A TREATISE

ON

FEDERAL CRIMINAL LAW PROCEDURE

WITH

FORMS OF INDICTMENT

AND

WRIT OF ERROR

AND

THE FEDERAL PENAL CODE

BY

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University of Texas, 1891.

THIRD EDITION

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Dedicated to that splendid character—my friend—the Honorable Edward R. Meek, United States District Judge for the Northern District of Texas.

PREFACE TO FIRST EDITION

The many years I have served as United States Attorney have convinced me that the majority of the bar will welcome a sort of compendium of Federal Law and Procedure and indictment forms, that may be of instant assistance to them, when called into a criminal case in the Federal Court.

No especial claim of originality is made for the pages that follow. Reference books, annotations, dictionaries, encyclopedias, and reports of the Courts have been frequently and studiously consulted. A great portion of the work, however, has been taken from my own annotations, made during my service as an official.

In the preparation of the volume, I have been conscientiously aided by my clerk and private secretary, Mr. J. A. Lantz.

The book is offered with the prayer that the labor of some fellow attorney may be somewhat lightened.

Yours very earnestly,

WILLIAM H. ATWELL.

August 1, 1910.

PREFACE TO SECOND EDITION

In 1910 the first edition of my work on Federal Criminal Law was published. It was generously received by the profession. Many complimented it—a few criticized it. The five years that have passed since then have been fat with decisions. I have tried to cite, and believe I have cited, in the present volume, all of these new decisions. I have also added another chapter on Practice Suggestions.

In this book should be found, if not all of the decided law with reference to a statute, a quick index to where

such law may be found, and this is often all the busy, painstaking lawyer wants.

WILLIAM H. ATWELL.

Dallas, Texas, March 1, 1916.

PREFACE TO THIRD EDITION.

Congresses and courts have been working so rapidly since the publication of my Second Edition, in 1916, that this Third Edition is necessary.

Regardless of political opinions it may be conceded that the hegemony of the Federal Court is at hand.

That those who enter that tribunal may find some assistance here is my prayer.

WILLIAM H. ATWELL.

Dallas, Texas, April 1, 1922.

ALPHABETICAL TABLE OF CASES.

EXPLANATION.

(The following table of cases shows cases cited in this volume; if a case is cited more than once there will be a semi-colon between the first and second citations. The letter P means the page in this volume that the case will be found; thus, Wetzel v. U. S., 233 F. 904, p. 246, means that Wetzel v. U. S. shown at 233 F. page 904, will be found in Atwell's Federal Criminal Law at page 246 of this volume.)

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FEDERAL CRIMINAL LAW

CHAPTER I.

THE UNITED STATES CONSTITUTION.

§ 1. **The United States Constitution—Supreme Law.** The Constitution of the United States provides in Section 2 of Article VI., that, "The Constitution and the laws of the United States which shall be made in pursuance thereof..... shall be the supreme law of the land; the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

§ 2. Article V. of the Amendments to the Constitution provides:

"No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger; nor shall any person be subject, for the same offense, to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself; nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use without just compensation."

Article VI. of the Amendments provides:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

By Article III. of the Constitution, the judicial power is vested in a Supreme Court, and in such inferior courts as Congress may establish.

In Section 8, Article I., Congress is authorized specifically to establish naturalization laws, uniform bankrupt laws, to coin money, to establish post-offices and post-roads, to promote the progress of science and useful arts, and to make all laws necessary and proper for carrying into execution any of the powers vested by the Constitution in the government of the United States, or in any department or officer thereof.

§ 3. From these specific grants of power, as well as from the power that is inherent in sovereignty to pass such regulations as will conserve the liberties of the individual and the existence of the sovereignty, has come the Federal criminal law.

The power to establish post-offices and post-roads must necessarily include the power to preserve them after so being established; the power to coin money, the power to promote science and arts, and the power to make all laws necessary to promote the general welfare of the government is sufficient, when delegated by the people, for the foundation of a code, by the enforcement of which the

liberty, property, and life of individuals is taken through the process of the Courts.

§ 4. There are certain well known guarantees of our republican form of government that are in the Constitution, most of which appear in the respective Constitutions of the various states. These guarantees are:

(1) The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it. (Section 9, Article I., Paragraph 2.)

(2) No bill of attainder or *ex post facto law* shall be passed. (Sec. 9, Art. I., Par. 3.)

(3) The trial of all crimes, except in cases of impeachment, shall be by jury; and such trials shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed. (Sec. 2, Art. III., Par. 3.)

(4) No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open Court. (Sec. 3, Art. III., Par. 1.) The Congress shall have power to declare the punishment of treason, but not attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attained. (Sec. 3, Art. III., Par. 2.)

(5) The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states. (Sec. 2, Art. IV., Par. 1.) A person charged in any state with treason, felony, or other crime, who shall flee from justice and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime. (Sec. 2, Art. IV., Par. 2.)

(6) The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

(Amendment IV.) Amendment V. guarantees that no person shall be held to answer unless upon presentment or by indictment, and that no person shall be twice put in jeopardy of life or limb, nor compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; and Amendment VI. guarantees speedy trial in the proper jurisdiction, that he shall be confronted with the witnesses, be represented by counsel, and himself, entitled to process for witnesses.

(7) Amendment VIII. provides excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punshment inflicted.

§ 4a. While power to punish for contempt committed in the presence of the court, existing within the limits of and sanctioned by the Constitution, is not controlled by the limitations of the Constitution as to modes of accusation and methods of trial generally safeguarding the rights of the citizen, judicial authority is not exempt from Constitutional limitations; the great and only purpose of the power being to secure judicial authority from obstruction in the performance of its duties to the end that means appropriate for the preservation and enforcement of the Constitution may be secured. Ex parte Hudgings, 39 Supreme Court Reporter, 337.

An amendment to the Constitution is adopted in the Constitutional way and the Secretary of State cannot investigate the truth of such amendment. Ratification, and not proclamation, governs, hence mandamus as to the Secretary of State does not lie. U. S. vs. Colby, 265 Fed., 998.

A violation of Constitutional provisions presumes injury and such injury need not be shown. Davis vs. U. S., 247 Fed., 394.

A statute which declares it to be unlawful to make an unreasonable charge for an article, violates the Constitutional provision which declares that the accused shall be informed of the nature and cause of accusation. Lamborn vs. U. S. Attorney, 265 Fed., 944; U. S. vs. Bernstein, 267 Fed., 295; Contra, Weed vs. Lockwood, 266 Fed., 785,

but the Supreme Court settled the conflict in 1921 in 41 Sup. Ct. Rep. 298, holding that the Lever Act, over which most of these decisions arose, was unconstitutional so far as the matter now being discussed is concerned. U. S. v. Peoples, 217 F. 790.

The meaning of the words "two witnesses," as contained in Section 3, of Article 3, relating to the crime of treason, is that it is necessary to produce two direct witnesses to the whole overt act; and while it may be possible to piece bits together of the overt act, yet every part must have the support of two oaths, and hence conviction cannot be had on the testimony of one witness together with circumstantial evidence, though it was well-nigh conclusive. U. S. vs. Robinson, 259 Fed., 685.

Whatever may have been the slight vacillation of the courts in the matter of the violation of that portion of the constitution which relates to unreasonable searches and seizures, it is now determined that there may be no search warrant issued unless the court is furnished with facts under oath and premises cannot be searched by merely curious officers; such searches may be made only when felonies are presently prosecutable and cannot be made to discover whether there is a conspiracy to do some unlawful thing. Veeder vs. U. S., 252 Fed., 414.

An affidavit for search warrant is insufficient which does not state facts, and every agent cannot give consent to an illegal search. In re Tri-State, 253 Fed., 605.

An illustration of what is an "unreasonable" search will be found in U. S. vs. Premises, 246 Fed., 185.

The rule with reference to evidence that is secured by unreasonable searches and seizures is, that such evidence must be returned upon request, that a conviction secured upon such evidence or through such evidence must be reversed. U. S. vs. Kraus, 270 Fed., 578; Flagg vs. U. S., 233 Fed., 481; U. S. vs. Abrams, 230 Fed., 313; U. S. vs. Friedburg, 233 Fed., 313; Ex parte Jackson, 263 Fed., 110.

And evidence so taken will not support an indictment. U. S. vs. Bush, 269 Fed., 455.

A void warrant is no protection against a charge of false imprisonment, or for an invasion of the home in

violation of the constitution. Reichman vs. Harris, 252 Fed., 371; U. S. v. Kelih, 272 Fed., 484.

A defendant cannot be required to produce private papers before a grand jury, as this would be compelling him to give evidence against himself. U. S. vs. Brasley, 268 Fed., 59.

See also post sections on admissibility of documentary evidence secured illegally, and search warrants.

The Supreme Court, in the case of Gouled vs. U. S., 41 Sup. Ct. Rep., 261, and the case or Amos vs. U. S., 41 Sup. St. Rep., 266, held, that evidence illegally taken by improper searches and seizures must be returned and conviction set aside, if secured thereon. But see Miggins vs. U. S., 272 Fed., 41.

See also U. S. vs. Maresca, 266 Fed., 713, for a definition of probable cause, application for return of property, and the ordering of the return of property unlawfully taken. See also U. S. vs. Ray, 275 F., 1004, as to insufficiency of affidavit based on belief and not facts.

An officer of a court having in his possession or under his control property illegally seized, may be ordered to return such property if it was unlawfully taken through search and seizure.

A subpoena duces tecum is not an unreasonable search and seizure when directed to the officer of a corporation amenable to such process. U. S. vs. Watson, 266 Fed., 736.

A bail bond that has been forfeited may be remitted under Section 1020. U. S. vs. Jacobson, 257 Fed., 760. See also U. S. vs. Smaller, 275 F. 1011.

An administrative officer who violates the law and the constitution in searching premises and seizing property may not be ordered by a court, which does not have then before it a justiciable case, to return the same. In re Weinstein, 271 Fed. 5, also 271 Fed., 673. The rights of such a sufferer would have to be secured through an independent action brought by him for damages for the trespass and for such other relief as he might petition the court for.

Papers which are in the possession of the prosecuting officer to be used in a criminal prosecution, which have been illegally seized, must, upon application, be returned, and if the trial court should refuse to return them they would be incompetent evidence at the trial. Weeks vs. U. S., 232 U. S., 383. In Silverthrone Lumber Company vs. U. S., 251 U. S., 385, the supreme court went further and held that the prosecuting officer might not make any use whatsoever of evidence so obtained.

Deportation proceedings are administrative and officers who make illegal searches and seizures, even though such officers be from the department of justice, they may not be required to return such property by a court which does not have the case before it. In re Weinstein, 271 Fed., 5.

Leave to file an information will be refused by the court where the evidence against the defendant was procured by an unlawful search. U. S. vs. Quaritius, 267 Fed., 227.

Seizure of liquor from a private residence prior to the taking effect of constitutional amendment, 18, on a search made without a warrant by officers armed with shot-guns and pistols, although there was "an invitation to enter and consent to the seizure," held unlawful, and the owner of the liquor held entitled to its return. U. S. vs. Marquette, 271 Fed., 120; U. S. vs. Kelih, 272 Fed., 484, even orders return of still when so unlawfully taken.

A diary kept by a defendant which came lawfully into the possession of the government, even though, the defendant had made a motion to have the same returned to him, is usable in evidence. Pedersen vs. U. S., 271 Fed., 187. Self incrimination, see Elwell, vs. U. S., 275 F. 775.

Articles illegally seized will not be impounded, but must be returned, even though contraband. U. S. vs. Porazzo, 242 Fed., 276. See sec. b. See also U. S. vs. Lydecker, 275 F. 977.

Indictment for resisting officer who is searching, and seizure must show such actions constitutional, otherwise it is defective. U. S. vs. Hallowell, 271 Fed., 795.

Search warrant and affidavit for different premises held invalid. U. S. vs. Armstrong, 275 Fed., 506.

A plea in abatement interposed by the defendant on the ground that the indictment was procured by the wrongful use before the grand jury of evidence which was obtained by an illegal search and seizure of private papers and documents may be overruled by the trial court, if he considers it just to overrule it, without fear of reversal since Sec. 1011, R. S. U. S. as amended, reads as follows, "there shall be no reversal in the Supreme Court or in a circuit court upon a writ of error, for error in ruling any plea in abatement, other than a plea to the jurisdiction of the court, or for any error in fact." Mounday vs. U. S., 225 Fed., 965.

In U. S. vs. Mitchell, 274 Fed., 128, Judge Dooling reviews the prohibition statutes and the Constitutional amendment and the search warrant statutes, and then says "it is not merely a pro forma matter, but one of utmost importance, that search warrants should be properly issued in the first instance. They should not be lightly applied for, nor lightly issued, as they trespass upon the most important rights of the people."

A search warrant to search a private dwelling should never be issued until the issuing officer has asked "what evidence have you that this place is being used for the unlawful sale of intoxicating liquor?", and has received evidence of such transgression. The 4th Amendment to the Constitution is far more important to the people than the conviction of one who has violated the prohibition law.

Evidence illegally obtained is inadmissible and in the absence of other evidence a directed verdict for the defendant is proper. Holmes vs. U. S., 275 Fed., 49. Also see O'Conner vs. Patter, 276 F. 32; Berry vs. U. S., 275 F. 680.

Evidence obtained by unlawful search is inadmissible and where such evidence is liquor it may not be introduced in evidence nor may the testimony of its finding and seizure be introduced, and this, even though the seiz-

ing officers are a sheriff and his deputies instead of United States officers. Dukes vs. U. S., 275 Fed., 142.

§ 5. **Infamous Crimes as Meant in Art. V. of Constitution.**—*In re* Classen, 140 United States, 205, is the ranking Supreme Court decision as to what is an infamous crime, and that case hold that a crime which is punishable by imprisonment in a state prison or a state penitentiary, is an infamous crime, whether or not the accused is sentenced to hard labor; and the determination of the question rests upon what the statute provides, and not upon what the judge imposes. See also Fitzpatrick vs. United States, 178 U. S., 307; McKnight vs. United States, 113 Fed., 452; Good Shot vs. United States, 154 Fed., 258; Gritt Garritee vs. Bond, 102 Maryland, 383; State vs. Nichols, 27 R. I., 83; United States vs. Wynn, 9 Fed., 894; ex parte Wilson, 114 United States, 423; Mackin vs. United States, 117 U. S., 351; ex parte McClusky, 40 Fed., 74; Parkinson vs. United States, 121 U. S., 281; ex parte Bain, 121 U. S. 13, United States vs. Cadwallader, 59 Fed., 679; United States vs. Dewalt, 128 U. S., 393.

Section 335 of the new Federal Criminal Code, in effect January 1, 1910, contains this provision:

"All offenses which may be punished by death or imprisonment for a term exceeding one year shall be deemed felonies; all other offenses shall be deemed misdemeanors."

§ 5a. Section 1022 provides that all crimes and offenses committed against the provisions of Chapter 7, title Crimes, which are not infamous, may be prosecuted either by indictment or by information filed by a district attorney. It was held in U. S. vs. Wells Co., 186 Fed., 248, that a prosecution for a violation of the Food & Drugs Act, Section 2, 34 Stats. L. 768, for shipping adulterated food, wherein, upon conviction, a fine not exceeding $200 for the first offense and for each subsequent offense a fine not exceeding $300 or imprisonment not exceeding one year, or both, in the discretion of the Court, could be begun by information for the reason that the offense charged was not a felony in that a defendant who

may not be imprisoned in a penitentiary for more than one year, has not committed a felonious offense.

All offenses, therefore, which may not receive punishment in excess of one year, are misdemeanors and no convicted defendant may be sent to a penitentiary unless his punishment exceeds one year.

§ 5b. The court will refuse leave to file an information where the evdience against the defendant was procured by an unlawful search. U. S. vs. Quaritus, 267 Fed., 227.

While it is the established practice for the prosecuting officer to secure leave of the court to file an information yet in the absence of a challenge, filing without permission is not prohibited by the constitution. The information must allege that such permission has been granted. U. S. vs. Simon, 248 Fed., 980.

A violation of the act of may 18, 1917, which is commonly known as the Selective Draft Act, may be instituted by information. U. S. vs. Nelson, 254 Fed., 889.

The Fifth Amendment to the Constitution provides, "no person shall be held to answer for a capital or other infamous crime, unless on presentment or indictment by a grand jury, except in cases arising in the land or naval forces or the militia, when in actual service in time of war or public danger." Section 5541 of the Revised Statutes of the United States provides, that where any person convicted of an offense against the United States is sentenced for a period longer than one year, the court by which the sentence is passed may order the sentence to be served within any jail or penitentiary within the district or state where such court is held, the use of a jail or penitentiary is allowed by the Legislature of the state for that purpose.

In the case of Blanc vs. U. S., 258 Fed., 921, it was held that prosecution under the draft act for keeping a house of prostitution could be begun by information. Also Hunter vs. U. S., 272 Fed., 235.

Keeping whiskey for illegal sale under National Prohibition Act may be prosecuted by information. Young vs. U. S., 272 Fed., 967.

§ 6. **Jeopardy.**—Each American citizen, owing allegiance to two governments, state and national, is the beneficiary of both, and also liable to the pains and penalties of both. He that sells whiskey must comply with both state and federal laws, and a conviction or acquittal under the laws of either is no impediment or safeguard to prosecution from and by the other. One who sells whiskey without taking out either state or federal license is liable to prosecution by both governments.

The Courts have held, *in re* Boggs, 45 Federal, 475; U. S. vs. Barnhart, 22 Federal, 290; Fox vs. Ohio, 5 Howard, U. S., 434; Moore vs. Illinois, 14 Howard, U. S., 20, that the jeopardy clause in the Federal Constitution is not a limitation upon any state government, but I do not understand such holding to mean that if one were put in jeopardy twice by the state machinery, that he would thereby be precluded from raising the question. While the jeopardy clause in the Federal Constitution was doubtless intended to relate to trials in the Federal courts, I am sure that the constitutional guarantee could be successfully relied upon by a citizen of a state, if the effort were made to place him in jeopardy twice by the state government.

It will be borne in mind that a former conviction or acquittal must be pleaded, and the protection is as ample whether the former trial resulted in a conviction or an acquittal. United States vs. Wilson, 7 Peters, 159; United States vs. Ball, 163 U. S., 662; ex parte Glenn, 111 Federal, 261.

§ 6a. **Identity of Offense Must be Shown.**—Louie vs. U. S., 218 Fed., 36.

§ 6b. **Jeopardy Continued.**—A conviction by a court-martial prevents a conviction by the United States District Court. U. S. vs. Block, 262 Fed., 205.

A conviction in a state court will sometimes bar one in the federal court, was held by the district court in the case of U. S. vs. Porria, 255 Fed., 172. Where the defendant had been convicted in a state court on an indictment charging him with receiving and aiding in concealing stolen property, such property being the same as that

which the federal indictment alleged he had stolen from an interstate commerce shipment and in the second count of which he was charged with having it in his possession, such federal indictment was barred by the state conviction. The court quotes Sec. 8604, U. S. Statutes, 1916, "a judgment of conviction or acquittal on the merits under the laws of any state shall be a bar to any subsequent prosecution ....."

See also Gavieres vs. U. S., 220 U. S., 338; 55 law edition, 489.

It is not jeopardy to convict one who broke open a post-office for both larceny and breaking and entering. Morgan vs. Sylvester, 231 Fed., 886.

It is not a denial of "due process" as guaranteed by the fifth and sixth amendments to withdraw a case and re-submit it. Lovata vs. State of New Mexico, 242 U. S., 199.

The changing of a judge, by the consent of the defendant, and the continuance of the trial under the new judge, which proceedings were subsequently set aside as nullities, would not constitute jeopardy. Freeman vs. U. S., 237 Fed., 815.

Conviction under State Statutes not a bar to prosecution under Federal Statute for same act. U. S. vs. Rotagczak, 275 Fed., 558.

An acquittal by reason of a variance is not jeopardy, was held, in U. S. vs. Phelan, 250 Fed., 927.

A conviction of murder in the first degree and a "without capital punishment," recommendation by the jury, is not an acquittal of first degree murder, and, upon another trial and conviction the defendant may be given a death sentence. Stroud vs. U. S., 251 U. S., 15; 40 supreme court reporter, 50. A prosecution of a stockholder and director of a corporation is not a bar to subsequent proceedings to forfeit the oleomargarine. U. S. Manufacturing Company, 240 Fed., 235.

A prosecution on a defective indictment would not bar a subsequent prosecution, where there was no acquittal on the merits, when the court, upon the defects being called to his attention, after the close of the testi-

mony and the arguments to the jury, discharged the jury. Simpson vs. U. S., 229 Fed., 940.

A plea of former acquittal should establish identity of offenses and when such identity is established all of the elements that enter into the original charge are barred to further prosecution. U. S. vs. Clavin, 272 Fed., 985.

A test by which is determined a plea of former jeopardy is whether if what is set out in the second indictment had been proved under the first it would have supported a conviction, and, if it would, the second cannot be maintained. Manning vs. U. S., 275 Fed., 29.

§ 7. **Witness Against Self.**—That clause of Amendment V., which declares that no person shall be compelled in any criminal case to be a witness against himself, is not limited to the defendant. It is a privilege that can be claimed by any witness. Counselman vs. Hitchcock, 142 U. S., 562; U. S., vs. Collins, 145 Federal, 711; in re Hess, 134 Federal, 111; United States vs. Praeger, 149 Federal, 484; Hale vs. Henkel, 201 U. S., 67; Jack vs. Kansas, 199 U. S., 381; Burrell vs. Montana, 194 U. S., 578; Ballman vs. Fagin, 200 U. S., 195; Edelstein vs. United States, 149 Federal, 642; United States vs. Simon, 146 Federal, 92; in re Briggs, 135 N. C., 122; U. S. vs Price, 163 Fed., 904.

There is nothing more barbarous than to compel disclosures which will degrade and convict the person so compelled. Voluntary appearance no violation or deprivation of constitutional guarantee. Pendleton vs. U. S., 216 U. S., 305. See also sec. 20. See also Elwell vs. U. S., 275 F. 775.

Section 860 of the Revised Statutes of the United States provides that no pleading of a party nor any discovery or evidence obtained from a party or a witness by means of a judicial proceeding in this or any foreign country shall be given in evidence or in any manner used against him or his property or his estate in any Court of the United States in any criminal proceeding or for the enforcement of any penalty or forfeiture. An interesting case, showing the extent of the doctrine and the care with which the Courts have preserved it, is McKnight vs. the United

States, 115 Federal, 981. In that case, the Circuit Court of Appeals for the Sixth Circuit condemned as unconstitutional a demand by the District Attorney of the defendant for the original of a paper in evidence.

As to immunity from prosecution because of testimony before Grand Jury, see U. S. vs. Heike, 175 Fed., 852. When such is plead in bar burden is on the defendant, for discussion thereon see same case.

§ 7a. **Continued.**—See Section 39a. Section 860 of the Revised Statutes was repealed by the Act of May 7, 1910, Chapter 216, 36 Stats. L. 352, and the protection originally afforded by it comes now directly from the fourth and fifth amendments to the Constitution of the United States. In fact Section 860 was narrower in its protection than are the amendments. American Lithographic Co. v. Werckmeister, 221 U. S., 603.

The Supreme Court of the United States in re Harris, 221 U. S., 274, determined in substance that a bankrupt is not deprived of his Constitutional right not to testify against himself by an order requiring him to surrender his books to the duly authorized receiver.

This decision was made in the face of facts which were, in substance, that the bankrupt had declined to testify concerning a certain written statement of his assets and liabilities, on the ground that it might tend to incriminate him, and he also refused to produce his books and made oath that the books contained evidence that might tend to criminate him. The bankrupt relied upon the fifth amendment and Counselman v. Hitchcock in 142 U. S., 547, but the Court said "If the order to the bankrupt standing alone infringed his Constitutional rights, it might be true that the provisions intended to save them would be inadequate and nothing short of statutory immunity would suffice. But no Constitutional rights are touched. The question is not of testimony, but of surrender—not of compelling the bankrupt to be a witness against himself in a criminal case, present or future, but of compelling him to yield possession of property that he no longer is entitled to keep. If a trustee had been appointed, the title to the books would have vested in him

by the express terms of Section 70 and the bankrupt could not have withheld possession of what he no longer owned on the ground that otherwise he might be punished. That is one of the misfortunes of bankruptcy if it follows crime. The right not to be compelled to be a witness against one's self is not a right to appropriate property that may tell one's story. As the bankruptcy court could have enforced title in favor of the trustee, it could enforce possession ad interim in favor of the receiver, Section 2. In the properly careful provision to protect from use of the books in aid of prosecution, the bankrupt got all that he could ask."

In the above case the Supreme Court merely decides that a bankrupt may not retain possession of his books, the title to which is vested in his trustee, on the ground that they contain matters which would subject him to criminal prosecution, but the decision does not lessen in any degree the protection of the amendments of the Constitution about which we are talking. In other words, having secured such books, from which the sovereignty would gather data to support a prosecution against the bankrupt, such sovereignty would be precluded from the use of such testimony on the ground that the defendant was forced to produce the same.

In U. S. vs. Rhodes, 212 Fed., 518, it was held that the law is well settled that the Constitutional provision that no man shall be compelled to be a witness against himself enables a person, under ordinary circumstances, to refuse not only to give oral testimony, but to produce his books and papers, on the ground that they would tend to incriminate him. Boyd vs. U. S., 116 U. S. 616. And it is held that a bankrupt, as well as any other person, is entitled to the protection of such Constitutional provision. In re Canter & Cohen, 117 Fed., 356; in re Dow's Estate, 105 Fed., 889. But evidence proposed to be used in a perjury prosecution against a bankrupt secured by the force of the bankrupt statute is not permitted by law to be so used, under the Constitutional provision referred to, as well as by that of the bankrupt law. In re Harris, 164 Fed. 292.

Sub-division 9 of Section 7 of the Bankrupt Act of 1898 and the immunity afforded by it are not applicable to a prosecution for perjury committed by a bankrupt when examined under it. The Constitutional guaranty of the fifth amendment does not deprive the law-making authority of the power to compel the giving of testimony, even though the testimony, when given, may serve to incriminate the witness, provided complete immunity be accorded. The sanction of an oath and imposition of punishment for false swearing are inherent parts of the power to compel giving testimony and are not obviated by immunity as to self-incrimination. The immunity afforded by the fifth amendment relates to the past; it is not a license to the person testifying to commit perjury either under the provisions as to the giving of testimony in Section 860 of the Revised Statutes or of the Bankruptcy Act of 1898. The provisions in the Bankruptcy Act compelling testimony do not confer an immunity wider than that conferred by the Constitution. Glickstein vs. U. S., 222 U. S., 139.

The Glickstein case was a prosecution for perjury committed by the defendant upon his examination before the first meeting of his creditors, and the proposition that the Supreme Court announces is merely that Congress had a right to compel the bankrupt to disclose all matters relating to his business, but to disclose them truthfully, and if he saw fit to perjure himself upon such disclosure, he could be made to suffer the penalty of a prosecution for perjury. Had he testified upon such forced examination about facts that were the truth, such testimony could not thereafter have been used against him in either a civil or a criminal cause for the reason that the testimony was not voluntary.

To the same effect is the decision in Dreier vs. U. S., 221 U. S., 394, which was a contempt proceeding to require Dreier to produce certain books of a corporation which were in his possession and which he refused to produce on the ground that they would incriminate him. The court held that Dreier was not entitled to refuse the production of the corporate records. By virtue of the

fact that they were the documents of the corporation in his custody and not his private papers, he was under obligation to produce them when called for by the proper process. See also Wilson vs. U. S., 221 U. S., 361; Hale v. Henkel, 201 U. S., 43.

In Cameron vs. U. S., 192 Fed., 548, the Circuit Court of Appeals for the Second Circuit held that Section 860 shall not exempt a bankrupt from prosecution for perjury in giving evidence in his bankruptcy proceedings, nor does it prevent the introduction, in support of such a charge, of the false statement and so much of the other part of the accused's testimony as may be necessary to make the charge intelligible.

In Powers vs. U. S., 223 U. S., 303, the Supreme Court held that when the accused voluntarily becomes a witness in his own behalf before a commission it is not essential to the admissibility of his testimony that he be first warned that what he says may be used against him and it is of no avail, after he has testified voluntarily and understandingly, to thereafter make a motion to exclude his testimony by way of a privilege under the fifth amendment, because the defendant voluntarily testifying waives his privilege and may be fully cross-examined as to the testimony given.

The President cannot compel one to accept a pardon. A pardon to be effective must be accepted, and the tender of a pardon does not destroy the privilege of a witness against self incrimination. He may reject the pardon and refuse to testify on the ground that his testimony may have an incriminating effect. Burdick vs. U. S., 236 U. S., 79, overruling U. S. vs. Burdick, 211 Fed., 493.

Interstate Commerce Commission has power to compel attendance and testimony of witnesses, and witness has immunity under Act February 11, 1893, even though government does not inquire of him whether he claims privilege. This question raised on demurrer. U. S. vs. Skinner, 218 Fed., 871.

§ 7b. This clause of the constitution is operative in civil as well as criminal cases. Woodmen vs. Bailey, 183 S. W., 107.

A notice to a defendant in a criminal case to produce documents is not permissible. Hanish vs. U. S., 227 Fed., 584; Green vs. U. S., 266 Fed., 779.

A witness before a federal grand jury cannot urge objections of incompetency and irrelevanvy to questions which a party might urge, and, he may be required to testify, subject only, to the constitutional exemptions against self incrimination. Blair vs. U. S., 250 U. S., 273; 39 Sup. Ct. Rep., 468.

The danger of self incrimination must be real. Mason vs. U. S., 244 U. S. 362. Whether a witness must answer is determinable by the trial court in the exercise of its sound discretion and unless there is reasonable ground, distinct from a remote or speculative possibility, to apprehend that a direct answer may prove, dangerous to the witness, his answer should be compelled.

The fifth amendment is violated by the white slave act which requires certain reports. U. S. vs. Lombardo, 228 Fed. 980.

Where testimony vital to conviction is given under duress, no conviction based thereon will be permitted to stand. Ford vs. U. S. 259 Fed. 552.

A district attorney has no authority to make an agreement with a defendant where the case is not within any statue. U. S. vs. Ford 99 U. S. 594.

A person charged as a defendant may be in such condition of duress that the court may infer that he was "compelled," as the word is used in the constitution, from the very fact that he is brought before the jury and thereupon gives evidence. U. S. vs. Kimball, 117 Fed. 161.

Immunity by reason of having testified before a grand jury may or may not follow, since one may claim his privilege, and his ignorance of such right would not necessarily entitle him to claim immunity. U. S. vs. Bryant, 245 Fed. 682.

A compulsory attendance before a pension examiner saves a witness from prosecution because immunity follows. Section 860 of the Revised Statutes offering a certain sort of immunity is not as broad as the constitu-

tional protection afforded by the fifth amendment, and the witness is not compelled to answer. U. S. vs. Bell, 81 Fed. 830.

§ 8. Amendment VI. of the Constitution means a trial by a common law jury, which consisted of twelve men, Maxwell vs. Dow, 176 U. S. 586; Thompson vs. Utah, 170 U. S., 349, and to such a hearing as the terms and rules of the Court permit, Beavers vs. Haubert, 198 U. S., 86, and to such an explanation of the offense charged as to afford the defendant ample protection from any subsequent prosecution and to enable him to make his defense in the present one, United States vs. Cruickshank, 92 U. S., 557; United States vs. Martindale, 146 Federal. 291; United States vs. Green, 136 Federal, 641; Fitzpatrick vs. United States, 178 U. S., 309; Terry vs. United States, 120 Federal, 486; Milby vs. United States, 149 Federal, 641; Bartlett vs. United States, 106 Federal, 885. It is not necessary, however, to furnish a copy of the indictment to the defendant, United States vs. Vanduzee, 140 U. S., 173; United States vs. Jones, 193 U. S., 530; Balliet vs. United States, 129 Federal, 689, unless the prosecution is for treason or other capital offense, in which event Section 1033 of the Revised Statutes of the United States provides the procedure, which includes a copy of the indictment for the defendant. The only exceptions to the guarantee that the defendant shall be confronted with the witness against him are the introduction of dying declarations and the introduction of the testimony of a deceased witness who was sworn upon a former trial, and the testimony taken in stenographic form, such testimony to be supported by the oath of the stenographer, Kirby vs. United States, 174 U. S., 61; West vs. Louisiana, 142 Federal, 4; Flynn vs. People, 222 Illinois, 309; Robertson vs. Baldwin, 165 U. S., 281; Mattox vs. United States, 156 U. S., 240; Motes vs. United States, 178 U. S., 471.

Section 878 of the Revised Statutes of the United States authorizes the issuing of process for indigent defendants when such defendants make affidavit in accordance therewith, but a rule of the Court limiting such witnesses to four is not unreasonable.

§ 8a. A defendant cannot consent to a trial by less than twelve jurors in Texas in a state court in a felony case and to allow the defendant to do so is fatal error. Dunn vs. State, 224 S. W. 893.

Since the order for the drawing of jurors may be made by the judge in chambers it is, therefore, valid for a judge to make an order for the drawing of jurors in a district other than the district in which the jurors are to be drawn. Apgar vs. U. S. 255 Fed. 16.

The drawing of the jury must be done in accordance with the statute and an assistant attorney, who does what the clerk ought to do makes the drawing illegal. U. S. vs. Murphy, 224 Fed. 554. The act was amended on February 3, 1917, so as to allow a deputy clerk to draw the jury as well as the clerk.

A marshal is presumed to be without favor but when he hires a private detective out of his own funds he is not indifferent. Johnson vs. U. S. 247 Fed. 92.

The duties of selecting person to act as a grand or petit juror must be performed by the person authorized by the statute to make such selection and cannot be delegated to courts; and when the clerk did not participate in the selection of the jury as required by 36 Stat., at Sec. 1164, the error was prejudicial and an indictment found by a grand jury so directed must be set aside as the error is not a mere matter of form. Dunn vs. U. S. 238 Fed. 508.

Judicial Code 277, providing that "jurors" shall be returned from such parts of the district from time to time as the court shall direct, so as to be most favorable to an impartial trial, and so as not to incur unnecessary expense or unduly burden the citizens of any part of the district with such service, held, applicable to grand jurors as well as petit jurors. Williams vs. U. S., 275 Fed. 129.

§ 8b. In section 8, above, are cited cases which define and declare exceptions to the constitutional guarantee that the defendant shall be confronted with the witness; to that list may now be added the case of Bergin vs. State, 188 S. W. 423, where it was held that the testi-

mony of one given at a former trial with due opportunity for cross examination is admissible on a subsequent trial after death of such witness.

§ 8c. In the federal court a copy of the indictment in cases other than capital and treason may not be furnished to the defendant by the government; a rule of the district attorney's office, denying a list of the jury until two days before trial in all cases less than capital is sustained in the case of Hendrickson vs. U. S. 249 Fed. 34.

§ 9. It is well for the attorney whose practice has been largely confined to the state courts to ever bear in mind that the rules and forms of practice and methods of pleading that are adopted by Federal Statute for procedure in the Federal Courts, do not apply to any extent in the trial of Federal criminal law. It is entirely immaterial what the state statutes provide with reference to procedure in criminal cases, so far as the Federal Courts are concerned. The Federal statutes alone control in criminal matters. In Logan vs. United States, 144 U. S., 301, the Supreme Court held that even Section 858 of the Revised Statutes of the United States, which, in its concluding paragraph, seems to program the line of competency for witnesses in the Courts of the United States did not relate to criminal trials or witnesses in criminal cases. The Court in that case said:

"For the reasons above stated the provisions of Section 858 of the Revised Statutes, that 'the laws of the state in which the court is held shall be the rules of decision as to competency of witnesses in the Courts of the United States, in trial at common law and in equity and admiralty,' has no application to criminal trials; and, therefore, the competency of witnesses in criminal trials in the Courts of the United States ..... is not governed by a statute of the state."

Criminal cases in the Federal courts are governed and controlled by Federal statutes and Federal decisions, and state statutes and state decisions are inapplicable. Jones vs. United States, 162 Fed., 419; United States vs. Reid, 12 Howard, 363; Starr vs. United States, 153 U. S., 625; Jones vs. United States, 137 U. S., 211; Sim-

mons vs. United States, 142 U. S., 148; Lang vs. United States, 133 Fed. 204; U. S. vs. Davis, 103 Fed. 457; U. S. vs. Hall, 53 Fed., 353; U. S. vs. Stone, 8 Fed. 239.

§ 9a. There is no common law jurisdiction in federal courts. Oliver vs. U. S. 230 Fed. 971.

The federal courts in criminal procedure do not follow the practice of the courts of the states in which they sit. Myres vs. U. S. 256 Fed. 779.

State statutes relating to criminal procedure have no application to prosecutions in the Federal courts. U. S. vs. Bopp, 232 Fed. 177.

CHAPTER II.

GENERAL PROVISIONS APPLICABLE TO THE PRACTICE.

§ 34a. Sentence not Absolutely Void; Resentencing.
35. Remission of Penalty on Forfeited Recognizance.
35a. Fine Abated by Death.
35b. Fine—Recovery, etc.
36. Bail After Affirmance.
36a. Bail—Amount—Manner of Trial.
36b. Bail Matter of Discretion and Matter of Right, When.
36c. Voluntary Giving of Bond no Defense to Surety Liability.
37. Severance—Separate Trials—Discretion of Court.
38. Habeas Corpus—Conclusion of Law Therein Instead of Statement of Facts.
38a. Habeas Corpus.
38b. Habeas Corpus not to be used as Writ Error.
39. Immunity under Commerce Act by Reason of Testimony.
39a. Immunity Governs Testimony by the Commissioner of Corporations; As Applied to the Fifth Amendment; As Applied to Section 860; *Duces Tecum* Basis of.
40. Improper Person in Grand Jury Room.
40a. Improper Presence in grand jury Room.
40b. Hearsay Testimony Before Grand Jury—Stenographer Before Grand Jury.
41. Private Prosecutor Unknown in Federal Courts.
41a. Assignments to District Attorneys.
42. Proof of Witness's Former Conviction.
42x. Proof of Witness, Former Connection.
42y. Evidence of Another Crime.

§ 10. **Judicial Code and the Courts.**—Article 3 of the Constitution of the United States provides in substance that the judicial power of the United States shall be vested in a Supreme Court and in such inferior courts as Congress may establish. Passing by the courts of the District of Columbia and the territorial courts there is but one federal court in which indictments and informations may be lodged and tried, namely, the district courts. Circuit courts were abolished by the Act of March 3, 1911, which Act enlarged the jurisdiction of the district courts, re-enacted the provisions relating to the Supreme Court, Circuit Courts of Appeals, and Court of Claims, and embraced the enactments establishing the Commerce Court and the Court of Customs Appeals. This act was called the Judicial Code, and went into effect January 1, 1912. The jurisdiction conferred on the district courts up to January 1, 1912, is

enumerated in Section 563 of the 1878 statutes and the jurisdiction conferred on the district courts by the new Judicial Code is shown in Section 24 of that Code.

§ 10a. **Trial — Public.** — The Constitution does not necessarily mean that "public trial" means the presence of spectators. When spectators are excluded defendant should allege and show injury to set aside verdict. Reagan vs. U. S., 202 Fed. 488.

§ 10b. **Trial—Public—Continued.**—In the case of Davis vs. U. S., 247 Fed. 394, the Circuit Court of Appeals for the 8th Circuit reversed the conviction because the court excluded from the court-room all spectators except the relatives of the defendant, members of the bar and newspaper reporters, holding that such action deprived the defendants of a public trial which is guaranteed by the constitution, and that prejudice will be implied, and that an affirmative showing that the defendants were harmed was unnecessary to justify a reversal.

This case in its holding seems to be in direct conflict with the case of Reagan vs. U. S., cited in paragraph 10-a, in that circuit Judge Gilbert speaking for the Court of Appeals of the 9th Circuit said, "we think the better doctrine is that it is not reversable error to exclude the spectators as was done by the order of the court in the case at bar, when there is no showing whatever that the defendant was prejudiced thereby, or deprived of the presence, aid, or counsel of any person whose presence might have been of advantage to him."

I am of the opinion that a violation of the constitutional rights necessarily implies prejudice and, as said in the Davis case, "more than that need not appear."

§ 10c. **Constitutional Trial—Court.**—In some districts the courts have been following the practice of permitting pleas of guilty to be taken in felony cases, as well as misdemeanors, before the court, without a jury. It is not believed that this practice is defensible. While there are some states that permit this practice, a reading of the cases from such states discloses that the constitutional provision relating to jury trials in such states is radically different from the federal provision. While it

may be argued that it would be difficult for a defendant who consented to such procedure to afterward undo it, the fact remains that there is no constitutional way to try one under the federal constitution for a felony save by a jury presided over by a judge.

Often it would be quite convenient, and apparently quite harmless, to allow the record to be silent as to the number of jurors sitting; but it has been invariably held by the federal courts that there are some things that a defendant cannot waive — some things that a prosecuting attorney, as an agent of the people, cannot agree to, and that, therefore, there is only one sort of jury, viz., twelve men.

When we review the history of the trial of persons charged with crime and ascertain the growth, harvest and perfection of the present system we understand the solicitude of the people for the preservation of such rights.

Originally the trial was by ordeal — hot iron or water or some other method; later, during the reign of Henry 7th, it was decided that the guilt or innocence of a criminal charge was determined by a public court, in the county where the offense occurred, before a jury of twelve men, from whose unanimous verdict no appeal could be had. To these final perfections has been added the right of appeal; in other words the verdict of the petit jury is not final in the sense that it may not be appealed from.

A federal trial must be conducted before a jury of twelve men and presided over by a judge and such judge cannot be substituted during the trial.

In the case of Freeman vs. U. S., 227 Fed. 734, Circuit Judge Rogers, speaking for the Court of Appeals of the second circuit writes learnedly and interestingly of the evolution of our system and of its constitutional rigors and demands.

§ 11. **United States Commissioners.**—The present United States Commissioners, that correspond in a general way to magistrates, justices of the peace, and other state examining officers, were, under the old law, called Commissioners of the Circuit Courts; but by the Act of

May, 1896, all Circuit Court Commissioners were abolished, and thereafter it became the duty of the District Court of each judicial district in the United States to appoint such number of persons as it might deem necessary to be known as United States Commissioners. This Act of May, 1896, was an amendment to the old Section 627 of the Revised Statutes. The Criminal Code of 1910 does not change the Act of 1896.

A United States Commissioner, however, is not a Court. In the case of in re Sing Tuck, 126 Federal, 397, the Court held a United States Commissioner to be neither a court nor a judge, nor vested by law with any part of the judicial power of the United States. A United States Commissioner is an inferior officer of a court, appointed by the court under authority of Congress, with defined and circumscribed powers. United States vs. Case, 8 Blatchf., 250; United States vs. Schumaan, 2 Abb. U. S. 523; in re Kaine, 14 Howard, 103; United States vs. Clark, 1 Gall., 497. See also in re Grin, 112 Federal, 795; Rice vs. Ames, 180 U. S., 371; Wright vs. Henkel, 190 U. S., 62; Beavers vs. Henkel, 194 U. S. 87, as to other powers of United States Commissioners, under proper appointment from the Court.

In 100 Federal, page 950, in re Perkins, it was held that a United States Commissioner cannot punish for contempt, and the doctrine is reiterated that a United States Commissioner does not, and cannot, hold a United States Court, but is a part of the Court appointing him; and when there be disobedience to his process or authority, the Commissioner properly refers such disobedience to the Court by whose authority he exists, which Court pursues the proper methods for contempt proceedings. In United States vs. Wah, 160 Federal, 207, the above doctrine has been reiterated, and it is clearly stated and argued, citing authorities, that United States Commissioners are neither judges nor courts, nor do they hold courts, though at some times acting in a quasi-judicial capacity, nor do they possess the power of courts, except in so far as the Acts of Congress conferring certain au-

thority and imposing certain duties on them, especially confer the same.

§ 11a. **Contempts.**—In speaking of the authorities that hold that a United States Commissioner is not a court, I cited some precedents that have blazed a method for punishing contempts before United States Commissioners which suggests the subject as related to the courts. There is never any difference of opinion as to the power and right of a court to punish for contempts comitted in its presence. This power is inherent and is a corollary of authority itself. Just what outside acts amount to a contempt and just how far the courts will go in enforcing obedience is an interesting field and not quite so well measured. For instance in Grant v. U. S., 227 U. S. 704, it was held that a judgment for criminal contempt can be reviewed only by writ of error and not by appeal and that the personal privilege does not relieve an attorney from producing, under subpoena of the federal grand jury, books and paper of a corporation left with him for safe-keeping by a client who claimed to be owner thereof, and such production may be enforced even though the books and documents would incriminate the attorney who claimed to be holding them for his client. See also Wheeler v. U. S. 226, U. S. 478. To the same effect is the case of Norcross v. U. S., 209 Fed. 13, which held that a contempt punishment would lie for the failure of the secretary of a corporation to produce before a grand jury the books and records called for in a subpœna duces tecum and this though there was no pending charge before the grand jury against the corporation or any of its officers or stockholders. This case was a writ of error from a judgment by the lower court committing the offending witness to imprisonment until he should conform to the requirements of the subpoena and the above opinion was by the Circuit Court of Appeals for the Ninth Circuit.

In the case of U. S. v. Huff, 206 Fed. 700, District Judge Grubb outlines the procedure and says that a contempt proceeding, although instituted in civil form by an order made in a pending suit directing the issuance of an

attachment to bring the defendant into court, may be converted into a criminal proceeding by the intervention of the United States and the filing of a motion asking to be made plaintiff therein. He also says that the common law rule that one charged with contempt may purge himself and be entitled to a discharge by the filing of a sworn answer denying the contempt, is not recognized by the federal courts because they leave the question to be determined by the proofs on the hearing.

In the provision of Revised Statute § 725 and Judicial Code § 628 limiting the power of federal courts to punish for contempt to misbehavior in the presence of the court or so near thereto as to obstruct the administration of justice, the second clause is not restricted in meaning to acts committed so near any point of distance to the place of holding court as to be obstructive to orderly procedure, which are covered by the preceding clause as construed by the Supreme Court, but applies to all acts of misbehavior the natural tendency and effect of which are to interfere with the administration of justice, wherever the acts may be committed. Where a defendant wrote and sent letters to a federal judge which were delivered to him in a room of his residence where he frequently heard matters in chambers, although it was not being so used at the time, such letters relating to a pending suit, to which the defendant was a part and in which the judge was still required to take action, they constituted a contempt punishable by the court under Judicial Code § 268.

In Kirk v. U. S., 192 Fed. 273, Circuit Judge Gilbert, speaking for the Circuit Court of Appeals for the Ninth Circuit, affirmed a contempt conviction which grew out of an attempt to corrupt jurors whom the defendant expected would sit in a criminal trial about to be held in the same city, though such acts occurred in a saloon several blocks from the place where the court was held. The court specifically said that it was sufficiently near to the court to obstruct the administration of justice and it was therefore within the court's jurisdiction to punish, even though it did not occur on property belonging to the United States or occupied or used by it.

In U. S. v. Barrett et al., 187 Fed. 378, the defendants were punished for having made an unprovoked assault on one of the attorneys interested in a caes being tried in the district court, such assault having been made because of the argument of such attorney and having been made on the street in full view of the jury room. The court said it had the power under its general jurisdiction to see that counsel practicing before it were not interfered with and that it had jurisdiction to punish individuals for contempt who assaulted counsel.

Judge Lacombe, in the Steiner case, 195 Fed. 300, held that the preparation, verifying and presentment of a false affidavit intended to influence the action of a court, constituted an obstruction to the administration of justice punishable as a criminal contempt and that contempt proceedings could be begun by warrant of attachment, as well as by a rule to show cause.

Section 268 of the Judicial Code reads as follows:

"The court shall have power to impose and administer all necessary oaths and to punish by fine or imprisonment, at the discretion of the court, contempts of their authority; provided, that such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness or other person to any lawful writ, process, order, rule, decree or command of the said courts."

In Gompers v. U. S. 233, U. S. 604, the Supreme Court held that while it could not review by appeal or writ of error a judgment of the Court of Appeals of the District of Columbia, punishing for contempt, it may grant a writ of certiorari to review the same. In this case the court asked the interesting question as to whether an indictment will lie for a contempt of the court of the United States and left it unanswered. The Gompers case will be recalled as the case originating from the Buck stove boycott and grew immediately out of the publication of an issue of a labor paper.

Section 1044 of the Revised Statutes provides that no person shall be prosecuted for an offense, not capital,

unless the indictment is found or information instituted within three years after the commission of the offense and the Supreme Court held in the Gompers case that this provision of limitation applied to acts of contempt that were not committed in the presence of the court, 233 U. S. 605. In that same case the court exhaustively considered the proposition as to whether or not a summary punishment for contempt was in violation of any of the Constitutional provisions guaranteeing jury trial and presentment by indictment and determined that the power to punish summarily was a part of the court itself and could not depend upon the uncertainty or delay of jury trials. This construction has long been recognized by the law writers as correct, the carrying into effect of which is not a deprivation of "due process of law." Bishop's New Criminal Procedure, Vol. 1, § 100a, Par. 3; same work, Vol. 2, § 892, Par. 6. U. S. v. Sweeney, 95 Fed. 434; People v. Kipley, 171 Ill. 44; 41 L. R. A. 775.

Violating injunctions, process of punishment for, whether civil or criminal contempt, Scovic v. U. S. 217, Fed. 871; Schwortz v. U. S. 217, Fed. 866.

§ 11b. **Contempt Defined.**—The act of October 15, 1914, on trade unions and combinations and trusts, found at page 128 of the Federal Statutes Annotated Supplement, of the 63rd Congress, in § 21 provides:

"That any person who shall wilfully disobey any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia, by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States, or under the laws of any state in which the act was committed shall be proceeded against for his said contempt as hereinafter provided."

Section 22 provides the procedure for such trials and punishment, which includes the right of trial by jury, and limits the punishment to a fine not exceeding one thousand dollars or a term not exceeding six months or both, and § 23 provides for an appeal from a conviction and bail during such appeal. § 24 reads as follows:

"That nothing herein contained shall be construed to delate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts commited in disobdience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of or on behalf of the United States, but the same and all other cases of contempt, not specifically embraced within section 21 of this Act, may be punished in conformity to the usages at law and in equity now prevailing."

Other than the contempts defined in Section 21 of this new law, it would seem that the statute relates to no other sort and that the procedure and punishment are as hereinbefore defined for all other contempts.

§ 11c. **Contempt Pendente Lite.**—A persisting in perjury or a continued failure to comply with an order of the court, are contempts that may be prosecuted by a motion filed by the prosecuting officer or upon the court's own motion. In United States v. Appel, 211 Fed. 495, the court held that it had power to punish as a criminal contempt persistent perjury which blocks the inquiry before it, upon motion made by the district attorney on behalf of the United States. A court, like anyone else who is in earnest, ought not to be put out by transparent sham or evasive answer. Answers that are manifestly untrue are as surely a contempt of the court as is the refusal to answer at all. It is no defense to proceedings for contempt in making and presenting false affidavits and in disobeying an order requiring delivery of property, that the respondent ultimately succeeded in the suit in which the contempt was committed. In re Steiner, 195 Fed. 300. A proceeding for contempt of court may be begun by warrant of attachment as well as by rule to show cause, and the fact that perjury is a substantive crime, punishable as such, does not prevent it from also constituting a contempt punishable under Revised Statutes 725, which is now Section 268 of the Judicial Code. See, also, for bankruptcy contempts, U. S. v. Henkel, 185 Fed. 553.

§ 11d. **Illustrative Contempts.**—In Toledo Newspaper Company vs. U. S., 38 Sup. Ct. Rep., page 560, 247 U. S.

402, it was determined that Sec. 268 of the Judicial Code, which declares that courts shall have the power to punish contempts of their authority, provided that such power shall not be construed to extend to any cases, except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, confers no power not already granted, and imposes no limitations not already existing, but merely marks the boundaries of existing authorities, and under it the publisher of a newspaper which criticized the presiding judge and held him up to ridicule and hatred in case he should grant an injunction, and in advance impeached his motives, was guilty of contempt, even though it did not appear that the judge saw the articles or that he was affected by them.

See also In re U. S. vs. Providence, 241 Fed. 524.

In the case of Marshall vs. Gordon, 243 U. S. 521, the supreme court held that the congress did not have the power to punish by contempt proceedings an United State Attorney who had criticized a committee of the House of Representatives.

A letter of an administrative officer containing a false charge against a judge concerning cases pending before such court was a contempt of that court. U. S. vs. Craig, 266 Fed. 230.

Attorneys having communications and meeting with jurors may be prosecuted for contempt by information presented by the U. S. Attorney and the facts alleged upon information and belief. Kelley vs. U. S., 250 Fed. 947.

Hiring out of a prisoner or allowing him to escape is a contempt. O'Rourke, 251 Fed., 768.

Disobedience on an order is a civil contempt and reviewable only by appeal. Cutting vs. Van Fleet, 252 Fed. 100.

Failure to answer questions is a contempt and is reviewable on writ of error taken within six months; but an order denying the motion to vacate such order is interlocutory, and not subject to review by writ of error. Gill vs. U. S., 262 Fed. 502.

The sheriff of a state who allows an United States prisoner to escape is guilty. Swepston vs. U. S., 251 Fed. 205.

Language or conduct designed and having the natural effect to incite others to violence in disregard of an injunction, is in itself a contempt of the court. Stewart vs. U. S., 236 Fed. 838.

In the Toledo Newspaper Company vs. U. S., 237 Fed. 986, while it was before the Circuit Court of Appeals, it was suggested that where a contempt was charged by certain newspaper publishers concerning a judge sitting in a pending trial, that such judge has jurisdiction to dispose of the contempt proceedings, but, if there be sufficient time, he should call in another judge.

A criminal contempt is an "offense," within the meaning of Art. 5541 R. S., and where the sentence imposed, exceeds a year imprisonment, may be in a penitentiary. Creekmore vs. U. S., 237 Fed. 743.

A speech by an attorney at a public meeting attacking the court is a contempt. U. S. vs. Markewich, 261 Fed. 537.

An attorney drinking, etc., with a juror is in contempt. In re Kelly, 243 Fed. 696.

A civil contempt should not be turned into a criminal contempt for the convenience of the defendant, as to speeding a hearing on an injunction as to patents. Turner vs. U. S., 238 Fed. 194.

In a criminal action for contempt, for violating an injunction, the only errors for which the judgment may be reversed are those errors of law committed by the court below in the contempt action. Jennings vs. U. S., 264 Fed. 399.

The Supreme Court of the United States will grant permission to file an habeas corpus to one illegally committed for contempt in the United States District Court, say for perjury, when the case is of exceptional character. Ex parte Hudgings, 39 Sup. Ct. Rep., 337; 249 U. S. 378.

Contempts.—House of Representatives.

See U. S. vs. Gordon, 235 Fed. 423.

§ 12. **Prosecution Begun by Indictment.**—While there remain some few statutes that impose punishments sufficiently light to permit prosecution to be begun by information, most prosecutions must be begun by indictment. See also § 5a.

§ 12a. For illustrative cases under which prosecutions have been begun by information see paragraph 5-b.

§ 13. **Grand Jury and Indictment.**—Constitutional amendment 5 guarantees that no person shall be held to answer unless upon presentment or by indictment. We have learned in § 5a that all offenses which may be punishable by a term in excess of one year, must be begun by indictment. A grand jury, under Section 808 of the Revised Statutes, must consist of not less than sixteen nor more than twenty-three men, twelve of whom must vote in favor of a bill before it can be legally returned. Section 1021 R. S. Section 282 of the new Judicial Code provides that every grand jury shall consist of not less than sixteen nor more than twenty-three persons and that if of the persons summoned, less than sixteen attend, they shall be placed on the grand jury and the court shall order the marshal to summon either immediately or for a day fixed from the body of the district, and not from the bystanders, a sufficient number of persons to complete the grand jury. Judicial Code Section 282.

Section 276 of the Judicial Code specifies the method for drawing jurors and provides for a commission to perform this service. It is not legal to summon thirty men to serve on a grand jury and then to cull therefrom twenty-three for actual service. U. S. v. Lewis, 192 Fed. 633. But see U. S. v. Breeding, 207 Fed. 645, where the court held that the summoning of thirty veniremen for grand jury service and thereafter when more than twenty-three answered a standing rule of the court provided that an alphabetical list of those present should be made and of such list the first twenty-three should compose the grand jury, it was legally constituted under the present statutes.

Judge McDowell, in reasoning his conclusions to support the last decision, said "The first objection to summoning more than twenty-three veniremen is, of course,

the seeming difficulty in fairly selecting those who are to serve. The rule of court above-mentioned certainly wholly obviates this objection. This rule being followed, it is a matter of pure chance. There is no room for even any suspicion of unfairness in selecting the grand jury of twenty-three from the qualified veniremen present. The only remaining objection that occurs to me must be found in a supposed implication from the statutory requirement, Section 808 R. S.; Section 282 Judicial Code, that grand juries shall not exceed twenty-three members. There is certainly in the statute no express inhibition against summoning more than twenty-three veniremen, and there are some very strong reasons against finding in the statute any implied inhibition." As for instance the loss of time in waiting for the marshal to summon talesmen from the body of the district.

It is not error for the court to instruct the marshal to summon additional names as provided by the statute even though as many as sixteen have responded to the original summons. In other words, the court, finding but sixteen men on a responding grand jury venire may direct the marshal to summon from the body of the district five or more names to bring the number up to twenty-three, if he sees fit. U. S. vs. Nevin, 199 Fed. 831.

So also a venire of jurors may be drawn and examined for a term, in accordance with the statute, without designating them as grand or petit jurors, and at the term a grand jury may be selected therefrom, where such is the state practice. U. S. vs. Breese, 72 Fed. 765, affirmed U. S., Supreme Court, 226 U. S. 1.

Under the authority of Section 802 R. S. the court may provide that jurors shall be returned from such parts of the district, from time to time, as the court shall direct, so as to be most favorable to an impartial trial and so as not to incur unnecessary expense or to unduly burden the citizens of any part of the district with such service. May vs. U. S. 99 Fed. 54.

Under a statute declaring that the names first drawn from a jury box shall constitute the grand jury, and the later the petit jury, a grand jury from which jurors whose

names were first called were improperly excused, and their places filled by persons whose names were thereafter drawn from the box, was illegal.

The bill must be returned into open court and it must be returned by the foreman who shall be accompanied by the rest of the grand jurors. I am fully aware that the case of U. S. vs. Breese, reported in 172 Fed. 765, held that where the record in a criminal case showed that the indictment was properly endorsed "a true bill" by the foreman of the grand jury and where it was conceded that the indictment was found by a vote of the requisite number of grand jurors and after being properly endorsed by the foreman, was taken by him into the court room which opened from the grand jury room and presented to the judge on the bench when the court was in session and by him handed to the clerk, such indictment was held to be valid. If this decision is based upon the fact that the balance of the grand jurors could be seen from where the presiding judge sat or upon the fact that the balance of the grand jurors had the foreman in sight all the time, then the same reasoning would permit the foreman to walk unaccompanied by the remainder of the grand jurors a mile or across a Texas prairie so long as he was in sight of either the judge or the rest of the grand jurors. When the case got to the Supreme Court, as shown in Vol. 226, p. 1, that body affirmatively answered the questions of the Circuit Court of Appeals which was passing upon the writ of error as to affirming the judgment of conviction, but the opinion specially states that the mode of presentment followed was the mode prescribed by the laws of North Carolina, and also states that the objections made to this manner of presentment came too late and if there was any objection to such presentment, it was cured by Section 1025 of the Revised Statutes which will not permit an indictment to be held defective because of matters of form only, and the court said that "We do not think it necessary to discuss the condition that the fifth amendment to the Constitution requires the indictment to be presented by

the grand jury in a body or that their failure so to do goes to the jurisdiction of the court."

When a grand jury has found its indictments it returns them into open court, going personally and in a body, a duty which is more or less regulated by statutes in various states. Vol. 2, Bishop's New Criminal Procedure, Second Edition, Section 869a, Par. 3. Renigar vs. U. S. 97 C. C. A. 172, 172 Fed. 646. See also Section 17 post.

Judge Trieber in U. S. vs. Lewis, 192 Fed. 834, held that the selection of a grand jury is a matter of substance which cannot be disregarded without prejudice to the accused and is not a mere defect of form such as Section 1025 R. S. requires to be disregarded and therefore an indictment was vitiated by an order for the drawing of thirty-six names for the formation of a grand jury, which permitted the marshal to summon twenty-three persons to be selected by him from the thirty-six drawn. Grand jury must be drawn by only those authorized by sec. 276, Judicial Code. U. S. vs. Murphy 224 Fed. 554.

§ 13a. **Grand Jury, Continued.**—While Federal prosecuting officers are not bounden by any rule or statute to permit a defendant or his witnesses to present their side of a question which is being investigated, yet the careful prosecutor, careful of the reputation of the citizen, often avails himself of the opportunity to permit the defendant to have his day before the grand jury. A citizen would seem to have the right to enjoy immunity from indictment, if not guilty, as fully as he has the right to enjoy immunity from punishment, if not guilty. Under the common law, however, which, in the absence of statute, controls the procedure in the United States courts, a grand jury hearing was an *ex parte* proceeding, at which the sovereignty alone was heard.

In Book 4, at page 302, of Blackstone's Commentaries, it was said that the grand jury are previously instructed in the articles of their inquiry by a charge from the judge who presides upon the bench. Then they withdraw to sit and receive indictments, which are preferred to

them in the name of the King, but at the suit of any private prosecutor; and they are only to hear evidence on behalf of the prosecution; for the finding of an indictment is only in the nature of an inquiry or accusation which is afterwards to be tried and determined; and the grand jury are only to inquire upon their oaths whether there be sufficient cause to call upon a party to answer it. A grand jury, however, ought to be thoroughly persuaded of the truth of an indictment so far as their evidence goes; and not to rest satisfied merely with remote probabilities; a doctrine that might be applied to very oppressive purposes.

Mr. Justice Fields, speaking for the Supreme Court of the United States in 2 Sawyer, 668, observed in substance that the grand jury, while originally for the convenience of the Crown, under our institutions should be the protector of the citizen.

One has not, however, as a matter of law, the right to appear and testify before a grand jury which is investigating a case against him. U. S. vs. Bolles, 209 Fed. 682.

§ 13b. **Copy of the Indictment.**—A copy of the indictment is not furnished as a matter of course to defendants. When a prosecution is for treason, however, or other capital offense, then a copy of the indictment and a list of the jurors and witnesses, must be delivered to the defendant, in the first instance at least three days before trial, and in the last instance at least two days before trial, in accordance with Section 1033. In other cases, however, copy of the indictment is unnecessary. Balliet vs. U. S. 129 Fed. 689; Jones vs. U. S. 162 Fed. 417; Ball vs. U. S. 147 Fed. 32; U. S. vs. Van Duzee, 140 U. S. 173. In a capital case this provision applies only to the list of the regular panel of jurors and not to talesmen. Stewart vs. U. S. 211 Fed. 41.

§ 13c. **Evidence Before Grand Jury.**—Indictment should be based on legal evidence. To warrant the return of an indictment it should be based on competent legal evidence such as is legitimate and proper before a petit jury. 20 Cyc. 1346; U. S. vs. Kilpatrick, 16 Fed. 765, U.

S. vs. Reed, Fed. Cas. No. 16134. Thus the report of an assistant attorney general would not be competent legal evidence in a trial upon an indictment charging use of the mails in execution of a scheme to defraud, nor, upon a charge of the use of the mails in carrying out a lottery scheme. It would not, therefore, be proper to submit it to the grand jury. Harrison vs. U. S. C. C. A. 200 Fed. 673.

The court in a criminal case, however, will not inquire into the evidence before the grand jury to ascertain whether it was all competent or sufficient to warrant the indictment, when such a plea is verified on information and belief only. U. S. vs. Nevin, 199 Fed. 831.

In the case of McKinney vs. U. S. 199 Fed. 25, the court held that a trial court cannot be required to review the evidence before a grand jury to determine its sufficiency or whether incompetent evidence was received, unless the case was an extreme one and unless it was to prevent a clear injustice or an abuse of judicial process. This case also held that a "presentment" is an action made by grand jurors upon personal knowledge or observance of the facts or upon the testimony of witnesses. speaking for the Court of Appeals for the Ninth Circuit, In the case of Hillman vs. U. S., Circuit Judge Gilbert, in 192 Fed. 264, said that pleas in abatement are to be strictly construed and that such a plea to an indictment that books containing criminating evidence were wrongfully produced before the grand jury, was bad where it showed that the books belonged to corporations of which accused was president and not to him individually. It also held in that case that competent evidence upon which an indictment was founded, consisting of books and documents which were unlawfully seized and produced before the grand jury, is no ground for abating the indictment.

§ 13d. **Motion to Quash Indictment or Other Dilatory Plea.**—After the return of a bill into court, if there be any dilatory plea that the defendant thinks to lodge, he must speed to do so. A delay of five days in presenting such a plea may be fatal to him; and in the presentment of such

a plea there must be specifically set out the causes and particulars of the injury to him. Agnew vs. U. S. 165 U. S. 36; Lowden vs. U. S. 149 Fed. 675; Wilder vs. U. S. 143 Fed. 439. The plea must be filed quickly and must show injury to the defendant. U. S. vs. Nevin, 199 Fed. 831; Hillman vs. U. S. 192 Fed. 264; Breese vs. U. S. 172 Fed. 761, 226 U. S. 1.

§ 13e. **Information.**—Having spoken several times in the different sub-divisions of this section of an information, it will be well to call attention to the fact that the Constitution of the United States, in its fourth amendment, provides, that no warrants shall issue, but upon probable cause, supported by oath or affirmation. The courts hold, however, that it is a limitation upon the powers of the federal government, but that it does not require an information filed by a district attorney of the United States to be verified or supported by an affidavit based on personal knowledge, and showing probable cause, unless such information is made the basis of an application for a warrant of arrest. Thus, in a prosecution against a corporation for the imposition of a fine or against a firm, for a fine under the Pure Food Act, for instance, the information of the District Attorney need not be verified. 216 Fed. 292.

There are, however, small misdemeanors which, through the imposition of a fine, may result in imprisonment. Such prosecutions may be commenced by information, but invariably the information must be supported by oath.

In the case of *ex parte* Wilson, 114 U. S. 417, the court, in treating the fifth amendment to the Constitution, which inhibits all prosecutions for capital or other wise infamous crime, unless on a presentment or indictment of a grand jury, authoritatively decided the meaning to be given to the word "infamous" and that meaning is understood to be a crime punishable by imprisonment for a term of years in a penitentiary. Since, however, the adoption of the new code, there can be no trouble with reference to the meaning of this term, because the code specifically defines the word "infamous" or "felony"

to mean such crimes as are or may be punishable by imprisonment in the penitentiary for more than one year.

§ 13-f. A true bill must be returned by a properly constituted grand jury. Cooper vs. U. S. 247 Fed. 45.

A socialist is not entitled to a socialist on the grand jury. Ruthenberg vs. U. S. 245 U. S. 480.

Any discrimination against any class in the make up of the grand jury will be a ground for quashing the indictment. Mamaux vs. U. S. 264 Fed. 816.

An indictment should not be presented to a grand jury without leave of the court. U. S. vs. Jenks, 258 Fed. 763.

It is no ground to quash an indictment that a previous grand jury had failed to indict. U. S. vs. Thompson, 40 Sup. Ct. Rep. 289.

The politics of the clerk and commissioner is a discretionary matter with the judge is held in the case of U. S. vs. Caplis, 257 Fed. 840.

The return of an indictment in one division of a district where the crime was not committed and the transferring of the indictment afterward to the proper district is held to be a legal procedure in Biggerstaff vs. U. S. 260 Fed. 926. This case holds that the filing of the indictment and the proceedings leading thereto are not a part of the prosecution and by so holding Sec. 53 of the Judicial Code which requires all prosecutions to be had within the division of the district where the crime is charged to have been committed is complied with.

Directly opposite to this holding is the case of U. S. vs. Chennault, 230 Fed. 942. And since the Chennault case is based on Virginia vs. Paul, 148 U. S. 107, that the filing of an indictment and its return into court is the beginning of a criminal prosecution, it would seem that the Chennault case is correct. At any rate the cautious prosecutor will indict only in the division where the crime was committed and the cautious defending attorney will never allow his client to go to trial on an indictment found in a division other than that in which the crime was committed without saving the point by appropriate motions. It is not only statutory but constitutional by implication. See Secs. 17-17-b.

The case of Logan vs. U. S. 36, Law Ed. 429 which held that a grand jury sitting for the district could indict for offenses committed in any division of that district, was decided before the new Judicial Code was passed.

In the case of Virginia vs. Paul, 148 U. S. 107, the question as to when a prosecution was begun was directly before the court and the court held that it was begun by the filing of an indictment.

Sec. 42 of the Judicial Code authorizes the prosecution of an offense in any district in which it was begun, or into which it was continued and in passing upon this section the Supreme Court in U. S. vs. Lombardo, Oct. term, 1915, inferentially reasons slightly in favor of the position here contended for.

Under Judicial Code, Sec. 275, jurors in U. S. courts are required to have the same qualifications as jurors in the highest court of the state. Christopoula vs. U. S. 230 Fed. 788.

§ 13h. Illegal evidence before grand jury.

An indictment cannot be set aside on the ground that evidence unlawfully secured was before the grand jury unless it affirmatively appears that there was no lawful evidence presented upon which it could have been based. Anderson vs. U. S. 273 Fed. 21.

§ 13g. A stenographer's notes are not admissible in evidence, but, like other contemporaneous writings, may be used, under the proper circumstances, to refresh the memory of the person making. Sneierson vs. U. S. 264 Fed. 268.

The destruction of evidence by a defendant may be proven as a fact in the case. Ayala vs. U. S. 268 Fed. 296.

The court may quash an indictment when illegally secured testimony is used before the grand jury. U. S. vs. Silverthorne, 265 Fed. 853.

A defect in an indictment discovered and proclaimed after verdict, must have prejudiced the defendant before it can be advantaged. Grantele vs. U. S. 232 U. S. 647.

A motion to quash an indictment on account of the misconduct of the district attorney in the grand jury room must set out facts. U. S. vs. Gradwell, 227 Fed. 243; U. S. vs. Rintelen 235 Fed. 787.

An indictment is not subject to a plea in abatement because incompetent testimony was presented to the grand jury, unless competent evidence sufficient to justify the indictment was not presented. U. S. vs. Rientelen, 235 Fed. 787.

Nine months is too long to wait to file a plea in abatement complaining of the conduct of the grand jury and of the drawing of the same. Moffat vs. U. S. 232 Fed. 522.

An information is insufficient which issues on the information and belief of the United States District Attorney; it must be supported by proof establishing probable cause. U. S. vs. Baumert, 179 Fed. 735; U. S. vs. Wells, 225 Fed. 320.

An information filed by a United States Attorney which appears to be based upon affidavits taken by a notary public is insufficient because notaries have no authority under the laws of the United States to administer any oaths in connection with criminal prosecutions. U. S. vs. Schallinger, 230 Fed. 290.

Pleas in abatement were held insufficient in U. S. vs. Scott, 232 Fed. 192 and U. S. vs. Bopp, 232 Fed. 177.

An objection made on the day the case was called for trial in the nature of an abatement plea was too late. Benson vs. U. S. 240 Fed. 413.

A plea in abatement for illegality in drawing the grand jury filed seven months after the indictment was returned, and filed without leave of the court, was so late that the trial court refused to rule upon it and the Court of Appeals in passing upon the question held that such action of the court was not error as it was in the trial courts sound discretion as to whether he would rule on a plea of that sort filed so late. Matters vs. U. S. 244 Fed. 736.

§ 14. **Preliminary Proceedings.**—We have heretofore noticed the provisions relating to the appointment of United States Commissioners. If warrant is secured

prior to indictment, such warrant is issued under the hand and seal of the United States Commissioner, and the offender is brought before him for preliminary hearing, and is entitled to make his bail before that officer. The general authority for such procedure is found in Section 1014. If one be arrested in a district different from that in which he is indicted, he is entitled to be taken before the nearest United States Commissioner, who inquires into his identity, and fixes bail for his appearance before the proper Court of the proper district. If the prisoner cannot make the bail, application is made to the District Judge for a warrant of removal, under Section 1029.

The latest authority seems to be that upon proper application, the District Court may inquire into the validity of the indictment, so far as the jurisdiction is concerned, before ordering the defendant moved to the district in which the indictment was found. In United States vs. Smith, 173 Federal, this doctrine was announced, and the Court refused to remove the publisher of a newspaper in Indianapolis to the District of Columbia for trial. To the same effect is Findley vs. Treat, 205 U. S., 20; also 131 Fed., 968; U. S. vs. Green, 136 Fed., 618; United States vs. Peckham, 143 Fed., 625; 119 Fed., 93; *in re* Benson, 130 Fed., 486; United States vs. Green, 100 Fed., 941; Pereles vs. Weil, 157 Fed., 419. Probable cause is the only question to be inquired into when removal on indictment is asked. *In re* Quinn, 176 Fed., 1020.

§ 14a. **Warrant to Issue—When?**—We have heretofore spoken briefly of amendment 4 of the Constitution, Chapter 1, but in this connection it will be well to repeat a provision of that amendment which reads as follows: "No warrant shall issue but upon probable cause supported by oath or affirmation." As the government grows larger and stronger and the people are further removed from their representatives and its officers, there will come a corresponding disregard of the individual's rights and an overlooking of the principles that were so jealously championed and so dearly purchased. There

should never be the arresting of one in his right to walk where he pleases unless the Constitutional provisions authorizing such invasion of the citizen's right has been fully complied with. Judge Ray, in U. S. vs. Baumert, 179 Fed. 738, said that "However convenient and inexpensive it might be to ignore this provision of the Constitution, a due regard for the rights of the citizen and the danger of gross abuses of the old system which had its basis in the now exploded idea that the King—that is the government—can do no wrong, led to the adoption of this amendment to the Constitution." A contention which holds that this provision of the Constitution is complied with when an information setting forth on information and belief the facts claimed to exist, is erroneous and such an information is not supported by "oath or affirmation." A court will not authorize the issuance of a warrant on an information made on the information and belief of the United States District Attorney, but it must be supported by proof establishing probable cause, to-wit, legal evidence that a crime has been committed and that there is probable cause and belief that the accused is guilty of the commission thereof. U. S. vs. Baumert, 179 Fed., 735.

§ 14aa. **Warrant to Issue—When—Continued.**—A warrant will not issue upon information and belief. The fourth amendment to the constitution forbids the issuance of warrants except on probable cause supported by oath and affirmation, U. S. vs. Michalski, 265 Fed. 839; and a void warrant is no protection to the officer acting thereunder if he has such knowledge. 252 Fed. 371. There will be no arrest without a warrant except in misdemeanors when committed in the presence of the officer. Ex parte Harvell, 267 Fed. 997; and when an arrest is made in such case charge must be filed at once. See also American Steel Company vs. Davis, 261 Fed. 800.

An information may not be verified before a Notary Public as such officer is not known to United States law. U. S. vs. Schallinger, 230 Fed. 290.

§ 14b. **Questioning of Indictment on Removal.**—In the last paragraph of Section 14 some cases are cited which practically settle it as a rule that the removing judge shall remove unless the validity of the indictment is properly questioned, when warrant will be refused. In U. S. vs. Ruroede, 220 Fed. 210, it was held preliminary affidavit must state offense.

A broadening of this right is expressed in the case of U. S. v. Campbell, 179 Fed. 762, wherein the court held that a defendant may overcome the presumption that the offense was committed in the jurisdiction alleged in the indictment by appropriate evidence and show any other legal reason why removal should be denied. Commissioner has no authority to issue warrant of removal. Hastings vs. Murchie, 219 Fed. 83.

§ 14bb. **On Removal.** A prima facie right to removal is made by the government when it introduces the indictment and the defendant admits his identity. But in the case of Gayon vs. McCarthy, U. S. Sup. Ct., 40, U. S. Sup. Ct. Rep. 244, the course of permitting the defendant, after such prima facie case, to introduce evidence raising the question of jurisdiction and probability, seems to have been approved, though not specifically so held.

The present authorities drive one to the conclusion that after such prima facie case is made the defendant may then question the jurisdiction of the court, and, raise the question as to whether or not an offense has actually been committed by him, or in other words whether there is probable cause to so believe. U. S. vs. Yount, 267 Fed. 861; though in Rowe vs. Boyle, 268 Fed. 809, it was held that the sufficiency of the indictment is not an issue; that the identity of the defendant makes a prima facie case; while in Williams vs. Boswell, 255 Fed. 889, it would seem that the Circuit Court of Appeals likewise favors the testing of the sufficiency of the indictment before removal.

In the case of Rumely vs. McCarthy, 256 Fed. 565, on habeas corpus to prevent removal, District Judge Mayer, held that both the commissioner and the court should

have before them the entire situation, that is to say, all of the facts bearing upon the offense charged. It is not thought that this decision means that a trial of the same shall be had but that the jurisdiction of the court, the sufficiency of the indictment, and probable cause shall be established.

§ 14c. **Arraignment.**—Arraignment of the defendant has been considered a necessary step in all criminal trials, and the failure to do so has frequently been considered reversible error. Bishop's New Criminal Procedure, Vol. 1, p. 434.

The Supreme Court of the United States, in Crain v. U. S. 162 U. S. 625, reversed a judgment of conviction because the record showed no form of arraignment and held that arraignment was essential to a legal trial and that in a federal court no valid trial could be held without the requisite arraignment and plea and that such must be shown by the record of conviction. Johnson vs. U. S., 225, U. S. 405.

In obedience to the popular demand for the effacement of as many technicalities in our court procedure as possible, the Supreme Court in Garland v. State, 232 U. S. 642, overruled its original decision in the Crain case and held that the arraignment is no longer required in the United States courts for the protection of the accused and said that technical objections originating in the early period of English history, when the accused was entitled to but few rights, are passing away and should not be allowed as to unimportant formalities, where the rights of the accused have not been prejudiced. Of course this decision does not mean in any sense of the word that a plea is not necessary. There is no way to join an issue between the accused and the sovereignty save and except by the entering of a plea, and if the defendant stand mute, the court shall enter a plea for him, and that plea shall be "Not guilty."

§ 15. **Bail Bonds, Etc.**—Under Section 1014, all bail bonds and recognizances are to be as near like those in the state court as the difference in codes and practice will permit. *In re* Belknap, 96 Fed., 614; U. S. vs. Hunt,

166 U. S., 1063; U. S. vs. Lois, 149 Fed., 277. In United State vs. Zarafonitis, 150 Federal, 97, the Court held that all proceedings for holding an accused person to answer to a criminal charge before a court of the United States are assimilated to those under the laws of the state in which the proceedings take place, and the sufficiency of a bail bond taken in such proceedings is to be determined by the law of the state, though in Hardie vs. United States, 71 Fed., 158, the Court held that a bail bond taken before a United States Commissioner, though affidavit and information charge no offense, is good, and may be enforced. The United States may enforce a forfeited bail bond of recognizance by an action at law or scire facias. United States vs. Zarafonitis, 150 Fed., 99; United States vs. Insley, 54 Fed., 221. In 170 Federal, 613, United States vs. Lee, the court held that an indemnified surety may be refused, and in the same Federal Reporter, at page 476, in United States vs. Marrin, the Court held that a defendant who goes where he can be arrested, and thus causes a breach of his bond, renders his sureties liable.

§ 15a. **Bail During Trial.**—Section 1015 of the Revised Statutes, which provides that bail shall be admitted upon all arrests for offenses not punishable by death, does not entitle the defendant, as a matter of right, to bail during his trial. U. S. vs. Rice, 192 Fed. 720. In 5 Cyc. the law is thus stated:

"Where the accused is free on bail he may be ordered into actual custody during the trial of the case, nor will bail be allowed during adjournments of the daily sessions of the court." In another list of citations in Judge Ray's opinion in the above case, it is held that it is within the discretion of the court to order defendants into actual custody, when the trial is commenced.

In Texas there is a state statute which gives the defendant the right to go at liberty on his bond during the trial, and federal courts in that state recognize the state statute and follow that procedure, which statute would of course protect the sovereignty in any suit it might bring aganist the bondsman for forfeited recognizance.

The bondsman could not claim in the face of that statute that their obligation had been fulfilled when there was an announcement of "ready" or when the case went to trial because they would have executed the bond with full knowledge of the statute which gave their principal this right.

§ 15aa. **Bond, Forfeiture and Relief.** Sureties on supersedeas bond are not liable for the failure of the defendant to appear for re-trial when the obligation of writ of error bond contained nothing more than, "surrender himself in execution of the judgment and sentence appealed from as said court may direct, after the judgment and sentence of said District Court against him shall be affirmed." U. S. vs. Murphy, 261 Fed. 751.

The death of a defendant after forfeiture is no defense to a recovery on the bond. De Orozco vs. U. S., 237 Fed. 1008.

A petition for the remission of the penalty of a forfeited recognizance under Sec. 1020, which authorizes such remission in the discretion of the court whenever it appears to the court that there has been no willful default of the party and that a trial can, notwithstanding, be had in the cause, is properly signed by a person who put up the money to indemnify the sureties, and who is the real party in interest, and an allegation therein that there was no willful default of the defendant is sufficient; it being neither necessary nor proper to plead the evidence. The relief from forfeiture is in the discretion of the court under this section. U. S. vs. Smart, 237 Fed. 978; U. S. vs. Jacobson, 257 Fed. 760. See also sec. 4a.

A bail bond should conform in all substantial particulars to the requirements of the law of the state in which the commissioner is sitting, under Sec. 1014, and a judgment on a bail bond cannot be set aside by the court after the expiration of the term at which it was rendered, where the bond was valid and the judgment was not a nullity. U. S. vs. Buchanan, 255 Fed. 915.

The Court of Appeals for the Fifth Circuit in the case of Anduaga vs. U. S. 254 Fed. 61, held that a bail bond is not invalid because of a mere verbal inaccuracy, caused

by accidental transposition of words, which does not work injury to any party in interest.

Before there can be a recovery of a bail bond, it must appear that the offender was bailed by one qualified to admit to bail. A recognizance is an obligation of record entered into before some court of record and need not be signed by the principal or the surety, while a bail bond is signed by the party; the consideration being the release of one accused from custody. Ewing vs. U. S. 240 Fed., 241.

A bail bond is a contract between the sureties and the government, and an action on it is a civil action, in which the law is not required to be construed strictly, as in a criminal proceeding, when the sufficiency of the procedure is to be determined. U. S. vs. Davenport, 266 Fed. 425.

§ 16. **Challenges.**—Section 819 of the Revised Statutes allows the defendant twenty challenges, and the United States five peremptory challenges, when the offense is treason or capital. On the trial of any other felony, the defendant is entitled to ten; and the United States to six peremptory challenges; and in all other cases, civil and criminal, each party shall be entitled to three peremptory challenges. Under Section 335 of the 1910 Code, however, all offenses which may be punished by death or imprisonment for a term exceeding one year are felonious, and all other offenses misdemeanors, and it is now an easy matter to determine just how many challenges the defendant is entitled to. If, however, there be more than one defendant, and the trial is had without severance, the defense will be allowed no more challenges than if there were but one defendant on trial, R. S. 819.

The number of defendants in the indictment, when they are all tried together, does not increase the number of challenges, in other words the defendants, together, are entitled to ten. Schwartzberg vs. U. S. 241 Fed. 348. It would seem that there is no statutory reason and no law rule of the trial court which would deny the trial court the right, if he should think it in the interest of

justice, when there is more than one defendant, to increase the number of peremptory challenges for such defendants. There might be some local condition or some acquaintanceship or some other attitude that might make it quite appropriate to grant a number of defendants additional challenges.

Challenges Under the New Code. —Heike vs. U. S. 192 Fed. 101. After consolidation of indictments, see Emanuel vs. U. S. 196 Fed. 317.

In a note to Jeff Harrison vs. United States, 163 U. S., 140, as reported in the 41 Law Ed., at page 104, is a very valuable compilation of the decisions involving the following points:

As to trial by jury, how effected by Seventh Amendment to the Constitution, New York Supreme Court Justices vs. United States, reported in 76 U. S. 282.

As to jury, of what number; practice in regard to; illness or insanity of one; thirteen or eleven jurors; wrong person serving as juror by mistake: Silsby vs. Foote, 14 Howard, 218; 14 Law Ed., 394, and the notes on page 394 of the 14 Law Ed.

As to cause of challenges of jurors and their qualifications, Clinton vs. Englebrecht, 80 U. S., 449, 13 Wallace; 20 Law Ed., 659, and the note.

As to discharge or withdrawal of jurors before verdict, effect of, United States vs. Perez, 9 Wheat., 578; Vol. 6, Law Ed., 165.

As to impeachment of verdict by jurors; affidavit of parties or third persons; affidavits of jury to sustain verdict, Doss vs. Tyack, 14 Howard, 296; 14 Law Ed., 428. and note thereunder.

Challenges to jurors; challenges to the array and to the panel; challenges to individual jurors; peremptory and for cause, full and complete note on page 104 of Book 41, Law Ed.

§ 16a. **Consolidation of Indictments.**—Under the Federal statute the court has the power to consolidate either civil or criminal causes and when many indictments of the same sort against the same party are consolidated they merely become so many counts in the new bill. Such

was the holding in the National bank prosecution of Keltenbach vs. U. S. 202 Fed. 377, and after such consolidation the former indictments becoming mere counts in the last indictment, the defendant is entitled to but ten challenges because he is now on trial for but one indictment. Keltenbach vs. U. S. 202 Fed. 377.

16aa. **Consolidation of Indictments Continued.**—Sec. 1024 R. S. U. S. invests trial judges with discretionary power to require indictments charging one or more persons with different though connected acts or transactions of the same class of crimes or offenses to be consolidated for purpose of trial; this, of course, signifies a judicial discretion, soundly exercised, and not the uniting of offenses which for that reason would confound and prejudice the defendants. Kelly vs. U. S., 258 Fed. 403, citing, Dolan vs. U. S., 133 Fed. 444. Similar power exists independent of the statute, said the Supreme Court, in Logan vs. U. S., 144 U. S. 263. See also Brown vs. U. S., 143 Fed. 60.

For a discussion of this question, see McElroy vs. U. S., 164 U. S. 76; Williams vs. U. S., 168 U. S., 382.

The moving spirit of the rule seems to be that while distinct offenses may be consolidated they must be "transactions connected together," and "of the same class of crimes or offenses." See also Sec. 18.

§ 16b. **Impeachment of Verdict by Juror.**—Public policy forbids that a juror shall be allowed to orally or by affidavit or otherwise impeach his verdict, or in any way disturb the result arrived at by himself and his fellows.

In one or two of the states such practice is permitted, but the rule in the United States courts is against such procedure. McDonald et al. vs. Pless et al. 206, Fed. 262; Doss vs. Tyack, 14 Fed. 296, 14 L. ed. 428; Hyde vs. U. S., 225 U. S. 347. See also Section 25.

§ 17. **Indictment and Return of Same.**—The indictment should always be returned into open Court by the entire grand jury. The best practice is for the grand jury to be polled when they report an indictment. Of course, there must be at least sixteen present when in-

dictments are presented, which sixteen must include the foreman.

In 172 Federal, page 646, Reingar vs. United States, the Circuit Court of Appeals held that an indictment delivered by the foreman alone to the clerk of the Court when Court was not in session, is not a bill of indictment within the meaning of the Constitution. I am sure this opinion states the law.

In the same volume of the Federal Reporter, in the case of the United States against Breese, the District Court, upon a somewhat different state of facts, holds a little bit differently, but the Reingar case, cited supra, is undoubtedly the law. See also Section 13.

§ 17a. **Endorsements on Indictments.**—In the case of Williams against the United States, 168 U. S., 382, the Supreme Court held that endorsements on the margin of an indictment, referring to certain statutes which do not support it, although they may have been erroneously supposed to do so by the District Attorney who drew it, do not make the indictment invalid, if it properly charges an offense under another statute. The exact words of the Court are as follows:

"It is said that these indictments were not returned under that statute [5481], and that the above endorsement on the margin of each indictment shows that the District Attorney of the United States proceeded under other statutes that did not cover the case of extortion committed by Chinese Inspector under color of his office. It is wholly immaterial what statute was in the mind of the District Attorney when he drew the indictment, if the charges made are embraced by some statute in force. The endorsement on the margin of the indictment constitutes no part of the indictment, and does not add to or weaken the force of its averments. We must look to the indictment itself, and if it properly charges an offense under the laws of the United States, that is sufficient to sustain it, although the representative of the United States may have supposed that the offense charged was covered by a different statute."

To be in good form, the bill should be signed upon the cover by the prosecuting officer and by the foreman of the Grand Jury, and should be endorsed, "A true bill," and should bear the file marks of the clerk; but if the bill be signed inside by the prosecuting officer and by the foreman of the Grand Jury, the Courts hold that such signatures are sufficient.

It is entirely immaterial what provisions the various states may make with reference to the forms of indictment therein; the Federal statutes control in the enforcement of the Federal criminal law.

17aa. **Indictment—Place of Finding—Absence of Judge—Counts.**—The indictment must be found in the division of the district where the offense was committed. U. S. vs. Chennault, 230 Fed. 942. See also Sec. 13f.

The absence of the judge from the district during part of the time of the deliberation of the grand jury does not invalidate the indictment. Badders vs. U. S., 240 U. S. 391.

Later counts of the indictment may refer to earlier counts without re-writing the substance thereof and may make the same a part of such later count. Anderson vs. U. S., 269 Fed. 65. But this method of pleading is not approved. It is thought that each count should be complete in itself even though the courts do permit such pleading. An endorsement of an indictment is no part of it even though it may erroneously recite a statute under which it was found. Wessel vs. U. S., 262 Fed. 389. See Par. 17a.

§ 18. **Consolidation of Indictments.**—By Section 1024 of the Revised Statutes, several charges against the same person may be included in the same indictment, and separate indictments against the same person for the same class of crimes may be consolidated by the order of the Court. Williams vs. United States, 168 U. S., 388; Pointer vs. United States, 151 U. S., 396; Logan vs. United States, 144 U. S., 301. In the case of United States against Dietrich, 126 Fed., 670, the doctrine is made clearer by being distinguished, and the Court there holds two persons cannot be indicted in the same count, one for giving, and the other for receiving bribe.

The case of McElroy vs. United States, 164 U. S., 76, does not in decision or dictum differ from the above authorities. The inquiry in that case was, "whether counts against five defendants can be coupled with a count against part of them, or offenses charged to have been committed by all at one time, can be joined with an-

other and distinct offense committed by part of them at a different time." The Court in that case held that the statute did not authorize that to be done, and speaking thereupon, said: "It is clear that the statute (1024) does not authorize the consolidation of indictments in such a way that some of the defendants may be tried at the same time with other defendants charged with a crime different from that for which they all are tried." This decision, of course, does not interfere with the statute, or the doctrine announced by Mr. Justice Harlan in the Williams case, cited supra, that, "The indictments against the same person charging offenses of the same kind, provable by the same sort of evidence, can be consolidated and tried together without embarrassing the accused in making his defense." This doctrine is approved in Olson vs. United States, 133 Fed., 852; Dolan vs. United States, 133 Fed., 447, and distinguished, but not controverted, in Betts vs. United States, 132 Fed., 240. See Section 16.

§ 19. **Question of Duplicity in Indictment.**—It is too late to raise the question of duplicity after verdict by motion in arrest of judgment. Morgan vs. U. S., 148 F., 190; Bishop's New Crim. Proc., Vol. 1, Sections 442, 443; U. S. vs. Bayard, 16 F., 376; Proler vs. U. S., 127 F., 509; Conners vs. U. S., 158 U. S., 408. The safe practice is to raise all questions speedily by exception or demurrer.

In Ammerman vs. U. S., 216; Fed. 326, the Circuit Court of Appeals dismissed the indictment because of duplicity. A charge that defendant attempted to rob a mail clerk and put his life in jeopardy is not duplicitous. Price vs. U. S., 218 Fed. 149.

19a. **Duplicity Continued.**—Felonies and misdemeanor counts may be joined. Phillips vs. U. S., 264 Fed. 657. The allegation of different intents is not duplicitous. Boone vs. U. S., 257 Fed. 963.

The allegation of embezzlement of money and stamps is not. McNeil vs. U. S., 246 Fed. 827.

A conspiracy to establish a house of ill fame, bawdy house or brothel is not duplicitous. U. S. vs. Casey, 247 Fed. 362.

An allegation that, "during April and May," is not. Eisenberg vs. U. S., 261 Fed. 598.

Duplicity is the joinder of two or more distinct offenses in one count. Epstein vs. U. S., 271 Fed. 282. Only one offense can be charged in the same count. U. S. vs. Blakeman, 251 Fed. 306.

An indictment which charged that an accused gave an order for certain drugs and that he failed to preserve a duplicate of the order, each constituting an offense, and also failed to keep a record of the amount of the drug by him dispensed, was held not to be duplicitous in U. S. vs. Charter, 227 Fed. 331.

An indictment which charged in one count the three several offenses denounced by the Espionage Act, Sec. 3, is duplicitous and, of course, there can be no amending thereof. U. S. vs. Demboski, 252 Fed. 894.

It seems under the last two foregoing authorities permissible to plead in the alternative and use the word "and" wherever the statute uses the word "or."

So the doing of a thing and the attempting to do a thing when denounced in that way by the statute may be placed in the same count without being duplicitous, is held in the last mentioned case.

§ 20. **Confessions.**—Because of the adoption by many of the States of statutes which prescribe certain conditions limiting or admitting confessions of those charged with crime in evidence, it is well to bear in mind that no statute bearing thereon has been passed by Congress. The Fifth Amendment to the Constitution and Section 860 of the 1878 Revised Statutes, that bear upon such testimony, are as follows:

"..... Nor shall any person be compelled, in any criminal case, to be a witness against himself."—Fifth Amendment to the Constitution.

"No pleading of a party, nor any discovery or evidence obtained from a party or witness by means of a judicial proceeding in this or any foreign country, shall be given in evidence or in any manner used against him or his property or estate in any court of the United States in any criminal proceedings, or for the enforcement of any penalty of forfeiture; provided, that this section shall not exempt any party or witness from prosecution and punishment for perjury committed in discovering or testifying, as aforesaid."—Section 860, 1878 Revised Statutes, U. S.

Of course, the limitations and meaning of Section 860 have been determined and decided repeatedly. In 170 Federal, 715, Cohen vs. United States, the Court held that it applied to bankrupt schedules, and that, therefore, such schedules were not admissible against the bankrupt. The contrary was held in United States vs. Brod, 176 Federal, page 165, and the latter is perhaps the ranking authority. In United States vs. Bell, 81 Federal, 830, the Court held that the constitutional protection was broader than Section 860, and in passing upon a prosecution for perjury, alleged to have been committed in a statement made before a Pension Examiner by an ignorant person, such statement was excluded on the proposition that while the person appeared before the Examiner, and submitted to the examination, yet such appearance was not conclusive that the statement was voluntary, and that the constitutional right of the person to remain silent had not in fact been infracted. See also sec. 7.

The sole legal test, in the Federal courts, is whether the same was free, voluntary, and without compulsion or inducement of any kind. The fact that a confession was made while the party was under arrest is entirely immaterial, but it devolves upon the prosecution to show that the confession was voluntary. The authorities conflict somewhat as to whether the Court or the jury shall determine this question. The better authority seems to be that the Court shall determine it, because, manifestly, the admission of a confession to a jury, under the thought and instruction that it must determine, first, whether the same was voluntary before they can give it consideration, would be entirely inadequate to sufficiently safeguard the interest of the defendant. At page 588 of Bishop's Criminal Procedure, that authority holds that the prosecution, in making the opening statement to the jury, should not make any detailed statements that show a confession to have been made, for the reason that the admissibility of such confession must first be passed upon by the Court. At page 619 of the same volume, the same author again announces that whether a confession is voluntary or not is to be

determined by the Court, and cites Ellis vs. State, 65 Miss., 44; 7 Am. St., 634; State vs. Crowson, 98 N. C., 595; Corley vs. State, 50 Arkansas, 305; also Section 1220 of the First Volume of Bishop's Criminal Procedure.

Underhill on Criminal Evidence, at page 161, paragraph 126, says that the preliminary question, Was the confession voluntary? bearing directly upon its competency as evidence, must be, according to the majority of the cases, decided by the Court as a mixed question of law and fact. This statement is supported by a long list of authorities, some of which go to the point of holding it error for the Court not to determine this question before the confession is submitted to the jury. From a careful consideration of such authorities, it may be stated that the weight of the same is for the preliminary determination by the Court of this question, before permitting the confession to go to the jury.

In discussing the statement that the prosecution must show that the confession is voluntary, Underhill, at page 161-162 of his work on Criminal Evidence, states that many of the cases sustain this proposition, and require the state to show by some evidence that the confession was freely and voluntarily made, but that other authorities sustain, at least in the absence of evidence to the contrary, the very reasonable theory that a confession, like every act or utterance which is the result of human agency, is presumed to have been voluntary until the contrary is shown. This latter view would throw the burden of proving that the confession was involuntary upon the accused; but whichever position is right, the defendant is always entitled to show, by preliminary evidence, that the confession was not voluntary, and it is the duty of the Court, in determining the competency of the confession, not only to consider the evidence of the state, but the evidence elicited by the accused in his favor, as well. In State vs. Fidment, 35 Iowa, 545; Rufer vs. State, 25 Ohio, 464; State vs. Miller, 42 La., 1186; Simmons vs. State, 61 Miss., 243; Commonwealth vs. Culver, 126 Mass., 464; State vs. Kinder, 96 Mo., 548,

the refusal, before the confession was admitted, to allow counsel for the prisoner to cross examine the witness as to the voluntary character of the confession, or to allow the accused to testify and explain his mental condition when it was made, or to show by the evidence of others, that it was improperly obtained, were reversible error.

In Hopt vs. Utah, 110 U. S., 574, the Court said that, "the admissibility of such evidence (confessions) so largely depends upon the special circumstances connected with the confession that it is difficult, if not impossible, to formulate a rule that will comprehend all cases, as the question is necessarily addressed, in the first instance, to the judge, and since his discretion must be controlled by all attendant circumstances, the Courts have wisely forborne to mark with absolute precision the limits of admission or exclusion." This latter utterance, therefore, is the authority that binds in the United States Courts.

It was also said, in Wilson vs. United States, 162 U. S., 613, 40 Law Ed., 1090, that statements by an accused, not under oath, voluntarily made in answer to questions of a Commissioner, not as a confession of guilt, but as explanations to avert suspicion from himself, are not inadmissible because the Commissioner failed to inform him that he could have the aid of counsel, or to warn him that his statements might be used against him, or to advise him that he need not answer. This reasoning, of course, finds its support in the existence of extraneous facts which have been discovered through the statements of the accused, or otherwise, and such statements are, therefore, admissible, though made involuntarily, or though made to conceal guilt, and a different rule relates to them from that which respects confessions which are guarded by the great probability that the prisoner has been influenced by his expectation of punishment or of immunity, to speak what is not true.

The leading case respecting a judicial determination of what is voluntary and what is not voluntary, is the case of Bram vs. United States, 168 U. S., 532, 42 Law

Ed., 568. In that case, the accused was an officer of a ship upon which a triple murder had been committed. He and a subordinate were placed in irons, and carried into port. The prisoner Bram was taken before a detective at Halifax, who searched him, and stripped him, and took what the bill of exceptions called "extraordinary liberties" with him, and thereupon questioned him as follows:

"When Bram came into my office, I said to him, 'Bram, we are trying to unravel this horrible mystery. Your position is rather an awkward one. I have had Brown in this office, and he made a statement that he saw you commit the murder." He answered, 'He could not have seen me. Where was he?' I said, 'He states he was at the wheel.' 'Well,' said he, 'he could not see me from there." I said, 'Now look here. Bram, I am satisfied that you killed the Captain from all I have heard from Brown, but,' I said, 'some of us here think you could not have done all that crime alone. If you had an accomplice, you should say so, and not leave the blame of this horrible crime on your own sholders.' He said, 'Well, I think, and many others on board the ship think, that Brown is the murderer, but I don't know anything about it.' He was rather short in his replies."

Because of the admission of this testimony or confession, the Supreme Court of the United States reversed the judgment of conviction, and granted a new trial. Compendiously stated, the rulings upon the same, by that Court, were as follows: The use which was made of the prisoner's statement precludes the prosecution from saying that it was not used to his prejudice, and after so using the testimony the prosecution will not be heard to assert that the confession was not prejudicial, because it did not tend to prove guilt. The sole question with reference to the voluntary character of an alleged confession depends on whether the making of the statement was voluntary and without inducement or compulsion, and not whether the particular communications contained in it were voluntary or not. The mere fact that a confession is made to a police officer while the accused is under arrest, in or out of prison, or is drawn out by his questions, does not necessarily render a confession involuntary, but, as one of the circumstances, such imprisonment or interrogation may be taken into account

in determining whether or not the statements made by the prisoner are voluntary.

The above decision is cited and applied in Sorenson vs. United States, 143 Federal, 820, by the Circuit Court of Appeals for the Eighth Circuit, to the protection of a defendant from the use of a confession which was secured from him by a Post office Inspector, who had advised the defendant that he, the Inspector, had an absolutely good case against him for robbing the post office, and advised him that the thing for him to do was to plead guilty and throw himself on the mercy of the Court, and that by doing so, the offense against the State laws, would probably be overlooked.

It may be stated, therefore, as a general proposition, that the sole question for determination in the Federal practice is, whether the confession was voluntary—that is, made without inducement or offer or promise of any sort.

§ 20a. **Confession Continued.**—It is not an element of a voluntary confession under the federal authorities and under the common law rule that such confession shall have been made after warning, nor when not under arrest. Shaw vs. U. S., 180 Fed. 348. Upon request by the accused it is proper to specially instruct that a confession must be found to have been made voluntarily before it could be considered. Shaw vs. U. S., 180 Fed. 348. See also U. S. vs. Lydecker, 275 F. 976.

Of course it will be borne in mind, as heretofore suggested, that the court passes upon this preliminary inquiry before submitting the testimony to the jury.

§ 20b. Confession Continued.—See Sec. 4. a.

Evidence illegally secured on a warrant may be used when no motion is made to return it, MacKnight vs. U. S., 263 Fed. 832.

The court will order property illegally secured returned, U. S. vs. Meresca, 266 Fed. 713; and such order cannot be appealed from, U. S. vs. Marquette, 270 Fed. 214; see also U. S. vs. Friedburg, 233 Fed. 313; Flagg vs. U. S. 233 Fed. 481; U. S. vs. Schallinger, 230 Fed. 290.

Evidence that has been given up cannot be recovered was held in Linn vs. U. S. 234 Fed. 543.

The case of Adams vs. N. Y., 192 U. S. 575, seems to be challenged by U. S. vs. Abrams, 230 Fed. 313, in re Marx, 255 Fed. 344, and Silverthorne vs. U. S. 40 Sup. Ct. Rep. 182. Affirmance of the far reaching doctrines is made, that, evidence which has been illegally secured by the government must be returned upon application and cannot be made use of by the government in any way; in other words the government cannot advantage by its own wrong; to the same effect are cases cited under Sec. 4a herein. While the case of Lyman vs. U. S. 241 Fed. 945, holds to the old doctrine of 192 U. S., the Adams case, that papers which are pertinent to the issue which may have been illegally taken does not constitute a valid objection to their admissibility.

The case of U. S. vs. Gouled, 253 Fed. 242, which permitted the introduction of certain written evidence seized under a search warrant and in which the court refused to quash an indictment found upon such testimony was reasoned out, by the Supreme Court of the United States in the same case at page 261, 41 Sup. Ct. Rep., for the proclamation of the doctrine that evidence illegally taken by improper searches and seizures must be returned and conviction set aside, if secured thereon.

These observations are made because a confession at common law, must have the element of the voluntary before it is admissible.

The question of the admissibility of a confession is for the court but when the evidence is conflicting, the court may submit it to the jury with instructions to disregard it if not voluntary. McCool vs. U. S. 263 Fed. 55; see also U. S. vs. Oppeinheim, 228 Fed. 221.

Where a defendant, charged with stealing a package from the postoffice, where he was employed, was taken in charge by inspectors and held twenty four hours, without being permitted to communicate with friends or procure counsel, but compelled to sleep in the room with one of them and being told by them that they believed him guilty and had evidence which made it look bad for

him, a confession, written by the inspectors, but signed by him at the end of that time, held involuntary, and not admissible against him, by the Court of Appeals, in, Purpura vs. U. S., 262 Fed. 473.

There is no oppression so oppressive as official oppression—that oppression which under the majesty of the law asserts and carries forward a wrong.

A confession secured from accused while he was in jail through questions asked by an agent of the department of Justice, without accused having been warned of his right to remain silent and of the effect of his answers as evidence against him, was secured by compulsion, contrary to Const. U. S. Amendment V. U. S. v. Kallas 272 F. 743.

§ 21. **Admissibility of Documentary Evidence Secured Illegally.**—In line with the thought that we have been pursuing is the inquiry as to whether documentary evidence, letters, papers, etc., secured in violation of the Constitutional provision guaranteeing the private citizen against illegal searches and seizures, can be used in evidence against the party from whom they were so secured. The case of Adams vs. New York, 192 U. S., 586, 48 Law Ed., 577, by the Supreme Court, holds that the admissibility of documentary evidence, tending to establish the guilt of an accused of the offense charged, is not affected because it was secured in violation of the prohibition against unreasonable searches and seizures, and the self-incrimination of an accused is not affected by the introduction in evidence against him of certain private papers found in the execution of a search warrant, where he did not take the witness stand in his own behalf, as was his privilege, and was not compelled to testify concerning the papers or make any admission about them. This was a case that originated under the gambling paraphernalia statute of New York City, and the officers, armed with a search warrant under that statute, secured certain private papers that were not called for, nor included, in the search warrant, but which were decidedly damaging testimony against the defendant, and upon this state of facts the direct question above

suggested was passed upon. The Supreme Court lays down the rule in the following terms, quoting from Greenleaf, Volume 1, Paragraph 254*a*:

"It may be metioned in this place that though papers and other subjects of evidence may have been illegally taken from the possession of the party against whom they are offered, or otherwise unlawfully obtained, this is no valid objection to their admissibility, if they are pertinent to the issue. The Court will not take notice how they were obtained, whether lawfully or unlawfully, nor will it form an issue to determine that question. ....Evidence which is pertinent to the issue is admissible, although it may have been procured in an irregular, or even in an illegal manner. A trespasser may testify to pertinent facts observed by him, or may put in evidence pertinent articles or papers found by him while trespassing. For the trespass, he may be held responsible civilly, and perhaps criminally, but his testimony is not thereby rendered incompetent."

In line with the cases and authorities cited above was the holding of District Judge Thompson in the case of Firth-Sterling Steel Co. vs. Bethlehem Steel Co., 199, Fed. 353, where the information in question consisted of original drawings of armor-piercing projectiles submitted under orders of secrecy and the possession of which was subsequently wrongfully obtained, but the court said that the illegality of the method by which evidence has been obtained does not affect its admissibility. See also Hartman vs. U. S., 168; Fed. 30.

This doctrine has been approved and followed by the Federal Courts, even though the property unlawfully or irregularly seized belonged to a third person, as was decided in U. S. vs. McHie et al., 196 Fed. 586. In that case District Judge Sanborn held that a Federal Court has power to impound books and papers, although the property of a third person and unlawfully and irregularly seized by officers of the government, where they are shown to be essential evidence in a criminal case.

In Hardesty et al. vs. U. S., 164 Fed. 420, the Circuit Court of Appeals for the Sixth Circuit decided in a *per curiam* opinion that it is no objection to the admissibility of evidence which is pertinent to the issue in a criminal case that it was obtained by means of a search warrant illegally issued or executed.

To the same effect was the decision of the Circuit Court of Appeals for the Ninth Circuit in Lum Yan vs. U. S., 193 Fed. 970, which determined that letters were not inadmissible against the accused because unlawfully seized by the authorities, where the search does not appear to have been seriously resisted.

§ 21a. **Method for Recovering Illegally Secured Evidence.**—A party may, upon the filing of a proper motion setting forth the facts, secure from the court in which the cause is pending an order directing the prosecution to return to him such papers or evidence as was illegally secured.

Certain inspectors having accompanied a marshal to serve a warrant on defendants, arresting them for misuse of the mails in furtherance of a scheme to defraud, remained and searched their office and seized their books, papers, letters and documents, removing the same to their office, whence they were ordered delivered to the clerk of the court and sealed. Upon this state of facts, after a motion had been filed to have the papers returned, District Judge Pollack, in U. S. vs. Mounday et al., 208 Fed. 186, held that, the material having been secured as the result of an unconstitutional search and seizure, defendants were entitled to have the same returned to them, though such documents might contain incriminatory evidence which the district attorney desired to submit to the grand jury and use against them.

When, however, there is an element of the voluntary surrender, no relief will be granted upon such an application, and this applies to oral testimony by one. Powers vs. U. S., 223 U. S. 303; Weeks vs. U. S., 232 U. S. 383; U. S. vs. Hart, 214 Fed. 655; same case, 216 Fed. 374.

In Weeks vs. U. S., 232 U. S., 383, cited above, the court held that while an incidental seizure of incriminating papers, made in the execution of a legal warrant, and their use as evidence, may be justified, and a collateral issue will not be raised to ascertain the source of competent evidence, Adams vs. N. Y., 192 U. S. 585, that rule does not justify the retention of letters seized in violation of the protection given by the Fourth Amend-

ment where an application in the cause for their return has been made by the accused before trial.

Continuing, the court said in that cause that the court has power to deal with papers and documents in the possession of the district attorney and other officers of the court and to direct their return to the accused, if wrongfully seized, and where letters and papers of the accused were taken from his premises by an official of the United States, acting under color of office, but without any search warrant and in violation of the constitutional rights of accused under the fourth amendment, and a seasonable application for return of the letters and papers has been refused, and they are used in evidence over his objections, prejudicial error is committed and the judgment should be reversed.

§ 21aa.—Method for Recovering Illegally Secured Evidence Continued.— Congress having specifically authorized United States Commissioners to issue warrants in certain cases, and having conferred no authority to issue warrants to search and seize letters, writings, etc., used, or intended to be used, in the execution of a scheme to defraud, in the execution of which the mails are used, a United States Commissioner had no authority to issue a search warrant for such purposes, and, upon motion by the defendant, the papers were ordered restored to him, in U. S. vs. Jones, 230 Fed. 262.

One who kills an officer who is acting under a void search warrant committs no offense, U. S. vs. Pitotto, 267 Fed. 603.

Where evidence has been secured illegally, and, then introduced in evidence on the trial, over objection, a new trial will be granted, U. S. vs. Hill, 263 Fed. 812.

An order denying the restoration of documents alleged to have been illegally taken, and being held as evidence, is an interlocutory order in a criminal case, and under Sec. 128, of the Judicial Code, is not reviewable by the Court of Appeals. Coastwise Lumber Co. vs. U. S., 259 Fed. 847.

§ 21b. **Production of Documents.**—The constitutional guarantees protect the defendant in a criminal cause

against involuntary disclosures or against unreasonable searches and seizures. In Schatz vs. Winton Motor Carriage Co., 197 Fed. 777, Circuit Judge Noyes held that the production of documents by the adverse party in actions at law in Federal Courts is governed by the Statutes of the United States, and under such statutes a court at law cannot compel a party in an action to produce documents in advance of the trial for the inspection of the other party, citing Carpenter vs. Winn, 221 U. S. 533.

§ 21bb. **Production of Documents Continued.**

It is error to demand, that the defendant produce papers in his possession. But where the court directs the jury to disregard the demand, and the defendant later offered in evidence all of the checks which the prosecution had previously demanded from him, the error was cured; or, at any rate, was not a reversable error under the circumstances. Bain vs. U. S., 262 Fed. 664.

§ 22. **Comments or Improper Argument of District Attorney.**—Too much care cannot be given by counsel to words they use in addressing the jury. Attorneys for the prosecution and the defense should be jealous indeed to guard themselves from remarks that are unsupported by the testimony, or that are individual opinions rather than legitimate deductions from the law and the evidence. One of the abuses of the modern practice is the proneness of the attorneys defending to express unbounded belief in the innocence of their client, even to the staking of personal reputation. Great censure also is due the prosecution for intemperate and immoderate expressions, due ofttimes to the vehemence of opposing counsel but never excused. The only remedy the prosecuting officer has against such unfair argument is to appeal to the trial judge. Defending counsel can save the point by bill of exception, and present the language of the prosecuting officer to the appellate court for review. Trial judges should, therefore, be extremely careful to enforce, by proper ruling, not prejudicial to the interests of the prosecution or the rights of the defendant, a fair argu-

ment, devoid of personal opinions, and as free from prejudicial and inciting statements as fair discussion will permit. In the case of Williams against the United States, 168 U. S., 382, the defendant was convicted of extortion in exacting money from Chinese immigrants for permission to land and remain in the United States. The defendant proposed to show by witnesses that while he was acting in such official position, there were more females sent back to China than ever were sent back before or after. The representative of the government objected to this evidence, as irrelevant, saying in open court, and presumably in the hearing of the jury: "No doubt every Chinese woman who did not pay Williams was sent back." The Supreme Court said: "The observation made by the prosecuting attorney was, under the circumstances, highly improper, and not having been withdrawn, and the objections to it being overruled by the Court, it tended to prejudice the right of the accused to a fair and impartial trial."

In Hall against the United States, 150 U. S., 76, a judgment of the trial Court was reversed, because the District Attorney was permitted to make an argument, against the objection of the defendant, not based on evidence, which tended to prejudice the jury against the defendant. See also People vs. Mull, 167 N. Y., 247. In the case of Lowdon against the United States, 149 Fed., 677, this question was raised: The attorneys for the defendant had insisted that six men could not return a verdict, nor could eleven; that it required twelve. The District Attorney, in answering that argument, said in substance that it was true that six could not return a verdict, nor could eleven, and, that, as matter of fact, it did take twelve; but that he would hate to be the obstinate juror, for fear when he returned home, his friends and neighbors, who possibly were not versed and familiar with the various technicalities and intricacies of the law might conclude that the jingle of the broken banker's unlawful and illy gotten gold in his pocket had influenced his action. The court, in that case, held that the argument was improper, and said: "We would not embar-

rass free discussion, so essential to proper administration of the law. We would not regard many hasty but exaggerated expressions of attorneys made in the heat of debate, which are not expected to become factors in the formation of the verdict. We wish to follow established rules, and to avoid introducing another element of uncertainty in the trial of criminal cases by making a new precedent for the reversal of judgments. The difficulty of drawing a line between legitimate and improper arguments admonishes us that the trial judge often has a delicate and difficult task imposed on him; but, under the circumstances of this case, considering the character of argument, the refusal of the trial judge to interfere at the time the objection was interposed, or to correct the probable effect of the argument by a subsequent instruction, and because it does not appear affirmatively to us that no injury was done to the defendants, we are constrained to hold that the judgment should be reversed and a new trial granted." See also Allen vs. United States, 115 Fed., p. 4.

So, also, the District Attorney may not comment in argument upon the failure of the defendant to offer evidence of his previous good character. McKnight vs. United States, 97 Fed., 208; Bennet vs. State, 86 Ga., 401; Davis vs. State, 138 Ind., 11; Fletcher vs. State, 49 Ind., 124; Thompson vs. State, 92 Ga., 448; the People vs. Evans, 72 Mich., 367; Lowdon vs. U. S., 149 F., 677.

Neither can the defendant, by questions, be compelled to disclose evidence against himself, as, for instance, he cannot be asked to produce the original, else a certified copy will be permitted. McKnight vs. United States, 115 Fed., 972.

See U. S. vs. Snyder, 14 F., 554, where District Attorney comments on failure of defendant to testify in his own behalf. See also Dimmick vs. U. S., 121 Fed., 638. Also case of Latham et al. vs. U. S., Circuit Court Appeals 5th Circuit, 226 Fed. p. 000, decided in October, 1915, reversed because District Attorney said, "if it had not been that a train was three hours late he would have produced another witness."

§ 22a. **Procedure When Improper Argument or Remarks are Made.**—When the prosecuting officer has indulged in argument not supported by the record or makes use of unfair and prejudicial statements either in argument or in the examination of witnesses, or at any other time in the presence of the jury, the defense should at once object, and thereupon it becomes the duty of the court to instruct the jury not to consider what the prosecuting officer has said, and the remark or argument or statement should also be withdrawn by the prosecuting officer. If this course is not taken, the defense should except and preserve such exception by a proper bill. It is also a safe practice to request a special charge governing the occurrence and if such special charge is not given, to reserve a bill to that action of the court. Higgins vs. U. S., 185; Fed., 710; Donaldson vs. U. S., 208; Fed., 4; Stewart vs. U. S., 211; Fed., 41; Fish vs. U. S., 215 Fed., 545. Ammerman vs. U. S., 185 Fed., 1; Goodwin vs. U. S., 200 Fed., 123; Rogers vs. U. S., 214 Fed., 981; Carlisle vs. U. S., 194; Fed., 827. In the above cases will be found a number of illustrations as to what the court will and will not permit.

In Carlisle vs. U. S., 194 Fed., 827, the court said that the rule that a district attorney shall not refer in his argument to defendant's failure to testify in his own behalf does not prevent argument amounting only to a claim that the government had made out a prima facie case, which had not been contradicted.

In Ammerman vs. U. S., 185 Fed., 1, the court went further than I have ever known it to go when it held that where the district attorney in his opening argument said that "Gilliam's testimony must be taken as true because the defendant had not gone on the witness stand and denied it." And the court immediately, on its own motion, stopped the attorney, and defendant's counsel at the same time excepted, and the court then said to the jury that the remarks of the assistant district attorney were improper; that he had no right to make them; and the jury should not draw any unfavorable conclusion or inference against defendant from

such remarks; that the law prohibited the assistant district attorney from commenting as he had upon the defendant's conduct in not contradicting Gilliam; that it was a gross impropriety for him to have done so; and that his statement should be entirely disregarded, and later on the trial Judge told the jury in other and different words that they must entirely disregard the improper comment. Upon such a state of facts the Court of Appeals held that there was no reversible error. This holding is in direct contravention to the holdings of the courts of many of the states and seems to be in conflict with many of the decisions of the Federal Courts. The jury's attention having been drawn to the fact that the defendant had not testified, no possible charge or caution by the Judge could entirely eradicate the harm done. The defendant is presumed to be innocent until his guilt is established by competent evidence and beyond a reasonable doubt, and his failure to offer any testimony whatsoever must not be taken as any indication of his guilt, nor shall such failure be referred to either by the prosecution or by the court lest a fair trial as defined by the law be denied. The Court of Appeals, in the case under consideration, concluded by saying, "We cannot refrain, however, from saying that counsel in their zeal to enforce obedience of the law on the part of others should not themselves grossly violate it," which appendage to an affirming opinion seems to warrant us in saying that the court was extremely doubtful of the correctness of its position. It may be added here that the court does not cite a single case in support of its position when, as we know, the books are full of cases opposing such a position. The Constitution provides that not one shall be made to testify against himself. When the prosecution is permitted to remark that the defendant has not testified, this Constitutional guarantee is swept away, as have the courts so frequently held.

In Goodwin vs. U. S., 200 Fed., 121, the United States attorney used this language, "Do not let it be said, gentlemen, that you as jurors did not have the nerve to attach the death penalty, because, gentlemen of the jury, this

case, if there ever was a case, is one in which it is merited." The report does not show just what steps the defendant took to shield himself from this improper attack, but the court said, "Admonitions of this character to a jury by a prosecuting officer of the government cannot be approved. They should not be resorted to by an officer in the performance of his duty as a prosecutor. On the other hand we cannot say that such deviation from the path of strict propriety was such an error in this case as would justify its reversal and a new trial. After carefully reading the evidence we are of the opinion that it had no influence upon the verdict of the jury."

In the case of Fish vs. United States, 215 Fed., 544, the conviction was reversed because the district attorney, in his argument to the jury, reflected upon the defendant's character which was not put in issue, and going beyond any evidence in the case, and which were not withdrawn or corrected when called to the attention of the court and counsel. The opinion was rendered by Judge Bingham of the Circuit Court of Appeals for the First Circuit, and among other things, he said, "What the district attorney said * * * was an appeal to the passion and prejudice of the jury. Immediately upon the statement being made, counsel for the defendant objected, and brought the matter to the attention of the court and of counsel for the prosecution. It then became the duty of the district attorney to withdraw the statement and ask the jury to disregard it; and the court should at that time have instructed the jury that the statement was improper, and that they should not allow it to influence their action. * * * The objectionable statement being allowed to stand, defendant's counsel followed it up with an exception. The objection and exception were seasonably and properly taken. Odell Mfg. Co. vs. Tibbetts, 212; Fed., 652."

In the case of Stewart vs. U. S., 211 Fed., 41, the Court of Appeals for the Ninth Circuit denounced as improper a reference by the district attorney to the conviction of the partner of the defendant, but refused to reverse. I assume that the judges were so overwhelmed with the hor-

ror of the facts that they could find no way for the jury to do anything but convict and therefore found that there was no prejudicial error, but the fact remains that the failure to reverse affords another comfort to the prosecuting officer who is regardless of the record or of the rights of the accused.

§ 22b. Instances of Improper Remarks and of Remedies Therefor.——It is improper to refer to the failure of friends to appear. Hall vs. U. S., 256 Fed. 748. For improper argument the cause will be reversed. Houston Ice Company vs. Harlan, 212 S. W. 779. Improper to call the defendant a Jew. Gurinsky vs. U. S., 259 Fed. 378. When the jury is explicitly directed by the court to disregard the improper argument of the District Attorney, it is not error. Phelan vs. U. S., 249 Fed. 43.

A statement by counsel as to what other juries have done is improper. McKibben vs. Phila., 251 Fed. 577. It is not admissible to mention other offenses. Paquin vs. U. S., 251 Fed. 579. A reference by a prosecuting attorney in his opening argument to the crimes, murder, for which the defendant was serving a sentence at the time of the killing of a prison guard, was unnecessary and prejudicial. Manuel vs. U. S., 254 Fed. 272. Argument of counsel for the government in a prosecution for offering to bribe a member of a draft board, referring to the war with Germany, was held to be an appeal to prejudice and reversible error. August vs. U. S., 257 Fed. 388. The District Attorney is a judicial officer and cannot use language that other advocates might use. Fitter vs. U. S. 258 Fed. 567.

The remarks of the District Attorney which are thought to be erroneous must be excepted to. Eisenburg vs. U. S., 261 Fed. 598.

The vocal emphasis of a judge cannot be complained of on appeal where no exception was reserved in the trial court. Sims vs. U. S., 268 Fed. 234.

A withdrawal of the remarks and an instruction from the court to the jury to disregard, and a caution to the jury is oftentimes sufficient to cure the error. Green vs. U. S., 266 Fed. 780; Gilmore vs. U. S., 268 Fed. 721;

Kreuzer vs. U. S., 254 Fed. 35; Lowdon vs. U. S., 149 Fed. 677; Hardy vs. U. S., 256 Fed. 284.

It was prejudicial error for the prosecuting attorney to tell the jury that if the defendant was acquitted, or, awarded a suspended sentence that it would be a stench in the nostrils of every citizen of Taylor County. Brookerson vs. State, 225 S. W. 375.

For questions held not improper see, Foley vs. U. S., 241 Fed. 587; Rose vs. U. S., 227 Fed. 357. For remarks held improper see, Sparks vs. U. S., 241 Fed. 778; Elmer vs. U. S., 260 Fed. 646. A cross examination may be prejudicial. Skuy vs. U. S., 261 Fed. 316.

An objection to unfair remarks, calling the attention of the judge to them when made, together with an exception to the action of the judge, or his lack of action, on the objection, are essential to review of unfair remarks, or their effect. Chambers vs. U. S., 237 Fed. 513. In this case the court held that it was not error for the prosecuting officer to speak of those who had dealt with the defendants as victims when the evidence showed that the land was not of the value represented by the defendants.

A defendant having testified may be re-called for proper cross-examination. Ching vs. U. S., 264 Fed. 639.

The failure of the defendant to testify may be charged on by the court saying, that no presumptions shall arise therefrom. Kreuzer vs. U. S., 254 Fed. 35; Robilia vs. U. S., 259 Fed. 101.

The real and correct rule in the federal court is that neither the court, nor the counsel shall comment upon the failure of the accused to testify. Act Mar. 16, 1878, 20 Stat. 30; Stout vs. U. S., 227 Fed. 799; see also People vs. Watson, 111 N. E. 243.

For further improper remarks of District Attorney and references therefor, see Gowling vs. U. S., 269 Fed. 215; Lynch vs. State, 193 S. W. 667.

The court must stop and instruct the jury to disregard improper remarks, comments, or, argument. Hunter vs. U. S., 264 Fed. 831.

Under the Act of February 26, 1919, error may be noticed without exception. August vs. U. S., 257 Fed. 388.

§ 23. **District Attorney in Grand Jury Room.**—Having already noticed something of the latitude permitted the District Attorney or prosecution in argument before the trial jury, it will not be out of place to call attention to the limits within which the prosecuting officer must work in the grand-jury room in seeking an indictment or presenting evidence to the grand jury upon which he expects an indictment to be returned. In United States vs. Wells, 163 Federal, 313, Judge Whitson reviews, at some considerable length, authorities along this line, and from that opinion may be deduced the following rules and limits: The District Attorney has no right to participate in, nor be present, during the deliberations of a grand jury, nor to express opinions on questions of fact, or as to the weight and sufficiency of the evidence. The District Attorney should not comment upon and review the evidence and apply the law thereto for the purpose of securing an indictment. He should not express an opinion that the defendants are guilty, and that the grand jury should return an indictment against them. He should not be present while the jury is balloting upon the persons under investigation; and while the mere presence of the prosecutor during the taking of a vote, through inadvertence, and without intending to influence any action, is not necessarily fatal to a bill, yet where the prosecutor expresses his opinion and urges the finding of an indictment, it is clearly shown that the grand jury must have been influenced thereby, and an indictment so returned will be quashed.

§ 23a. **Misconduct—How Raised.**—A plea of misconduct in the grand jury room must set out fully facts and not conclusions. U. S. vs. Gradwell, 227 Fed. 243.

§ 24. **Jury.**—The right of trial by jury is the most priceless boon enjoyed by the people under any government. Text-book writers, newspaper writers, politicians, and theorists may thunder as they will against the miscarriages of justice from the jury box; the system is not only established for all time, but is as necessary as

a bill of rights. No judge, however learned, no set of judges, however impartial can approximate the justice that is found and dispensed by the layman juror. A mind trained in the law, or in any other science or profession, holding the utmost purity of thought, is still short of an ability to appreciate and weigh justly the motives that actuate those who are permanently, or occasionally, or unfortunately only once, charged with crime or offense. The very people with whom the unfortunate walked, and the very people who suffered or won as the unfortunate suffered or won understand best the power that makes or unmakes an intent of the human heart. That the Federal judge is permitted to give expression to his opinion to the jury is no argument for the abolition of the jury. The jury is strong, because it has twelve men on it, and, therefore, twelve sets of different opinions, and the addition of a judge's opinion, coupled with the statement that such opinion is not to influence or bind any member of the jury, but strengthens the desire upon the part of the individual jurors to think for themselves, and thus bring to bear the best thought for the determination of the human problem upon which they sit. Not the least part of the gloriousness of American jurisprudence and court history is due to the fact that the American court, appellate or supreme, views with sacredness and honor the verdict of the jury, and only for well-known reasons will there be a disturbance of the same. The latitude given the Federal judge in the matter of his charge is to be entered with great care. The cream of the decisions seems to indicate that a judge should never permit the jury to know just what he thinks individually of the guilt or innocence of the party on trial, but that he may indicate, by instructions or otherwise, his opinion upon a particular piece of evidence, so that the truth or falsity of that particular testimony may be determined with as much ease as possible by the jury, it being the object of a Court to ascertain the truth, and to seek every light possible that will assist in finding just where the truth in fact does lie. The Constitution of the United States provides for trials by jury, as do also the Amendments,

which have been denominated by the Supreme Court and by great thinkers as the bill of rights of the American people. Congress has provided, in the Revised Statutes, for jury trials in both the Circuit and District Courts of the United States, and has authorized the waiving of a jury in the trial of civil cases in the Circuit Court, but has not authorized the waiving of a jury in the trial of civil cases in the District Court. United States vs. St. Louis Railway Company, 169 Fed., 73; Low vs. United States, 169 Fed., 86.

It is quite certain that a jury cannot be waived by one who is charged with a felony, and it seems that the great weight of authority is against the permission of a waiver of a trial by twelve jurors when the crime is infamous or a high misdemeanor. In Dickinson vs. United States, 159 Federal, page 801, the Circuit Court of Appeals for the First Circuit speaking through Judge Putnam, reviews the American authorities with reference to the waiver of one on trial of his right to be tried by a jury of twelve, when one of the originally selected twelve becomes ill or from other cause must be excused. In that particular case, the juror who became ill was excused by consent, which consent was in writing of both the defendant and his counsel. The case being tried was one denominated by the Federal statutes as a misdemeanor, which, however, under the new Code, is infamous, because the punishment was penitentiary. In that case, the majority of the Court holds that the second Section of Article III. of the Constitution demands a trial by jury, and that Thompson vs. Utah, 170 U. S., 343, has authoritatively determined that a jury for a criminal cause is to consist of twelve men, and that the Amendments to the Constitution relating to jury trial do not in any measure explain or abrogate or lighten the second Section of the original Article III., and that in the trial of criminal cases, not only the defendant is interested in the maintenance of Constitutional guarantees, but that the people themselves are interested and concerned.

It is true that District Judge Aldrich, in the foregoing opinion, dissents, and in a well-reasoned and authority-

supported paper; but one cannot well escape the force of the suggestion that if a defendant may waive one and be tried by eleven, why could he not waive eleven and be tried by one. The safe rule, therefore, for all District Attorneys, is ot see that there is a full panel, and if sickness or other unavoidable interference causes the judge to excuse a member of a jury, that the trial then be discontinued and begun all over again before the regulation number. I have no doubt that a defendant and his counsel may consent in writing and bind themselves in writing as strongly as a document can be worded, and yet, in the event of conviction, successfully raise the point by way of motion in arrest of judgment, and cause a reversal of the case. Dickinson vs. United States, 159 Fed., 809.

The case of Schick vs. United States, 195 U. S., 65, and the case of Callan vs. Wilson, in 127 U. S., 549, are discussed and differentiated in the Dickinson case, cited supra; and while the Schick and the Callan cases are relied upon as authority by District Judge Aldrich in his dissent, the majority opinion seems better founded, and I would counsel the following of the Dickinson case until the same is expressly overruled by higher authority. See also 4 Fed. Statutes, p. 391.

The Dickinson case went to the Supreme Court but certiorari was dismissed without acting on the question involved. 213, U. S., 92. A panel of jurors must be drawn by those authorized by section 276 Judicial Code and no one else, otherwise a challenge to the panel will be sustained. U. S. vs. Murphy, 224 Fed. 554.

§ 24a. **Comments of the Court.**—Judge McDowell, in U. S. vs. Foster, 183, Fed., 626, in taking issue with the court in Garst vs. U. S., 180, Fed., 339, defined the right of the trial judge to state his opinion on the facts to a jury in a criminal or civil case, provided he explained to the jury at the same time that such opinion has no binding effect. It is difficult indeed to understand how a court could express itself with reference to a particular fact, the existence, force and effect of which is paramountly for the determination of the jury, under our system, without influencing or affecting the jury.

In Adler vs. U. S., 182 Federal, 464, the appellate court held that the trial court could not cross examine witnesses in a way that would communicate to the jury his opinion of the defendant's guilt, and in Sandals vs. U. S., 213, Federal, 569, the appellate court held that certain observations by the trial court could not be removed by a general charge that the jury was the sole judge of the credibility of the witnesses. See also Foster vs. U. S., 188 Federal, 305, as to the care to be exercised by a court in the expression of opinion. No one doubts, of course, the power of the court to express an opinion. See collated authorities in Young vs. Corrigan, 208 Federal, 431, nor must the court be a mere presiding officer, for his function is to ascertain the truth and speed the progress of the trial, Kittenbach vs. U. S., 202 Federal, 379, but there should be as little entrenchment as possible upon the province and field of the jury. The right to a jury trial is priceless and in this age of enlightenment a jury is entirely capable of finding the light without the aid of judicial observation, which might lead the jury to think the way the court leads rather than to incur the displeased mind of the court. It is not that the jury fears punishment at the hands of the court, but the jury looks up to the court and becomes, as it were, worshipers at the shrine of the correctness of the Judge's opinions and in their newness to court atmosphere, they tremble lest their judgment as to the credibility of a witness or the guilt of the accused might be at fault, especially since the court has clearly indicated what he thinks about it. And so the opinion of one man is substituted for the opinion that should be the product of twelve minds hard at work with all the guides that experience has given them.

The court may express his opinion in his charge relative to the failure of the plaintiff to produce a certain witness, where the jury was given to understand that it was not bound by such an opinion. Young vs. Corrigan, 210 Federal, 442.

§ 24b. **Comments and Attitude of the Court.**—What has been heretofore said with reference to the impartiality of the presiding judge and the concealment of his

individual opinion as to the guilt or innocence of the defendant, and particularly as to his guilt, cannot be too often repeated. Now that the country is becoming more thickly settled and the people are further removed from the birth of their government and, therefore, less in love with it, every enforcer of the law must stand clearly unbaised and determined to meet out exact justice by the application of the well-known constitutional guarantees and by the beaten paths of the law.

The court's comment must be judicial and dispassionate and leave the jurors free to exercise their independent judgment. Shea vs. U. S., 251 Fed. 445; Sylvia vs. U. S., 264 Fed. 593.

The court should not commit a witness for the defendant for perjury in the presence of the jury. McNutt vs. U. S., 267 Fed. 670.

The court should not cross-examine a witness in such a way as to use a prejudicial hypothetical case, before the jury not warranted by the evidence and tending to mislead the jury and prejudice them against the defendant. McCallum vs. U. S., 247 Fed. 27. He should not so instruct the jury as to limit the presumptions that really belong to the defendant. McCallum vs. U. S., 247 Fed. 27. Another evidence of improper questioning by the court will be found in Manuel vs. U. S., 254 Fed. 272.

It is quite improper for the court to observe that "practically all whisky cases show half-pint bottles," on the trial of a man charged with a whiskey violation. Whiting vs. U. S., 263 Fed. 477. The court may not, in submitting a defense, criticise the doctrine upon which such defense is based, and if he does so it is reversible error. Bergen vs. Shaw, 249 Fed. 466.

The reviewing courts always permit the trial judge, in a judicial and fair manner, to direct the attention of the jury toward the ascertainment of the truth, even though, such truth may indicate the court's opinion, provided he then certainly instructs the jury that they are not to be guided by his opinion but are to make up their own conclusions. Balcom vs. U. S., 259 Fed. 779; Clark vs. U. S., 265 Fed., 104; Gross vs. U. S., 265 Fed. 606; Little v. U. S., 276 F. 915.

The court may instruct a verdict of guilty under certain conditions. Horning vs. D. C., 41 Sup. Ct. Rep. 53.

§ 25. **Care of Jury.**—Text-book writers, judges, and statute makers cannot well formulate rules with reference to the care of juries that can be invariably followed. Under most jurisdictions, jurors in the trial of criminal cases are kept together and not permitted to separate, being under the constant surveillance of bailiffs or deputies. This care and espionage of the jury is not necessarily due to the distrust of the jury itself, but is ofttimes considered as a right belonging to the jury. When that body has returned its verdict, no one should question its sincerity, honesty, and cleanness, and every safeguard that keeps the jury from unauthorized and outside persons, thereby making improper advances impossible and improbable, lends weight and force and purity to its verdict, and thus tends to convice the most common mind of the righteousness of the ultimate conclusion. It is not alone necessary to avoid evil—the thoughtful man avoids the appearance even thereof. Newspapers, letters, conversations with outsiders, telephone messages, and telegrams should all alike be kept from the jury, or else go to the jury under the surveillance of the Court.

In Marrin vs. United States, 167 Federal, 951, the Court refused to set aside a verdict upon a motion made by the defendant to the effect that newspapers relating to the case had been read by the jurors during the trial; and while the facts disclose that the jurors themselves testified that they were not influenced by the newspaper statements, yet it does seem that we would have felt a great deal better had there been no such case reported. Of course, after a juror has rendered his verdict, he is slow to answer that any part thereof was shaped or rendered or assisted by anything that he may have read in a newspaper. It is a safer plan to keep the paper from the jury, and if prejudicial articles do come into the hands of the jury and this fact be ascretained by the Court, the jury should be discharged, or, if the fact is not known until after the verdict, then a new trial should be granted, unless it clearly appears that no prejudice was worked to

the defendant. In the case of Callahan vs. Chicago, 158 Federal, 988, the Court held that he would not permit the jurors to testify to the effect upon themselves of an attempt made to influence their verdict. They were permitted to testify to any facts showing attempts of others to improperly influence their verdict, but it is for the Court to determine whether or not the attempts shown are of a character that the verdict may have been improperly influenced thereby.

§ 25a. **Care of Jury Continued.**—The jury must be kept together and it is unsafe to make any other rule; yet in the case of Elder vs. U. S., 243 Fed. 84, the Circuit Court of Appeals for the Ninth Circuit refused to reverse the conviction on the ground that a juror had absented himself for twenty minutes during which time he had gone to his office, there being no circumstances shown to justify an inference of possible injury to the defendant's rights. The decision seems to be justified by the case of Holt vs. U. S., 218 U. S., 245.

The isolation of the jury and its aloofness and its care by trained and trustworthy bailiffs ought never to be abrogated. It is a protection to the jury itself. It is a protection to the prosecution. It is a protection to the defendant.

A United States marshal in charge of a jury is not permitted to make remarks as to the penalty that might be imposed in the event of a conviction. Chambers vs. U. S., 237 Fed. 513.

A full note on the reading of papers by jurors will be found in 46 L. R. A. (N. S.), 741. But the careful judge keeps the papers away from the jury. Jurors are just men and, therefore, are amenable, often, to intimations or suggestions that might, upon their face, appear perfectly harmless.

The voice of the jury ought to be heeded by all the people, and, it will be, when all of the people feel that every possible extraneous and improper influence has been kept away from the body during its deliberations and service.

§ 25aa. **Setting Aside Verdict.**—See Section 16b and latter part of Section 16.

In the case of Colt vs. U. S., 190 Federal, 305, the Court refused to set aside a verdict, even though it was shown that one of the jurors, while deliberating on the case, had secured a copy of the statute and had read that portion of it which bore upon the case he was trying.

§ 26. **Evidence of Good Character.**—If there be a difference in the rule of evidence as adopted by the various appellate Courts of the different states, respecting the admission of testimony as to the good character of the defendant, the rule in the United States Courts, as outlined in the case of Edgington vs. United States, 164 U. S., 361; 41 Law Ed., 467, is that evidence of a defendant's general reputation for truth and veracity is admissible on a prosecution, not merely to give weight to his personal testimony in the case, but to establish a general character inconsistent with guilt, whether he has testified or not; and a charge to the jury that if they have hesitancy as to the defendant's guilt, then they may consider as important the testimony as to his good character, is erroneous, as limiting the effect of such testimony to a doubtful case. The identical language of the Court upon this question is as follows:

"It is not necessary to cite authorities to show that in criminal prosecutions the accused will be allowed to call witnesses to show that his character was such as would make it unlikely that he would be guilty of the particular crime with which he is charged; and as here the defendant was charged with a species of *crimen falsi*, the rejected evidence was material and competent.....It is impossible, we think, to read the charge without perceiving that the leading thought in the mind of the learned judge was that the evidence of good character could only be considered if the rest of the evidence created a doubt of defendant's guilt. He stated that such evidence 'is of value in conflicting cases,' and that if the mind of the jury 'hesitates on any point as to the guilt of the defendant, then you have the right and should consider the testimony given as to his good character.' Whatever may have been said in some of the earlier cases to the effect that evidence of the good character of the defendant is not to be considered unless the other evidence leaves the mind in doubt, the decided weight of authority now is that good character, when considered in connection with the other evidence in the case, may generate a reasonable doubt. The circumstances may be such that an established reputation for good

character, if it is relevant to the issue, would alone create a reasonable doubt, although without it, the other evidence would be convincing."

§ 26a. **Good Character Becomes a Fact.**—In the case of Searway vs. U. S., 184 Federal, 716, Circuit Judge Hook, speaking for the Circuit Court of Appeals for the Eighth Circuit, said that evidence of the good character of the accused is admissible on all criminal trials whether the other evidence leaves the mind in doubt or not; and when established, it becomes a fact in the case, to be considered with all other facts in determining the final issue of guilt or innocence. But in absence of evidence presumption cannot be considered evidence. Price vs. U. S., 218, Federal, 149. Chambliss vs. U. S., 218 Federal, 154.

§ 26b. **Charge on—Refused When.**—A special charge on the presumption of good character, when directed at a particular fact, and when the general charge of the Court contains an instruction to the jury that the defendant is presumed to be of good character, may be refused. U. S. vs. Smith, 217 Federal, 839.

§ 26bb. **Charge on Good Character.**—The trial court in its charge on good character should not minimize its importance. In the case of Perara vs. U. S., 235 Fed, 515, the Court of Appeals reversed the conviction on the ground that the trial court committed error when he, after charging on good character, stated that persons of high character frequently committed crimes.

Where the court has fully and clearly charged on good character, he may properly refuse a requested charge to the effect that good character itself may generate a reasonable doubt of guilt. Le More vs. U. S., 253 Fed. 887.

§ 26c. **Proof of Other Offense.**—In Bishop's New Criminal Procedure, 2nd Ed., Vol. 2, page 961, it is stated as fundamental that the state cannot prove against a defendant any crime not alleged either as foundation for a separate punishment or as aiding the proofs that he is guilty of the one charged, even though he has put his character in issue. In support of this doctrine a long list of authorities is cited, which include U. S. vs. Mit-

chell, 2 Dall., 348. The same authority, at page 963, maintains that even where offenses are of a like sort, evidence of one is not ordinarily admissible in proof of another; as on a trial for larceny, to show that the defendant has committed other and disconnected larcenies; or for riot, that he has engaged in other riots; or for the murder of a particular person, that at another time and place he murdered or threatened another person; or for burglary in one county, that he committed the like in another; hence, a fortiori distinct crimes of other sorts than the one on trial are inadmissible. Of course when a detail of the res gestae would include offenses other than that on trial, as that they are linked together, or as that the transaction is a continuing one, such testimony is admissible.

The particular question under discussion is treated at some length in Dysar vs. U. S., 186 Federal, 620, by the Circuit Court of Appeals for the Fifth Circuit, in which case the prosecution was allowed to prove, over the defendant's objection, that the defendant had been convicted and had served a penitentiary sentence and that the defendant had also been indicted in a third jurisdiction and that he had gone under an alias in a fourth jurisdiction and had been in the penitentiary in other jurisdictions. There were two defendants on trial and the Court held that such procedure was erroneous as to both of the defendants and reversed the cause. In the discussion the court cited Section 192 of Wigmore on Evidence in the following words:

"This principle has long been accepted in our law. That the doing of one act is in itself no evidence that the same or a like act was again done by the same person has been so often judically repeated that it is a commonplace."

A very exhaustive discussion then follows, citing the cases State vs. Lapage, 57 N. H., 245; Kansas vs. Adams, 20, Kansas, 311; Commonwealth vs. Jackson, 132, Mass., 16; State vs. Saunders, 14, Oregon, 300; Booth vs. U. S., 139, Federal 252; People vs. Molineaux, 168, N. Y., 264; 1st Wigmore on Evidence, Section 192, and the court

then proceeds: "Of course there are many instances in which evidence of the commission of other offenses is necessarily admissible. One instance, often referred to in the books, is where the commission of one offense is a circumstance tending to show the commission of the offense for which the defendant is on trial. The fact that the defendant charged with homicide stole an ax or a gun with which the killing was done; the stealing of the weapon, though a distinct offense, would necessarily be, in the very nature of the case, competent evidence against him on his trial for homicide. The passing of other counterfeit money of the same character as that which the defendant is charged with passing, in the case on trial, would be admissible to show guilty knowledge or intent," Register vs. U. S., 186 Federal, 624. Conviction reversed in Talliaferro vs. U. S., 213 Fed. p. 25, because evidence of defendant's house being an assignation place was admitted when she was on trial for selling beer.

26 d. Proof of Other Offenses Continued.—When the defendant testifies he may be asked about other crimes he has committed for impeachment purposes only. MacKnight vs. U. S., 263 Fed. 832.

Proof of other offenses when connected with the one being investigated to show a common and continued purpose is admissible. Hall vs. U. S., 235 Fed. 870; Mitchell vs. U. S., 229 Fed. 358; Paris vs. U. S., 260 Fed. 529; Degnan vs. U. S., 271 Fed. 291; Sears vs. U. S., 264 Fed. 257; Weathers vs. U. S., 269 Fed. 254; Nee vs. U. S., 267 Fed. 84.

Care must be taken in this respect and if this rule is not strictly followed the admission of such proof will be prejudicial and reversable error. Hall vs. U. S., 256 Fed. 748; Paquin vs. U. S., 251 Fed. 579; Shea vs. U. S., 236 Fed. 97; Youmans vs. U. S., 264 Fed., 425; McDonald vs. U. S., 264 Fed. 734; Holzmacher vs. U. S., 266 Fed. 979.

§ 26 e. Good Character not Presumed.—Obviously the character of a defendant is a matter of fact, which, if investigated, might turn out either way. It is not es-

tablished, as a matter of law, that all persons indicted are men of good character. Green vs. U. S., 245 U. S., 559; De Moss vs. U. S., 250 Fed. 87; Kirchner vs. U. S., 255 Fed. 301; Sylvia vs. U. S., 264 Fed. 593.

The law, however, does not minimize the effect of good character when proven. It is very highly regarded. U. S. vs. Freedman, 268 Fed. 655.

Evidence of, to be considered in connection with all other evidence. Rosen v. U. S., 271 F. 651.

§ 27. **Instructions of the Court.**—Section 722 of the Revised Statutes of the United States do not in any measure bind the Federal Judge in the method or form of the instructions he delivers to the jury. The statutes and decisions of the state within which he holds his Court are not binding upon him in the matter of procedure in criminal cases, and he may deliver a written or an oral charge as he sees fit. *In re* Strupp, 12 Blatchf., 509; U. S. vs. Egan, 30 Federal, 608. The personal conduct and administration of the judge in the discharge of his separate functions is neither practice, pleading, nor a form nor mode of procedure within the meaning of the statute, and a state statute regulating the manner in which the Court shall charge the jury is not within this statute. 4 Federal Statute, 567; Mudd vs. Burrows, 91 U. S., 441; Indianapolis, etc., vs. Horst, 93 U. S., 300; Grimes Dry Goods Co., vs. Malcolm, 164 U. S., 490; Lincoln vs. Power, 151 U. S., 442; U. S. Mutual Association vs. Barry, 131 U. S.

In Tennessee vs. Davis, 100 U. S., 257, the Court held with reference to Section 722, that, "examined in the most favorable light, the provision is a mere jumble of Federal Law, Common Law, and State Law, consisting of incongruous and irreconcilable regulations, which, in legal effect, amount to no more than a direction to a judge sitting in such a criminal trial to conduct the same as well as he can, in view of the three systems of criminal jurisprudence, without any suggestion whatever as to what he shall do in such an extraordinary emergency, should he meet a question not regulated by any one of the three systems." At Common Law, it is entirely

within the discretion of the trial judge whether instructions to the jury shall be in writing; and in the absence of statutes providing otherwise, the whole charge may be delivered orally, and the action of the trial judge in so doing will not be reviewable on appeal or error. Smith vs. Crichton, 33 Maryland, 103; Baer vs. Rooks, 50 Federal, 898; Gulf Ry. Co. vs. Campbell, 49 Federal, 354.

The most careful way, however, is in writing, and there is little doubt that any judge, upon proper request, would gladly charge the jury in writing. If special instructions be desired, they must be requested in writing before the retirement of the jury, and the best practice is to give them to the judge before he delivers his charge. All exceptions to the Court's charge must be in open Court, and before the jury retires, and no bill will be granted, unless such action is taken.

§ 27 a. Instructions of the Court Continued.

The judge should not answer any question or communicate with a jury, after it has been charged, in the absence of the parties and their attorneys, if practicable, in a criminal case, though under certain conditions he might answer a question propounded by a jury in a civil case, Fillipon vs. Albion, 242 Fed. 258. In this case the Court of Appeals concluded that the answer of a trial judge to a question propounded by the jury after the judge had retired to his chamber, and not in open court, or in the presence of the parties or their counsel, was not ground for reversal, where no harm had resulted, and the question and answer being preserved of record and counsel being promptly informed of what had taken place and given an opportunity to except to the substance of the instruction and the manner of giving it.

When this case reached the Supreme Court, 250 U. S. 76; 39 Sup. Ct. Rep. 435, the affirmance by the Court of Appeals was set aside and it was definitely held that the giving of supplementary instructions to the jury, after retirement, in the absence of the parties and without affording them opportunity to be present or to make timely objection to the instruction, is error, not withstanding

opportunity afterward was given to except; and that may now be accepted as the real rule.

See also Dodge vs. U. S. 258 Fed. 300, holding that any communication from the court to the jury not made in open court is improper.

The court has ample right to give additional instructions, U. S. vs. Oppenheim, 228 Fed. 220, but must do so in the manner above suggested.

In the matter of instructions Federal Courts in criminal matters are not controlled by state statute, Bryant vs. U. S., 257 Fed. 380, nor by rules of procedure, U. S., vs. Oppenheim, 228 Fed. 220.

The judge of the court should reflect the real issue, U. S. vs. Stilson, 254 Fed. 120, and must not assume the defendant's guilt, Erhardt vs. U. S., 268 Fed. 326.

§ 27b. **Exception to Charge After Jury Retired.**—In Coffin vs. U. S., 156; U. S., 445, Supreme Court reversed upon exception to charge reserved after the jury had retired. Such procedure having been by permission of the Court and prosecuting officer that defendant's counsel might have time to examine the charge and make his objections afterward.

§ 27 c. Exceptions to Charge.

General exceptions to a charge are not allowable but must be specific and point out the errors complained of so that the court may have an opportunity to correct if he has made error, in his judgment, and so there may be no misunderstanding. Letterman vs. U. S., 246 Fed. 940.

Stipulated matters are not necessarily thereby made a part of the record. Ulmer vs. U. S., 266 Fed. 176.

After a case is in the appellate court orders respecting the same may not be entered in the trial court. Ulmer vs. U. S., 266 Fed. 176.

§ 28. **Opinion of Court.**—A long line of decisions supports beyond contradiction the right and, under some circumstances, even the duty of the judge to express his opinion upon the testimony, which expression, in most state jurisdictions would be a charge upon the weight of the evidence, and, therefore, reversible error; but it is well settled that the Federal judge has this right. In

Simmons vs. United States, 142 U. S., 148, the Court said: "It is so well settled by a long series of decisions of this Court that the judge presiding at a trial, civil or criminal, in any Court of the United States, is authorized, whenever he thinks it will assist the jury in arriving at a just conclusion, to express to them his opinion upon the questions of fact, which he submits to their determination, that it is only necessary to refer to a few cases; namely, Vicksburg, etc., vs. Putnam, 118 U. S., 545; United States vs. Philadelphia Company, 123 U. S., 113; Lovejoy vs. United States, 228 U. S., 171." These decisions have been followed repeatedly. Sebeck vs. Plattseutsche, 124 Federal 18; Ching vs. United States, 118 Federal, 543. In the Ching case, the Court held that it was not error for the trial judge to express an opinion as to what the verdict should be, if afterward he qualified his statements, and in Breese vs. United States, 106 Federal, 686, it was held that an expression of the judge that the defendant is guilty was not error, he having cautioned the jury that they were the sole judges, and that his opinion should not govern. See also Doyle vs. Union Pacific R. R. Co., 147 U. S., 430; Allis vs. United States, 155 U. S., 123; Wiborg vs. United States, 163 U. S., 556; Woodruff vs. U. S., 58 Federal, 767; Spur vs. U. S., 87 Federal, 708; Hart vs. U. S., 84 F., 799; Smith vs. U. S., 157 F., 722.

§ 28 a. Opinion of Court Continued.

The court may express his opinion if he ultimately and clearly leaves the question to the jury. Griggs vs. Nadeau, 250 Fed. 783; the court must not argue one side of a case, Oppenheim vs. U. S., 241 Fed. 625.

The court may say he thinks the defendant is guilty but he must also say that the jury will determine that and he cannot prevent the defendant's attorney from discussing such expressed opinion. Morse vs. U. S., 255 Fed. 681. The appellate court will reverse a conviction if the trial court's remarks are improper. Shea vs. U. S., 236 Fed. 97; and the court must not argue the case against the defendant, Johnson vs. U. S., 270 Fed. 168. He should be very careful in his expressions. Perkins vs. U. S., 228 Fed. 410.

§ 28b. **The Court is Not a Mere Presiding Officer.**—His function is to ascertain truth and express his views and insure an orderly progress of the trial. Littenbach vs. U. S., 202, Federal 379, but he must be careful in the expression of an opinion, Foster vs. U. S. 188, Federal 305, though he have the power to express an opinion, Young vs. Corrigan, 208 Federal 431. See also Sections 24 and 24*a*.

§ 29. **Court Cannot Comment on Lack of Evidence.**—One well marked limitation is that pointed out in Mullen vs. United States, 106 Federal, 892, in a decision by the Circuit Court of Appeals for the Sixth Circuit, which holds in substance that where no testimony has been offered as to the previous good character of the accused, the presumption of such good character exists in favor of the accused, of which, upon a request to that effect, a jury should be instructed, and the Supreme Court, in Coffin against United States, 156 U. S., 432, having said that the presumption of innocence stands as evidence in favor of the accused, as does also the presumption of good character stand as evidence. Such presumptions existing it is the duty of the Court to let the jury know of such presumptions, and it was, therefore, error for the trial judge to tell the jury that the defendants, whether of good character or bad character, were presumed good character.

§ 30. **Further Limitations.**—In Hickory vs. United States, 160 U. S., 408, and in Starr vs. United States, 153 U. S., 616, the Supreme Court said in substance that where there is sufficient evidence upon a given point to permit the point to go to the jury, it is the duty of the judge to submit it calmly and impartially, and if the expression of an opinion upon such evidence becomes a matter of duty, under the circumstances of the particular case, great care should be exercised that such expression should be so given as not to mislead, and especially that it should not be one-sided, and all deductions and theories not warranted by the evidence should be studiously avoided. See also Hicks vs. United States, 150 U. S., 442.

Were there testimony, therefore in the record, touching the question of character, it would not be error for the judge to assist the jury by such views as he entertained respecting character, its formation and effect, provided he then leave the jury free to decide the disputed matter of fact for themselves. See also McKnight vs. United States, 97 Federal, 210.

§ 31. **Verdict.**—A verdict in a criminal case which finds the defendant guilty upon certain counts of the indictments on which the trial was had, not guilty upon others, and which reports a disagreement as to the remaining counts, is entirely proper, and it is not error to receive such verdict and to enter judgment thereon as to the counts which were finally disposed of. Dolan vs. U. S., 133 F., 440.

§ 31 a. Return of Verdict.

A verdict may be returned to the clerk, by agreement, in the absence of the court, and out of the session thereof. U. S. vs. Bachman, 246 Fed. 1009; a verdict on "both" counts might mean, under certain circumstances, "all" counts. U. S. vs. Bachman, 246 Fed. 1009.

§ 32. **Sentence and the Correction Thereof.**—Certain sections of Chapter IX. of the 1878 statutes, relate to the place and term of sentence. Each Federal district is not provided with a Federal prison, but the statutes of all of the states of the Union provide for the reception of Federal prisoners upon the payment terms therein prescribed. Section 5541 permits the Court to sentence the prisoner, if the term be longer than a year, to either a jail or a penitentiary. In this connection, it must be understood that a sentence must be longer than one year before the Court can direct that it shall be served in the penitentiary. Haynes vs. United States, 101 Federal, 817; *in re* Bonner, 151 U. S., 252. 5542 leaves it optional with the Court in imposing sentence to hard labor, as to whether it shall be jail or penitentiary.

There is no direct Federal statute exacting when convicted prisoners shall be sentenced. The authority for the sentence of a convict, therefore, under the Federal system, must be found in the general proposition that

the Federal Courts are authorized to pronounce all decrees and judgments necessary. Specific penal statutes, with fixed terms of punishment, demand, therefore, sentence by the Court upon the convicted person.

§ 32. a. Sentence-Correction-Practice.

A sentence to the county jail without mentioning the county is valid since the Attorney General could change the place of imprisonment anyhow. Ozello vs. U. S., 268 Fed. 242.

A court cannot double sentence. Blackman vs. U. S., 250 Fed. 449.

It is necessary that the defendant be present, otherwise, the sentence is not valid. Price vs. Zerbert, 268 Fed. 72.

One may be sentenced after the term at which he was convicted. Miner vs. U. S., 244 Fed. 422.

The time of one's sentence begins to run from the date he is received by the warden of the penitentiary, or from the time he is sentenced as shown by the date of such judgment. Ex parte Lyman 247 Fed. 611.

But the time when a sentence of imprisonment is commenced is properly no part of the sentence and may be changed by the court at a subsequent term, if for any reason execution of the sentence has been delayed. Bernstein vs. U. S., 254 Fed. 967.

The lower court has large discretion in the matter of sentence so far as the magnitude of the punishment is concerned. Peterson vs. U. S., 246 Fed. 118.

The appellate court may not change the sentence.

The power of correction rests exclusive and alone with the trial court. Voege vs. U. S., 270 Fed. 219; Hickson vs. U. S., 258 Fed. 867; Rogers vs. Desporte, 268 Fed. 308.

"Hard labor" is not a requisite of a sentence to the United States penitentiary at Atlanta. Rogers vs. Desporte, 268 Fed. 83.

A sentence which showed in it's wording to have been on all of the counts in the indictment when the defendant had been acquitted on some of the counts is not invalid if the sentence could have been given on one of the counts. Roberts vs. U. S., 248 Fed. 873.

The Court of Appeals may reverse and order the lower court to correct a sentence. Farley vs. U. S., 269 Fed. 721.

§ 32b. **Single Sentence—What Is.**—District Judge Van Fleet in U. S. vs. Thompson, 202, Federal, 346, pronounced a judgment in a criminal case which designated different and consecutive periods of imprisonment of a defendant on different counts in the same indictment, a single sentence for the aggregate period and cited authorities to support his position, distinguishing the doctrine laid down *in re* Mills, 135 U. S., 263. See Section 34.

§ 33. **No Authority to Suspend Sentence.**—For years, and perhaps now in some of the Districts, judges have suspended sentence, when in their opinion such action was called for by the facts of the particular case. Such practice is, beyond question it seems, the exercise of pardoning power, and the usurpation by the judiciary of a power especially inhibited to them, and belonging to an entirely different branch of the Government. The Judge, in administering the law, is as surely bounden to society that all of its mandates shall be correctly observed, as he is not to lay the weight of his finger unjustly upon the defendant. In United States vs. Wilson, 46 Federal, 748, Judge Beatty denounced the practice, and observed, in substance, that while there was no question of the power and authority of a Court to temporarily suspend its judgment for the purpose of hearing and determining motions and other proceedings which may occur after verdict, and which may be properly considered before judgment, or for any other good reason, yet the suspension of a judgment upon the good behavior of the prisoner, or for any other reason that is not concerned with the case, is an exercise of arbitrary and unlawful power. He says:

"It operates as a condonation of the offense, and an exercise of a pardoning power, which was never conferred upon the Court."

§ 33a. No Authority to Suspend Sentence, Continued. The practice of suspending sentences by trial judges became so prevalent that the government filed an origi-

nal proceeding in the United States Supreme Court to mandamus a district judge who was engaging in such a practice and the Supreme Court's decree in that proceeding ended for all time the practice. Exparte U. S., 242 U. S., 27; it is thought that the execution of a sentence may be temporarily delayed for a pardon or similar proceeding. U. S., vs. Lynch, 259 Fed. 982.

Even when a sentence had been suspended, illegally, the court may thereafter issue a mittimus for it's enforcement, after the term has expired at which it was imposed. Morgan vs. Adams, 226 Fed. 719.

§ 34. **Correction of Sentence.**—Under Section 5546 and its Amendment, as shown at page 111, First Volume Supplement, the Attorney General of the United States designates the particular Federal penitentiary to which prisoners from a given district shall be sentenced. These designations because of various reasons, must, from time to time, be changed. Most of the Federal Statutes fix the maximum of the punishment, and leave it discretionary with the Court to come within such limits. Some of the statutes carry hard labor, and some do not. Because of all these and perhaps other reasons, mistakes are sometimes made by the Court, and sentences that are void or invalid are imposed. There seems to be no question under the authorities, that the Court which has rendered a judgment or sentence may, during the term of its rendition, and before any part of it has been executed or suffered, revise and vacate it, or change, correct, or amend it in form or substance, or may modify, diminish, or increase it within the limits allowed by law, and in fact may render a new judgment, in accordance with its authority, duty, and discretion. United States vs. Harmison, 3 Saw., 556; *ex parte* Caset, 18 Fed., 86; Bassett vs. United States, 9 Wallace, 38; *ex parte* Lange, 18 Wallace, 163; Reynolds vs. United States, 98 U. S., 145; *in re* Bonner, 151 U. S., 242; Williams vs. U. S., 168 U. S., 382; *ex parte* Waterman, 33 Federal 29; U. S. vs. Harmon, 68 Federal, 472; *in re* Groves, 117 Federal, 798.

The authorities also seem to be a unit upon the proposition that after the term has passed, the Court has no further control over a valid judgment or sentence which it has rendered, and cannot vacate, reform, or change it, or pronounce a new sentence. *Ex parte* Friday, 43 Federal, 916; U. S. vs. Malone, 9 Federal, 897; U. S. vs. Pile, 130 U. S., 280; U. S. vs. Patterson, 29 Federal, 775. Independently of some statutory provision, it is thoroughly settled that the practice of the Federal Courts with reference to granting new trials in criminal cases follows the Common Law, so that the Court has no jurisdiction over such motion after the term expires at which the sentence was pronounced. Chitty's Criminal Law, 651; Indianapolis R. R. Co. vs. Horst, 93 U. S., 291; Newcomb vs. Wood, 97 U. S., 581; Belknap vs. U. S., 150 U. S., 588; Kingman vs. Western Mfg. Co., 170 U. S., 675; Capital Traction Co. vs. Hof, 174 U. S., 1. Where, however, there is a local statute of the state, by which a motion for a new trial in a criminal case is justified, even though the term be ended at which the sentence and judgment was passed, it seems to be an open question as to just what course the Federal Courts would follow. In Trafton vs. U. S., 147 Federal, 513, the Circuit Court of Appeals for the First Circuit declined to pass upon this question, referring it back to the District Court for first investigation, without themselves indicating either for or against such practice.

So, also, the respectable weight of authority seems to indicate that a sentence which is null and void may be corrected at the same term in which it was entered, even though the prisoner has been in prison thereunder. People vs. Dane, 81 Mich., 36; *ex parte* Gilmore, 71 California, 624; *in re* Bonner, 151 U. S., 242; *in re* Christian, 82 Federal, 885.

While for some time it may have been considered doubtful as to whether the sentencing Court, after the term, could recall before it the prisoner, and re-sentence, for the purpose of correcting a null and void judgment, it seems now to be determined upon the weight of authority and sound public policy, that such action may be

taken. At Common Law, it could be done on a writ of error *coram vobis*. In recent times, it has often been done by motion. Bank of United States vs. Moss, 6 Howard, 38; Bronson vs. Schulter, 104 U. S., 410; Phillips vs. Negley, 117 U. S., 665; *in re* Wright, 134 U. S., 136; *in re* Welty, 123 Federal, 126; *ex parte* Peeke, 144 Federal, 1020; U. S. vs. Carpenter, 151 Federal, 216; Francis vs. U. S., 152 Federal, 157. In addition to these authorities is the ranking authority of the Supreme Court of the United States, in *in re* Bonner, 152 Federal, 252 wherein the Court says:

"But in a vast majority of cases, the extent and mode and place of punishment may be corrected by the original court without a new trial, and the party punished as he should be, whilst relieved from any excess committed by the Court of which he complains. In such case, the original Court would only set aside what it had no authority to do, and substitute directions required by the law to be taken upon the conviction of the offender."

The above expression was written in a case where many terms had elapsed; but the Supreme Court directed that the prisoner, who, upon his application for an habeas corpus, had been released from the penitentiary custody, should be transmitted to the original Court for the steps to be taken in accordance with the excerpt above. Ballew vs. U. S. 160, U. S. 195, affirms the Bonner case and takes action in harmony therewith.

§ 34*a*. **Sentence not Absolutely Void; Resentencing.** —In Howard vs. Moyer, 206, Federal, 555, it was held that one would not be released on writ of habeas corpus merely because the sentence was erroneous. In order to secure such relief, the sentence must in fact be a nullity. See also Balke vs. Moyer, 206, Federal, 559.

In Stevens vs. McClaughry, 207 Federal, 18, Circuit Judge Sanborn for the Court of Appeals for the Eighth Circuit, held that one who is being restrained of his liberty for many years by virtue of the judgment of a Federal Court which is beyond its jurisdiction and void, is not barred from a release therefrom by writ of habeas corpus by the fact that he might have secured such relief by a writ of error but failed to apply for it until it

was too late. An habeas corpus may be used to liberate one who is being restrained of his liberty by virtue of the judgment of the Federal Court beyond its jurisdiction and therefore void. Stevens vs. McClaughry, 207. Federal, 18.

Section 761 of the Revised States requires a Federal Court in an habeas corpus proceeding to dispose of the party as law and justice require, and where one seeks this relief on the ground that his sentence was illegal, it is proper for the Court on so finding to direct his return to the Court by which he was tried for a correction of the sentence, and this may be done though the term at which he was convicted has passed. Bryant vs. U. S. 214, Federal, 51.

It is not double jeopardy to re-sentence a prisoner who had his first sentence vacated by writ of error, Murphy vs. Massachusetts, 177 U. S., 155, nor to re-try him on a new indictment after a prior indictment, conviction and sentence have been set aside in a proceeding in error. Ball vs. U. S. 163, U. S. 662.

The Government is not authorized to move for a modification of judgment and sentence with respect to place of imprisonment in the absence of any of the contingencies covered by Section 5546, which provides that all persons convicted where there may not be a penitentiary or suitable jail, shall be confined in some suitable jail or penitentiary in a convenient state or territory, to be designated by the Attorney General, and that place of imprisonment may be changed when to the Attorney General it appears necessary. U. S. vs. Cane, 221, Federal, 299.

§ 35. **Remission of Penalty on Forfeited Recognizance.**—An application to a Federal Court which has entered judgment on a forfeited recognizance in favor of the United States, for a remission of the penalty for which such judgment was rendered under Rev. Stat. 1020, which gives the Court power to remit the whole or any part of such penalty, "when it appears to the Court that there was no willful default of the party," is not a motion to vacate the judgment, and may be en-

tertained after the term at which the judgment was entered. U. S. vs. Jenkins, et al, 176 F., 672.

§ 35*a*. **Fine.**—The imposition of a fine or penalty is abated by the death of the party against whom the same is imposed. Dyar vs. U. S. 106, Federal, 623.

§ 35. b. Fine-Recovery-etc.,

The imposition of a fine on a void indictment may be recovered even though, it was imposed on a plea of guilty, was held in Mossem vs. U. S., 266 Fed. 18, but the defendant must pursue his statutory remedies by suing in the court of claims. The imposing court has no right to order the repayment of such a fine upon a petition asking the court to act summarily, U. S., vs. Mossew, 268 Fed. 383.

A creditor's bill may be filed to collect a fine. Pierce vs. U. S., 257 Fed. 514.

§ 36. **Bail After Affirmance.**—The affirmance by the Circuit Court of Appeals of a judgment of conviction in a criminal case is the end of the proceedings in error, and that court has no power to continue defendant's bail, nor to admit him to new bail pending his application to the Supreme Court for a writ of certiorari, but the Court may, for good cause shown, defer the beginning of his sentence for a reasonable time. Walsh vs. U. S., 177 F., 208.

§ 36*a*. **Bail Matter of Discretion and Matter of Right —When.**—A person charged with a misdemeanor only, in extradition proceedings, is entitled to bail as a matter of absolute right, both under the state and federal laws, unless his enlargement on bail would be a menace to a community. *Ex parte* Thaw, 209, Federal, 954.

A Chinese person against whom an order of deportation has been entered, is not entitled to be admitted to bail pending an appeal, as a matter of right, but admission to bail rests in the discretion of the Court. U. S. vs. Fah Chung, 132, Federal, 109. The opinion of Judge Dodge in re Jem Yuen, 188, Federal, 350, is in direct conflict with the case above cited in 132nd Federal, for Judge Dodge holds that the words of the Act requiring depor

tation of Chinese persons under certain conditions deny the alien bail pending appeal.

A supersedeas is not a matter of right when appeal is taken in a criminal case. U. S. vs. Gibson, 188, Federal, 397.

§ 36b. Bail-Amount-Manner-Trial When Under.

A federal court has jurisdiction to try one who has been convicted in a state court and is then on bail. Vane vs. U. S., 254 Fed. 28.

A court cannot refuse cash bail, nor, can bail be denied because the defendant has once absconded. Rowan vs. Randolph, 268 Fed. 529.

Pending a writ of error proceedings the granting of bail is discretionary, with the court. U. S., vs. St. John, 254 Fed. 794.

The opinion of the attorney for the defendant that the defendant need not attend court is not an excuse such as would set aside a forfeiture, nor, will it make operative Sec. 1020, which authorizes the court to remit the whole or part of the bond. U. S., vs. Fabata, 253 Fed. 586. See also U. S. vs. Jacobson, 257 Fed. 760.

§ 36c. **Voluntary Giving of Bond no Defense to Sureties' Liability.**—In the case of U. S. vs. Lamar, 210, Federal, 685, it was determined that even though the accused voluntarily gave bond for his appearance, such contract was binding and he, not having appeared a preliminary surrender and a subsequent habeas corpus, were no defense to the forfeiture of his bond. It may be observed here that the government in most instances proceeds against the principal and his sureties by an action at law, after forfeiture, rather than by the old methods of *scire facias* and statutory proceedings. In other words it is a mere action for debt.

§ 37. **Severance.**—Severance and separate trials were not a Common Law right, but were permitted at the discretion of the Court, in all grades of offenses, including misdemeanor and felony. It is generally presumed that persons jointly indicted are to be tried jointly, but when, in a particular instance, this would work injustice to a party, the Court, under the Common Law, will permit a

servance and separate trials. Some of the States, by statute, authorize and guarantee this as a right. In the Federal Courts, however, the rule is the Common Law rule stated above. The application for severance may come from either the defendant or the prosecution, and there are authorities which hold that a request by the prosecuting officer for a severance will be granted as a matter of right, 1 Bishop Crim. Procedure, page 649.

Re-stating the Common Law rule, it is, that the trying together of joint defendants promotes convenience and justice; and unless the contrary appears, the trial will be joint. If, however, there be antagonistic defenses, or important evidence not adducible upon joint trial; or where the husband and wife are jointly indicted, and the testimony of the wife would not be admissible against the husband; or if the testimony would be prejudicial against one and incompetent against another; or where there be a contention of one which is not admissible against another—the Court may, in his discretion, grant separate trials. See also Lee Dock vs. U. S. 224 Fed., 431.

In United States vs. Marchant and Colson, 25 U. S., page 479; 6 Law Ed., 700, the Supreme Court of the United States held, speaking through Justice Story, that,

"Where two or more persons are jointly charged in the same indictment with a capital offense, they have not a right by law to be tried separately, without the consent of the prosecutor; but such separate trial is a matter to be allowed in the discretion of the Court."

See also 19 Vol. Enc. of Pleading and Practice, page 521.

In Ball vs. United States, 163 U. S., 663, 41 Law Rd., 300, the Supreme Court held, in a case where two defendants moved that they be tried separately from Ball, a co-defendant, alleging as a cause for such motion that the Government relied on his acts and declarations made after the killing, and not in their presence or hearing, and because he was a material witness in their behalf, that the question whether defendants jointly indicted should be tried together or separately, was a question

resting in the sound discretion of the Court below; and it not appearing that there was any abuse of that discretion in ordering the three defendants tried together, or that the Court did not duly limit the effect of any evidence introduced which was competent against one defendant and incompetent against others, Sparf vs. U. S., 156 U. S., 51; 39 Law Ed., 343, such discretion would not be reviewed on writ of error.

In Cochran against the United States, 147 Federal, 206, the Circuit Court of Appeals for the Eighth Circuit affirms this position, but holds that United States Courts held in territories which are governed by local statutes which give a right of severance, that the United States Courts, will, in such jurisdictions, grant the local right.

In Richards against the United States, 175 Federal, page 911, the Circuit Court of Appeals for the Eighth Circuit held that the request of defendants charged in the same indictment, for separate trials is addressed to the discretion of the Court, and its action in refusing the same will not be reviewed in the absence of clear indications that serious prejudice resulted therefrom to one or more of the defendants.

The granting of a separate trial to numerous defendants who are indicted in the same bill is a matter of discretion and such discretion can be reviewed only when abused. Schwartzberg vs. U. S., 241 Fed. 348; Oppenheim vs. U. S., 241 Fed. 625.

§ 38. **Habeas Corpus.**—Under the Federal practice, the return to a writ of habeas corpus must recite facts; and when it recites facts, verity will be imported thereto until impeached. Petitions that merely allege conclusions of law, such as that the respondent had a right to detain the petitioners, are held to be insufficient, and do not controvert the allegations of illegal detention alleged by the petitioner. In Stretton vs. Shaheen, 176 Federal, 735, the Circuit Court of Appeals for the Fifth Circuit held that a return to a writ of habeas corpus obtained on behalf of immigrants upon petitions alleging their illegal detention by an Inspector, which alleged no facts, but merely as a conclusion of law that the re-

spondent had the right to detain the petitioners, were insufficient. In Streton vs. Rudy, 176 Federal, 727, the same Court held that where a return shows a state of facts under which the petitioner is lawfully held, that if there be no evidence controverting such facts, the petitioner will be remanded to the custody of the officer, and it is error to release the petitioner under such a state of facts, and cites Japanese Immigrant Case, 189 U. S., 86, 47 Law Ed., 721, and Chin Yow vs. U. S., 208 U. S., 8; 52 Law Ed., 369.

§ 38a. Habeas Corpus. A civil court will release a prisoner from a court-martial if the court-martial really has no jurisdiction. U. S. vs. McDonald, 265 Fed. 754 and 695.

A writ will not run to a state court save and except for a deprivation of "due process." Teregno vs. Shattuck 265 Fed. 797.

When an application alleges that the prisoner is being held by a state court in violation of the constitution or of a law or treaty of the United States, or for an act done or omitted pursuant to a law of the United States, the federal courts, under Sec. 751-753 R. S. U. S., have plenary jurisdiction to inquire into the cause of such confinement by means of habeas corpus and to discharge the petitioner. Castle vs. Lewis, 254 Fed. 917, and there is the presumption of law that the finding of the trial court in habeas corpus proceedings, who hears and sees the witnesses, is correct. Castle vs. Lewis 254 Fed. 918.

When one is held under a warrant for extradition to another state, and institutes habeas corpus proceedings in a state court in which he raises, or could have raised questions involving his rights under United States laws and constitution, he should prosecute a writ of error to review the decision of the highest court in the state, remanding him to custody, before invoking the jurisdiction of the federal courts on new proceedings for habeas corpus. Ex parte Graves, 269 Fed. 461.

One who has been convicted in a state court which had jurisdiction over the offense, the place where it was committed and the prisoner cannot have relief on habeas

corpus from a federal court and such proceedings cannot be employed as a substitute for a writ of error. A criminal prosecution in a state court, based on a law not repugnant to the federal constitution and conducted according to the settled course of proceedings under the law of the state, constitutes "due process of law" in the constitutional sense, so long as it includes notice and a hearing and an opportunity to be heard before a court of competent jurisdiction according to established modes of procedure. Filer vs. Steele, 228 Fed. 242.

It is manifestly difficult, and almost impossible, to claim that a prisoner has been deprived of due process of law, until the conclusion of the course of justice in the state courts, as the prohibition of the Fourteenth Amendment is addressed to the state itself, and if a violation be threatened by one agency of the state, but prevented by another agency of higher authority, there is no violation by the state. Filer vs. Stelle, 228 Fed. 242.

So also the action of immigration officials, in ordering the deportation of aliens is reviewable by the courts only so far as to determine whether they acted under the scope of their authority and the fairness of their proceedings and a habeas corpus proceedings cannot be made to perform the function of a writ of error. Sibray vs. U. S. 227 Fed. 1.

§ 38b. **Habeas Corpus not to be Used on Writ of Error.**—Federal Courts will not inquire into the validity of an indictment on removal by the habeas corpus route. Henry vs. Henkel, U. S. Sup. Ct., Oct. Term, 1914. Glasgow vs. Moyer, 225 U. S., 420. *In re* Gregory, 219 U. S., 210. Nor can the writ be made to perform the office of a writ of error. Harlan vs. McGouer, 218 U. S., 44. Frank vs. Mangum, U. S. Sup. Ct., Oct. Term, 1914. The office of the writ of habeas corpus is confined to inquiry as to the cause of confinement. *ex parte* Jim Hong, 211 Federal, 73. It is a settled rule of the Federal Supreme Court that a writ of habeas corpus will not ordinarily be issued to review the decisions of courts of competent jurisdiction made within the limits of their jurisdiction, even though such decisions may be erroneous, and a de-

fendant convicted of a crime by a state court of competent jurisdiction, which conviction has been affirmed by the Supreme Court of the State, will not be released from imprisonment thereunder by a Federal Court on a writ of habeas corpus, on the ground that he is deprived of his liberty without due process of law, because of the overruling of a plea of former acquittal; his remedy being by a writ of error from the Supreme Court of the United States, if he claimed the right under the Constitution in the State Courts. Ex parte Blodgett, 192, Federal 707. Frank vs. Mangum, U. S. Sup. Ct., Oct. Term, 1915. Nor will extradition on valid indictment be defeated by. Drew vs. Thaw, U. S. Sup. Ct., Oct. Term, 1914.

§ 39. **Immunity.**—Since the passage of the Federal Sherman Anti-Trust and Interstate Commerce Act, so-called, the question has arisen whether the immunity from prosecution therein guaranteed means a shield from any prosecution, or a protection against successful prosecution. In the case of Heike vs. United States, decided May 2, 1910, the Court passed upon this question, and approved Brown vs. Walker, in 161 U. S., 591, in which the Constitutionality of the Immunity Statute was sustained, and said in substance that a shield against successful prosecution, available to the accused as a defense, and not immunity from the prosecution itself, is what was secured by the Act of February 25, 1903, as amended by the Act of June 30, 1906, providing that no person shall be prosecuted or subjected to any penalty or forfeiture for, or on account of, any prosecution, matter, or thing, concerning which he may testify or produce evidence in any proceedings, suit, or prosecution under the said Acts.

The facts of the Heike case were that Heike was indicted with others for alleged violations of the Customs laws of the United States, in connection with the fraudulent importation of sugar, and also for conspiracy under Section 5440 of the Revised Statutes of the United States, to defraud the United States of its revenues. Heike appeared and filed a special plea in bar, claiming immunity from prosecution under the aforementioned Act. The

plea set up, in substance, that Heike had been called upon to testify before the grand jury, in matters concerning the prosecution against him, and had thereby become immune from prosecution under the law. The Government filed a replication, and the issues thus raised were brought to trial, the result of which was a verdict for the Government upon the issue; and thereafter Heike asked to be permitted to plead over, and he then plead not guilty. The Court then held that the judgment on the special plea was not a final judgment from which an appeal could be had, and rendered a decision as above indicated.

§ 39a. **Immunity.**—See Section 7a. Under the Federal anti-trust act making it an offense to restrain trade, the Court, in U. S. vs. Swift, 186, Federal, 1002, held that the immunity statute governing the giving of testimony before the Commissioner of Corporation, Act of February 11, 1893, 27 Stats. L. 443, is made expressly applicable by the Act of February 14, 1903, which created the Department of Commerce and Labor. This immunity act of February 11, 1893, was enacted to satisfy the demand of the Fifth Constitutional Amendment and does so by affording the witness absolute immunity from future prosecution for any offense arising out of the transactions to which his testimony relates and which might be aided directly or indirectly thereby, so as to leave no ground on which the Constitutional privilege may be invoked. Of course it does not act as a shield against prosecution for offenses committed after the testimony is given. U. S. vs. Swift, 186, Federal, 1003.

Revised Statutes 860, which provides that evidence given in a judicial proceeding shall not be used against the witness in any Federal Court, does not exempt him from prosecution for perjury for giving such evidence and does not prevent prosecution for perjury in a bankruptcy proceeding, nor does it prevent introduction in support of the charge, not only the false statements, but such other parts of accused's testimony as is necessary to make the charge intelligible. Cameron vs. U. S., 192, Federal, 548.

In 192 Federal, 83, Heike vs. U. S., the Circuit Court of Appeals affirms the conviction of an officer of a corporation who claimed immunity because he had produced before a grand jury in response to a subpoena duces tecum, certain record evidence of that corporation, which showed his guilt as an official of the corporation. Persons making no objection to testifying cannot afterwards complain, though called, said the Court in U. S. vs. Wetmore, 218, Federal, 227, but see cases above.

§ 40. **Improper Person in Grand-Jury Room.**—An expert accountant who is not an attorney-at-law, appointed by the Attorney General "a special assistant" to a United States Attorney, to assist in the investigation and prosecution of a particular case is not an "officer of the Department of Justice," within the meaning of Act June 30, 1906, C. 3935, 34 Stat. 816, and cannot be authorized by the Attorney General to conduct or assist in the conducting proceedings before the grand jury—and his presence in room which results in bill is ground for quashing same. U. S. vs. Heinze, 177 F., 770. See also U. S. vs. American Tobacco Co., 177 F., 774, as to this and sufficiency of other abatement pleas and time for filing same. Stenographer not allowed. Latham vs. U. S., 226 Fed. p. 420.

§ 40a. **Improper Person in Grand Jury Room Continued.**—In Wilson vs. U. S., 229 Fed. 344, the court takes an entirely different position to that supported by the opinion in Latham vs. U. S., 226 Fed. 420, and cited in Sec. 40. It is believed that the Latham case will be followed as the law. The reason for the secrecy of the grand jury and the freedom of that body from the presence of unauthorized persons who are not under an oath identical with that taken by the members of the body, may not only result in a breaking of the secrecy of the proceedings but may likewise result in an outside pressure even though the pressure is not susceptable of measurement. If one stenographer be present then twenty five can be present. Any number can be present. When the rule is once broken it ceases to be a rule. Grand jurors who begin their duties together by simultaneously uplifting

their hands and taking the oath and who sit side by side day after day and work in the fearlessness of secret sessions, are disadvantaged by the presence of outsiders, however meek or lowly or insubordinate such outsider may be.

In May vs. U. S., 236 Fed., 495, it was held that an Assistant Attorney General, de facto, is not an "improper person."

In U. S. vs. Phila. Railway Co., 221 Fed. 683, Judge Thompson held that the Act of June 30, 1906, which provides that any attorney or counselor, specially appointed by the Attorney General under the provisions of law, when thereunto specially directed by the Attorney General, may conduct grand jury proceedings, does not authorize the appointment of an attorney, who was not intended to conduct the proceedings, but whose sole duty was to report stenographically the testimony of witnesses to be present in the grand jury room during the taking of testimony and that if he were so present it would be ground for quashing the indictment.

After an indictment has been found and the defendant has been apprehended and has submitted to the jurisdiction of the court and been released on bail, there is no impropriety in inquiring of the grand jurors, or in their telling, what transpired before them in court, under the proper direction of the Judge. U. S. vs. Perlman, 247 Fed. 158. In truth it would appear that it is the holding of the authorities that such inquiry need not necessarily be in court. After the presentment of the indictment and after the grand jury has heard the testimony and after the indictment has been made public and the accused has been arrested and the grand jury has been discharged, its members are at liberty to disclose if they see fit, the proceedings that were had before them to proper inquirers who seek information with reference to a particular case. Atwell vs. U. S., 162 Fed. 97. In this case an attempt was made to subject a grand juror to imprisonment for contempt for disclosing proceedings of the grand jury room after the grand jury had been dis-

charged and the Court of Appeals held that the grand juror was not subject to punishment.

§ 40b. **Hearsay Testimony Introduced Before Grand Jury** bound to quash the indictment, U. S. vs. Rubin et al. 218, Federal, 245. The use by the United States District Attorney of his stenographer in the grand jury room to take down the testimony of witnesses for the use of the District Attorney afterward is grounds for quashing the indictment. U. S. vs. Rubin et al., 218 Federal, 245. Latham et al. vs. U. S., 226 F. p. 420; U. S. vs. Philadelphia Ry. Co., 221 F. 683.

§ 41. **Private Prosecutors Unknown in Federal Courts.**—The Federal statutes provide for the appointment of District Attorneys and their assistants, for the purpose of prosecuting offenses against the Federal laws. Judge Hammond, in United States vs. Stone, 8 Federal, 232, held that private prosecutors are unknown to the practice of the Federal Courts, the District Attorney being alone authorized to prosecute; and in speaking of this matter, he said:

"Under our Federal practice, from the earliest times, and by force of the statute, the District Attorney is the only prosecutor known to our law; and as a matter of fact, in this Court at least, no private prosecutor has ever been recognized. Act of 1879, Chapter XX., Section 35, [1 St., 92]; Revised Statutes, Sec. 771; U. S. vs. Mundel, 6 Coll., 245; U. S. vs. McAvoy, 6 Blatchf., 418; U. S. vs. Blaisdell, 3 Ben., 132, where the Court refused to recognize an agreement of the Executive Department not to prosecute the offender, and said, that, 'when there is no District Attorney in commission, the Government cannot prosecute in this Court.' 1 Bishop Criminal Pr., Sec. 278. It is impossible, therefore, for anyone to occupy the place of a private prosecutor in this Court."

§ 41a. **Assistants to District Attorneys.**—Sec. 363 of the Revised Statutes of the United States gives the Attorney General power to employ, in the name of the United States, attorneys "to assist the district attorney." It places no restriction upon the powers of the district attorney and they come within the general rule that an assistant, duly appointed to prosecute, is clothed will all the powers and privileges of the prosecuting attorney, all acts done by him in that capacity must be regarded

as if done by the prosecuting attorney himself. Brown vs. U. S., 257 Fed. 703, citing 32 Cyc. 724; Parish vs. U. S., 100 U. S., 500; May vs. U. S., 236 Fed. 495.

§ 42. **Proof of Witness' Former Conviction.**—In the absence of a Federal statute on the subject, the incompetency of a witness by reason of his prior conviction of a felony, cannot be shown upon his examination, but only by the production of the record, or an exemplified copy of it. Rise vs. United States, 144 Federal, 374. If the guilt of the party should be shown by oral evidence, and even upon his own admission (though in neither of these modes can it be proved, if the evidence be objected to), or by his plea of guilty which has not been followed by a judgment, the proof does not go to the competency of the witness, however it may effect his credibility; and the judgment itself, when offered against his admissibility, can be proved only by the record, or in proper cases, by an authenticated copy, which the objector must offer and produce at the time when the witness is about to be sworn, or at furthest, in the course of the trial. I Greenleaf on Evidence, Fourteenth Edition, 375; 457. See also Sections 26 and 26a.

Sec. 42x. **Proof of Witness' Former Conviction.**—A conviction in a state court is no bar to the witness testifying in the federal court. Brown vs. U. S., 233 Fed. 353; Rosen vs. U. S., 237 Fed. 810; Pakas vs. U. S., 240 Fed. 350; Ammerman vs. U. S., 267 Fed. 136.

The competency of a witness in the federal court is no longer determined by the common law. Rosen vs. U. S., 245 U. S., 467.

For the rule of decision in the federal court see McCoy vs. U. S., 247 Fed. 861; the judiciary act adopts the law of the state which is in force at the time of the admission of such state to the union and the federal courts were created therein.

A witness who testifies renders admissible the record of his former conviction. Williams vs. U. S., 254 Fed. 52; but the prosecution is bound by the answer of the defendant as to a collateral crime and cannot impeach

the answer by introducing the judgment. Bullard vs. U. S., 245 Fed. 837.

§ 42y. **Evidence of Another Crime.**—In a prosecution for one crime evidence of an indictment for another crime is not admissible. Coyne vs. U. S., 246 Fed. 120; Gordon vs. U. S., 254 Fed. 53 see also brief in U. S. vs. Bryant and U. S., vs. Hardy, 257 Fed. and 256 Fed.

CHAPTER III.

PRACTICE SUGGESTIONS.

42pp. Monopoly—Sherman Act—Clayton Act.
42q. Verdict, Motion to Direct, Waiver; Coercing of Verdict.
42qq. Verdict—Motion to Direct—Coercing Continued.
42r. Writ of Error—Superseadeas; Direct to Supreme Court, When; Pauper has right to.
42rr. Writ of Error—Supersedeas—Pauper Continued.
42s. Hand Writing, Comparison Statute; Cannot be Introduced for Mere Purpose of.

§ 42a. **Aliens.**—An alien acquitted by a jury may be deported by the immigration authorities for the same offense. *Ex parte* Young, 211 Federal, 371.

The contrary has been held in Chen Kee vs. U. S., 196, Federal, 74. There is no provision in the law for the issuance of a United States Commissioner's certificate and therefore it is of no value to the holder. Lum Bing Wey vs. U. S., 201, Federal, 379.

A Chinaman has a right to bond pending his first hearing. Chin Yah vs. Caldwell, 187 Federal, 592; U. S. vs. Yet Yee, 192, Federal, 577.

The burden is on the Chinaman to show that he is native-born. Yee Ging vs. U. S. 190, Federal, 270: U. S. vs. Ching Fong, 192, Federal, 485.

A Chinese merchant is not subject to deportation if his interest is bona fide, however small, 210, Federal, 617.

A Chinaman who was a merchant when the registration law required him to register and who did so and who thereafterward became a laborer, is not subject to deportation. U. S. vs. Wing, 211, Federal, 935.

Sons of a Chinaman who is entitled to remain in this country, who become laborers upon reaching their majority, are not subject to deportation. U. S. vs. Yuen, 211, Federal, 1001.

To the same effect is the case of Lew Lin Shew, 217, Federal, 317, and in this latter case the Court determines what an affidavit shall charge in order to be sufficient under these statutes for the deportation of aliens.

"Moral turpitude" as embraced in the 34th Stats. L. 899, U. S. Compiled Statutes, 199 Supplement, p. 500, which is the immigration act in full, is defined in *ex parte* Young, 211, Federal, 371.

The meaning of five years' residence is determined in United States vs. Cautinie, 212, Federal, 925. The deportation of aliens under the immigration act is in no sense a trial. Siniscolchia vs. Thomas, 195, Federal, 701.

The entire method to be followed for the deportation of both men and women for prostitution under the Act will be found outlined in *ex parte* Pouliot, 196, Federal, 437. The right of the United States to recover the penalty for contracting with aliens and the method to be pursued for its collection, is discussed in United States vs. Dwight Mfg. Co., 210 Federal, 74. Government may proceed under Act February 24, 1907, compiled Stat., 1913, 4244, either civilly or criminally to collect penalty for importing contract labor.

The meaning of the words "free white person" within the Act is determined in *in re* Najour, 174 Federal, 735.

As to when habeas corpus may be resorted to by an alien who has been deported by the immigration authorities, is determined in *ex parte* Gregory, 210 Federal, 680.

The United States Courts will not overrule a State Court that has granted a naturalization certificate unless there be substantial difference between the state ruling and the Federal ruling, and the Federal ruling being the paramount ruling must prevail and in such a condition the United States Court would cancel a certificate issued by a State Court. U. S. vs. Lanare, 207 Federal, 865.

The new immigration act provides in substance that applications for final papers must be made within seven years after the declaration of intention is filed. This means that those who had filed their declaration of intention prior to the passage of the 1906 act must seek their final papers within seven years after that act became a law, though there are some decisions to the contrary, 218 Federal, 168; 210 Federal; 211 Federal.

The granting of bail to a Chinese person after the deportation order has been entered, is a matter of discretion with the Court. 132 Federal, 109; 188 Federal, 350.

Chinese exclusive Act, Sept. 13, 1888, Comp. St. 1913, 4310, requires master of vessel to "knowingly" commit

the acts denounced and such intent is not met by proof that a Chinese member, bona fide, of crew, escaped and stayed in the United States. U. S. vs. Innes, 218 Federal, 705.

42a. a. **Aliens Continued.**

An alien will be deported when he is likely to become a public charge under the Act of Feb. 5, 1917, Ex parte Mitchell, 256 Fed. 229, the full procedure for which will be found in Colyer vs. Immigrant, 265 Fed. 17; U. S. vs. Uhl, 266 Fed. 35.

Expatriation—The Act Governing—Mar. 2, 1907, Sec. 2, See U. S. vs. Anderson, 231 Fed. 546.

Chinemen must be tried and tried fairly, Kwock vs. White, 40 Sup. Ct. Rep. 566.

A certificate granted by the United States Commissioner to a Chinese person will protect him, U. S. vs. Lew, 224 Fed. 649; but is not evidence for a minor son, Ex parte Chin, 224 Fed. 138.

A student who is temporarily forced to work is not subject to deportation, U. S. vs. Gin; 253 Fed. 210; and a Chineman merchant has the right of re-entry, Chin Fong, 258 Fed. 849.

A member of the Communist Party will be deported under the Act of U. S. vs. Wallis, 268 Fed. 413.

Under the Act of Feb. 5, 1917, which punishes the vessel which brings in prohibited aliens and which denies the right to import laborers and prostitutes and criminals, many interesting questions have arisen as indicated in the following cases; to bring in aliens, Ding vs. U. S. 246 Fed. 80; who is a "white person" Dow vs. U. S. 226 Fed. 145; also Easurk 273 Fed. 207; the sort of evidence that shall be offered as to the five years residence, U. S. vs. Dean, 230 Fed. 957; one shall be deported to the country from whence he came and the judicial notice of citizenship, U. S. vs. Sisson, 230 Fed. 974; the act excludes contract laborers but excepts the provisions and a Japanese teacher is within such exceptions, Tat vs. U. S. 260 Fed. 104; a nephew may remain with his uncle, U. S. vs. Jew, 232 Fed. 279; an alien employed as a cook in a house of prostitution is squarely within the statute and must

be deported, Ex parte Loo 210 Fed. 995, Ex parte Young, 211 Fed. 370; one who gave a bad check in Canada is not subject to deportation therefor, Howe vs. U. S. 247 Fed. 292; a marriage of a foreign prostitute to an American will not save her from deporation, Ex parte Flores, 272 Fed. 783; it is a misdemeanor to solicit immigrants with a promise of employment under the Act of Feb. 20, 1907, and the offense is complete though the alien is denied entry, U. S. vs. Morrisey, 245 Fed. 923.

§ 42b. **Accomplice.**—So manifest is the danger of convicting a man on evidence from a source confessedly corrupt, and delivered by the witness to shield himself from merited punishment, that the judges, while explaining to the jury their right to convict on it alone, by way of caution, advise them not to return a verdict of guilty unless it is corroborated by evidence from a purer source, yet they are not as of law required to give this advice. Bishop's New Criminal Procedure, 2nd Vol., Section 1169.

There is nothing which forbids the conviction of a defendant at Common Law or in a Federal Court on the uncorroborated testimony of an accomplice. Richardson vs. U. S., 181 Federal, 1; Lung vs. U. S., 218 Federal, 817. Diggs vs. U. S., 220 Federal, 545. It is true there is a well established practice sanctioned by long judicial approbation, to caution jurors about accepting the evidence of an accomplice without material corroboration, and many of the states forbid a conviction on the testimony of an uncorroborated accomplice. Coleman vs. State, 44 Tex. 109. Bishop's New Criminal Procedure, 2nd Vol. Section 1169.

§ 42bb. Accomplice Continued.

The rule as stated above in the Federal Court is the common law rule and is not altered by the state law, Bandy vs. U. S. 245 Fed. 100; Freed vs. U. S. 266 Fed. 1012; Graboyes vs. U. S. 250 Fed. 793.

And while the government may rest on the unsupported and uncorroborated testimony of an accomplice, Rosen, vs. U. S. 271, Fed. 651, Wagman vs. U. S. 269 Fed. 568, U. S. vs. Fischer, 245 Fed. 477, Hollis vs. U. S. 246 Fed. 832, Ray vs. U. S. 265 Fed. 257, Gretsch vs. U.

S. 242 Fed. 897, Erber vs. U. S. 234 Fed. 221, Heitler vs. U. S. 244 Fed. 140, Wallace vs. U. S. 243 Fed. 300, the safest, sanest and most civilized practice, even in the Federal Court is to have corrobration, U. S. vs. Murphy, 253 Fed. 404, McGinniss vs. U. S. 256 Fed. 621.

It is not reversable error to fail to instruct on an accomplice's testimony, Nee vs. U. S. 267 Fed. 85.

§ 42*c*. **Alaska.**—Territorial Courts are controlled by the general United States Statutes, 202 Federal, 457.

§ 42*d*. **Assignment of Errors.**—The rules of the different circuits require that assignments of error shall be filed by the plaintiff in error or appellant with the Clerk of the lower Court with his petition for the writ of error or appeal and assignment of errors, which shall set out separately and particularly each error asserted and intended to be urged, and that no writ of error or appeal shall be allowed until such assignment of errors shall have been filed. 193 Federal VII. The failure, however, to file an assignment of errors before the allowance of an appeal, does not deprive the Appellate Court of jurisdiction and the appeal will not be dismissed because the assignment of errors was not filed until later, where there was a valid reason therefor. Bernard vs. Lea, 210 Federal, 583.

An error not assigned may sometimes be noticed, especially if it be a fundamental error. Savage vs. U. S., 213 Federal, 31.

The writ of error must be sued out and lodged in the Court below within sixty days from the date of judgment. 211 Federal, 970.

A supersedeas is not obligatory upon the Court. 188 Federal, 396. U. S. vs. Gibson.

Writ of error may go direct to the Supreme Court of the United States from the trial court under certain conditions detailed in United States vs. Nixon et al., Supreme Court of the United States, Oct. Term, 1914.

§ 42dd. Assignment of Errors Continued.

An assignment of error must be based on an exception, Finley vs. U. S. 256 Fed. 845.

An allowance of the writ of error does not divest the trial court of jurisdiction to do certain things, U. S. vs. Pollak, 230 Fed. 532.

The court cannot legally grant leave to amend the assignment of errors, Kreuzer vs. U. S., 254 Fed. 34.

While a criminal case must be taken up by a writ of error the court determined in Buessell vs. U. S. 258 Fed. 811, that it would consider a criminal case which came to it by appeal.

Assignments of error must be copied in the brief, Lohman vs. Company, 243 Fed. 517, and assignments which are not so copied in accordance with the rules will not be considered, Harris vs. U. S. 249 Fed. 41.

§ 42*e*. **Army and Navy.**—Courts martial will not be interfered with by Civil Courts. Tucker, 212 Federal, 569. Civil Courts are not Courts of Error to review the judgments of courts martial where they are legally organized and have jurisdiction of the offense and of the person and have complied with statutory requirements governing their procedure. Mullan vs. U. S., 212, U. S., 516.

§ 42ee. Army and Navy Continued.

In time of war the jurisdiction of courts martial extends to all offenses that are specified in the articles of war and the jurisdiction is supported. Ex parte King, 246 Fed. 848; the court, in U. S. vs. Waller, 225 Fed. 673, refuses the jurisdiction of courts martial.

For decisions relating to conscription, draft boards, and soliciting to necessary draft see U. S. vs. Stephens, 245 Fed. 956; Ex parte Beck 245 Fed. 967 and U. S. vs. Galleanni, 245 Fed. 977.

§ 42*f*. **Appeal and Writ of Error.**—The new judicial code of March 3, 1911, provides at Section 128, page 143, Hopkins Judicial Code, that the Circuit Court of Appeals shall exercise appellate jurisdiction to review by appeal or writ of error the final decisions in the District Courts.

* * *

Section 238 provides for the taking by appeal or writ of error direct to the United States Supreme Court from the District Court, in any case in which the jurisdiction of the

Court is in issue, in which case the question of jurisdiction alone shall be certified to the Supreme Court from the Court below for decision; from the final sentence and decrees in prize cases; in any case that involves the construction or application of the Constitution of the United States; in any case in which the Constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority, is drawn in question; and in any case in which the Constitution or law of a State is claimed to be in contravention of the Constitution of the United States.

Section 240 of the same act provides that in any case, civil or criminal, in which the judgment or decree of the Circuit Court of Appeals is made final by the provisions of that Act, it shall be competent for the Supreme Court to require, by certiorari or otherwise, upon the petition of any party thereto, any such case to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court.

All criminal cases are cases at law and therefore are reviewable only by writ of error and not by appeal. All equity cases are reviewable only by appeal. The disbarment of an attorney is an action in law and the proceedings of the lower Court are reviewed upon writ of error instead of upon appeal, Thatcher vs. U. S., 212 Federal, 805.

A writ of error may be prosecuted in *forma pauperis* as provided by the Act of June 25, 1910. Latham vs. U. S., 210 Federal, 159.

This Act provides for appellate rights by a pauper either by writ of error or appeal if the person shall certify under oath his poverty and inability to pay the costs or to give security therefor, and provided the trial court shall not certify, in writing, that in its opinion, such appeal or writ of error is not taken in good faith. Act of June 25, 1910, p. 401, Thornton on Federal Acts.

§ 42ff. Technical Errors.

In answer to a popular demand the congress passed, in Feb. 1919, an amendment to Sec. 269 of Judicial Code, what has been termed the Harmless Error Act. When the appellate court is convinced of the guilt of the defendant and feel that technical errors would not effect his substantial rights it will affirm the case. In any other country than America a statute of this sort would be very dangerous and I am not prepared to say that it is not dangerous here. If we are to have an adjudicated system of rules and procedure for the trial of men charged with crime and if such men have the right of precedent as well as statutory and constitutional safeguards I am unable to draw a dividing line between such of these as are imperative and needful and such of these as are useless and formal. If a right is denied it is immaterial whether it is a large right or a small right. It is like taking one's property — the value of it is immaterial — the wrong is what concerns civilization.

The courts have talked about this amendment sparingly but seem to have admitted its presence. Sneierson vs. U. S. 264 Fed. 275; Dye vs. U. S. 262 Fed. 6.

§ 42*g*. **Bill of Particulars.**—When an indictment sets forth the facts constituting the essential elements of the offense with such certainty that it cannot be pronounced ill upon motion to quash or demurrer, and yet is acknowledged in such language that the accused is liable to be surprised by the production of evidence for which he is unprepared, he should, in advance of the trial, apply for a bill of the particular. Rinker vs. U. S., 151 Federal, 759; Loring vs. U. S., 91 Federal, 881. A bill of particulars cannot make an indictment valid which fails to state an essential element of the offense, when objection is made at the proper time and in the proper manner. May vs. U. S., 199 Federal, 61. Morris vs. U. S., 161 Federal, 672. Connors vs. U. S., 158, U. S. 408.

§ 42gg. Bill of Particulars Continued.

An application for a bill of particulars may be denied on the second trial, Ciafridini vs. U. S. 266 Fed. 471; the granting of a bill of particulars is a matter of dis-

cretion, Moens vs. U. S. 267 Fed. 317; Horowitz vs. U. S. 262 Fed. 48; U. S. vs. Rosenwasser, 255 Fed. 233; U. S. vs. Pierce, 245 Fed. 888; U. S. vs. Gouled, 253 Fed. 239; a denial of a bill is not reviewable Savage vs. U. S. 270 Fed. 15.

A bill of particulars cannot correct a defective indictment, Collins vs. U. S. 253 Fed. 609.

The court may order a bill of particulars when an indictment is good on demurrer but does not furnish the defendant with all the information that he is entitled to have before being compelled to go to trial, Foster vs. U. S. 253 Fed. 481. Wilson v. U. S. 275 F. 307.

§ 42*h*. **Corporations—Indictment of.**—Regardless of the original position of the Courts of this and the mother country, and regardless of the differences that exist in the early decisions of the Courts of this country, it is now well settled that corporations may be indicted, as well for misfeasance as for non-feasance. 10 Cyc. 1226. The original theory was that a corporation was not indictable for acts of misfeasance because it had no power, under its charter, to commit such acts, but that when those who professed to act in this behalf committed acts of misfeasance they were acting *ultra vires* and their acts were personal acts and not the acts of the corporation. This rule was strictly analogous to the ancient doctrine that evil intent or motive cannot be imputed to a corporation and that a corporation cannot be made liable to a civil action for a trespass or other malicious injury unless committed by deed. 10 Cyc. 1226.

These theories and ideas have been completely overturned and this is thoroughly settled, both in England and in the United States, that a corporation may be prosecuted, both for misfeasance and non-feasance. Ellis vs. U. S., 206 U. S.; U. S. vs. Kelso, 86 Federal, 304; U. S. vs. Corporation I, 125 Federal, 94.

In Kaufman vs. U. S., 212 Federal, 613, the conviction of an individual for aiding and abetting a corporation in the commission of a criminal offense was affirmed. In the Kaufman case Circuit Judge Rogers says: "It is undoubtedly the case that decisions and dicta can be

found denying that a corporation can be indicted. Lord Holt is reported as having said that 'A corporation is not indictable, but the particular members of it are.' But it is a well-established principle of modern jurisprudence that an indictment will lie against a corporation, although there are some crimes, as treason or felony or breach of the peace, in respect of which it is agreed that an indictment could not be maintained against it, and it has been held that where a statute prescribes fine and imprisonment, it is not applicable to a corporation, because a corporation cannot be imprisoned. U. S. vs. Braun, 158 Federal, 456. But in Cohen vs. U. S., 157 Federal, 651, this Court decided that a bankrupt corporation was capable of committing offense of knowingly or fraudulently concealing its property from its trustee, definable and made punishable by the bankruptcy act, and that persons who conspire to cause a corporation to commit such an act are indictable for the conspiracy and that it is immaterial that a corporation is not or cannot be indicted as one of the conspirators.

The indictment should be against the corporation in its corporate name. 10 Cyc. 1231; 3rd Chitty Criminal Law, 587.

In the Ellis case, cited supra, there were a number of corporations indicted for violation of the Federal eight-hour Act, and so far as the record discloses in the Supreme Court of the United States, there was no question raised whatsoever as to the propriety of the proceedings.

Upon the filing of an information or an indictment against a corporation, the moving officer should cause a summons to be prepared for service upon the corporation which should direct the defendant to appear before the Court on a given date to answer the charge contained in the accusing document, and such summons should contain a general statement of the nature of the charge, and advise the defendant that it might secure a more complete statement of such offense by referring to the information or indictment on file with the clerk. U. S. vs. Kelso, 86 Federal, 304; U. S. vs. Nixon, Supreme Court of the United States, Oct. Term, 1914.

In the case of Hanley vs. U. S., 186 Federal, 711, the defendant, who was general manager for a corporation, was convicted for aiding and abetting other employees of the corporation, but, the case does not seem to raise the question being here considered as to the liability of the corporation.

In the preparation of summons or citation for a corporation to answer a criminal charge, I would suggest the following of the statute of the particular state in which the prosecution is pending that covers the service of Court summons for a corporation. U. S. vs. Kelso.

Bishop, in Bishop's first volume, New Criminal Law, page 255, Section 417, treats of the capacity of a corporation for crime and maintains that a corporation cannot, in its corporate capacity, commit a crime by an act in the fullest sense *ultra vires*, but within the sphere of its corporate capacity, and to an undefined extent, whenever it assumes to act as a corporation it has the same capabilities of criminal intent and of act, in other words, of crime, as an individual man sustaining to the thing the like relation.

Of course it will be borne in mind, which question can seldom arise in a criminal prosecution, however, that a corporation is a citizen only of the state in which it is incorporated. Baldwin vs. Pacific, 199 Federal, 291; Lemon vs. Imperial, etc., 199 Federal, 927; Woerheider vs. Jones, etc., 199 Federal, 535. Revett vs. Clise, 207 Federal, 673.

§ 42hh. Corporations— Indictments of Continued.

Though a corporation cannot commit certain crimes, and may not be arrested or imprisoned, a proceeding against it for the violation of a criminal statute is a "criminal proceeding," with all the incidents of such a proceeding, and an information therein is defective, if made upon the oath of parties named in annexed affidavits taken before notaries public, U. S. vs. Schallinger, 230 Fed. 290.

§ 42*i*. **Error—Not Assigned.**—In criminal cases Courts are not inclined to be as exacting with reference to the specific character of the objection made, as in civil cases.

They will, in the exercise of a sound discretion, sometimes notice error in the trial of a criminal case, although the question was not properly raised at the trial by objection and exception. Crawford vs. U. S., 212 U. S., 183; Wiborg vs. U. S. 163; U. S. 632; Weems vs. U. S.; 217 U. S. 349; Savage vs. U. S.; 213 Federal 31.

Of course this is a most unsafe practice and a most unsafe way in which to try a criminal case. The courts are not called upon to consider objections to the instructions of the Court or objections to the introduction of testimony unless exceptions were properly reserved and are properly presented for consideration of the Appellate Court. Savage vs. U. S., 213 Federal, 32; Hickory vs. U. S., 151 U. S., 303; Stewart vs. Wyoming Cattle Co., 128 U. S., 383; Lewis vs. U. S., 146, U. S. 370.

§ 42ii. Bill of Exceptions and Error.

See Sec. 27a. 27b. and 42i.

A bill of exceptions cannot be settled after the term without an express order of court made during the term or by understanding with opposing counsel, save under very extraordinary circumstances, Susquehanna vs. Casualty, 247 Fed. 137; Blisse vs. U. S. 263 Fed. 961.

That counsel of both government and defendant call the transcript of the stenographer's notes a bill of exceptions is not sufficient to make it such. Fraina vs. U. S. 255 Fed. 28.

The court will look at a radical error and reverse though such error was not properly saved, McNutt vs. U. S. 267 Fed. 670; August vs. U. S. 257 Fed. 388; which cases show the Act of Feb. 26, 1919, which amended Sec. 269 of the Judicial Code and requires courts of appeals to look at all the record and render judgment without regard to technical errors; but this requirement must not be construed as relieving the complaining party of showing prejudicial error, Rich vs. U. S. 271 Fed. 566; Rosen vs. U. S. 271 Fed. 651.

§ 42*j*. **Continuance.**—It is well settled that the action of the trial Court upon an application for a continuance is a matter of discretion not subject to review, unless such discretion has been abused. Hardy vs. U. S.

186; U. S. 224; Latham vs. U. S., 210 Federal, 159; Isaacs vs. U. S., 159, U. S. 487; Goldsbuy vs. U. S., 160 U. S. 70; Metropolitan Street Railway vs. Davis, 112 Federal, 634; Pacey vs. McKinney, 125 Federal, 679; Dexter vs. Kellas, 113 Federal 48.

In Youtsey vs. U. S., 97 Federal, 940, it was held that an application for continuance which contains also a showing, supported by affidavits of the mental weakness of the defendant occasioned by epilepsy, requires the Court to try the issue by appropriate proceedings.

§ 42jj. **Continuance Continued.**

The action of the court in overruling a motion for continuance is reviewable only for an abuse of discretion, continues to be the rule of the later decisions, Spear vs. U. S. 246 Fed. 250; Penn vs. Fanger, 231 Fed. 851; Moens vs. U. S. 267 Fed. 317.

§ 42*k*. **Extradition.**—Under the Constitution of the United States one who commits an offense in one State and flees to another, is liable to be extradited and the State in which the refugee is sought must respond when application is made to its chief executive. In the Federal procedure, however, extradition is accomplished by a much simpler process and there is no appeal to the Executive of the State. Defendants are removed from one state to another or from one district to another, rather, as the case may be. The statute authorizing this procedure is old Section 1014, the latter part of which reads as follows, "And where any offender or witness is committed in any district other than that where the offence is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned, seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had."

The procedure is simply that the prosecuting officer for the district where the defendant is apprehended, presents a written statement of such apprehension, including a synopsis of the defendant's preliminary hearing before a United States Commissioner, to the Court and moves that the Court grant the warrant directing the

marshal to make the removal. See also Section 14, ante.

Questions of extradition, however, may reach the Federal Courts, as in the case of *ex parte* Thaw, 214 Federal, 423, where the Court held that as the source of the extradition power of the states is Federal, and as it relates to crime only and contemplates the exercise of exceptional and arbitrary control in restraint of personal liberty, the Federal constitution and Acts of congress have reserved to the Federal Government, and imposed upon its Courts, the very important duty of seeing that the power is exercised upon due and appropriate process, and that it shall not be extended to pleas, and exercised in all cases, not clearly intended by the constitution. See also 209 Federal, 954.

In the case of Drew vs. Thaw, U. S., Supreme Court, Oct. Term, 1914, it was held that extradition may not be defeated by a resort to an habeas corpus writ.

Section 1014, by the Act of February 21, 1871, 16 Stats. L. 426, is made applicable to the District of Columbia. U. S. vs. Hyde, 132 Federal, 545.

And so when a fugitive has been discharged wrongfully, he may be re-arrested. *Ex parte* Scherer, 195 Federal, 334. Federal Courts may take jurisdiction by the habeas corpus route to prevent an illegal extradition by a state sheriff under certain circumstances. Sheriff vs. Daily, U. S. Supreme Court, decided May 15, 1911.

On habeas corpus to prevent extradition the regularity of the proceedings only will be inquired into. *Ex parte* Graham, 216 Federal, 813.

In extradition matters the technicality of a trial is not required. Gluckman vs. Henkle, U. S. Supreme Court, May 29, 1911. See also *ex parte* Charlton, 185 Federal, 880. A general extradition order is not liable to attack by habeas corpus. McNamara vs. Henkle, U. S. Supreme Court, Oct. Term, 1912, decided January 3, 1913. Governor's warrant is sufficient until presumption of its legality is overthrown, Reed vs. U. S. 224 Fed. 378.

General rules governing such procedure in the Federal Courts will be found *in re* Zentner, 188 Federal, 344. An exhibition on extradition of a certified copy from the

Secretary of State is sufficient. *Ex parte* Urzua, 188 Federal, 541. See Section 322 post.

§ 42kk. **Extradition Continued.**

See Secs. 4 and 4a, for constitutional provisions. It is only on a charge of crime that extradition may be resorted to under paragraph 2, of Art. 4, of the constitution and proceedings before a Governor will be accorded a large measure of conclusiveness, Reed vs. U. S. 224 Fed. 378.

A jury trial will not be granted when the facts are not disputed for the purpose of determining the defendant's presence and connection with the crime, Ex parte Crowley, 268 Fed. 1016; and the indictment will not be questioned, Hogan vs. O'Neil 41 Sup. Ct. Rep. 222.

For a treatise on "indictment" and "fugitive" see Ex parte Montgomery, 244 Fed. 967; Ex parte Birdseye, 244 Fed. 972.

For views with reference to extradition to a foreign country and the presumption that the foreign country will try only for the extradicted offenses see Grin vs. Shine, U. S. Sup. Ct. 177 U. S. -47 L. E. 130; Bingham vs. Bradley, 241 U. S. 511.

For cases bearing upon the sufficiency of the charge and indictment and procedure see Reichman vs. Harris, 252 Fed. 371; Innes vs. Tobin, 240 U. S. 127; Sec. 5278 Compiled Revised Statutes of the United States 1913.

§ 42*l*. **Judge—Disqualification of.**—Section 601 of the Revised Statutes of the United States, United States Compiled Statutes 1901, p. 484, provides that if the Judge of any District Court is in any way concerned in interest in any suit pending therein, or has been of counsel for either party, it shall be his duty, on application of either party, to certify the case to another Court. Section 21 of the Judiciary Act approved March 3, 1911, p. 27, Hopkins Judicial Code, provides that, whenever a party to any action or proceeding, civil or criminal, shall make and file an affidavit that the Judge before whom the action or proceeding is to be tried or heard has a personal bias or prejudice either against him or in favor of any opposite party to the suit, such Judge shall proceed no

further therein, but another Judge shall be designated in the manner prescribed in the Section last preceding, or chosen in the manner prescribed in Section 23 to hear such matter. Every such affidavit shall state the facts and the reasons for the belief that such bias or prejudice exists and shall be filed not less than ten days before the beginning of the term of Court, or good cause shall be shown for the failure to file it within such time. No party shall be entitled in any case to file more than one such affidavit; and no such affidavit shall be filed unless accompanied by a certificate of counsel of record that such affidavit and application are made in good faith. The same proceedings shall be had when the presiding judge shall file with the clerk of the Court a certificate that he deems himself unable, for any reason, to preside with absolute impartiality in the pending suit or action.

The Supreme Court of the United States, in Glasgow vs. Moyer, 225 U. S., 425, refuses in an habeas corpus proceeding to pass upon the question as to whether or not an affidavit filed under this Section 21, could be filed after the case had been tried.

The Court of Appeals for the First Circuit, in Kinney vs. Plymouth Rock et al., 213 Federal, 449, decided that Section 21 quoted above did not apply to appellate tribunals. The affidavit, in order to be effective under this Section, must state the facts and an allegation of information and belief is insufficient and ineffective. Neither will a certificate from counsel who has never been admitted before the Court, be effective. *Ex parte* Fairbank Co., 194 Federal, 978. District Judge Jones, in *ex parte* Fairbank, supra, held that if the Section is to be construed literally to mean that the mere filing of an affidavit in accordance therewith is sufficient to disqualify the Judge without hearing or determination of whether the facts stated are true or show disqualification, then and in that event, in his opinion, the Section would be unconstitutional as depriving the Courts of judicial power and vesting the same in the litigants to that extent.

It is entirely possible that Congress intended that if, in the mind of the litigant, the facts existed which would

disqualify the Court, that it were better that some other Judge should sit than leave the impression in the honest litigants' mind that his cause had been determined by a prejudiced or biased tribunal, and while the Constitution of the United States places judicial power exclusively in the Courts, yet the hearing of a law suit before one court or another court is a matter of venue and is, in more than a restricted sense, the right and liberty of the litigant to choose.

In construing the meaning of Section 601, cited above, in an opinion rendered January 2, 1912, which was before Section 21 of the new Code went into effect, in Epstein vs. United States, 196 Federal, 354, the Circuit Court of Appeals for the Seventh Circuit held that where the defendant was brought to trial before a Judge who had previously remarked, in the presence of the accused: "This is a nasty piece of business. This estate has been looted by someone." And then turned to the officer of the Court and directed that he use what was left of the estate, even to the last penny, to investigate the matter, and if anyone, whoever he might be, had committed any act that could be reached and punished under the law, to institute proceedings against him, had merely performed his duty to direct an official investigation of what appeared to be a criminal offense, and did not therefore become disqualified to try the accused therefore, as being either "concerned in interest" or "of counsel" for the prosecution.

§ 42*m*. **Nolo Contendere.**—This plea is the defendant's declaration in Court that he will not contend with prosecuting power. It is pleadable only by leave of the Court, and in light misdemeanors. The difference between it and guilty appears simply to be that while the latter is a confession binding the defendant in other proceedings, the former has no effect beyond the particular case. Bishop's New Criminal Procedure, 2nd Vol., p. 624. It is allowable only under leave and acceptance by the Court and when accepted the Court becomes an implied confession of guilt and, for the purposes of the case only, equivalent to a plea of guilty, but distinguish-

able from such plea in that it cannot be used against the defendant as an admission in any civil suit for the same act. Tucker vs. United States, 196 Federal, 260.

Since the Common Law rule governs in the Federal Courts such a Court, in order to entertain a plea of *nolo contendere* must find the case within the class of misdemeanors, for which punishment may be imposed by fine alone, although the offense may still be punishable by imprisonment at the discretion of the Court, either as an alternative of fine, or in addition thereto, or to enforce payment of the fine. Such a plea cannot be accepted for cases of felony requiring infamous punishment, nor in cases of misdemeanors for which the punishment must be imprisonment. When an indictment contains counts charging offenses for which the statute requires the imposition of punishment by both fine and imprisonment and other counts for offenses which may be punishment by fine alone, the Court has authority to allow a tendered plea of *nolo contendere*, but in such case the further proceedings and punishment must be confined to the latter class of counts, to which alone the plea is applicable. Tucker vs. U. S., 196 Federal, 260. When plea of *nolo contendere* is tendered to an indictment containing counts, some of which charged offenses which required punishment by both fine and imprisonment, and also other counts upon which a fine alone might be imposed, a Court cannot hear evidence, and make a finding of guilty as charged, and sentence the defendant to both fine and imprisonment, because such action is inconsistent with the acceptance of such a plea and would be a judgment of conviction within a jury trial and therefore unlawful and unconstitutional and void. Tucker vs. U. S., 196 Federal, 260.

After a plea of *nolo contendere* it is not necessary that the Court should adjudge that the party was guilty because that follows by necessary legal inference from the implied confession. State vs. Herlihy, 66 Atl., 643; 102 Me., 310.

Such a plea when accepted by the Court, cannot be withdrawn and a plea of not guilty entered, accept by

leave of the Court. State vs. Siddall, 68 Atl., 634; 103 Me., 144. It seems improbable that a Court, after having accepted such a plea, could thereafter compel the defendant to withdraw it, nor could the Court fail to act upon such a plea after the same were tendered to and accepted by him.

§ 42*n*. **New Trial.**—Section 726 of the Revised Statutes gives the United States Courts the power to grant new trials in cases where there has been a trial by jury, for reasons for which new trials have been usually granted in Courts of law.

Motions for new trials are addressed to the discretion of the Court in the Federal jurisdiction and are not reviewable in an Appellate Court. Terre Haute vs. Struble, 109 U. S., 381; Berry vs. Seawall, 65 Federal, 744; Alexander vs. U. S., 57 Federal, 830; Jacksonville vs. Smith, 78 Federal, 295; Cape Fear, etc., vs. Pearsall, 90 Federal, 437; Nininger vs. Cowan, 101 Federal, 789; U. S. vs. Rio Grande etc. 184, U. S., 423; Carlisle vs. U. S., 194, Federal 830. Pocahontas vs. U. S., 218 Federal, 782, C. C. A. Gladden vs. Gabbert, 219 Federal, 855.

It is well settled that a ruling of the trial Court denying a new trial cannot be assigned as error. Lueders vs. U. S., 210 Federal, 421; Moore vs. U. S., 150 U. S., 57; Holder vs. U. S., 150, U. S. 91; Blitz vs. U. S., 153 U. S., 308; Wheeler vs. U. S. 159, U. S. 523; Clune vs. U. S. 159, U. S. 590; Corenman vs. U. S., 188 Federal, 424.

It is well settled that the granting or refusing a new trial is a matter within the sound discretion of the trial Court and that its action in the exercise of such discretion cannot be reviewed. It is also settled that if the trial Court refuses to exercise or abuses this discretion, its judgment will be reversed because thereof. Felton vs. Spiro, 78 Federal, 576; James vs. Evans, 149 Federal, 136; Mattox vs. U. S. 146, U. S. 140; Dwyer vs. U. S., 170 Federal, 160.

An attempt was made to bring the case of Higgings vs. U. S., 185 Federal, 710, within the last paragraph of the above rule, but the lower Court, in acting on the motion for new trial, did not refuse to exercise, or abuse its dis-

cretion. It overruled the motion because in the exercise of its discretion it did not believe that it was entitled to a new trial.

§ 42nn. **New Trial Continued.**

Even though the application for a new trial is based on the allegation that new evidence has been discovered it does not chance the discretionary rule, Bates vs. U. S. 269 Fed. 563.

Judicial discretion does not mean an optional action. A trial court has discretion in passing upon a motion for a new trial but an abuse of such discretion would be noticed by the appellate court. Thus the action of the trial court in committing a defendant's witness for contempt in the presence of the jury will furnish such basis to the appellate court to order a new trial, Rutherford vs. U. S. 258 Fed. 855.

See also Lee Dock vs. U. S. 224 Fed. 431, with reference to the discretionary power. In Andrews vs. U. S. 224 Fed. 418, it was held that the same discretion vests in the trial court with reference to which on a motion in an arrest of judgment.

§ 42o. **Limitations.**—Sections 1043 to 1048, inclusive, of the 1878 statutes contain such general limitations as Congress has seen fit to make against the prosecution of Federal offenses, with the exception, of course, of such limitations as may be contained in many of the criminal statutes themselves. Where a statute, therefore, does not provide a limit within which prosecution thereunder shall be had, the general statutes here mentioned apply.

Section 1043 provides that no person shall be prosecuted, tried or punished for treason or other capital offense, wilful murder excepted, unless the indictment is found within three years next after such treason or capital offense is done or committed. Section 1045 provides that the statute of limitations should not apply to any person fleeing from justice and in Section 1046 the limitation for the prosecution of those violating the revenue laws was fixed at five years, and provided that no one should be prosecuted, tried or punished for any crime arising under the revenue laws or the slave trade laws of the

United States unless the indictment is found, or the conviction is instituted within five years next after the committing of such crime. Section 1048 is not now interesting for the reason that it related to matters arising during the Civil War.

In United States vs. Green, 146 Federal, 804, the Court construed the fugitive exception to mean absence from the district in which the offense was committed. See also 154 Federal, 402, as to pleading.

Judge Pardee, speaking for the Circuit Court of Appeals for the Fifth Circuit in Carter vs. New Orleans, etc., 143 Federal, 99, held that Section 1047, which provided a period of five years for the commencement of suits for penalties, forfeitures, etc., accruing under the laws of the United States, would govern rather than a state statute in a suit brought for a Federal penalty under Section 2 and 8 of the Act regulating commerce, that is penalty for giving special rates, rebates, etc.

On July 4, 1884, 23 Stats. L. 122, 1st Vol. Supp. 463, Congress changed the statute of limitations as to revenue laws of the United States, and provided that no prosecution should be brought nor any person tried or punished for any of the offenses under the internal revenue laws unless an indictment is found or the information instituted within three years next after the commission of the offense, in all cases where the penalty prescribed may be imprisonment in the penitentiary, and within two years in all other cases, provided that the time during which the person committing the offense is absent from the district shall not be taken as any part of the time limited by law for the commencement of such proceedings, and further provided that where a complaint shall be instituted before a Commissioner of the United States within the period above limited, the time shall be extended until the discharge of the grand jury at its next session within the district, and provided further that the act shall not apply to offenses committed by officers of the United States.

It must be borne in mind in this connection that the words "indictment found or information instituted" are

not satisfied by the filing of an affidavit before a Commissioner. Such action by the government will not stop the running of the statute. Matter of Lacey, 1894, Okla., 4. A nolle prosed indictment will not stop the running of the statute. United States vs. Ballard, 3 McLean, U. S. 469, 2nd Vol. Fed. Stats. Ann. p. 358. Limitation may be raised by demurrer, U. S. vs. Watkins, 3rd Cranch. C. 441; U. S. vs. Shorey, 9 Internal Revenue, 302, 27 Fed. Cas. No. 16281. See also p. 349, Vol. I. Gould & Tucker Notes. For construction of the Act of Federal Limitations, see 91 U. S., 566. But see Revenue Statute.

§ 42oo. **Limitations Continued.**—In a suit for land by the United States a statute of limitation will not bind the United States unless Congress has clearly manifested that it should be bounded thereby, U. S. vs. Whited, 246 U. S. 552.

By the Act of July 5, 1884, shown at page 806, Vol. 3, Federal Statutes Annotated, there was a provision limiting prosecutions under internal revenue laws unless the indictment was found or the information instituted within three years last after the commission of the offense where the penalty was imprisonment in the penitentiary and two years in all other cases. With provisions for absence from the district and for stopping the ruling of the limit while a complaint was pending before a commissioner until the discharge of the grand jury at the next session of court and with a further provision that such limit does not apply to offenses committed by officers of the United States.

See also Taylor vs. U. S., 45 Fed. 531, reversed by the Supreme Court in 147 U. S. 695; Mackins vs. U. S., 117 U. S. 355; U. S. vs. Norton, 91 U. S. 250; see also Sec. 344 Penal Code Appendix.

Likewise many statutes have their special provisions of limitation such as bankruptcy, revenue, the Volstead Act, narcotic law.

§ 42p. **Sherman Law—Trust Statute.**—Section 1, 2 and 3 of the Act of July 2, 1890, denounces monopolies and combinations in restraint of trade and provides criminal punishments for those found guilty of such offenses.

Section 1 provides that every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several states, or with foreign nations, is declared to be illegal and the violation thereof is declared to be a misdemeanor, punishable by a fine not exceeding $5000, or by imprisonment not exceeding one year, or by both said punishments at the discretion of the court.

Section 2 provides, "Every person who shall monopolize or attempt to monopolize or combine or conspire with any other person or persons to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished as provided in the first section."

Section 3 declares every contract, combination in form of trust or otherwise, or conspiracy in restraint of trade or commerce, in any territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such territory and another, or between any such territory or territories, and any state or states or the District of Columbia, or with foreign nations, is declared illegal, and a punishment like that prescribed in the first section, is provided for. Page 3200, Vol. 3, U. S. Compiled Statutes 1901; 26 Stats. L. 209. The Act was amended by the Act of June 29, 1906, 34 Stats. L. 504, and was later amended in minor as shown in Section 1 of the Act of October 15, 1914, 7 Fed. Stats. Ann. 336, 346, 347, and p. 402, 1914, Supp. Fed. Stats. Ann.

In the Act of October 15, 1914, it is provided in Section 14, thereof that whenever accorporation shall violate any of the penal provisions of the anti-trust laws, such violation shall be deemed to be also that of the individual directors, officers, or agent of such corporation who shall have authorized, ordered or done any of the Acts constituting, in whole or in part, such violation, and such violation shall be deemed a misdemeanor punishable to the same extent as provided in Section 1 heretofore noticed.

The Act was further aided by the Act of September 26, 1914, Section 8836-A, United States Compiled Statutes, by the establishment of a Federal trade commission. But the latter Act contains no additional criminal offense, save and except for failure to testify or to produce documentary evidence and for making false entries in reports or accounts of corporations, or for removal or mutilation of documents, and also for certain contempts. The statute is constitutional and reaches corporations. New York Railroad Co. vs. U. S.; 212 U. S. 481. It also reaches joint stock associations and partnerships. U. S. vs. Adams Express Co., 229 U. S., 381. Burden is in the Government. U. S. vs. American, 275 F. 939.

Prosecutions may be successfully had under the Act for cornering a commodity. That the immediate result of the corner advances rather than depresses the price of the commodity is no defense. U. S. vs. Patten, 226 U. S., 525, which reverses U. S. vs. Patten, 187 Federal, 664. An overt act in furtherance of the conspiracy is unnecessary. U. S. vs. Patten, 187 Federal, 664. The continuance of a monopoly after the completion of the conspiracy, is itself an offense under this Act. U. S. vs. Patterson, 201 Federal, 698, in which case will be found the cash register nidictment in full. This cause was reversed by the Circuit Court of Appeals.

A mere purchase of competing plants does not necessarily constitute a monopoly within the meaning of the statute. U. S. vs. Keystone Watch Company, 218 Federal, 502. A combination may be in violation of this statute even though the monopoly may not have been attempted to any harmful extent, but is potential only, and an elimination of competition between competing concerns, if illegal, is equally so, whether effected by an agreement or by a consolidation. U. S. vs. International Harvester Co., 214 Federal, 987.

There must not only be a restraint of trade, but an undue restraint, and to make a restraint unreasonable it must appear either that the normal volume of interstate trade has been interfered with by artificial agencies affecting to a substantial degree and to the disadvantage

of the public the price or supply of the commodity, or that there has been a direct and intentional interference with the transportation of commodities in interstate commerce. Thus a purchase of an interstate milk business to the extent that the purchasers own 86 per cent of the business, are not merely unreasonable because of such purchase, but such question of unreasonableness was a question for the jury. U. S. vs. Whiting, 212 Federal, 467. The Act should be construed in the light of reason, and as so construed it prohibits all contracts and combinations which amount to an unreasonable or undue restraint of trade in interstate commerce. Standard Oil Co. vs. U. S., 221 U. S., 1.

A contract to strangle a threatened competition by preventing the construction of an immediately projected line of railway, which if constructed would naturally and substantially compete with an existing line for interstate traffic, is one in restraint of interstate commerce and in violation of the Act. U. S. vs. Union Pacific, 188 Federal. 102.

On the other hand a combination cannot escape the condemnation of the Act merely because of the form it assumes and a single corporation, if it arbitrarily uses its power to force weaker competitors out of business or to coerce them into a sale to or union with such corporation, puts a restraint or interstate commerce and in a sense violates the Act. U. S. vs. DuPont, 188 Federal, 127. An indictment which charges that three distinct packing concerns, each one of whom was authorized to act for the others, and that such group acted for the three concerns, is sufficiently specific. U. S. vs. Swift, 186 Federal, 1002; 188 Federal, 92.

The test of the legality of a combination under this Act is its necessary effect upon competition; if its necessary effect is only incidentally or indirectly to restrict the competition while its chief result is to foster the trade and increase the business of those who make and operate it, it does not violate the law. United States vs. Standard Oil Co., 173 Federal, 177. U. S. vs. McAndrews et al.,

149 Federal, 823. "Open Price Plan" not violation. U. S. vs. American, 275 F. 939.

In the Standard Oil case by the Supreme Court of the United States, 221 U. S. p. 1, the old cases of U. S. vs. Trans-Missouri Freight Association, 166 U. S. 290, and U. S. vs. Joint Traffic Association, 171 U. S. 505, were limited and qualified because they did not permit an interpretation of each contract and agreement by the standard of reason. The Standard Oil case was followed by the Supreme Court in United States vs. American Tobacco Company, 221 U. S., 106.

42pp. **Monopoly—Sherman Act—Clayton Act.**—For requisites of an information see U. S. vs. Wells, 225 Fed. 320; U. S. vs. Boumert, 179 Fed. 735; U. S. vs. Cowell, 243 Fed. 730.

A rule of business which appeals to the reason as being legitimate competition is not a violation of the act, U. S. vs. Steel Co., 40 Sup. Ct. Rep. 293.

A conspiracy to violate the Sherman law is complete though no overt act was committed, U. S. vs. Rintelen, 233 Fed. 793; see also U. S. vs. Bopp, 237 Fed. 283.

A peaceful strike is not a violation since the Clayton Act takes agreements to strike out of Sec. 1, of the Sherman law, U. S. vs. Norris, 255 Fed. 423.

A monopoly agreement may be inferred from a course of dealing, to fix prices, Frey vs. Cudahay, 41 Sup. Ct. Rep. 451.

Agency is not a sale under the Clayton Act, Curtis Publishing Co. vs. Federal Trade Com., 270 Fed. 881.

It is not in violation of a monopoly act for a manufacturer to refuse to sell to any who will not agree to maintain prices, etc., U. S. vs. Colgate, 253 Fed. 522.

Combination of cement plants as formed was a violation, U. S. vs. Cowell, 243 Fed. 730; as was also a combination of retail lumber dealers which used "customers lists," U. S. vs. Hollis, 246 Fed. 611.

A sale contract such as is exhibited in Standard Fashion Magazine, 254 Fed. 493, is a violation.

A trust which restricts sale of territory is a violation of the Texas Statutes which is broader than the National

Statutes, but see discussion of Kissel vs. Walker, 270 Fed. 492.

An indictment under this section must be clear as such clearness is defined in U. S. vs. Colgate, 250 U. S. 300.

The unlawful agreement is the essence of the offense and it would not be right to hold unlawful the acts of persons who being in the same business exchange views and in good faith act the same way, U. S. vs. Piowaty, 251 Fed. 375.

See U. S. vs. King, 229 Fed. 275, for an indictment for listing and black listing.

A corporation which was itself lawful would not thereby become obnoxious to the Sherman Act by the appointment of an exclusive selling agent, American Slate Co. vs. O'Halloran, 229 Fed. 77.

See also for strikes, boycotts and injunction, Duplex vs. Deering, 252 Fed. 722.

For a discussion of the preservation of the monopolies, rights and the patent and trade restrictions, see U. S. vs. United Shoe Company, 264 Fed. 138.

§ 42-q. **Verdict—Motion to Direct.**—An exception to a refusal to direct a verdict at the close of plaintiff's case is waived if defendant thereafter proceeds to be put in proof and the strength of plaintiff's case must then be tested upon a new motion to direct a verdict after both sides have rested on an examination of the entire record made. Collins vs. U. S., 219 Federal, 671. Leyer vs. U. S., 183 Federal, 102. When a motion to direct a verdict is not renewed at the conclusion of the defendant's testimony, the objection to the failure of the Court to grant the motion to direct, is waived. Gould vs. U. S., 209 Federal, 730. See Sections 16b and 25a.

A Federal Court will not review the verdict or the finding of facts by a jury in the absence of a request to the trial Court to instruct them in whose favor to find, on the ground that evidence is so conclusive that no other verdict can be sustained. Thompkins vs. M. K. & T., 211 Federal, 391.

Coercing of.—It is error for a court, after ascertaining how a jury stands, to charge them that the case should be

finally disposed of and that it is the second trial and that there is no reason to believe that a more intelligent or honest jury more likely to arrive at a verdict would be drawn on another trial and that justice demanded that the case be brought to an end; that the expense of trials is great and that the government has a right to a verdict without further expenditure of time and money and defendants, if guilty, have a right to have that fact determined before they are bankrupt, and if innocent a right to be acquitted before their means are exhausted. Peterson vs. U. S., 213 Federal, 920. Holding jury after they say they cannot agree must be objected to by defendant to be available in error. Campbell vs. U. S., 221 Federal, 186.

In Suslak vs. U. S., 213 Federal, 913, the Circuit Court of Appeals for the Ninth Circuit, speaking through Judge Dietriech, who also spoke for that same Court in the Peterson case just above cited, held that it was not coercing a verdict for the trial Court to tell them that the case was important and costly both to the Government and to the defendants, and that the jury must remember that the witnesses were likely to disappear and could not be had at another trial and that they should attempt to agree on honest convictions; and though they had the power under the law to stand out for acquittal or conviction, no juror should do so arbitrarily but should listen to the arguments of the other jurors and come to an understanding if he could, and be convinced by their argument; that it was wrong to convict as well as to acquit a man on an arbtrary stand taken by a juror, and that they must not consider the penalty in the case whatever. The language, however, was said to be as strong as should ever be used in impressing upon a jury their duty. See also Allis vs. U. S., 155 U. S., 117; People vs. Miles, 143 Cal., 635; Jordan vs. State, 30 S. W., 445.

42qq. **Verdict—Motion to Direct—Coercing Continued.**—See Secs. 16, 16b, 25, 25a, 31, 429, 535.

A motion to direct a verdict, at the close of the government's evidence, is waived by thereafter introducing evi-

dence, Robins vs. U. S., 262 Fed. 126; Grandi vs. U. S., 262 Fed. 123.

A motion to direct may be made after all of the evidence is in, Grandi vs. U. S., 262 Fed. 123, but unless this procedure is taken the original motion is waived by the introduction of testimony, Youngblood vs. U. S., 266 Fed. 795.

For the practice see Isabell vs. U. S., 227 Fed. 788; U. S. vs. De Bolt, 253 Fed. 78.

The court has no right to tell the jury, "the trial is costly and that he would hold them until Saturday night to get a verdict," Hunter vs. Hunter, 187 S. W. 1049.

§ 42r. **Writ of Error—Supersedeas.**—Writs of error are not exactly a right of the convicted but are granted in all cases where assignments of error are filed and proper application made therefor. Whether the judgment shall be superseded is in the sound discretion of the Court granting the writ or of some other Court that under the law may take cognizance thereof. Judge Speer in the case of U. S. vs. Gibson, 188 Federal, 396, refused a supersedeas and ordered the prisoners to the penitentiary. The facts, however, in support of that procedure hardly appeal to the profession for the reason that if proper assignments of error had been filed and a writ of error in good faith perfected, it hardly seems right that the punishment should be begun until the guilt has been finally determined. It is in the power of the Court to fix a commensurate bond pending such reivew and if a trial Court should arbitrarily refuse a supersedeas, application should be made to the Court of Appeals for the same circuit or one of the Judges thereof, and unless the prosecution could show to the Court that the record of the convicted warranted a presumption that he would not abide the judgment of the Appellate Court, a supersedeas should be and in all probability would be granted.

A writ of error must be sued out and lodged in the Court below within sixty days from the date of the judgment. Roberts vs. Kendrick, 211 Federal, 970. And when such writ of error is not so sued out and lodged, a

supersedeas previously granted will be vacated and annulled. Roberts vs. Kendrick, 211 Federal, 970.

Direct to the Supreme Court.—A writ of error direct to the Supreme Court from the trial Court may be taken in certain cases. U. S. vs. Mixon et al., 235 U. S., 231; U. S. vs. Patten, 226 U. S., 527. See also Judicial Code, 1911. Supreme Courts may grant certiorari in Criminal Case when case is one of great gravity. Anderson vs. Moyer, 193 Federal, 499.

Pauper has Right to.—By the Act of June 25, 1910, a poor person may have an action reviewed by writ of error, including all appellate proceedings, unless the trial Court shall certify in writing that, in the opinion of the Court, such appeal or writ of error is not taken in good faith, without being required to prepay fees or costs or for the printing of the record in the Appellate Court or give security therefor. The pauper shall file in Court a statement under oath in writing that because of his poverty he is unable to pay the costs of said suit or writ of error or to give security for the same, and that he believes he is entitled to the redress he seeks by such writ of error, etc. Latham vs. U. S., 210 Federal, 159.

42rr. **Writ of Error—Supersedeas—Pauper Continued.**—For good cause shown a writ of error may be filed after the expiration of the sixty days provided by the rules. Freeman vs. U. S., 227 Fed. 732.

When a case is taken by a writ of error direct to the Supreme Court it is there for all purposes. Goldman vs. U. S., 245 U. S. 474.

A pauper may have his cause reviewed by writ of error when the proper orders are entered and for guidance therein see the foregoing paragraph; also see Page 45, Vol. 1, 1912 Supplement to Federal Statute Annotated, and as to the printing of the record see Meyer vs. U. S., 218 Fed. 372.

It is suggested that an order should be entered showing the defendant to be a poor person within the purview of the act of Congress of Form 25, 1910, and that the defendant be granted a writ of error to the United States Circuit Court of Appeals, for the ——— circuit, in forma

pauperis, and that he be relieved from paying any costs or furnishing security, and that said writ of error be returnable according to law; such order to be signed by the District Judge.

§ 42s. **Writing—Handwriting.**—Because of the confusion in appellate decisions, the Congress on Feb. 26, 1913, provided, "That in any proceedings before a Court or judicial officer of the United States where the genuineness of the handwriting of any person may be involved, any admitted or proven handwriting of such person shall be competent evidence as a basis for comparison by witnesses or by the jury, court or officer conducting such proceeding, to prove or disprove such genuineness." Of course this statute does not attempt to place a value on such testimony. After being admitted may be compared. Short vs. U. S., 221 Federal, 248.

It is well settled that a writing cannot be introduced in the cause for the mere purpose of enabling the jury to institute a comparison of handwriting, but where the writing had been admitted for some other purpose, then the jury may rightfully institute a comparison. Williams vs. Conger, 125 U. S., 397. Withamp vs. U. S., 127 Federal, 530.

In U. S. vs. North, 184 Federal, 152, Judge Wolverton, after reviewing the authorities, says, "From these authorities it would seem that it was not the purpose of the Courts, where the writing was admitted in evidence for some other purpose, to require that it must also have been admitted by the defendant to be genuine, or treated by him as such; but it is sufficient that it be satisfactorily proven to be in the handwriting of the party against whom it is sought to establish another writing, being an issue in the case, which he disputes.

In other words, the American rule seems to be that such papers can be offered in evidence to the jury, only when no collateral issue can be raised concerning them, which is only where the papers are conceded to be genuine, or are such, as the party is estopped to deny, or are papers belonging to the witness, who was himself previously acquainted with the party's handwriting, and he

exhibits them in confirmation and explanation of his own testimony. When a writing is offered for comparison, its genuineness must be found as a preliminary fact by the presiding judge upon clear and undoubted evidence in order to avoid the danger of fraud and surprise and the multiplication of collateral issues.

CHAPTER IV.

POSTAL CRIMES.

§ 43. **Postal Crimes.**—The provisions of Section 3833 that give jurisdiction to all civil and criminal causes arising under the postal laws to state and territorial courts, do not constitute such courts Federal Courts; and if either a civil or a criminal cause be instituted in the state courts involving the United States Postal Laws, such cause may be removed to the Federal Courts, under the second section of the Act of March 3, 1875. In the case of New Orleans National Bank vs. Merchant, 18 Federal, page 841, which was a bill for injunction filed in the state District Court against the United States Postmaster at New Orleans, seeking certain relief against the enforcement of the sections of the Revised Statutes relating to fraud orders, and which action was removed into the Federal Court under the second section of the Act of March 3, 1875, Circuit Judge Pardee held that while Section 3833 of the Revised Statutes confers jurisdiction upon the Courts of the State in certain instances, as Courts of the State, yet it does not thereby make them Federal Courts, and cases instituted therein are properly removable to the Federal Court.

§ 44. **How Is the Section Used.**—It would seem, therefore, that 3833 is really a section of convenience. Since there are state justices of the peace and committing magistrates at nearly all points, the state or Federal officer who discovers a violation of the postal laws may instantly get a warrant therefrom without waiting to communicate with the more remote and less accessible Federal Commissioner. The accounts for the state justices of the peace and committing magistrate for services of this sort are presented for approval in open Court, just as United States Commissioners are, and are paid by the Department at Washington.

§ 45. **Breaking Into and Entering Post-Office.**—We now come to a consideration of the various sections of the Criminal Code, starting with offenses against the postal service and system, because they are the most common violation. Section 5478 of the old statutes is altered very little by Section 192 of the new Code. The words "hard labor" are left out of the new statute, but under Section

338 of the new Code, the omission of the words "hard labor" from any provision of the new Code prescribed in the punishment, is not construed as depriving the Court of the power to impose hard labor as a part of the punishment in any case where such power existed under the old statute.

The new Section also contains the following words, "with intent to commit in such post-office or building, or part thereof so used," that were not in the old statute. These words were doubtless added by the codifiers to call the attention of the pleader to the fact that Congress had no jurisdiction to prescribe a penalty for entering a building, or for committing an offense in a building, unless such building was actually used as a post-office or such offense was committed in that part of said building so used as such post-office.

In the 16 Federal, page 235, United States against Campbell, the Court sustains a demurer to an indictment which charged forcible breaking into a building, which building was then and there used in part as a post-office of the United States, "with the intent then and there, in said building, to commit the crime of larceny." In passing upon the demurrer, the Court said that, "a building used in part as a post-office may contain many rooms besides the one or more used as a post-office. That there is some portion of it not so used is necessarily implied in the phrase 'used in part as a post-office.' To break into such a building with the intent to steal the purse of the lodger in a room therein that is in no way used as a post-office, nor connected with it, except that it is under the same roof, does not appear to me to be an act which the United States may punish, upon the ground that it is necessary to do so in the execution of the power granted to Congress to establish apost-office." Mr. Justice Storey, in United States vs. Coombs, 12 Peters, 76, said: "If the section admits of two interpretations, one of which brings it within, and the other presses it beyond, the constitutional authority of Congress, it will become our duty to adopt the former construction; because a presumption never ought to be indulged that Congress meant to ex-

ercise or usurp any unconstitutional authority, unless that conclusion is forced upon the Court by language altogether unambiguous."

The idea, therefore, is that the statute meant to punish the breaking into a building used in part as a post-office, with the intent to commit larceny in that part of the building so used as such post-office. To the same effect is the case of in re Byron, 18 Federal, page 723; also United States vs. Williams, 57 Fed., 201; also United States vs. Shelton, 100 Fed., 831; United States vs. Martin, 140 Fed., 256; United States vs. Saunders, 77 Fed., 170.

In the 30 Federal, 232, United States vs. Lantry, the Court held that the prisoners were not entitled to the presumption that they had hidden themselves within the building, merely because they had been seen with other person lawfully within the premises before they were closed for the night. In this same case, the Court refused, upon habeas corpus, to go beyond the finding of a Commissioner, as to the probable guilt of the prisoners, and followed the authorities of in re Fowler, 4 Fed., 303, and in re Day, 27 Federal, 678.

The case of Considine vs. United States, which holds that a violation of Section 5478 is a misdemeanor, and not a felony, and, therefore, but three challenges are permitted the defendant, will not now be considered binding against defendants under the new Code, for the reason that the punishment is felonious within the meaning of such offenses as defined by Section 335 of the new Code. Section 819 of the Revised Statutes allows the defendant charged with a felony ten challenges; therefore, one being prosecuted under Section 192 would be entitled to ten instead of three challenges.

The word "forcible" when used in a criminal statute in describing night-time or day-time burglaries, comprehends the opening of a door or the raising of a window or the raising of a latch, in fact, the use of any force in making an entry. In 74 Federal, 221, United States vs. Yennie, it was held that an entry into a postmaster's room in the post-office building, by opening the door,

was a forcible entry within the meaning of the statute. This case is also interesting in that it determines that an indictment is good, even though in the same count it charges the forcible entry and the theft of the property, and that while such allegations constitute separate offenses under old Sections 5475 and 5478, yet they are offenses of the same kind and the same grade of punishment, though with different degrees of severity, and upon the authority of Com. vs. Tuck., 20 Pick., 356, the Court holds that both offenses relate to and are parts of the same transaction, and may, therefore, be included in the same count without error, though perhaps the best practice not to do so. See also Horner vs. United States, 143 U. S., 207; ex parte Peters, 12 Federal, 46.

Sorenson vs. United States, 143 Federal, 820, and Sorenson vs. United States, 168 Federal, 785, are cases arising under Section 5478, and which do not decide any point with reference to the statute or an indictment thereunder. They contain, however, some interesting questions of practice with reference to circumstantial evidence and other matters not necessary to here discuss.

§ 46. **Unlawfully Entering Postal Car or Interfering with Postal Clerk, Etc.**—Closely akin to the statute just discussed is Section 193 of the new Code, which inhibits entering by violence a post-office car, or any apartment in any car, steamboat, or vessel assigned to the use of the mail service, and also denominates as an offense any wilful or malicious assault or interference with any postal clerk in the discharge of his duties in connection with such car, steamboat, vessel or apartment, and also punishes any one who shall wilfully aid or assist in either.

Neither this section, nor the substance thereof, was included in the old Revised Statutes. There was a provision largely similar passed by the Fifty-seventh Congress, as shown at page 1176 of the 32 Statute at Large. That provision has, however, been broadened by the omission of some words and the substitution of others.

A close reading of the statute indicates that the authorities that relate to entering a post-office or a building used in part as such office, cited under the old statute

5478 and under the new Section 192, would be in a large measure applicable to this question.

§ 47. **Assaulting Mail Carrier with Intent to Rob, and Robbing Mail and Injuring Letter Boxes or Mail Matter, and Assaulting Carrier, Etc.**—Under this heading, for convenience, is placed Sections 197 and 198 of the new Code. Section 197 is a combination of the old Sections 5472 and 5473.

Section 198 comprehends the meat of old Sections 3869 and 5466. 3869 had already been amended by the Act shown on page 1175 of the first part of Volume 32 of the Statutes at Large, which was an act of the Fifty-seventh Congress. The present section, as it now stands, is intended to protect more certainly the numberless rural route and star route boxes and mail receptacles.

It must be understood that no mail receptacle is protected under this statute, unless the same has been established, approved, or designated by the Postmaster General. The indictment should, therefore, allege such approval, designation, and establishment, and the proof must so show. As to just what sort of proof the Court will admit, no inflexible rule can be given. The Courts understand that it is impossible to bring the Postmaster General or some informed subordinate from his office into the various Districts of the Union, and testify to such action at Washington, and they, therefore, sometimes admit the testimony of the local postmaster that the receptacle is the proper one, or sometimes they admit the receptacle itself, which has stamped thereon the words designated, established, or approved by the Postmaster General. So also, some of the printed regulations of the Post-office Department give the dimensions and styles and description of the various receptacles, and these are sometimes admitted. The books contain no particular line of precedents with respect to such proof.

Section 197 of the new Code, which is, as above stated, a substitute for 5472 and 5473 of the old statute, eliminates some of the uncertainties that were in the old statutes, and as the new section now stands, it is easily understood. The following cases were interesting under

the old section: United States vs. Reeves, 38 Fed., 404, which determined in line with the academic authorities, the meaning of the words "dangerous weapon," the responsibility of one aiding or advising the offense, the meaning of the words "attempt to rob," and the further decision that the offense is committed where it is shown that the mail or any part thereof is taken fraudulently from the possession of the carrier, against his will, by violence or putting him in fear. In Jeff Harrison vs. United States, 163 U. S., 140, the only point decided was that a violation of 5472 was a felony, and on the prosecution for which the defendant was entitled to ten peremptory challenges under Section 819. United States vs. Hare, 2 Wharton Crim. Cases, 283, 26 Federal Cases, 148; U. S. vs. Wilson, 28 Federal Cases, 699; U. S. vs. Bowman, 5 Pac. Rep. 333.

§ 47*a*. **Reasonable Doubt in Appellate Court.**—Matthews vs. U. S., 192 Federal, 490, is a fact case under old Section 5472, in which the Court of Appeals affirms a judgment based upon circumstantial evidence and announces the rule that an Appellate Court need not be satisfied beyond a reasonable doubt of the guilt of the defendants in order to affirm.

47aa. **Reasonable Doubt.**

The reasonable doubt to which a defendant is entitled extends to each element in the case, Spear vs. U. S. 228 Fed. 486, and the court cannot take the force of such doubt away by a strong statement of the case, Oppenheim vs. U. S. 241 Fed. 626.

A reasonable doubt is a doubt for which a sensible man could give good reason, based on evidence or want of evidence, and is such a doubt as a sensible man would act or decline to act upon, Sotello vs. U. S. 256 Fed. 721.

§ 47*b*. **Duplicitousness.**—An indictment which charges that the defendant attempted to rob the mail clerk and put his life in jeopardy is not duplicitous. Price vs. U. S., 218 Federal, 149. "Magon vs. U. S., 260 Fed. 811, holds that different counts are not a species of duplicitousness."

§ 48. **Obstructing the Mail.**—Section 201 of the new Code takes the place of Section 3995 of the old, and enlarges the same by adding the words "car, steamboat, or other conveyance or vessel," and changes the punishment, which was, in the old statute, a fine of not more than a hundred dollars, to a fine of not more than one hundred dollars, or imprisonment for not more than six months, or both. These changes, however, do not render valueless the many cases arising under the old section.

In Salla vs. United States, 104 Fed., 544, the Court of Appeals for the Ninth Circuit held that an indictment charging defendants with conspiring "to unlawfully, wilfully, maliciously, and knowingly" delay and obstruct, etc., the passage of a railway car and train, "which said railway car and train were then and there carrying and transporting the mails of the United States," was insufficient to charge a violation of Section 3995, since it failed to charge that the defendants knew that said car and train were carrying the mails. In other words, the authorities are a unit upon the proposition that the indictment must allege, and the proof must show, that the defendants knew that the vehicle they obstructed carried the United States mail.

By an Act of the Fifty-seventh Congress, second session, page 1176 of the first part of Volume 32, Statute at Large, Congress determined "that every special delivery messenger, when actually engaged in carrying or delivering letters or other mail matter under contract, directly or indirectly, with the Post-office Department, or employed by the Post-office Department," shall be deemed a carrier or person intrusted with the mail, and having custody thereof, within the meaning of certain Sections of the Revised Statutes, which included old Section 3995.

It has been directly decided that two or more may conspire to commit the offense of obstructing the mail, as shown in Conrad vs. United States, 127 Fed., 798. Other interesting cases bearing upon the old section are the following: United States vs. Kirby, 74 U. S.; 19 Law Ed., 278, and see also note; *in re* Debs, 158 U. S., 564; Clune vs. United States, 159 U. S., 590; United States vs. Cassidy,

67 Fed., 698; United States vs. Thomas, 55 Fed., 380; United States vs. Sears, 55 Fed., 268; United States vs. Woodward, 44 Fed., 592; United States vs. Kane, 19 Fed., 42; United States vs. Claypool, 14 Fed., 127; United States vs. De Mott, 3 Federal, 478.

An officer in possession of a civil warrant against a mail carrier is not justified in arresting the mail carrier, though the carrier be not detained longer than necessary for the execution of the warrant. United States vs. Harvey, 8 Law Rep., 77. In United States vs. Barney, 3 Am. Law Journal, 128, the Court held in substance that the law did not allow any justification of a wilful and voluntary act of obstruction to the passage of the mail, such as the seizure by its lawful owner of a stolen horse found in a mail stage, or the arrest of its driver for debt. On the other hand, in United States vs. Hart, Pet. C. C., 390; S. C. 3 Wheeler's Criminal Case, 304, the Court held that the Act was not to be so construed as to prevent the arrest of the driver of a carriage transporting the mail when he was driving through a crowed city at such a rate as to injure the lives of the inhabitants. So also, it is understood that mere service of process on a mail carrier, without detaining him, is not an obstruction of the mail. United States vs. Harvey, 8 Law Rep., 77.

It seems, however, to be settled that while a mail carrier is not liable to arrest upon civil process—that he is liable to arrest on a charge of any criminal offense, as a violation of the law against the sale of liquor. Penny vs. Walker, 64 Maine, 430; S. C. 18 American Rep., 269.

The safest practice, however, in view of the public interest in the speeding of mails, is for the officer to make the arrest after the carrier has delivered his charge, which is not at all difficult to accomplish.

§ 48*a*. **Presumption as to Mail on Train.**—Judge Speer decided the case of U. S. vs. Hall, 206 Federal, 485, and held that every passenger train must be presumed to be a carrier of United States mail and that therefore an allegation of knowledge was unnecessary in an indictment under Section 201. The learned judge

cities no authorities in support of his decision. It is not believed that such a presumption will be allowed in the criminal law. The stopping of a train, the chastising of the engineer of a train or the infliction of bodily punishment upon the members, of the crew of a train without any thought of delaying the United States mail which might or might not be on such a train, would certainly not be an offense within the jurisdiction of the United States Courts. There must be an allegation that the defendant knew that the carriage thus delayed was conveying United States mail and it is thought that Salla vs. U. S. 104 Federal, 544, correctly states the rule, that is if there be no allegation that the defendants knew that the car and train were carrying the mails, the indictment is defective.

§ 49. **Ferryman Delaying the Mail.**—Section 202 differs little from the old statute 3996, and reads as follows:

"Whoever, being a ferryman, shall delay the passage of the mail by wilful negligence or refusal to transport the same across any ferry, shall be fined not more than one hundred dollars."

The penalty of the old statute was ten dollars, and required that a delay should be for ten minutes, but the new section evidently means any delay that is wilful.

§ 50. **Postmaster or Other Employee Detaining or Destroying Newspapers.**—Section 196 of the new Code, which reads as follows:

"Whoever, being a postmaster or other person employed in any department of the postal service, shall improperly detain, delay, embezzle, or destroy any newspaper, or permit any other person to detain, delay, embezzle, or destroy the same, or open, or permit any other person to open, any mail or package of newspapers not directed to the office where he is employed; or whoever shall open, embezzle, or destroy any mail or package of newspapers not being directed to him, and he not authorized to open or receive the same; or whoever shall take or steal any mail or package of newspapers from any post-office or from any person having custody thereof, shall be fined not more than one hundred dollars, or imprisoned not more than one year, or both."

replaced Section 5471 of the old statutes, and contains practically nothing new except that the wording is changed somewhat, and the punishment is enlarged.

For some reasons there were few prosecutions under 5471, and so far as reported decisions are concerned, the books contain none. *Ex parte* Friday, in 43 Federal, page 920, cited by some annotations, really does not bear upon the section other than to cite it as an instance of the power of a Court to impose hard labor, even though the term be less than one year. In State vs. Nichols, 50 Louisiana Ann., 699, the statute is cited.

At page 512 of the First Volume of the Supplement, being an Act of the Forty-ninth Congress, which applies alike to all of the statutes relating to offenses against the postal service, committed by persons employed therein in connection with the immediate delivery service, whether temporarily or permanently, or whether under oath or not:—

"That any person employed to make immediate delivery of letters or other mail matter under the provisions of this Act, or the Act of which the same is amendatory, shall be deemed an employee of the postal service, whether he may have been sworn or not, or temporarily or permanently employed, and as such employee shall be liable to any penalties or punishment provided by law for the improper detention, delay, secretion, rifling, embezzlement, purloining, or destruction of any letter or other article of mail matter, or the contents thereof, entrusted to him for delivery, or placed in his custody."

50a. Conspiracy to Open Anothers mail. Kirkwood vs. U. S. 256 Fed. 825.

§ 51. **Postmaster or Employee of Service Detaining or Destroying Embezzling Letter, Etc.**—Section 195 of the new Code, which reads as follows:

"Whoever, being a postmaster or other person employed in any department of the postal service, shall unlawfully detain, delay, or open any letter, postal card, package, bag, or mail entrusted to him or which shall come into his possession, and which was intended to be conveyed by mail or carried or delivered by any carrier, messenger, agent, or other person employed in any department of the postal service, or forwarded through or delivered from any post office or station thereof established by authority of the Postmaster General; or shall secrete, embezzle, or destroy any such letter, postal card, package, bag, or mail; or shall steal, abstract, or remove from any such letter, package, bag, or mail, any article or thing contained therein, shall be fined not more than five hundred dollars, or imprisoned not more than five years, or both."

takes the place of Sections 3890, 3891, and 5467 of the old statutes. The new law, as above quoted, does not contain the inhibition against the holding of office by a postmaster who unlawfully detains letters or mail matter, but largely increases the punishment. The three old sections were a source of considerable confusion, and with the making of the new section, which plainly states, in commensurate words, the elements of the offenses therein included, this will be largely removed.

The system of postal supervision and preservation by and through efficient Inspectors, ofttimes makes it necessary to use what have been termed "decoy" letters. A series of thefts may be reported at a certain office, and by a process of elimination the Inspectors conclude that the thefts occur during a certain watch. There may be more than one man upon this watch, and it is entirely unjust to suspect all of them. Decoys are, therefore, used. These decoy letters are sometimes called "test" letters. The question arose as to whether or not such letters could be the subject of the offense described and punished by 5467, and the other articles akin thereto. It is now settled, beyond dispute, that such letters may be the subject of the offenses defined. In Hall vs. United States, 168 U. S., 631; 42 Law Ed., 607, the point was raised as follows, which is taken from that case:

"The evidence showed that the Government detectives prepared a special delivery letter designed as a test or decoy letter, containing marked bills, and delivered it, bearing a special delivery stamp, to the night-clerk in charge of Branch Station 'F' of the post-office. The defendant was not a letter carrier, but a clerk employed at that office, whose duty it was to take charge of special delivery letters, enter them in a book for that purpose, and then place them in course of transmission. The letter in question was addressed to Mrs. Susan Metcalf, a fictitious person, 346 East Twenty-fourth Street, New York City, a fictitious number. The letter was placed by the night clerk with other letters upon the table, where such letters were usually placed, and the defendant, entering the office not long after, took this letter, along with the others on the same table, removed them to his desk, and properly entered the other letters, but did not enter this letter. On leaving the office, not long after, the omission to enter the letter having been observed, he was arrested, and the money contents of the letter, marked and identified by the officers, were found upon his per-

son. The officers testified upon cross examination that the address was a fictitious one; that the letter was designed as a test letter, and that they did not intend that the letter should be delivered to Mrs. Susan Metcalf, or that address, and that it could not be delivered to that person at that address.''

Upon this state of facts, the Supreme Court held that the facts stated an offense, and the evidence was entirely sufficient to sustain the conviction upon the latter part of Section 5467, which did not include the words ''intended to be conveyed by mail.'' The Court cites Good vs. United States, 159 U. S., 663; 40 Law Ed., 297; Montgomery vs. United States, 162 U. S., 410; 40 Law Ed., 1020.

I have spoken in a preceding paragraph of the use of decoy letters by government inspectors and the approval of such use by the Courts as expressed in Hall vs. U. S. Judge Bourquin draws a distinction in United States vs. Healy, 202 Federal, 349, between the proper and the improper use of the decoy. Such distinction is most pleasing since everyone dislikes to approve any course on the part of the official which appears to be overreaching or which suggests to the weak an easy way to get money or something of value. In the Healy case it was said that decoys are permissible to entrap criminals or to present opportunity to those having intent to or who are willing to commit crime, but not to create criminals, or to ensnare the law abiding into committing an offense without an intent to do so. Where a statute makes an act a crime regardless of the actor's intent or knowledge, ignorance of fact is no excuse if the act is done voluntarily; but if done on solicitation by the government's instrument to that end, ignorance of fact shows the act to have been involuntary and estops the government from claiming a conviction.

The observations in that case were based upon facts which showed that the government's decoy claimed that he was not an Indian when as a matter of fact he was, and upon his representation that he was not an Indian the defendant acted and sold him spirituous liquors. The court, of its own motion, set aside the conviction.

It will be observed that the new statute uses the word "such," which means, beyond any question of a doubt, a letter, postal-card, package, bag, or mail, which was intended to be conveyed by mail, or carried or delivered by a carrier, messenger, agent, or other person employed in a Department of the postal service, or forwarded through, or delivered from, any post-office or station. If, therefore, the testimony of the Government Inspector should disclose that he did not intend that the decoy or test should be carried or delivered or conveyed by mail, or forwarded through, or delivered from, any post-office, then and in that event, the new section would not be sufficiently broad to prosecute an employee who stole a decoy or test letter. Hall vs. U. S., 168 U. S., 631. The last portion of the old statute 5467 made it an offense for any such person, to wit, employee, to take any of the things mentioned therein out of any letter, packet, bag, or mail which had come into his possession as such employee; which is vastly different in its broadness from the present statute.

The case of Ennis vs. United States, 154 Federal, 842, decides that a piece of mail matter which had been set aside by a dishonest employee to be later taken, and which was discovered by an inspector, and taken to the addressee, from whom the inspector secured permission to open the packet, and thereupon marked certain bills, and placed them in the said packet, and then returned the packet, where the employee had left it, such employee afterwards taking the packet: held, that the packet, at the time it was returned by the Inspector, had not ceased to be mail matter, and that the defendant was, therefore, properly convicted of embezzling the same, in support of which the Court cites Scott vs. United States, 172 U. S., 343; 43 Law Ed., 471, and also argues that a letter delivered to the wrong address, and re-mailed with the canceled stamp thereon, if stolen after being re-mailed, would appear to be an offense under the section. In the case of Bromberger vs. United States, 128 Federal, 346, the Court held that a letter properly stamped, with the receiving stamp of the office thereon,

and placed in a carrier's pigeon hole at a postal station, with other letters addressed to a real person on his route is "intended to be conveyed by mail," and its abstraction by the carrier, and the taking of the money therefrom constitutes an offense under 5467, although it was placed there by postal inspector for the purpose of testing the carrier's honesty.

The difference between the Bromberger case and the Hall case is, that the test or decoy in the Bromberger case was addressed to an actual person, and was intended for delivery to such person, while in the Hall case, it was a fictitious address, and no such delivery could be made. Under the new statute, therefore, the indictment must allege, and the proof must show, that the matter was intended to be conveyed by mail, or carried or delivered by a carrier, messenger, agent, or other person employed in a Department of the Postal Service, or forwarded through or delivered from any post-office or station thereof, established by authority of the Postmaster General, and if the decoy or test be to a fictitious person, at an address where the delivery cannot be made, it would not, under the new statute, be an offense.

Under the authority of Shaw vs. United States, in 165 Federal, page 174, the indictment must allege lawful possession, but under the authorities of United States vs. Trasp, 127 Federal, 471, and Bowers vs. United States, 148 Federal, 379, and United States vs. Falkenhainer, 21 Federal, 624, it is not necessary to allege the ownership of the packet. The employee, under the present section, whether he be postmaster or other person, can offend against the new law only when he is such employee, has mail entrusted to him, or has mail in his possession when the same was to be conveyed and delivered as hereinbefore shown. So, too, it will be noticed that the new section makes it an offense to secrete, embezzle, or destroy any such letter, postal card, package, bag, or mail, and also makes it an offense to steal, abstract, or remove from any such package, bag, or mail, any article or thing therein, and does not make use of the word "value." In other words, any article, whether of value

or not, and any letter or packet, whether it has any article in it or not, under this new section, is protected by its provisions, and it is thought that this broadness comes by reason of its comprehending the elements of 3890 and 3891, as well as those of 5467. Other cases bearing upon these three sections are Alexis vs. United States, 129 Federal, 60; Chitwood vs. United States, 153 Federal, 551; United States vs. Kerr, 159 Federal, 185; United States vs. Wilson, 44 Federal, 593; United States vs. Lacher, 134 U. S., 624; United States vs. Delany, 55 Federal, 475; United States vs. Gruver, 35 Federal, 59; United States vs. Byrne, 44 Federal, 188; Walster vs. United States, 42 Federal, 891; United States vs. Matthews, 35 Federal, 890; Rosencrans vs. United States, 165 U. S., 257; *in re* Wight, 134 U. S., 136; U. S. vs. Taylor, 37 Federal, 200; Jones vs. United States, 27 Federal, 447; U. S. vs. Hamilton, 9 Federal, 442; Scott vs. United States, 172 U. S., 343.

§ 51*a*. For a fact case under Section 195, see Welsing vs. United States, 218 Federal, 369.

An indictment under this Section need not describe the article contained in the mail package with the same particularity as in a prosecution for forgery or larceny, but the article must be stated and sufficiently described so as to apprise the defendant of the charge against him and so as to protect him against a second prosecution for the same offense. An indictment which charged that a letter contained "articles of value" to wit, "$12 in money of the U. S." was sufficient under this statute to charge an offense. Shaw vs. U. S., 180 Federal, 348. An offense under this Section may be prosecuted in either the district where article "removed" or the one into which the article is taken with the evil intent. Perara vs. U. S., 221 Federal, 213.

51aa. **Decoy Letters.**

A "test" letter is protected even though the inspector testified that he intended to withdraw it, McShann vs. U. S. 231 Fed. 923.

See also Hanish vs. U. S. 227 Fed. 584, and see Sec. 51.

51b. **Opening Mail Unauthorized.**

The Act of June 15, 1917, reinacted that provision of the statute which reads as follows:—

"Except dead letter office or with a search warrant," no one is authorized to open a letter."

51c. **Injury to Letter Boxes, etc.,**

Sec. 198 of the Code, see Penal Code herein, was amended by the Act of May 18, 1916, so as to include the following:—

"That whosoever shall wilfully or maliciously injure, tear down, or destroy any letter boxes or other receptacle intended or used for the receipt or delivery of mail on any mail route or shall break open the same or shall wilfully or maliciously injure, defraud or destroy any mail deposited therein,"

shall be fined not more than a thousand dollars or by three years imprisonment.

This act together with the decisions of the Supreme Court in Rosen vs. U. S. 245 U. S. 467, gives complete protection to mail until it actually reaches the addressee and tends to overturn the case of U. S. vs. Lee 90 Fed. 256, cited under Sec. 52.

See also the case of U. S. vs. Lophansky, 232 Fed. 297, which holds that one commits no federal offense by taking mail that was left "on" the mail box.

Mail is property and the Postoffice Department has full power to protect it, Packas vs. U. S. 240 Fed. 350.

By Sec. 194 of the Postmaster General's regulations it is provided that any receptacle intended for mail is protected by the federal law.

§ 52. **Stealing, Secreting, Embezzling, Etc., Mail Matter or Contents.**—Section 194 of the new Code is in substitution of Sections 3892 and 5469 and 5470 of the Code of 1878, and by the wideness or latitude of punishment and generality of its phraseology, includes all of the offenses enumerated in the old sections. 3892 was limited originally to the taking of mail for the purpose of prying into the business or secrets of another, and 5469 originally was for the taking of mail matter by theft or other unlawful method by any person not employed in the postal service. It is only by being familiar with Section 5467 and 3891 and 3890, as heretofore

treated, that we conclude that 5469 related to persons other than postal employees. Under the terms of Section 194, as it now reads, one who, by misrepresentation or pretense, secures from a post-office mail directed and intended for another, is liable to the penalties of that section. For instance, one who calls for the mail of another, representing that he has authority to receive the same, and thereafter commits unlawful act with the mail, is subject to the penalty. The authorities cited *supra* in the construction of Section 195 are applicable to decoy and test letters under 5469 of the old statute or 194 of the new statute. The authority of the United States vs. Meyers, 142 Federal, 907, with reference to 5469, seems to be applicable to the needs of an indictment and proof under new Section 194. The indictment must allege that the stealing, taking, or obtaining by fraud of any letter or other mail matter and the embezzlement of the same or its contents must be either fraudulent or unlawful, and an indictment which leaves this open to inference is defective. Thus, an indictment which by inference may allow the letter charged to have been taken to have been delivered to and received by the defendant through a mutual mistake, is insufficient. Mail matter that has been delivered by the Postal Department to its address thereby passes from the protection of the Federal Government. A letter addressed to John Smith, in care of Jones, and delivered to Jones, and thereafter stolen or embezzled or treated unlawfully, cannot be made the subject of the above article. It must still be in the custody of the Post-office Department before one can be prosecuted under the Federal statutes for an unauthorized and unlawful act with reference thereto. Thus, a letter delivered by the Post-office Department to the desk of the addressee, upon which it was placed by the mail carrier in the absence of any one to receive it, is not protected by any Federal statute. In United States vs. Safford, 66 Federal, 942, one was arrested upon an information charging him with embezzling a letter containing an article of value, which had been in the United States Post-office at St. Louis and

had not been delivered to the person addressed, but that the letter had been placed by the mail carrier upon the desk of the addressee, from whence it was stolen by the defendant. The Court held that Congress only intended to secure the sanctity of the mail while it was in the custody of the Postal Department en route from the sender to the person to whom it was directed. Beyond the protection of the mail while discharging the functions of postal service with respect to it, the Federal Government has no rightful power or legal concern.

Thus, a letter directed to a person, care Kimball House, when delivered by a carrier at the office of the Kimball House, is delivered to the person to whom it was addressed, within the meaning of the law; and the duty of the postal authorities with respect to such letter having been full performed in accordance with the direction of the sender, a subsequent wrongful taking of such letter by another is not an offense under said section, nor one cognizable by the Courts of the United States. United States vs. Lee, 90 Federal, 256. See also U. S. vs. McCready, 11 Federal, 225.

It is not thought that United States vs. Hilbury, reported in 29 Federal, 705, is good authority. The judge in that case charged the jury in substance that a letter in care of F. Kressel, directed to A, and delivered by the mail carrier to Kressel, and taken by an authorized person from Kressel after such delivery, was a violation of 3892. Clearly, the letter had been delivered, so far as the Postal Department was concerned, and the protection and custody and jurisdiction of the United States had ceased. The entire weight of authority is against the decision in 29 Federal, just above cited, and the following decisions support the doctrine of 66 and 90 Federal, cited *supra*:—United States vs. Persons, 2 Blatchf., 104; United States vs. Driscoll, 1 Lowell, 303; U. S. vs. Sander, 6 McClain, 598; U. S. vs. Thomas, 28 Federal Cases 16471; U. S. vs. Huilsman, 94 Federal, 486; U. S. vs. McCready, cited *supra*, 11 Federal, 225, must be distinguished from the weight of authority, and it is thought that the learned judge there used expressions ill ad-

visedly that seem to support the decision in the 29 Federal.

It must also be borne in mind that one who secures lawfully from the Postal Department a letter belonging to an other, and who thereafter forms the design to commit an unauthorized act, as defined by the statute, with reference thereto, is not amenable to the Federal statute. It is true that the intent is usually presumed from the act itself, Reynolds vs. U. S., 98 U. S., 145, but if it could be clearly shown that the original taking was lawful and thereafter the unlawful design was formed, the Federal offense would be incomplete. United States vs. Smith, 11 Utah, 433; United States vs. Wilson, 44 Federal, 593; United States vs. Inabnet, 41 Federal, 130. This intent should be left to the jury by proper charge, not only when raised by the evidence of the defense, but upon the Government's case itself; in other words, it is a part of the facts that must be proven by the Government, inferred though it may be by the jury from the facts of the case.

Section 194, as now enacted, reads as follows:

Whoever shall steal, take, or abstract, or by fraud or deception obtain, from or out of any mail, postoffice, or station thereof, or other authorized depository for mail matter, or from a letter or mail carrier, any letter, postal-card, package, bag, or mail, or shall abstract or remove from any such letter, package, bag, or mail, any article or thing contained therein, or shall secrete, embezzle, or destroy any such letter, postal-card, package, bag, or mail, or any article or thing contained therein; or whoever shall buy, receive, or conceal, or aid in buying, receiving, or concealing, or shall unlawfully have in his possession, any letter, postal-card, package, bag, or mail, or ony article or thing contained therein, which has been so stolen, taken, embezzled, or abstracted, as herein described, knowing the same to have been so stolen, taken, embezzled, or abstracted; or whoever shall take any letter, postal card, or package, out of any post-office or station thereof, or out of any authorized depository for mail matter, or from any letter or mail carrier, or which has been in ony post-office or station thereof, or other authorized depository, or in the custody of any letter or mail carrier, before it has been delivered to the person to whom it was directed, with a design to obstruct the correspondence, or try to pry into the business or secrets of another, or shall open, secrete, embezzle, or destroy the same, shall be fined not more than two thousand dollars, or imprisoned not more than five years, or both."

The following cases may be of interest relating to the original three sections that this section is substituted for:—United States vs. Trosper, 127 Federal, 476; Brown vs. United States, 148 Federal, 379; United States vs. Jones, 80 Federal, 513; United States vs. Hall, 76 Federal, 566; United States vs. Thomas, 69 Federal, 588; Grimm vs. United States, 156 U. S., 604; Goode vs. United States, 159 U. S., 663; Montgomery vs. United States, 162 U. S., 400; Hall vs. United States, 168 U. S., 632; Scott vs. United States, 172 U. S., 343; United States vs. Dorsey, 40 Federal, 752; Walster vs. United States, 42 Federal, 891; United States vs. Wilson, 44 Federal, 593.

It will be noticed that the new section leaves out the word "value" with reference to any article so contained in the mail matter. It simply uses the word "article" without stating that the same shall be of value, as did the old law.

§ 52*a*. An indictment under Section 5470, which is a part of new Section 194, which alleges that the defendant did wilfully, etc., receive from a certain described bank notes of a specified value, which had been knowingly, etc., stolen from the mails and that the defendant, at the time and place of receiving and concealing, etc., knew the same to have been unlawfully and feloniously stolen and carried away from the mails of the United States, imported that the concealment by defendant was done with an unlawful intention and was therefore not objectionable for failure to charge the intent or the name of the owner. Thompson vs. U. S., 202 Federal, 401.

52aa. **Mail Protected.**

Rosen vs. U. S., 245 U. S., 467; U. S. vs. Lophansky, 232 F. 297; Pakas vs. U. S., 240 F. 350.

§ 53. **Obscene, Etc., Matter, Non-mailable, and Penalties.**—Section 211 of the new Code reads as follows:

"Every obscene, lewd, or lascivious, and every filthy book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character, and every article or thing designed, adapted, or intended for preventing conception or producing abortion, or for any indecent or immoral use; and every article, instrument, substance, drug, medicine, or thing which is advertised or described in a man-

ner calculated to lead another to use or apply it for preventing conception or producing abortion, or for any indecent or immoral purpose; and ever written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information directly or indirectly where, or how, or from whom, or by what means any of the hereinbefore-mentioned matters, articles or things may be obtained or made, or where or by whom any act or operaton of any kind for the procuring or producing of abortion will be done or performed, or how or by what means conception may be prevented or abortion produced whether sealed or unsealed, and every letter, packet, or package, or other mail matter containing any filthy, vile or indecent thing, device, or substance; and every paper, writing, advertisement, or representation that any article, instrument, substance, drug, medicine or any thing may, or can be, used or applied for preventing conception or producing abortion, or for any indecent or immoral purpose, and every description calculated to induce or incite a person to so use or apply any such article, instrument, substance, drug, medicine, or thing, is hereby declared to be non-mailable matter and shall not be conveyed in the mails or delivered from any post-office or by any letter carrier. Whoever shall knowingly deposit, or cause to be deposited for mailing or delivery, anything declared by this section to be non-mailable, or shall knowingly take, or cause the same to be taken from the mails, for the purpose of circulating or disposing thereof, or of aiding in the circulation of disposition thereof, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both."

This takes the place of 3893 of the old statute. It contains one word, the exact limits and meaning of which when used in criminal law, do not seem to be well defined by any line of decisions. The word "filthy," as used in the new section, has never before been used in 3893 or any of its predecessors. The Century Dictionary defines filthy to mean, foul, dirty, nasty, polluted, low, contemptible, mean, and gives as synonyms, impure, corrupt, gross. In Reg. vs. Wood, 5 El. and Bl., 49, 85 E. C. L., 49, shows what was held not to be filthy. In United States against Benedict, 165 Federal, page 222, the Court said that the present statute, (that is, 3893), did not protect against "offensive, filthy, and vulgar language," when conveyed by a sealed wrapper, unless the language will have, or may have, an immoral effect in a sense related to sexual impurity upon those into whose hands the written language may come. The Courts all along have al-

most universally construed Section 3893 to be directed against such impurity as related to sexual matters and gave rise to libidinous thought. If the addition of the word "filthy" in the new statute broadens the construction, it will be welcome indeed, because under the present authorities, the old section permitted a perfect sluice of vulgarities and coarseness and obscenity to pass through the United States mails unchallenged and unprosecuted. For instance, the courts have held that the use of the word "son-of-a-bitch" in a sealed envelope is not an offense. It would seem that under the dictionary definition of the word filthy, as quoted above, the law would now comprehend the use of the word "bitch" and the phrase "son-of-a-bitch" and "whore" "prostitute" and a great many others that are used in an abusive way toward the recipient of the mail. This, however, remains to be seen, and the construction of the new statute will be welcomed if it now inhibits the use of such expressions.

The use of the word "filthy" in the statute imports that Congress intended to prohibit a class of offenses that the Courts had failed to pronounce unlawful under the old section. U. S. vs. Dempsey, 188 Federal, 450. and this question should be submitted to the jury.

The term filthy added to the statute may be properly defined as nasty, dirty, vulgar, indecent, offensive to the moral sense, morally depraving and debasing, and after such definition the final determination is with the jury. Tyomies Publishing Co. vs. U. S., 211 Federal, 386.

An indictment under 211 must surely be as certain in its allegations as the decisions demanded under 3893, and must therefore, allege that the defendant knowingly deposited or caused to be deposited, and the best practice would seem to be to allege that he so deposited or caused to be deposited with knowledge of the contents or import of the writing or printing, as the case may be. Such allegation is not specially required under the authority of Price vs. United States, 165 U. S., page 308; 41 Law. Ed., page 727, but it is decidedly the best pleading. Rosen vs. United States, 161 U. S., 29; 40 Law Ed.,

606. The mailing of obscene matter in answer to decoy requests, such requests being made by postal inspectors for the purpose of fixing absolutely the guilt of the sender or of an advertiser, are in violation of the statute, and may be the basis of prosecutions. Price against United States, cited *supra*, and Rosen vs. United States, cited *supra*; Shepherd vs. United States, 160 Federal, page 584. The indictment must also allege that the matter is non-mailable. United States vs. Clifford, 104 Federal, 296, but the indictment need not set out the obscene matter. An allegation that the matter is too obscene, lewd, and lascivious to be set out and made a part of the records of the Court will satisfy the statute. 105 Federal, page 59; Tubbs vs. United States, 94 Federal, 356; and the Rosen and Price cases cited *supra*.

The old question as to whether a private sealed letter came within the meaning of the statute was definitely settled by the Supreme Court in the case of Grimm vs. United States 156 U. S., 604, which was followed by Andrews vs. United States, 162 U. S., 420, which distinctly held that the mailing of a private sealed letter containing obscene matter, on the envelope of which nothing appeared except the name and address, was an offense within the meaning of the statute.

Recurring again to the sort of obscenity at which the statute is directed, we find the case of United States vs. Lamkin, 73 Federal, 459, where it was held that the statute did not punish for the mailing of a letter which was written for the purpose of seduction or to obtain a meeting for an immoral purpose, provided such letter was free from lewd, and indecent language, expressions, or words. This case seems to be in conflict with the great weight of authority, and with the spirit of the statute. Assignations attempted to be made through the United States mail, however chaste the language, are in direct violation of the statute. United States vs. Martin, 50 Federal Rep., 918. In the Martin case, a letter from a man to an unmarried woman, proposing a clandestine trip to a neighboring town and a return the next morning, the man to pay expenses and five dollars be-

sides, was held to be an obscene letter within the meaning of the Act. In line with the Martin case, seems to be the case of Dunlop vs. United States, 165 U. S., 486, in which it was held that newspaper advertisements giving information where courtesans could be found, came within the Act, although such advertisements were couched in the most chaste and elegant language. In Swearingen vs. United States, 161 U. S., 446; 40 Law Ed., 765, the Supreme Court held that the words "obscene," "lewd," and "lascivious," as used in the statute signified that form of immorality which has relation to sexual impurity, and have the same meaning given them at Common Law in prosecutions for obscene libels, and, therefore, do not extend to language although it may be exceedingly coarse and vulgar, and plainly libelous, if it has not a lewd, lascivious, and obscene tendency, calculated to corrupt and debauch the mind and morals. This definition supports, it would seem, the line of authorities upholding the Martin decision, cited *supra*, and also limits the purpose of the original statute to such obscenity. In the Swearingen case, the prosecution was for the mailing of a paper which contained the coarsest possible language toward another, and the language would unquestionably have been construed "filthy," had that word been included in the statute, unless the Courts are to determine that the word filthy," as used in the new statute, was purposelessly used by Congress. To the same effect is United States vs. O'Donnell, 165 Federal, 218; United States vs. Benedict, 165 Federal, 221; Konda vs. United States, 166 Federal, 91. The question as to whether the matter is obscene within the meaning of the law, as defined by the judge, must be submitted to the jury. It is quite true that there are some decisions to the contrary, but all of the reasoning, as well as the weight of authority, seems to be that the question should be left to the jury, because it is a question of fact. In Konda vs. United States, 166 Federal, 93, the Court said:

"In our judgment, a defendant in a criminal case has the absolute right to require that the jury decide whether or not the evidence sustains each and every material allegation of the indictment. Mate-

rial allegations are allegations of fact, and each, as much as any other, enters into a verdict of guilty. If the judge may decide that one or another material allegation is proven, he may decide that all are proven, and so direct a verdict of guilty. In a civil case, the judge may exercise the power of directing a verdict for the plaintiff, when there is no conflict in the evidence, and the only inference that can be drawn by reasonable minds as to the ultimate facts in issue favors the plaintiff. This power, we opine, grew out of the practical administration of the fundamental power of review on a motion for a new trial, the findings of the jury. In the civil cases above supposed, if the jury should return a verdict for the defendant, the judge would set it aside; and he would continue to set aside verdicts in that case until one should be returned that was in accord with the undisputed facts; so he cuts off the possibility of useless verdicts by directing in the first instance, the jury to return the only verdict he will let stand. But in a criminal case, if the jury returns a verdict for the defendant, the judge, no matter how contrary to the evidence he may think the verdict is, cannot set it aside and order a new trial. Therefore, since the judge is without power to review and overturn a verdict of not guilty, there is no basis on which to claim the power to direct a verdict of guilty. Our conclusion is that an accused person has the same right to have twelve laymen pronounce upon the truth or falsity of each material averment in the indictment, if the evidence against him is clear and uncontradicted, as he unquestionably would have if it were doubtful and conflicting. Inasmuch as jurors are rightly trusted in close and difficult cases, to maintain the peace and dignity of organized society, surely they may be relied on in the plain and simple ones."

In Knowles vs. United States, 170 Federal, page 410, the Court assumes a similar position, and says:

"Upon this record, the only question before us is, whether the article is obscene, lewd, or lascivious, within the meaning of the statute. If it was fairly open to the construction of falling within either of these classes, it was the plain duty of the Court to submit the question of its character to the jury. In all indictments under this statute, there is a preliminary question for the Court to say whether the writing could, by any reasonable judgment, be held to come within the prohibition of the law. That is like the question of law in a case of negligence, as to whether there is any substantial evidence of negligence. It leaves a wide field for the sound, practical judgment of the jury to determine the true character of the writing and its probable effect upon the minds of readers. Whenever reasonable minds might fairly reach different conclusions as to the character of the writing, it is the duty of the Court to submit the question to the jury."

and cites Rosen vs. United States, 161 U. S., 29; United States vs. Bennett, 16 Blatchf., 342; United States vs. Davis, 38 Federal, 326; United States vs. Harmon, 45 Federal, 418.

Under a plea of not guilty, each and every necessary element alleged in the bill of indictment must be proven beyond a reasonable doubt by the sovereignty, and each of such elements, and the proof thereof to the measure indicated, is to the satisfaction of the jury, and any peremptory charge against the defendant is violative of his rights.

It is the duty of the Court to define the words obscene, lewd, lascivious and filthy, etc., as used in the statute and then leave it for the jury to say whether the facts show such obscenity, lewdness, lasciviousness, etc. Botsford vs. U. S., 215 Federal, 510; U. S. vs. Kennerly, 209 Federal, 119; Tyomies vs. U. S., 211 Federal, 389.

It is entirely immaterial that one who mails impure matter, within the meaning of the statute, has a pure motive; if the matter mailed is obscene, he is guilty. So, also, the freedom of religion, and freedom of the press, cannot be used as defenses to prosecutions under these statutes. Knowles vs. United States, 170 Federal, 411; Davis vs. Beason, 133 U. S., 333; 33 Law Ed., 637.

In 118 Federal, page 495, United States vs. Moblenski, the Court held in substance that the matter must tend to corrupt the morals of the person to whom it is addressed. This decision is not thought to be supported by the best authority. The addressee might, as a matter of fact, be so morally obtuse as to be beyond further injury or corruption, but the letter might fall into the hands of innocent persons; and the test is, whether the contents would bring the blush of shame to the cheek of virtue, not whether the contents would bring, the blush of shame to the cheek of vice. See 160 Federal page 700, United States vs. Musgrave, which holds that the law relates to the reading matter, and not to the state of the mind of the receiver. Under the Common Law, and for time immemorial it was an offense to utter obscene language in public places, or near a dwelling house, or in the pres-

ence of women, and the purpose, therefore, of the Federal statute, it would seem, is to protect the innocent and pure against having obscenity intruded upon their notice.

The section, so far as it relates to the prevention of conception and articles intended therefor, would require that bill of indictment describe the thing advertised. United States vs. Pupke, 133 Federal, 243. A somewhat broader holding is in United States vs. Somers, 164 Federal, 259. See also Lee vs. United States, 156 Federal, 948. It is also held that a corporation may violate this section. United States vs. Herald, 159 Federal, page 296.

In Ackley vs. U. S., 200 Federal, 218, it was held that a decoy letter from a postoffice inspector relating to that portion of the statute designed to prevent the mails from the conveying of information as to where or from whom instruments or information to prevent conception might be obtained, might be made the basis of prosecution, but that such postoffice inspector was an accessory and must be treated as such. The letter of inquiry mailed by the inspector and the answer thereto are both admissible. U. S. vs. Kline, 201 Federal, 954. And it is entirely immaterial that such letters would upon their face give information as to their true meaning to a stranger. U. S. vs. Blenholm, 208 Federal, 492. And a letter which is an answer to a prospective patient may be set forth in the indictment without explanatory words to show wherein it gave the inhibited information. Clark vs. U. S., 202 Federal, 740.

An indictment which contains no copy of the letter, no averment that it was indecent; that it was unfit to be spread upon the record of the Court, and no allegation of its date, of the name signed to it, of the place where it was mailed, or of any words, figures, or marks which it contains whereby it can be identified, does not state the facts which constitute the offense charged with such clearness and certainty as to enable the defendant to avail himself of a conviction or acquittal thereon as defense to a second prosecution for the same offense, and is insufficient in face of a motion in arrest of judgment,

and the office of a bill of particulars is not to make a bad indictment good. Floren vs. U. S., 186 Federal, 961.

See Stayton vs. U. S., 213 Federal, 224, as to allegation of knowledge in the indictment. Under this statute, knowledge, of course is an essential ingredient of the offense. In other words, if one should deposit in the United States mails any article inhibited by the statute it would not be an offense unless such deposit was knowingly done.

An indictment which charges that the defendant received from the Postoffice Department a certain letter, a copy of which was set out, and that thereafter in response thereto did knowingly, etc., deposit, etc., for mailing and delivery a certain envelope containing a letter giving information as he, the defendant well knew, as to how when, where, of whom and by what means certain articles, etc., intended to prevent conception, might be obtained, was not demurrable for failure to allege that defendant knew or believed the articles mentioned in the letter were designed or intended to prevent conception. U. S. vs. Currey, 206 Federal, 322. This case also holds that this section does not apply to a letter describing and advertising certain articles in a manner calculated to lead another to use and apply such articles for the prevention of conception, if it does not give information as to where they can be obtained.

It is reversible error to ask highly prejudicial and improper questions as to division of fees in abortion cases upon trial of indictment charging the furnishing of information as to where an abortion might be secured. Bombarger vs. U. S., 219 Federal, 841. A reading of the case will raise doubt in the mind as to whether the question was really improper. The defendant was being tried for a similar offense and his agreement to divide fees with another would seem to be relevant in showing, not only intent, but willingness, and also as tending to throw light upon true meaning of defendant's letters.

A deposit, under this Section, in a United States post-office, is a deposit in a post-office box. Shepherd vs. United States, 160 Federal, 584.

By an amendment to an Act in May, 1908, Congress provided that the term "indecent," as used in the old Section 3893, shall include matter of a character tending to incite arson, murder, or assassination; but it is not thought that any statement in the new Code would authorize such meaning for the word "indecent" in Section 211. Federal Statutes Annotated, Supplement 1909, page 525. Other cases bearing upon this statute are the following:—Evans vs. United States, 153 U. S., 587; Grimm vs. United States, 156 U. S. 608; Rinker vs. United States, 151 Federal, 755; in re Rapier, 143 U. S., 110; Barnes vs. U. S., 166 Federal, 113; United States vs. Musgrave, 160 Federal, 700; Hansom vs. United States, 157 Federal, 749; United States vs. Harris, 122 Federal, 551; United States vs. Moore, 104 Federal, 78; United States vs. Chase, 135 U. S., 117; United States vs. Reid, 73 Federal, 289; United States vs. Clark, 43 Federal, 574.

Postmark.—In U. S. vs. Noelke, 1 Fed. Rep., 426, which was followed in U. S. vs. Williams, 3 Federal, 484, the Court held that the postmark upon the envelope made a prima facie case that the letter had been deposited in the United States mail.

53a. **Obscenity, Scurrilousness, Indecency, Knowledge, Etc.**—To be a violation of Sec. 211 the letter must disclose its evil character, Sales vs. U. S., 258 F. 596.

An indictment is not invalid because it adds the word indecent, though that word be not in the statute, Lockhart vs. U. S., 250 F. 610.

It is not an offense to mail a sealed obscene letter to one's self was held in U. S. vs. Reinheimer, 233 F. 545. But this decision seems to me to be in conflict with the fundamentals upon which the reasoning with reference to this statutes has been based. It is not a question, altogether, of whether the matter would corrupt the addressee; the broader and safer rule seems to be that that is an offense under this statute, when the matter would bring the blush of shame to the cheek of virtue. A letter addressed to one's self and carried through the mail might never reach its destination, by some accident its contents might be exposed enroute.

Judge Ray held in U. S. vs. Klauder, 240 F. 501, that a letter which described the immoralities of priests was not necessarily violative of this section and that, upon demurrer, the court can decide whether the matter is so clearly innocent that the question should not be submitted to the jury.

On the other hand the Circuit Court of Appeals, in Parish vs. U. S., 247 F. 40 held that a letter to a woman threatening exposure of her compromising position with a man could not, as a matter of law, be held not to be obscene, etc., within the meaning of this statute.

Knowledge must be alleged always in the indictment, Moens vs. U. S., 267 Fed. 318. It is not difficult for one to imagine how an innocent person might, without knowing the character of a writing, mail it, but such a person should not be held guilty if there was no knowledge of the character of the writing.

For a judicial definition of the word "indecent" and the word "filthy" as used in the present statute see U. S. vs. Davidson, 244 Fed. 523.

The character of the addressee is not the subject of the inquiry. In other words it is immaterial what sort of a character the addressee may be in order to make the communication offensive; it is the words, the subject matter and not the person, Robbins vs. U. S., 229 Fed. 987.

For an indictment and the necessary ingredients thereof to plead an offense under this statute, for the presenting of conception see Wetzel vs. U. S., 233 Fed. 984.

The indictment must describe the offense, as if one is indicted for conveying information with respect to the performance of an abortion, there must be no uncertainty in pleading that he was really willing to perform such an operation; that is there must be the indication of a positive intent that the act will be done and not merely that it may perhaps be performed, Bours vs.U . S., 229 Fed. 960.

The conclusion of an indictment may be disregarded, Frisbie vs. U. S., 157 U. S. 160.

For the essentials of an indictment and an expression as to when such essentials amount to "due process," see Fontana vs. U. S., 262 Fed. 283.

§ 53b. **Indictment.**—Ordinarily documents essential to the charge of crime must be sufficiently described to make the contents thereof known, yet matter too offensive or indecent to be spread on the record may be referred to in a manner sufficient to identify it and advise the accused of the document intended without setting forth its contents and this course is applicable to an indictment under this statute. Bartel vs. U. S., 227, U. S. 427. An indictment may set out a part only of a printing. Winters vs. U. S., 201 Federal 845. An omission from an indictment may be satisfied by a bill of particulars which will be granted as a matter of course. Coomer vs. U. S., 213 Federal, 2; Bartel vs. U. S., 227, U. S., 427. U. S. vs. Kennerly, 209 U. S, 219.

I believe that the whole instrument in which is contained the alleged improper matter, whether book, pamphlet, paper, or writing, should be submitted to the jury and included by them in their consideration as to whether the alleged matter is unmailable. U. S. vs. Kennerly, 209 Federal, 119; Clark vs. U. S., 211 Federal 917.

§ 53c. **Matter Intended to Incite Arson, Murder or Assassination.**—The Act of March 4, 1911, added a most unusual and seemingly incongruous meaning to the word "indecent" as used in this section, such amendment being, "That the term 'indecent' within the intendment of this section shall include matter of a character tending to incite arson, murder or assassination." 36 Stats. L. 1335, page 302, 1st Vol. 1912, Supp. Fed. Stats. Ann.

§ 53d. **Prize Fight Films.**—On July 31, 1912, the Congress passed an Act providing as follows:

"§ 1. That it shall be unlawful for any person to deposit or cause to be deposited in the United States mails for mailing or delivery or to deposit or cause to be deposited with any express company or other common carrier for carriage, or to send or carry from one state or territory of the United States or the District of Columbia to any other state or territory of the United

States or the District of Columbia, or to bring or cause to be brought into the United States from abroad any film or other pictorial representation of any prize fight or encounter of pugilists, under whatever name, which is designed to be used or may be used for purposes of public exhibition.

"§ 2. That it shall be unlawful for any person to take or receive from the mails or any express company or other common carrier, with intent to sell, distribute, circulate or exhibit any matter or thing herein forbidden to [sic] be deposited for mailing, delivery or carriage in interstate commerce.

"§ 3. That any person violating any of the provisions of this Act shall for each offense, upon conviction thereof, be fined not more than one thousand dollars or sentenced to imprisonment at hard labor for not more than one year, or both at the discretion of the court." 37 Stats. L. 241, page 326, 1914 Supp. Fed. Stats. Ann.

Manifestly the statute is directed solely at the sending of such prize fight films, etc., as are intended for public exhibition or for the purpose of sale, distribution or circulation, which words seem to be broader than the word exhibition. The sending of such a film for one's own convenience and without any thought of exhibiting or selling or circulating the same would, of course, not be unlawful.

The statute not only inhibits the sending of films but, likewise any pictorial representation, which would include photographs of any other reproduction of such an encounter or exhibition preserved by the arts of science. It is not thought that the statute would prevent the sending of films or pictorial representations of a simulated prize fight. In other words, the film or representation, in order to be unlawful, must reproduce a genuine prize fight, that is a fight for a prize or title or belt of championship, and must be an encounter between pugilists.

§ 53d.d. **Paid Editorial, etc. to be marked "Advertisement."**—Congress, on August 24, 1912, passed the following statute; "That all editorial or other reading mat-

ter published in any such newspaper, magazine, periodical for the publication of which money or other valuable consideration is paid, accepted or promised, shall be plainly marked 'advertisement.' Any editor or publisher printing editorial or other reading matter for which compensation is paid, accepted or promised, without so marking the same, shall, upon conviction in any court having jurisdiction, be fined not less than $50 nor more than $500.'' 37 Stats. L. 553, page 316, 1914 Supp. Fed. Stats. Ann.

The word ''such'' as used in this statute relates to publications that are admitted into the United States mails as second class matter.

This section is not unconstitutional as infringing the freedom of the press and depriving one of property without due process of law. Lewis Publishing Co. vs. Morgan, 229 U. S., 288.

This Act, in the Section immediately preceding, also provides that the names of the owners of the publication, etc., shall be furnished the government at stated periods, but no penalty is provided for a failure to do so, save and except that the use of the mails shall be denied.

53d.d.d. **Matter Intended to Incite Arson, Murder or Assassination, Continued.**—In an indictment under this Sec. it is not necessary to set out the matter, though that is the proper pleading, U. S. vs. Wells, 262 Fed. 833.

An indictment may contain a count under Sec. 211 and a count under Sec. 212.

53d.d.d.d. **Espionage Act.**—During the world's war which begun in April 1917, so far as the United States is legally concerned, the Congress passed what was called an Espionage Act and the following cases are preserved in the reports as following the extent of such legislation and the judicial construction thereof. Debs vs. U. S., 249 U. S. 211; this case is based upon the obstruction of recruiting.

For false reports and statements, Kirchner vs. U. S., 255 Fed. 301, remarks Rhuberg vs. U. S., 255 Fed. 865. Book denouncing patriotism, Shaffer vs. U. S., 255 Fed. 886. Insubordination, Coldwell vs. U. S., 256 Fed. 805.

Expression of opinion, Sandberg vs. U. S., 257 Fed. 643. Intent, Schulze vs. U. S. 259 Fed. 189. Motion picture, Goldenstein vs. U. S., 258 Fed. 908. False reports, Foster vs. U. S., 253 Fed. 481. Public address, O'Hare vs. U. S., 253 Fed. 538. Examples, Doe vs. U. S., 253 Fed. 903 and U. S. vs. Binder, 253 Fed. 978; Sugar vs. U. S., 252 Fed. 79. Indictment, elements and essentials, U. S. vs. Schutte, 252 Fed. 213. Protection of Red Cross, U. S. vs. Nagler, 252 Fed. 217. Obstructing enlistment, U. S. vs. Nearing, 252 Fed. 223. Impeding enlistment, 252 Fed. 232. Refusal to subscribe to loan or Red Cross, U. S. vs. Pape, 253 Fed. 270. Means of support, etc., U. S. vs. Schulze, 253 Fed. 377. False questions, Pierce vs. U. S., 40 Sup. Ct. Rep. 205. False notarial certificate, U. S. vs. Blakeman, 251 Fed. 306. Denouncing war, U. S. vs. Boutin, 251 Fed. 313. Family conversation, Harshfield vs. U. S., 260 Fed. 659; Goldman vs. U. S., 245 U. S. 474. Publications, U. S. vs. Pierce, 245 Fed. 878. False statements, Moses vs. Patten, 244 Fed. 535. Legitimate criticism, Masses vs. Patten, 246 Fed. 24; Wolf vs. U. S., 259 Fed. 388; U. S. vs. Sugarman, 245 Fed. 605. Insubordination, U. S. vs. Kraft, 249F ed. 920. False statements and whole seditious act, U. S. vs. Hall, 248 Fed. 150.

53d.d.d.d.d. The prize fight film act was declared constitutional in Webber vs. Freed by the Supreme Court of the United States, 239 U. S. 325.

§ 54. **Libelous and Indecent Wrappers and Envelopes, Etc.**—Closely akin, and for the same practical purpose to Section 211, is Section 212 of the new Code. This section was the result of a series of acts, which resulted finally in the Act of September, 1888, First Supplement, 621, which is practically identical with the new Section. 212. Originally, scurrilous epithets by the Act of 1872, on postal cards and envelopes were alone prohibited. By the Act of March 3, 1873, the word "indecent" was added; by the Act of July 12, 1876, the words "lewd, obscene, or lascivious" as adjectives and the words "delineations, terms, or language" as nouns, were inserted;

and finally, by the Act of September 26, 1888, Section 212 reads as follows:

"All matter otherwise mailable by law, upon the envelope or outside cover or wrapper of which, on any postal card upon which any delineations, epithets, terms, or language of an indecent, lewd, lascivious, obscene, libelous, scurrilous, defamatory, or threatening character, or calculated by the terms of manner or style of display and obviously intended to reflect injurious upon the character or conduct of another, may be written or printed or otherwise impressed or apparent, are hereby declared non-mailable matter, and shall not be conveyed in the mails nor delivered from any post-office nor by any letter carrier, and shall be withdrawn from the mails under such regulations as the Postmaster General shall prescribe. Whoever shall knowingly deposit or cause to be deposited, for mailing or delivery, anything declared by this section to be non-mailable matter, or shall knowingly take the same or cause the same to be taken from the mails for the purpose of circulating or disposing of or aiding in the circulation or disposition of the same, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both."

Every decision and construction of the Act of 1888 is material aid in understanding the present law, because, as before stated, they are practically identical.

In a consideration of postal statutes and particularly such statutes as inhibit the use of this utility for what Congress has called improper and unlawful purposes, we must bear in mind that an unrestricted use is not one of the fundamental rights guaranteed by the Constitution. Warren vs. U. S., 183 Federal, 718. It is not material whether the objectional language is true or false or whether the accused was actuated by public spirit or private malice; hence the offering of a reward upon the outside cover of a piece of mail which reflects injuriously upon some person is against the law. Warren vs. United States, 183 Federal, 718.

The court must submit to the jury the determination of whether or not a delineation or other display is calculated to reflect injuriously upon the character of the person addressed. The reasons for this are just as strong as those urged in support of the submission of any other question of fact upon a plea of not guilty to the jury. The Court cannot determine, as a matter of law, that any

particular delineation or display is in violation of the statute. Of course, it is not meant to here indicate that the Court may not express his opinion thereon. He always has this right.

In United States vs. Dodge, 70 Federal, 235, the proprietor of a collection agency adopted a method of proceeding by which, on failure of debtors to pay on first demand, a dunning letter was sent through the mails, enclosed in a pink colored envelope, and if this did not receive a favorable response, another letter was sent enclosed in a black envelope, addressed in white letters. The purpose of these letters was universally known to the post-office employees. Having been arrested on a charge of violation of the Act of September 26, 1888, in respect to non-mailable matter, he sued out a writ of habeas corpus, and the Court held that the use of such envelopes was a delineation within the meaning of the statute, and that whether the effect was to reflect injuriously upon the character or conduct of the addressee was a question for the jury, upon a trial for the offense, for which reasons the prisoner was remanded. While the Court did not pass upon the identical question as to whether the determination of the injurious character of the delineations was for the jury, and not the Court, yet the decision is strongly persuasive. In United States vs. Brown, 43 Federal, 135, upon a demurrer to an indictment under this statute, the Court said:

"The respondent is indicted for depositing for mailing and delivery matter, upon the envelope of which the words 'Excelsior Collection Agency' were printed in large letters, and calculated by the terms ond style of display, and obviously intended to reflect injuriously upon the character and conduct of the person addressed.....To make a matter non-mailable and to constitute the offense, that the delineation is calculated and obviously intended to so reflect, must be apparent from an inspection of the envelope.....The manner of display might indicate clearly whether the words were placed there for injurious reflection upon that person, or for legitimate transmission of the contents of the envelope through the mails.....Whether the display of the words upon the envelope would support the averments of the indictment, would be a question of fact for a jury."

See also United States vs. Olney, 38 Federal, 328.

What Is Outside Cover or Wrapper?—A very interesting and vital question is raised by the case of the United States vs. Gee, 45 Federal, 194, wherein the District Judge held, that, "the statute applied only to matter exhibited upon an enclosing wrapper or cover and not to matter which is contained in the body of the thing mailed; that the statute being one constituting a criminal offense, it cannot be extended by construction to cases where there is no wrapper at all, even though such cases may be within the reason and policy of the enactment." This decision was with reference to a case arising upon the mailing and delivery of a large number of four-page printed circulars about the size of a sheet of note paper, upon the four pages of which was printed matter; being an account of certain dealings between the defendant and another; that these circulars, as deposited for mailing and delivery, had no separate wrapper or cover over them, but were folded twice into oblong shape, and the postage stamps placed upon the circulars themselves.

The evident purpose of the statute was to prevent patrons of the Post-office Department from sending through the mails such matter as would or might easily attract the eye of the distributing or handling clerks, by reason of its being uncovered. It is submitted that an attack upon another on a printed page of a newspaper or circular, upon which page the clerk or clerks must look to find the address of the one to whom the paper is going or must be delivered, is as apt to injure the addressee as though the matter were upon a postal card or an envelope, or upon a cover containing a newspaper, and that the one so offending placed it upon the outside for that particular purpose. The Century Dictionary, in defining the word "cover," says, "It is something which is laid, placed, or spread over, as the cover of a box, or the cover of a dish, or the cover of a bed, or the cover of a book." It is thought that the cover of a box, a dish, a bed, or a book, is a part of the article itself, and thus, the cover of a box is a part of a box, the cover of a dish is a part of the dish, the cover of a bed is a part of the bed, and the cover of a book is a part of a book. In United States

against Burnell, 75 Federal, 824, District Judge Woolson distinguishes the Gee case, and disagrees with it. The Burnell case was an indictment against the proprietor of a collection agency for having mailed and caused to be mailed a certain newspaper, on the first page of which a motto showed that its purpose was to collect debts, and a large part of the paper contained notices warning the public against persons alleged to have failed to pay their debts or asking information as to such persons. It appeared that when an account was sent to the agency for collection, the alleged debtor was notified that if not paid, the account would be advertised in such newspaper as being for sale, and the paper contained many such advertisements. It was apparent that the object of the paper was to coerce the payment of money. In mailing the paper, where more than one copy was to be sent to the same post-office, the name of the persons to whom the copies were to be delivered were placed on the front (outside) page. Then the papers for the office are rolled together in a package in one wrapper, and on that wrapper was written the name of the post-office. When the package reached the post-office, the office employees tore off the package wrapper, that they might find the names of the persons to whom the papers were to be delivered, and every clerk or carrier attached to that office through whose hands a copy thus sent had to pass, must look at this front (outside) page to ascertain the name of the addressee. Upon this state of facts, Judge Woolson held that "if the obnoxious matter is on the 'outside cover,' the statute is made against its mailing, even though such cover be not an 'enclosing wrapper or cover,' but overspreads or overlays the pamphlet or paper mailed."

This opinion is interesting and exhaustive, and clearly upholds that construction of the statute which makes it an offense to publish upon the outside page of a newspaper statements that reflect injuriously upon the character of the addressee.

Judge Evans, in United States vs. Higgins, 194 Federal, 539, chooses and follows the Gee case rather than the Burnell case, placing his decision upon the rule that laws

which create a crime ought to be so explicit that all men subject to their penalties may know of the acts it is their duty to avoid, and before a man can be punished his case must be plainly and unmistakably within the statute.

Duns and Postal Cards.—In United States against Smith, 69 Federal, 971, the following language has been held to come within the Act, when upon a postal-card: "You have been fighting time all along.....I will garnishee and foreclose, but I dislike to do this if you will be half white." In United States vs. Davis, 38 Federal, 326, the following was held to be a violation: "You are sharp. All of you are on the beat." In United States vs. Olney, 38 Federal, 328, the Court submitted the following language to the jury, and the jury held that it was a violation, to wit: "Mr. Editor: I though that you were publishing a paper for the wheel, but I see nothing but rotten democracy. I am a republican and a wheeler, and you can take your paper and democracy and go to hell with it." So also, the following were held to be violations: "Your rent was due Thursday, February 25, 1892, and has not been paid, and if not paid by Thursday, March 3, 1892, I will place the matter in the hands of an officer," United States vs. Elliott, 51 Federal, 807. "You have promised, and do not perform, and I see very plainly you do not intend to pay any attention to my letters or your agreements," U. S. vs. Simmons, 61 Federal, 640. In United States vs. Boyle, 40 Federal, 664, the Court held that this language, to wit, was not a violation: "Please call and settle account which is long past due, and for which our collector has called several times, and oblige," but in the same decision the Court held that the statement, "If it is not paid at once, we shall place the same with our lawyer for collection," was not mailable, and was a violation. For other cases bearing upon this section, see United States vs. Pratt, 27 Federal, Cases No. 16082; United States vs. Jarvis, 59 Federal, 357; in re Barber, 75, Federal, 980; United States vs. Smith, 11 Federal, 663; ex parte Doran, 32 Federal, 76; U. S. vs. Durant, 46 Federal, 753; U. S. vs. Loftin, 12 Federal, 671; U. S. vs. Elliott, 51 Federal, 807.

Of course, when the matter is obscene, lewd, or lascivious, then the authorities cited under Section 211 are applicable.

See also Griffin vs. U. S., 248 F. 6, and U. S. vs. Davidson, 244 F. 523, which treats of the different phases of these statutes; U. S. vs. Anderson, 268 F. 696 also offers some suggestions on the indictment; see also U. S. vs. Pendergrast with reference to postcards.

§ 55. **Use of the Mails for Fraudulent Purposes.**— The reliability, speed, and universality of the conveniences of the post-office establishment affords a revenue-bringing vehicle for the unscrupulous. Many sorts of frauds and schemes and artifices have, from time to time, flourished for a season. A proposition attractively stated in print, and addressed to a specific person, seems to contain much more magnetism than spoken words or general advertising. Just what per cent of the inhabitants of the United States are credulous, has perhaps never yet been determined, but the success of the fakir would seem to indicate that a very large part of the people, while they may not believe everything they see, do believe nearly everything they read, especially if it be addressed directly to them. Section 5480 of the old Code was an Act intended to bring to justice those who made this improper use of the mails. On March 2, 1889, 25 Stat. at Large, 873, I Vol. Sup. 694, this section was amended, broadening and bettering it.

Section 215 of the new Code contains all of the elements of the last amendment with some additional words and eliminations that make the Act comparatively complete. The new Section also makes the punishment commensurate with the offense, the penalties of the old statute being entirely too light. Section 215 reads as follows:

"Whoever, having devised or intending to devise any scheme or artifice to defraud, or obtaining money or property by means of false or fraudulent pretenses, representations or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, bank note, paper money, or any obligation or security of the United States, or of any State, Territory, municipality, company, corporation, or person, or anything represented to be or intimated or held out to be such

counterfeit or spurious article, or any scheme or artifice to obtain money by or through correspondence, by what is commonly called the 'saw-dust swindle' or 'counterfeit-money fraud,' or by dealing or pretending to deal in what is commonly called 'green articles,' 'green coin,' 'green goods,' 'bills,' 'paper goods,' 'spurious Treasury notes,' United States goods,' 'green cigars,' or any other names or terms intended to be understood as relating to such counterfeit or spurious articles, shall, for the purpose of executing such scheme or artifice or attempting to do so, place, or cause to be placed, any letter, postal card, package, writing, circular, phamphlet, or advertisement, whether addressed to any person residing within or outside the United States, in any post-office, or station thereof, or street or other letter box of the United States, or authorized depository for mail matter, to be sent or delivered by the post-office establishment of the United States, or shall take or receive any such therefrom, whether mailed within or without the United States, or shall knowingly cause to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such letter, postal card, package, writing, circular, phamphlet, or advertisement, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both."

Elements of the Offense.—The indictment must charge and the proof must show, (a) the devising of a scheme or artifice to defraud; (b) that such scheme or artifice to defraud is to be effected by opening or intending to open correspondence with such other person or persons through the post-office establishment or by inciting such other persons to open communication with them; and, (c) that a letter or packet or some other mail matter enumerated in the statute must be deposited or caused to be deposited for mailing and delivery in the United States mail. United States vs. Long, 68 Federal, 348; Milby vs. U. S., 109 Federal, 638; U. S. vs. Post, 113 Federal, 852; Horman vs. U. S., 116 Federal, 350; Hume vs. U. S., 118 Federal, 689; Stuart vs. U. S., 119 Federal, 89; Ewing vs. U. S., 136 Federal, 53; Brown vs. U. S., 143 Federal, 60; Rumble vs. U. S., 143 Federal, 772.

Rimmerman vs. U. S., 186 Federal, 387; Horn vs. U. S., 182 Federal, 721; Humes vs. U. S., 182 Federal, 485. The elements must be affirmatively charged on by the Court and found by the jury. Smith vs. U. S. 208 Federal, 133.

Whether the element which I have called "b" is to be present in violations under the section, remains to be

seen, because the old section differed from the new in that the old contained the words "to be effected by either opening or intending to open correspondence or communication with any person, ... or by inciting such person or any person to open communication with the person so devising or intending," which the new does not contain. The new section simply demands, (1) the formation of a scheme or artifice to defraud; (2) "shall for the purpose of executing such scheme or artifice, ... place or cause to be placed, any letter, etc., ... to be sent or delivered by the post-office establishment." It thus would seem, in the absence of the words "other person," that one might, in the execution of a scheme to defraud, wherein the use of the mails was contemplated, as required by the statute, devise a scheme, within the meaning of the statute, so as to subject himself to the penalty of the statute, and only use the mail in addressing communications to himself. This was not possible under the old statute. In Erbaugh vs. United States, 173 Federal, 434, the Circuit Court of Appeals for the Eighth Circuit held that one who devises a fraudulent scheme to be effected by opening or intending to open correspondence or communication with himself, by means of the post-office establishment of the United States, is guilty of no offense under 5480. The elements, therefore, of an indictment under the new statute, are the same as those under the old statute, with the possible exception, as indicated above, that one may, under the new statute, be guilty of the offense, even though he use the mail only for the purpose of addressing himself, and not for addressing his intended victim or victims.

The Courts have construed the new section with reference to the element b and have held as I indicated that I felt they would hold. In other words, under the new statute it is not necessary that the scheme or artifice to defraud should have contemplated as a part of itself the further idea that the post-office establishment should be used. There are but two elements of the statute under discussion and they are the elements a and c, namely the devising of a scheme or artifice to defraud, and the plac-

ing or causing to be placed for transmission and delivery a letter or packet in the United States mails. U. S. vs. Young, 215 Federal, 268; U. S. vs. Goldman, 207 Federal, 1002; U. S. vs. Young, 232 U. S., 155; U. S. vs. Maxey, 200 Federal, 1001.

Broadly speaking, the section "includes everything designed to defraud by representations as to the past or present, or suggestions and promises as to the future. The significant fact is the intent and purpose ..... It was with the purpose of protecting the public against all such intentional efforts to despoil and to prevent the post-office from being used to carry them into effect, that this statute was passed; and it would strip it of value to confine it to such cases as disclose an actual misrepresentation as to some existing fact, and exclude those in which is only the allurement of a specious and glittering promise." 5 Fed. Stats. Durland vs. United States, 161 U. S. 306. See also Horman vs. U. S., 116 Federal, 350. In U. S. vs. Sherwood, 177 F., 596, Court simplifies indictment. In Foster vs. U. S., 178 Federal, 165, C. C. A., held scheme need not be repeated in second and succeeding counts, if laid well in first and appropriately referred to.

Actual misrepresentation is unnecessary provided the representations that were made were intended and calculated to deceive and defraud, McCarthy vs. U. S., 187 Federal, 117, though "puffing" is not a violation, that is to say use of extravagant statements is not necessarily an offense particularly if the party himself believes. Harrison vs. U. S., 200 Federal, 662. Neither is a scheme that is visionary necessarily fraudulent, Sandels vs. U. S., 213 Federal, 569. It must be a scheme to defraud the addressee and must be "scheme" or "device" and an offer to sell loaded dice and marked cards is not such a scheme. Stockton vs. U. S., 205 Federal, 462.

Threatening Letter.—A scheme to extort money by threatening to injure the reputation and character of others by accusing them of heinous crimes in default of payment of a large sum of money to the accusing, is a scheme to defraud, within the meaning of this section.

Fed. Stats. Ann., 5, page 976. Horman vs. United States, 116 Fed. 350, which affirms the lower court in the case of the United States vs. Horman, 118 Federal, 780.

A scheme to secure money from one whose photograph was secured in a compromising position with a woman, under threat that the photograph would be published, is within the statute. United States vs. Goldman, 207 Federal, 1002. Affirmed in Goldman vs. U. S., 220 Federal, 57.

Matrimonial agency, good indictment, see Glinn vs. U. S., 177 Federal, 679.

Ordering Goods Without Intention to Pay.—A fruitful source of revenue for this class of frauds has been the use of the mails in ordering goods and merchandise, for which they did not intend to pay. The Courts have very justly held that such acts evidence the formation of a scheme within the meaning of this section, and the intent to not pay is drawn from the facts of the particular, case, as, for instance, misrepresentation as to the solvency of the person or firm ordering, misstatement as to the sort of business engaged in, speedy sale of the goods and merchandise when received at a price below cost or at cost, and other facts that evidence no legitimate intent to engage in a legitimate business. United States vs. Woodson, 35 Federal, 358; United States vs. Staples, 45 Federal, 195. It must be borne in mind that the intent not to pay must exist before the credit is sought—must precede the order for the goods. United States vs. Wootten, 29 Federal, 702.

In United States vs. Evans, 153 U. S., 584, Mr. Justice Brown says:

> "If a person buys goods on credit in good faith, knowing that he is unable to pay for them at the time, but believing that he will be able to pay for them at the maturity of the bill, he is guilty of no offense, even if he be disappointed in making such payment. But if he should purchase them knowing that he will not be able to pay for them, and with an intent to cheat the vendor, this is a plain fraud, and made punishable as such by statutes in many states."

A scheme to sell false certificates to old soldiers is a violation. Blanton vs. U. S., 213 Federal, 320. Ordering

whiskey with no intention to pay and securing the bill of lading by false representations and sending a check that there was no intention should be paid, constitute a scheme within the meaning of the statute. Charles vs. U. S., 213 Federal, 707. The making of a false financial statement to a commercial agency with knowledge that it was false and that it would be used as a basis for the sale of goods on credit is an offense under this statute. Todd vs. U. S., 221 Federal 205; Scheinberg vs. U. S., 213 Federal, 758. Selling stock in a corporation for the alleged promotion of the wireless telegraph by false representations is a misuse of the mails. Parker vs. U. S., 203 Federal, 950. The selling of cheap books by representation of excessive value, etc., is false, even though matter of opinion. United States vs. Farmer, 218 Federal, 929.

Indictment.—It is absolutely necessary that the indictment allege the sort of a scheme or artifice which sort must include a determination to use the Post-office establishment, and in addition must allege that the defendant deposited or caused to be deposited in the Post-office for mailing and delivery, mail matter, in pursuance of the scheme.

It is true that proof under this allegation will support a conviction if it shows that the defendant's agent deposited the matter, and this even though the defendant may have been in another district. In Hume vs. United States, 118 Federal, 689, which was a case under the old statute, when the punishment made the offense a misdemeanor, Judge Shelby, speaking for the Circuit Court of Appeals, held that even assuming that the offense is a felony, the presence of the defendant at the time the letters are mailed, in furtherance of a scheme denounced by the statute, is not necessary to make him a principal in the crime. So, also, in United States vs. Fleming, 18 Federal, 907, it was held that it was not necessary, in order to make out the offense, that the defendant actually, with his own hands, placed a letter or packet in the post-office. If the proof show that it was done through his agency or direction, by an agent or employee, employed and directed for that purpose, it is sufficient to

meet the allegations of the bill and the demands of the statute.

It should also be borne in mind in this connection that under the authority of United States vs. Loring, 91 Federal, 881, which seems to have been generally followed, it is not necessary to set out all of the letters in full in the indictment, nor to give the substance of their contents; nor is it necessary that it should appear from the letters that they were part of the fraudulent scheme. The indictment may make a general allegation that there were various and sundry and divers letters deposited and caused to be deposited to divers and sundry persons to the grand jurors unknown, if such allegations be true, and then set out particularly and accurately one letter, and if the defense desires to know the names and addresses upon the letters covered in the blanket portion of the indictment, they may obtain the same from the prosecuting officer by a proper request for a bill of particulars. addressed to the Court.

A letter set out particularly in the indictment will support a charge under the statute, even though the letter may be ever so formal, provided the letter was sent by the defendant with a view of executing his scheme to defraud. Durland vs. United States, 161 U. S., 306. Letters, however, which do not seem to have been written for the purpose of accomplishing any fraud, are not an offense, of course. United States vs. Ryan, 123 Federal, 634; United States vs. Owens, 17 Federal, 72; Stewart vs. U. S., 119 Federal, 89. Similar letters to the one set out in the bill are always competent testimony, and may be introduced on the question of intent. United States vs. Watson, 35 Federal, 358; and under the authority of the United States vs. Sauer, 88 Federal, 249, the venue of the prosecution is determined by the point of mailing the letter or the packet and prosecution must be had in the district in which the letter or packet was mailed. The Circuit Court of Appeals for the Ninth Circuit, speaking through Judge Wolverton, in Walker vs. United States, 152 Federal, 111, determined that all letters intended in some way to be utilized in connection with the scheme,

are admissible, and quotes in support of that doctrine, the expression of Justice Brewer in the Durland case, cited supra, in these words:

"We do not wish to be understood as intimating that in order to constitute the offense, it must be shown that the letters so mailed were of a nature calculated to be effective in carrying out the fraudulent scheme. It is enough if, after having devised a scheme to defraud, the defendant, with a view to execute it, deposits in the post-office letters which he thinks may assist in carrying it into effect, although, in the judgment of the jury, they may be absolutely ineffective therefor."

In Lemon vs. United States, 164 Federal, 953, Circuit Judge Adams, speaking for the Circuit Court of Appeals for the Eighth Circuit, said:

"The contention that the statements and letters set out in the several counts of the indictment negative the alleged fraudulent scheme, cannot be sustained. The mailing of a letter in the execution or attempted execution of a fraudulent scheme, is the gist of the offense denounced by the statute. It is that act, and it alone, which confers jurisdiction upon the Courts of the United States to punish devisors of fraudulent schemes. The letter which is mailed is not required to recite the whole scheme or be in itself effective to execute it. All that is imperatively required is that the letter mailed should be one calculated or designed to aid or assist in the execution or attempted execution of a scheme or device."

The Circuit Court of Appeals for the Third Circuit quotes with approval in re Henry, 123, U. S., 373, followed in De Barr, 179, U. S. 320, the following: "The Act forbids, not the general use of the post-office for the purpose of carrying out a fraudulent scheme or device, but the putting in the post-office of a letter or packet, or the taking out of such a letter or packet from the post-office in furtherance of such a scheme. Each letter so taken out or put in constitutes a separate and distinct violation."

Miller vs. United States.—The Circuit Court of Appeals for the Seventh Circuit, in the case of Miller vs. U. S., 174 Federal, 35, seems to run dangerously near an antagonistic decision to the Durland case, decided by the Supreme Court, cited supra. It is true that the Miller case holds that the indictment charged no offense because it did not charge that the stock sold was not worth

the price paid for it, but the decision in reaching this particular point, which it decides, contains many expressions that might lead the practitioner to infer a dangerous broadness as to what is not comprehended within the meaning of the statute. It is true that all the decisions are a unit upon the proposition that there must be an intention to injure the person addressed or sought to be reached, by defrauding him of something which he already has, but it must be equally ever present in one's mind that the statute inhibits the formation of a scheme or artifice to defraud, wherein misrepresentations are made through the United States mail for the purpose of securing something of value from the person to whom such representations are made. In the Miller case, the devisor of the scheme to defraud was the President of a corporation. The corporation decided to increase its capital stock from $250,000 to $400,000. The corporation was an actual manufacturer, employing from one hundred to one hundred fifty men, the plant and good will of which was worth many thousands of dollars. The defendant represented through the mails, for the purpose of selling this increased stock, that the corporation desired to open branch houses for the sale of its goods and to employ therein managers at fixed salaries, besides a share of the profits, and that the company was earning a profit of 20 per cent and paying 6 per cent dividend to holders of its stock out of its net earnings; that as a matter of fact the company was not earning 20 per cent, or any per cent, and was not paying any dividends; that pursuant to these representations, the stock was sold in blocks of five thousand dollars each.

I do not fuss with the Court for determining that the indictment should have alleged that the stock was not worth what the purchasers paid therefor, but it does seem to me that the allegations otherwise contained a full and complete statement of such a case as comes easily within the meaning of the statute. There was a determination to increase the stock; the determination to increase the stock was due to the fact that the defendant needed money. In order to realize the money, representations

were made with reference to the earning capacity of the plant, which, therefore, controlled the value of the stock, and made it desirable or undesirable. The representations made with reference to the stock and the plant, its earning capacity, and dividends, were untrue and false, and made through the United States mail. It is not thought that any safe counselor would advise his client to engage in a similar enterprise.

Punishment and Number of Counts.—That paragraph of the 1889 Amendment, which related to the number of offenses committed within a certain given time, and which was construed in Hall vs. United States, 152 Federal, page 420, and which has been the occasion of some difference of opinion, is not entered into this statute. Late decisions, however, upon that old section, are the following: United States vs. McVickar, 164 Federal, 894: Lemon vs. United States, 164 Federal, 953.

A consideration of the following cases, for the purpose of finding illustrations of the effectiveness and limitation of the statute, will be interesting: United States vs. Smith, 166 Federal, 958; U. S. vs. Raish, 163 Federal, 911; Faulkner vs. U. S., 157 Federal, 840; U. S. vs. Dexter, 154 Federal, 890; Booth vs. U. S., 154 Federal, 836; Gourdain vs. U. S., 154 Federal, 453; Dalton vs. U. S., 154 Federal, 61; Francis vs. U. S., 152 Federal, 155; Van Dusen vs. U. S., 151 Federal, 989; U. S. vs. White, 150 Federal, 379; Brooks vs. U. S., 146 Federal, 223; U. S. vs. Hess, 124 U. S., 483; in re Henry, 123 U. S., 372; Stokes vs. U. S., 157 U. S., 187; Streep vs. U. S., 160 U. S., 128; Brown vs. U. S., 143 Federal, 60; U. S. Etheridge, 140 Federal, 376; Betts vs. U. S., 132 Federal, 228; Packer vs. U. S., 106 Federal 906; Tingle vs. U. S., 87 Federal, 320; U. S. vs. Smith, 45 Federal, 561.

See Colt vs. U. S., 190 Federal 305, in which it was held that evidence of other like offenses in order to show intent, is admissible.

Various indictments charging this offense may be consolidated. Emmanuel vs. U. S., 196 Federal 317.

§ 55a. **Other Illustrative Cases.**—A scheme to defraud by means of fraudulent bounty claims for killing

wolves may be properly laid under this statute. Fall vs. U. S., 209 Federal, 547. The Court said, in reversing this case for the exclusion of testimony upon the objection of the Government, that all evidence is to be received which tends to refute any presumption or proof of an evil intent. There must have been a scheme or artifice to defraud, which necessarily includes the intention to defraud, and such intent is the very essence of the offense. Variance in indictment, see U. S. vs. Smith, 222 Federal, 165.

A conviction in the case of Fane vs. U. S., 209 Federal, 525, for inducing false homestead entries upon government lands was reversed on account of the erroneous admission of testimony and the Court further held in this case that it was neither criminal nor unlawful to do or to conspire to do that which the law does not prohibit, but recognizes may be lawfully done without prejudice or injury to the United States or the State, following United States vs. Biggs, 211 U. S., 597.

In the case of Bruce vs. U. S., 202 Federal, 98, the Court of Appeals reversed the conviction on the ground that the Court had erred in refusing to charge that the fraud was not in the fact that morphine was employed as a part of the treatment to cure the morphine habit. In other words, one having advertised through the mails to cure the morphine habit, he would not be precluded from the use of morphine for that purpose, provided as a matter of fact it was a recognized treatment for the habit. Matters of opinion are difficult indeed to prove as a fact and can hardly be made the basis of successful prosecution. Bruce vs. U. S., 202 Federal, 105; American School vs. McAnnulty, 187 U. S., 104.

An indictment which charges doctors with having pretended to be skilled and eminent physicians in the treatment of various diseases and which is insufficient in allegation, must be attacked by demurrer or motion to quash before verdict and unless the defendant's character is put in issue proof of other offenses is inadmissible and is reversible. Dyar vs. U. S., 186 Federal, 620; U.

S. vs. Smith, 222 Federal, 165; Moses vs. U. S., 221 Federal, 863.

An intent to defraud is an absolute essential and without such an allegation an indictment is fatally defective, Blackman vs. U. S., 186 Federal, 965. The persons must be defrauded. Wilson vs. U. S., 190 Federal, 427; Stockton vs. U. S., 205 Federal, 462.

55b. **Illustrative Cases of Fraudulent Use of the Mail.** The fraudulent use of the mail statute continues to be one of the most useful. In fact care must be taken lest under it, jurisdiction over frauds that really does not belong to the Federal courts be attempted. The new statute excludes the theory that the scheme must include the use of the mail; it is sufficient now if the mail is used whether there was an original intention so to do, Smith vs. U. S., 267 Fed., 665. In U. S., vs. Comyns, U. S., Sup. Ct., Jan. 1919, it was held that a land scheme was a violation and the case also approved the form of an indictment. For other indictments, McClendon vs. U. S., 229 Fed., 523; Gardner vs. U. S., 230 Fed., 575; Robins vs. U. S., 262 Fed., 126. Wilson vs. U. S., 275 Fed., 307.

A pecuniary loss is not essential to constitute a violation was held in Wine vs. U. S., 260 Fed., 911. For sample cases of the improper use of the mail to sell stock see Tjosevig vs. Boyle, 268 Fed., 813, and Rowe vs. Boyle, 268 Fed., 809. See also Lyman vs. U. S., 241 Fed., 945. Fraud practiced does not fall within the statutes unless the scheme was so in its inception, U. S. vs. Bachman, 246 Fed., 1010; a scheme to pretend to locate government land is a violation, U. S. vs. Comyns vs. U. S., Sup. Ct., Jan. 1919. Names of the victims and the time the scheme to defraud was determined upon need not be known, Bonfoey vs. U. S., 252 Fed., 802.

For a fraudulent order against a seller of a sexual rejuvenator, etc., see Leach vs. Carlisle, 267 Fed., 61; any evidence showing that the article will do what it is claimed for it is admissible, Hair vs. U. S., 240 Fed., 333; one letter is sufficient to show character, Gernert vs. U. S., 240 Fed., 403.

A conspiracy among doctors to declare an ailment curable regardless of the syptoms is a violation, Holsman vs. U. S., 248 Fed., 193.

When the letter is delivered by hand and afterwards another sends it through the mail, though the defendant knew that such was the custom, he committed no offense, was decided by the court in U. S. vs. Kenofskey, 235 Fed., 1019, but such decision was reversed by the Sup. Ct., on April 6, 1917, same case.

The depositing by another makes the offense, Rose vs. U. S., 227 Fed., 357.

The use of the mails after the completion of the offense is insufficient, U. S. vs. Dale, 230 Fed., 750.

An acquittal on a conspiracy count in an indictment makes a reversal of a conviction on the fraudulent use count necessary, Hart vs. U. S., 240 Fed., 911.

See the case of Badders vs. U. S., U. S., Sup. Ct., Fed. 1916, for a discussion of the statute.

As to healing and the virtue of medicines see, U. S. vs. Schlatter, 235 Fed., 381; Samuels vs. U. S., 232 Fed., 536.

A scheme to buy oil stock includes promises as to the future as well as to existing facts, Moffatt vs. U. S., 232 Fed., 522; Menefee vs. U. S., 236 Fed., 826.

Threats either by letter or otherwise is an offense under the act of Feb. 14, 1917, 10200A—see 64; with imprisonment up to five years or a thousand dollar fine or both, U. S. vs. Strickrath, 242 Fed., 151. A threat to kill must be intended to reach the party, U. S. vs. French, 243 Fed., 785. Un-communicated, offense, when, U. S. vs. Stobo, 251 Fed., 689; threats vs. the President, see U. S. vs. Jasick, 252 Fed., 931 and U. S. vs. Metzdorf, 252 Fed., 933; and Pierre vs. U. S., 275 Fed., 352; one cannot pretend that a threat was a joke unless it was made known at the time that it was such, Raganshky vs. U. S. 253 Fed., 643; Which case also defines "wilfully."

An application for a position which mis-states age, salary, etc., is not an offense, Underwood vs. U. S., 267

Fed., 412. Pretending to have spiritual power is a violation, Crane vs. U. S., 259 Fed., 480.

False credit statements are violations of these statutes, Kaplan vs. U. S., 229 Fed., 389; Bettman vs. U. S., 224 Fed., 819; Tucker vs. U. S., 224 Fed., 833. Pretending to do a large collection business and intending to keep collections is a violation, Clark vs. U. S., 245 Fed., 112.

Others counts may refer to the first count for a detail of the scheme, Linn vs. U. S., 234 Fed., 543.

Trickery and chicanery are violations, Grant vs. U. S., 268 Fed., 443; as is pretention of having a fine drug, Edwards vs. U. S., 249 Fed., 686; a fraudulent collection agency, Freeman vs. U. S., 244 Fed., 2.

The deposit by an innocent bank of a deposited check secured by fraud in the United States mails is deposited by the defendant, Spear vs. U. S., 228 Fed., 485, which case holds that the doctrine of reasonable doubt extends to all the elements of the offense.

Other illustrating cases are, exchange of property, Stubbs vs. U. S., 249 Fed., 571; Mounday vs. U. S., 225 Fed., 965; stock sale, Finnegan vs. U. S., 231 Fed., 561; McDonald vs. U. S., 241 Fed., 793; selling lands, Chambers vs. U. S., 237 Fed., 513; scheme to bring black mailing suits, McKelvey vs. U. S., 241 Fed., 801; to defraud depositors of bank by false statements of solvency, Sparks vs. U. S., 241 Fed., 777; chain of banks and use of mail incidental, Hendrey vs. U. S., 233 Fed., 5; worthless treatment by physician, Oesting vs. U. S., 234 Fed., 304. Physician pretending patient ill, Hughes vs. U. S., 231 Fed., 50, but an employee in such office is not guilty; Freman vs. U. S., 243 Fed., 354; protections and policies, New vs. U. S., 245 Fed., 710; use of mail by innocent agent as bank is imputed to the defendant, Spear vs. U. S., 246 Fed., 250; theory of medicine, etc., under this statute, U. S. vs. American Labatories, 222 Fed., 104.

§ 56. **The Civil Statute.**—Section 3929 of the old statute, amended by the Fifty-first Congress, as shown at page 804 of the first Volume of the Supplement, Act of September 19, 1890, gives the Postmaster General

power to deny the use of the United States mails to those conducting fraudulent schemes. Interesting cases growing out of the exercise of such power are Missouri Drug Company vs. Wyman, 129 Federal, 623, which recites exhaustively and learnedly cases bearing upon this question, and mentions and distinguishes the leading case of Magnetic Healing vs. McAnulty, 137 U. S., 94; 47 Law Ed., 90; Donnell Company vs. Wyman, 156 Federal, 415; Appleby vs. Chiss, 160 Federal, 984; Putnam vs. Morgan, 172 Federal, 450. The weight of authority under this statute seems to be that a Court will inquire into the evidence that was submitted to the Postmaster General, and upon which that official acted, but will not determine the weight of the evidence. The Postmaster General, being in the Executive Department of the Government, and empowered with certain duties that involve judgment and discretion, is not bound by the discretion and judgment of the Courts, provided he have before him evidence upon which to base his act.

More is not said with reference to this statute and this interesting jurisdiction of the Post-office Department, for the reason that its discussion does not belong in this work, it relating to civil remedies.

One seeking to enjoin the fraud order has the burden, etc., Hall vs. Wilcox, 225 Fed., 333.

See also U. S. vs. Burleson 41 Sup. Ct. Rep., 352, for an opinion bearing upon the denial of the second class privilege which is the same doctrine.

See Sec. 65.

§ 57. **Fraudulently Assuming Fictitious Address or Name.**—The meat of Section 216 in the new Code was an Amendment to the old Section 5480 of the Revised Statutes, and was an Act of the Second of March, 1889, 25 St. L., 873; First Supplement, 695.

In the new Code, however, the assumption of a fictitious, false, or assumed title, name, or address, for the purpose of conducting, prompting, or carrying on in any manner, by means of the Post-office establishment, any scheme or device mentioned in Section 215 of the new

Code, or any other unlawful business, is made a separate section.

The same punishment, however, is carried for violations of this section as that provided for violations of Section 215.

It is not sufficient, under this section, that one assume a false or fictitious name, or title to carry on a business, unless such business be unlawful or denounced by the terms of Section 215. In other words, a business that is lawful in itself, even though conducted under an assumed, fictitious, or false name, and though furthered through the post-office establishment, would not be an offense under this statute. In United States vs. Smith, 45 Federal, 561, in passing upon a case where a person devised a scheme which contemplated that he should assume the role of a Chinese physician and pretend to possess curative power, and to be able to minister to those ailing certain Chinese herbs, but who in fact never fitted up such apartments, nor put into execution the scheme, other than to make such representations, the Court held that the business must be specifically charged and its unlawful character disclosed, for it is not an offense within the statute, to assume a fictitious name in a lawful business.

In Tingle vs. United States, 87 Federal, 320, the Circuit Court of Appeals for the Fifth Circuit held that the indictment was defective, because it failed to allege in appropriate words that the alias and fictitious and false name set out in the indictment, to wit, Otho Aronson, was not in fact the name of a real person, and under this allegation in the bill, the Court charged the jury that they could convict the defendant whether or not Aronson was a real person, and this charge the Court held to be erroneous.

In other words, the decision would seem to indicate, though it does not so decide, that to be entirely safe, the prosecution must satisfy itself that the assumed name is not in reality the name of some actual person before it chooses to make the allegation in the bill. If the assumed name were in fact the name of a genuine

person, then it is thought that the bill could not allege, and stand the test, that the name so used for the unlawful business was in fact fictitious and false. There should be appropriate allegations under a different portion of the law, or rather, as the law now stands, the case would be a fraudulent use of the mail, under Section 215, instead of Section 216.

§ 58. **Lottery, Gift-Enterprise, Etc., Circulars, Etc., Not Mailable.**—Thomas, in his interesting volume which treats exhaustively some postal offenses which include lottery violations, calls our attention to the fact that the lottery as a method of gambling has prevailed from the remotest antiquity. In England, Italy, France, Germany, Austria, Spain, Holland, Denmark, Japan, China, Mexico, and many of the South American Republics, lotteries not only have flourished, but still live and thrive. The life of the lottery in the United States was active and fortune producing. The public conscience, however, first pricked in some of the old countries, notably England, aroused itself in the United States, and various state legislatures attempted to rid this country of this system of gambling. It was not until 1872, however, that Congress took a hand in the fight, giving us Section 3894, of the old Statute, which, while a move in the right direction, was rather puny, and not at all strong enough to combat the gigantic power and force of the deep-rooted evil. Later, September 19, 1890, 26 St. L., 465, First Volume Supplement, 803, came a substitute for 3894, under which much effective prosecution was had. On March 2, 1895, 28 St. L., 963, Second Volume Supplement, 435, came an assisting and auxiliary Act, which left in force all of the old statutes, and provided some new provisions. This was the last lottery act before the new code. Under this legislation, the lottery, and practically every other scheme involving a chance or draw, has been driven from this country. The law inhibits the passing of lottery matter either through the mails or by any private carrier from one state to another, or from another country to the United States, or from the United States to another country. The sending of lot-

tery matter, as defined in the statute, which includes letters or circulars or any sort of an advertisement relating thereto, by any of the post-office facilities, for never so short a distance, is a violation; the sending of any such matter by private conveyance from one state to another state, or across the border from one country to another country, is a violation.

The new law, or Section 215, reads as follows:

"No letter, package, postal card, or circular, concerning any lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance; and no lottery ticket or part thereof, or paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise or similar scheme offering prizes dependent in whole or in part upon lot or chance; and no check, draft, bill, money, postal note, or money order, for the purchase of any ticket or part thereof, or of any share or chance in any such lottery, gift, enterprise, or scheme; and no newspaper, circular, phamphlet, or publication of any kind containing any advertisement of any lottery, gift, enterprise, or scheme of any kind offering prizes dependent in whole or in part upon lot or chance, or containing any list of the prizes drawn or awarded by means of such lottery, gift enterprise, or scheme, whether such list contains any part or all of such prizes, shall be deposited in or carried by the mails of the United States, or be delivered by any postmaster or letter carrier. Whoever shall knowingly deposit or cause to be deposited, or shall knowingly send or cause to be sent, anything to be conveyed or delivered by mail in violation of the provisions of this section, or shall knowingly deliver or cause to be delivered by mail anything herein forbidden to be carried by mail, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both; and for any subsequent offense, shall be imprisoned not more than five years. Any person violating any provision of this section may be tried and punished either in the district in which the unlawful matter or publication mailed, or to which it was carried by mail for delivery according to the direction thereon, or in which it was caused to be delivered by mail to the person to whom it was addressed."

It will be noticed that every possible term indicating latitude in the old statutes has been incorporated into the new section, and in addition thereto, it authorizes the trial of any offender in either the district wherein the matter was deposited in the mails, or in the district where the same was taken from the mails. The statute,

however, continues to contain the original weakness of the old statutes, to wit, an indictment which charged merely the depositing of a lottery ticket, etc., purporting to be or represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, etc., would not be sufficient to sustain a conviction where the proof only showed the deposit of tickets, etc., evidencing a drawing that had already taken place. The tickets, to make an offense under that portion of the statute, must be for a future drawing; otherwise, it would not be a share or interest in or dependent upon the event of a lottery, etc. It is quite true that the indictment could include other portions of the statute, as, for instance, that the tickets, even though representing a past drawing, were advertisements of the lottery, and, therefore, contraband and unlawful. In France et al. vs. United States, 164 U. S., 674; 41 Law Ed., 595, the Supreme Court of the United States, speaking through Mr. Justice Peckham, said:

"The lottery had already been drawn; the papers carried by the messengers were not, then, dependent upon the event of any lottery. The language as used in the statute looks to the future. The papers must purport to be or represent an existing chance or interest, which is dependent upon the event of a future drawing of the lottery. A paper that contains nothing but figures, which in fact relate to a drawing that has already been completed, and one that is past and gone, cannot properly be said to be a paper certificate or instrument as described in the statute. It purports to show not interest in or dependent upon the event of any lottery. If the lottery has been drawn, the interest is no longer dependent upon it. The condition upon which the bet or the interest was dependent has happened; the solution of the problem has already been arrived at; the bet has already been determined. The bare statement of that solution or determination, placed on paper, does not impart to that paper the character of a certificate or instrument purporting to be or represent a ticket etc., dependent upon the event of a lottery. From the statement upon the paper, the agent may acquire the knowledge which will enable him to say who has won, but the book or the paper does not purport to be, and is not, a certificate, etc., within the Act of Congress."

It may, therefore, be contended that Section 213 is no broader in the way of remedying this defect than was

the original law. The Act of March 2, 1895, still stands as the only Act that makes it against the law to transport by private carrier from one state to another. In 125 Federal, page 617, United States vs. Whelpley, the Court held that the Act of 1895 did not prohibit the transportation of lottery tickets from a state to the municipality of the District of Columbia, and also that the section did not prohibit the transportation of lottery tickets from one state "through" another state or states, where the ultimate destination of the shipment was not within one of the United States. See also United States vs. Ames, 95 Federal, 453, which held that the transportation of lottery tickets from a state to a territory is not within the statute. In this last case, however, the point of great importance to the life and validity of the Act of March 2, 1895, was, whether Congress had the power, under the Commerce clause of the Constitution, to prohibit the transportation of lottery matter from one state to another state in the United States, by carriers or persons that were not government utilities. Circuit Judge Jenkins held the law to apply fully. Thereafter, in the same case, styled Champion vs. Ames, in 188 U. S., 321; 47 Law Ed., 492, Mr. Justice Harlan, speaking for the Court, settled for all time the effectiveness of the new Act. The writer had the honor to draw the indictment passed upon in that case, and each of the defendants was afterwards convicted at the Dallas Division of the Northern District of Texas. In that opinion, Mr. Justice Harlan, after reviewing extensively the authorities, the Court having ordered a re-argument, said:

"It was said in argument that lottery tickets are not of any real or substantial value in themselves, and, therefore, are not subjects of commerce. If that were conceded to be the only legal test as to what are to be deemed subjects of the commerce that may be regulated by Congress, we cannot accept as accurate the broad statement that such tickets are of no value.....These tickets were the subject of traffic; they could have been sold; and the holder was assured that the company would have paid to them the amount of the prize drawn. That the holder might not have been able to enforce his claim in the courts of any country making the drawing of lotteries illegal, and forbidding

the circulation of lottery tickets, did not change the fact that the tickets issued by the foreign company represented so much money payable to the person holding them, and who might draw the prizes affixed to them. Even if a holder did not draw a prize, the tickets, before the drawing, had a money value in the market among those who chose to sell or buy lottery tickets. In short, a lottery ticket is a subject of traffic, and is so designated in the Act of 1895.....We are of the opinion that lottery tickets are subjects of traffic, and, therefore, are subjects of commerce, and the regulation of the carriage of such tickets from state to state, at least by independent carriers, is a regulation of commerce among the several states."

§ 59. **What Is a Lottery or Chance?**—In Horner vs. United States, 147 U. S., 449, the Supreme Court of the United States in effect determined that whatever amounted to a distribution of prizes by lot was a lottery, no matter how ingeniously the object of it might be concealed. In United States vs. Wallis, 58 Federal, 942, the Court held that the language of the statute is sufficiently comprehensive to include any scheme in the nature of a lottery, and it may be sufficient to say, said the Court, that this embraces the elements of procuring through lot or chance, by the investment of a sum of money or something of value, some greater amount of money or thing of greater value. When such are the chief features of any scheme, whatever it may be christened, or however it may be guarded or concealed by cunningly devised conditions or screens, it is, under the law, a lottery. So, in Randall vs. State, 42 Texas, 585, the Court determined that Courts will not inquire into the name, but will determine the character of the transaction or business in which parties are engaged. Mr. Thomas, in his work, cited supra, has collaborated a number of definitions, from which the following are taken:

"A lottery is a sort of gaming contract, by which, for a valuable consideration, one may, by favor of the lot, obtain a prize of a value superior to the amount or value of that which he risks."—*American and English Encyclopedia of Law.*

"Any scheme whereby one, in paying money or other valuable thing to another, becomes entitled to receive from him such return in value, or nothing, as some formula of chance may determine."—*Bishop on Statutory Crimes*, Section 952.

"Lottery, in its popular acceptation, is a distribution of prizes by lot or chance; and when the chances are sold and the distribution of prizes determined by lot, this constitutes a lottery."—Buck vs. State, 62 Ala., 432; Solomon vs. State, 62 Ala., 83.

"The generally accepted definition of a lottery is, that it is a scheme for the distribution of prizes for the obtaining of money or goods by chance."—People vs. Noelke, 94 N. Y. 137.

"Any device whereby money or any other thing is to be paid or delivered on the happening of any event or contingency in the nature of a lottery, is a lottery ticket."—Smith vs. State, 68 Md., 170; Bayland vs. State, 69 Md., 170.

"A lottery is a scheme, device, or game of hazard, whereby, for a smaller sum of money or other thing of value, the person dealing therein, by chance or hazard or contingency, may or may not get money or other thing of value, of greater or less value, or in some cases of no value at all, from the owners or managers of such lottery."—State vs. Lumsden, 89 N. C., 572.

"Both by reason and authority, a lottery is a game—a game of chance."—Korten vs. Seney, 68 N. W., 824.

"Whatever may be the name or character of the machine or scheme, if in its use a consideration is paid, and there is gambling, the hazarding of small amounts to win larger, the result of winning or losing to be determined by chance, in which neither the will nor skill of man co-operates to influence the result, it is a determination by lot."—Loiseau vs. State, 22 Southern Rep., 138.

It must also be constantly borne in mind that a scheme may come within the meaning of the lot or chance or lottery clause of the above acts, even though every investor secures something; that is to say, even though there be no blanks. United States vs. Horner, cited supra. So in Seidenbender vs. Charles, 4 Serg. and Rawle, 151 (8 Am. Dec., 682), and Dunn vs. State, 40 Illinois, 465.

This class of cases covers and inhibits the so-called land scheme, where each adventurer secures a lot of land, but the lots are of unequal value, yet each being secured for the same price. The Supreme Court of Pennsylvania said upon this point:

"If it be said that in this case there be no blanks, we answer that no material difference arises from that circumstance. Some of the most fraudulent lotteries ever known have been those in which there were no blanks. They are an imposition on the folly of mankind;

for of what importance is it if a man who pays a considerable sum for a ticket has a prize of very little value."

So in the Dunn case, cited *supra*, the Supreme Court of Illinois said, the case showing that prizes in that scheme ranged in value from a cheap trinket to a grand piano:

"If it differs from ordinary lotteries, the difference is chiefly in the fact that it is more artfully contrived to impose upon the ignorant and credulous, and is, therefore, more thoroughly dishonest and injurious to society."

§ 59*a*. **Illustrative Cases.**—A loan company which has a scheme for filing applications and numbering for the determination of who shall be entitled to a loan, but which scheme is an unfair device to save the making of loans, is a violation. U. S. vs. Purvis, 195 Federal, 618. Prizes in boxes of tobacco is a violation of this lottery statute. U. S. vs. One Box, 190 Federal, 731. The plotting of land and the increasing of the value of some lots arbitrarily is a violation of this lottery statute. U. S. vs. Ridgway, 199 Federal, 287.

59 b. Illustrative Cases Continued.

Publishing pictures and giving a prize to the person or persons who identify the same is not an offense according to Post vs. Murray, 230 F. 773. A false representation as to the value and character of a piece of ground or a lot is a violation, Trent vs. U. S. 228 F. 648.

§ 60. **Land Schemes.**—One of the most universal violations and attempts to violate the lottery statute are the various and sundry schemes for the sale and distribution of town-lot additions. A tract of land will be secured contiguous to some city or town, the same will be plotted into lots, and upon one or two of such lots a building will be erected, and then the entire addition put on the market at a uniform price per lot, there being some sort of an arrangement whereby the investors are to determine which one shall secure the important lot. This identical scheme has been denounced

by the Supreme Court of Pennsylvania in the Seidenbender vs. Charles case, cited *supra*. In that case the evidence showed that a party possessed of a tract of land on the banks of a river divided it into town lots, which he sold for three hundred thirty dollars each, the specific lot to be awarded to each purchaser by lot. The lots were of unequal value. The one on which the house was erected was valued at eleven thousand dollars; another having a barn on it was valued at three thousand dollars, and two of the others had wooden buildings thereon. While the lots abutting on the river were peculiarly valuable, the great mass which laid back from the river, and which were unimproved, bore no proportion to the price at which the tracts were sold.

This scheme was denominated a lottery.

Throughout the country this and similar decisions are being avoided by having the purchasers determine among themselves how the lots shall be divided, in which division there will be no drawing; as, for instance, a community of trustees will be appointed, and these trustees will pretend to auction the lots. It is thought, however, that all such schemes are really within the pale of the law, because the real incentive moving toward the purchaser in all these cases is the thought that he may secure the valuable lot.

60 a. Land Schemes Continued.

An indictment which alleges false representations concerning the locality of lands and false representations as to value but does not allege that the lots were valueless nor that the lots were of less value than the selling price is insufficient to show a real purpose to defraud the purchaser, U. S. vs. Schwarz, 230 F. 537.

A scheme involving a pretended location of claimants upon government lands when they knew that the lands could not be had because of litigation or otherwise, is a violation, Hallowell, vs. U. S. 253 F. 865, so likewise a false claim as to ownership would involve criminality, McKnight vs. U. S. 263 F. 832.

§ 61. **Issuing of Stock.**—The Post-office Department and its force of inspectors, and particularly the Assist-

ant Attorney General for that Department, has been most efficient in rendering service to the general public by declaring fraudulent a great many so-called stock concerns, insurance companies, building and loan associations, tontine policy corporations, that pretend to issue stock or certificates, or to loan money at some future date to such customers as would pay in small installments at short and stated periods. But applying figures and reasons to the respective plans of these fraudulent concerns these officers of the people determined that it was impossible for the concerns to carry out the contracts made, and when such conclusion has been reached, a fraud order has followed under the statute cited *supra*, and ofttimes the perpetrators have been convicted. Such a scheme was denounced and a conviction followed in the case cited at page 477 of the 156 Federal Reporter, Fitzsimmons vs. United States. That was a scheme by which certificates were issued by a corporation on each of which the holder agreed to pay one dollar per week, subject to forfeiture for non-payment, and about 75 per cent. of which payments were paid into a "mutual benefit credit fund" until all certificates prior in date had matured and been cancelled, when his own certificate should mature, and he should be paid from such fund a sum of two dollars for each week such certificate had been in force, provided there were in such fund the amount, which was not to exceed the sum of one hundred sixty dollars.

§ 62. **Other Cases.**—Other cases bearing directly and indirectly upon the statute under discussion, by reason of their having arisen under some of the preceding statutes, are the following:

United States vs. Irvine, 56 Federal, 375.
United States vs. Rosenblum, 121 Federal, 180.
United States vs. Fulkerson, 74 Federal, 619.
United States vs. McDonald, 65 Federal, 486.
McDonald vs. United States, 63 Federal, 426.
United States vs. Conrad, 59 Federal, 458.
United States vs. Politzer, 59 Federal, 273.
United States vs. Lynch, 49 Federal, 851.

United States vs. Bailey, 47 Federal, 117.
United States vs. Horner, 44 Federal, 677.
Ex parte Jackson, 96 U. S., 727.
In re Rapier, 143 U. S., 110.
Horner vs. United States, 143 U. S., 570, and 147 U. S., 449.
McDonald vs. U. S., 171 U. S., 689; also 87 Federal, 324.
U. S. vs. McCrory, 175 Federal, 802, holds incidental use of mails insufficient.

62 a. Other Cases Continued.

The fraudulent securing of the issuance of bills of lading when there was really no such shipment is, of course, a violation, LeMore vs. U. S. 253 F. 887.

§ 63. **Postmaster Not to Be Lottery Agents.**—Section 214 makes it an offense punishable by not more than one hundred dollars fine, or imprisonment for not more than one year, or both, for any postmaster or other person employed in the postal service, to act as an agent for any lottery, or under color of purchase or otherwise to vend lottery tickets, or to knowingly send the same by mail, or to deliver any letter or package or postal card or circular or pamphlet advertising any lottery, etc., which is a substantial re-enactment of the old Section 3851 of the Revised Statutes, the new section being somewhat broader and covering more territory. In Louisiana lottery cases, 20 Federal, 628, the Court held that the word "send" as used in the old section, signifies forwarding in the mail through the officers of the government.

§ 63 a. **Every Employee Liable to Penalties.**—Section 230 provides that every person employed in the postal service shall be subject to all penalties and forfeitures for the violation of laws relating to such service, whether he has taken the oath of office or not, and Section 231 provides that the words "postal service" whenever used in this chapter, meaning chapter on offenses against the postal service, shall be held and deemed to include the Post-office Department.

§ 64. **False Returns to Increase Compensation.**—Section 3855 of the old statutes provided the basis for fixing the compensation and salary of postmasters of the fourth

class. That statute was subsequently amended in some detail by the Act shown at page 186 of the First Volume of the Supplement, and later by the Act shown at page 417 of the First Volume of the Supplement, and still later by the Act shown at page 419 of the First Volume of the Supplement, and still later by Section 2 of the Act shown at page 602 of the 22 Statute at Large.

The pay of officers of this class is graded in this last act upon the amount of stamps canceled. For instance, on the first fifty dollars or less per quarter, 100 per cent; on the next one hundred dollars or less per quarter, 60 per cent; on the next two hundred dollars or less per quarter, 50 per cent; and on all the balance 40 per cent, the same to be ascertained and allowed by the Auditor of the Treasury for the Post-office Department in the settlement of the accounts of such post-masters, upon their sworn quarterly returns. To guarantee fidelity in these returns and these reports, Congress enacted Section 1 of the 20 St. L., page 141, which provided a punishment for any false return made by a postmaster to the Auditor for the purpose of fraudulently increasing his compensation. This includes what has been technically termed "false cancellation;" and while it is one of the most difficulty offenses to prove in the postal service, such proof has repeatedly been made by the placing of proper watches and counts upon the outgoing mail matter from the office, and by the estimating of the sale of stamps, computing of box rents, drop letters, etc.

Section 206 of the new statute increases the penalty and is much more comprehensive than the old statute, and reads as follows:

"Whoever, being a postmaster or other person employed in any branch of the postal service, shall make, or assist in making, or cause to be made a false return, statement, or account to any officer of the United States, or shall make, assist in making, or cause to be made, a false entry in any record, book, or account, required by law or the rules or regulations of the Post-office Department to be kept in respect of the business or operations of any post-office or other branch of the postal service, for the purpose of fraudulently increasing his compensation or the compensation of the postmaster or any employee in a post-office; or whoever, being a postmaster or other person em-

ployed in any post-office or station thereof, shall induce, or attempt to induce, for the purpose of increasing the emoluments or compensation of his office, any person to deposit mail matter in, or forward in any manner for mailing at, the office where such postmaster or other person is employed, knowing such matter to be properly mailable at another post-office, shall be fined not more than five hundred dollars, or imprisoned not more than two years, or both."

Few cases under this criminal statute have been reported. United States vs. Snyder, page 554 in the 14 Federal, and the same case in the 8 Federal, at page 805, do not contain any suggestions that will be of much benefit to the practitioner. This case simply determines that one may aid and abet a postmaster in committing the offense, and that evidence of other acts and doings of a kindred character are admissible to illustrate or establish the intent or motive in the particular act charged and being tried, which is, of course, the recognized doctrine in all criminal cases.

In United States vs. Wilson, 144 U. S., 24, affirmed in the 26 Court of Claims, 186, and 27 Court of Claims, 565, it was held that a postmaster was entitled to his salary under a designation by the Postmaster General, even though he was not commissioned by the President until some months thereafter.

§ 65. **Civil Remedy.**—The following cases relate to that portion of the old statute, 20 St. L., 141, which relates to the civil feature in which the government is interested in the way of fixing the compensation, withholding the same, and recovering the same. A Postmaster General having allowed the commissions, he cannot recover the same without due process of law. United States vs. Case, 49 Federal, 270; United States vs. Hutcheson, 39 Federal, 540; United States vs. Miller, 8 Utah, 29.

The Postmaster General may determine, under the arbitrary power given him, what is right and reasonable in the matter of compensation, when the false return has been made. United States vs. Joedicke, 73 Federal, 100. A certified copy of an order of the Postmaster General to recover money against a postmaster for false returns, is prima facie evidence of the fact of such falseness. United

States vs. Dumas, 149 U. S., 283; Joedicke vs. U. S., 85 Federal, 372; U. S. vs. Carlovitz, 80 Federal, 852; U. S. vs. Case, 49 Federal, 270; U. S. vs. McCoy, 193 U. S., 599.

65 a. Acquittance No Bar to Civil Suit.

It was held in Sanden vs. Morgan, 225 F. 266, that an acquittal upon an indictment charging a fraudulent use of the mail was not res adjudicata as to a civil cause.

§ 66. **Collection of Unlawful Postage.**—Closely akin to the foregoing section, and for the protection of the public, both in the way of extortion and to insure uniform service, is Section 207 of the new Code, which reads as follows:

"Whoever, being a postmaster or other person authorized to receive the postage of mail matter, shall fraudulently demand or receive any rate of postage or gratuity or reward other than is provided by law for the postage of such mail matter, shall be fined not more than one hundred dollars, or imprisoned not more than six months, or both."

It is a practical re-enactment of the old Section 3899, with the exception that the new section increases the punishment by adding the imprisonment feature. It is also more wholesale in its terms, since it uses the word "mail matter" while the old section used the words "letters."

§ 67. **Unlawful Pledging or Sale of Stamps.**—To further guarantee uniformity in the service and one price to all, and to conserve the government property and prevent its use by its officials, and to restrict the salary of the Postmaster or other person employed in the post-office within the limits of that fixed by law. Congress passed old Section 3920 of the Revised Statutes, and later an addition at page 141 of the 20 St. L., both of which acts are now included in the new Section 208, in the following words:

"Whoever, being a postmaster or other person employed in any branch of the postal service, and being intrusted with the sale or custody of postage stamps, stamped envelopes or postal cards, shall use or dispose of them in the payment of debts, or in the purchase of merchandise or other salable articles, or pledge or hypothecate the same, or sell or dispose of them except for cash; or sell or dispose of postage stamps or postal cards for any larger or less sum than the values in-

dicated on their faces; or sell or dispose of stamped envelopes for a larger or less sum than is charged therefor by the Postoffice Department for like quantities;) or sell or dispose of, or cause to be sold or disposed of, postal stamps, stamped envelopes, or postal cards at any point or place outside of the delivery of the office where such postmaster or other person is employed; or induce or attempt to induce, for the purpose of increasing the emoluments or compensation of such postmaster, or the emoluments or compensation of any other person employed in such post-office or any station thereof, or the allowances or facilities provided therefor, any person to purchase at such post-office or any station thereof, or from any employee of such post-office, postage stamps, stamped envelopes, or postal cards; or sell or dispose of postage stamps, stamped envelopes, or postal cards, otherwise than as provided by law or the regulations of the Post-office Department, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both."

Under the provisions of this section, the indictment must allege, and the facts must show, that the stamps used by the postmaster had been received by him officially from the government, because the use of tamps by a postmaster procured from another source, is not prohibited by the statute, as the word "intrusted" is used with reference to the sort of stamps protected by the Act. United States vs. Williamson, 26 Fed., 690. The new section is as strong in its inhibition against the use of stamps by a postmaster in the payment of merchandise, even though he place the money value of the stamps in the till of the post-office. In United States vs. Douglas, 33 Fed., 381, the Court in charging the jury, said:

"The defendant, testifying on his own behalf, admitted that he had used stamps on several occasions in paying for merchandise and remitting money for the purpose of making change. He says that he did this not dreaming that it was wrong, and that in every instance he put the money value of the stamps so used in the till of the post-office; in fact, thus purchasing the stamps from himself. The Act of Congress forbids any disposition by a postmaster of stamps intrusted to him, except the sale of them at their face value for cash to third persons. He cannot use them in purchase of goods, or in payment of debts nor can he purchase them from himself for any such purpose. By his own admission, therefore, he has violated the law, and if you believe him, you must find him guilty on the indictment."

In Palliser vs. United States, 136 U. S., 267; 34 Law Ed., 514, the Supreme Court of the United States, speak-

ing through Mr. Justice Gray, held that the word "cash" in the Act forbidding a postmaster to sell or dispose of postage stamps except for cash, means ready money or money in hand. A sale on credit is not a sale for cash. That case further determines that an offer to a postmaster, promising him that if he would put postage stamps on certain circulars and send them at the rate of fifty to one hundred, that the writer would remit to him the price of the stamps, that such an offer was the tender of a contract for the payment of money to induce the posmaster to sell stamps on credit, in violation of his lawful duty, and that an offer of a contract to pay money to a postmaster for an unlawful sale by him of postage stamps on credit is not the less within the statute, (the Court was then considering Section 5451 of the old Revised Statutes), because his commission on the sale would be no greater than upon a lawful sale for cash. In United States vs. Walter Scott Stamp Company, 87 Federal, 721, Circuit Judge Lacombe, in passing upon a civil action of replevin brought by the government against a concern that had in its possession a great number of stamps, decided that the possession of stamps by persons outside of and unconnected with the Post-office Department is not presumptively unlawful.

§ 67a. **Receiving Stolen Property, Etc.**—See Section 74—Section 48 of the Act of March 4, 1909, 35 Stats., 1098, page 1603, 1911 Supp. Compiled Statutes, provides: "Whoever shall receive, conceal, or aid in concealing or shall have or retain in his possession with intent to convert to his own use or gain any money, property, record, voucher, or valuable thing whatever of the moneys, goods, chattels, records or property of the United States which has theretofore been embezzled, stolen or purloined by any other person, knowing the same to have been so embezzled, stolen or purloined, shall be fined not more than five thousand dollars or imprisoned not more than five years, or both; and such person may be tried either before or after the conviction of the principal offender."

The Court of Appeals for the Eighth Circuit, speaking through Judge McPherson, in Naftzger vs. U. S., 200 Fed. 497, in reversing a conviction under this statute, determined that inasmuch as an allegation in the indictment that the stamps had been stolen from the United States was necessary to give a United States court jurisdiction, there must be some substantial proof offered to establish this fact, and that hearsay testimony of post-office inspectors would not meet the required measure. The allegation in that case on this particular point was that the stamps had been stolen from post-offices in Kansas, the exact names of which were to the grand jurors unknown, and the Court held that this allegation having been made, it was necessary to prove it.

It was further held in this case that a conviction upon extrajudicial confession or acts or declarations of a person will not be sustained without corroborative proof that the property was in fact stolen.

It is improper to admit testimony of post-office inspectors that a number of post-offices had been burglarized, for the purpose of showing the theft of postage stamps, even though such testimony is limited by the Court's charge to the issue of defendant's knowledge and the case of Grayson vs. Lynch, 163 U. S., 468, does not state a rule of criminal law. Naftzger vs. U. S., 200 Federal, 500.

§ 68. **Failure to Account for Postage and to Cancel Stamps.**—Section 209 of the new Code, reading as follows:

"Whoever, being a postmaster or other person engaged in the postal service, shall collect and fail to account for the postage due upon any article of mail matter which he may deliver, without having previously affixed and canceled the special stamp provided by law, or shall fail to affix such stamp, shall be fined not more than fifty dollars."

relates evidently only to what is commonly known as special or due postage. It was originally a part of the Act of March 3, 1879, as shown at page 249 of the First Volume of the Supplement, and was Section 27 of that Act.

§ 69. **Issuing Money Order Without Payment.**—Section 210 of the new Code reads as follows:

"Whoever, being a postmaster or other person employed in any branch of the postal service, shall issue a money order without having previously received the money therefor, shall be fined not more than five hundred dollars."

The only difference between it and 4030 of the Revised Statutes, which was directed at the same offense, is that the new Code contains no minimum fine, and does not denounce the offense as a misdemeanor. In view of the lightness of the punishment and the dire consequences of issuing money orders without having received the money therefor, it is believed that Section 210 was intended merely for the punishment of postal employees who through negligence, and not by reason of any fraudulent design, issue a money order without previously having received the money therefor. Practically the entire money-order funds of the government are at the disposal of each employee who has authority to issue money-orders, and a punishment so light as that affixed under this section would be entirely disproportionate to the grievousness of the offense, and all fraudulent issues, therefore, of money orders, by postal employees, should or may be prosecuted under Section 218 of the new Code, as they were under 5463 of the old statutes and amendments thereto.

§ 69a. **Conviction Under One Statute No Bar, When.**—A conviction under Section 210 would not be a bar to a conviction under Section 218 which follows, for the reason that where an offense is in violation of two different statutes, and a different proof is required to convict under one, different elements or grounds being involved in each, a conviction or acquittal under one statute is not a bar to a prosecution under the other. U. S. vs. Komie, 194, Federal 567; Carter vs. McClaughry, 183 U. S., 365; Barton vs. U. S., 202 U. S., 344; Gavieres vs. U. S., 220 U. S., 338.

§ 70. **Counterfeiting Money Orders, Etc., and Fraudulently Issuing the Same Without Having Received the Money Therefor.**—Section 218 of the new Code embraces all the features of 5463 of the old statute, the Act of the third of January, 1887, First Supplement, 518, and the

Act of the eighteenth of June, 1888, First Supplement, 593, and reads as follows:

"Whoever, with intent to defraud, shall falsely make, forge, counterfeit, engrave, or print, or cause or procure to be falsely made, forged, counterfeited, engraved or printed, or shall willingly aid or assist in falsely making, forging, counterfeiting, engraving or printing, any order in imitation of or purporting to be a money order issued by the Post-office Department, or by any postmaster or agent thereof; or whoever shall forge or counterfeit the signature of any postmaster, assistant postmaster, chief clerk, or clerk, upon or to any money order, or postal note, or blank therefor provided or issued by or under the direction of the Post-office Department of the United States, or of any foreign country, and payable in the United States, or any material signature or endorsement thereon, or any material signature to any receipt or certificate of identification thereon; or shall falsely alter or cause or procure to be falsely altered in any material respect, or knowingly aid or assist in falsely so altering any such money order or postal note; or shall, with intent to defraud, pass, utter, or publish any such forged or altered money order or postal note, knowing any material signature or endorsement thereon to be false, forged, or counterfeited, or any material alteration therein to have been falsely made;) or shall issue any money order or postal note without having previously received or paid the full amount of money payable therefor, with the purpose of fraudulently obtaining or receiving, or fraudulently enabling any other person, either directly or indirectly to obtain or receive from the United States or any officer employed, or agent thereof, any sum of money whatever; or shall with intent to defraud the United States or any person, transmit or present to, or cause or procure to be transmitted or presented to, any officer or employee or at any office of the government of the United States, any money order or postal note, knowing the same to contain any forged or counterfeited signature to the same, or to any material endorsement, receipt, or certificate thereon, or material alteration therein unlawfully made, or to have been, unlawfully issued without previous payment of the amount required to be paid upon such issue, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both."

An indictment under the forging or counterfeiting feature of this section must contain no incompatibility of purport and tenor clauses, and it is decidedly the safer plan for the bill to set out in haec verba the instrument, and the pleader must take careful notice that the instrument so set out does not differ in any respect from that portion of the bill giving the purport of the forged instrument.

The old Common Law rule that a fictitious name could not be subject to forgery, for the reason that there would be no one to be defrauded, has a marked exception under this statute. In ex parte Hibbs, 26 Federal, 421, which was a case that arose by reason of a postmaster issuing a money order on the application of a fictitious person payable to a certain bank, to which he at the same time wrote in the name of such person, directing that the amount of the order be collected and remitted to him in a registered package, which he intercepted as it passed through his office, converting the contents to his own use, the Court held that the Act of the postmaster constituted forgery, both at Common Law and under the statute, to wit, 5463.

In United States vs. Royer, 122 Federal, 844, the government elected to prosecute a clerk in a post-office authorized to issue money orders, who had issued money orders in payment of his private debts, under Section 4046 of the Revised Statutes, for an embezzlement of money order funds. Clearly, he was also guilty of a violation of Section 5463, after having issued the orders without first having received the money therefor, but the decision of the Court in that case shows to what extent an employee empowered to issue money orders may depredate upon the Government funds. In Vives vs. United States, 92 Federal, 355, Judge Pardee, speaking for the Circuit Court of Appeals for the Fifth Circuit, with reference to the defendant's use of money order funds by drawing money orders without previously receiving the money therefor, and which was a prosecution for embezzlement under 4046, said that the intention of the employee to return the money to the Government when a settlement of his account would have been due was no defense under the law. In United States vs. Long, 30 Federal, 678, Judge Speer, in charging the jury, said that forgery, being the fraudulent making or alteration of a writing to the prejudice of another man's right, and that one may be guilty of such forgery if he fraudulently signs his own name, although it is identical with the name of the person who should have signed. He further holds in the same case that the signature to a receipt on a money order is a material signature in the meaning of the law.

It may be here remarked that that portion of the statute which relates to the forgery of a material endorsement or signaure to a money order or any receipt thereon, is the portion of the law most frequently violated.

It must be continually borne in mind that the indictment must charge, and the proof must show that the forgery or other acts committed under this section were so committed with the intention to defraud. In United States vs. Morris, 16 Blatchf. (United States), 133, 26 Federal Cases No. 15813, the Court held that even though an indictment charged the defendant with having forged a material endorsement upon a post-office money-order with the intent to defraud a certain private person, the same was sufficient, because it was still an act which the United States had the authority to punish, for the better protection of money orders lawfully issued by the United States.

Judge Thayer, in United States vs. Crecilius, 34 Federal, page 32, said that the word "alter," as used in this statute, described an act or acts not distinctly covered or embraced by any preceding word.

Under the statute as it is now drawn, there is practically no act, alteration, erasure, or change that can be made to a money order with fraudulent intent that is not by some of the terms of the statute fitted with the meaning of the same.

See Sections 69 and 69a. Also U. S. vs. Komie, 194 Federal, 567.

§ 71. **Counterfeiting Postage Stamps, Domestic or Foreign.**—Sections 5464 and 5465 of the old statutes protected from forging and counterfeiting the stamps and envelopes and other output of the Post-Office Department which were for the purpose of paying postage, whether of this or a foreign country. These two statutes with some change in punishment, have become Sections 219 and 220 of the new Code, and they read as follows:

"Sec. 219. Whoever shall forge or counterfeit any postage stamp or any stamp printed upon any stamped envelope or postal card, or any die, plate, or engraving therefor; or shall make or print, or knowingly use or sell, or have in possession with intent to use or sell, any such forged or counterfeited postage stamp, stamped envelope, postal

card, die, plate, or engraving; or shall make or knowingly use or sell, or have in possession with intent to use or sell, any paper bearing the water-mark of any stamped envelope, or postal card, or any fraudulent imitation thereof; or shall make, or print, or authorize or procure to be made or printed, any postage stamp, stamped envelope, or postal card of the kind authorized and provided by the Post-office Department, without the special authority and direction of said Department; or shall, after such postage stamp, stamped envelope, or postal card has been printed, with intent to defraud, deliver the same to any person not authorized by an instrument in writing duly executed under the hand of the Postmaster General and the seal of the Post-office Department, to receive it, shall be fined not more than five hundred dollars, or imprisoned not more than five years, or both."

"Sec. 220. Whoever shall forge, counterfeit, or knowingly utter or use any forged or counterfeited postage stamp of any foreign government, shall be fined not more than five hundred dollars, or imprisoned not more than five years, or both."

It will be observed that each of the sections fails to include any word with reference to intent, and in the absence of any such word, and under the authority of United States vs. Coppersmith, 4 Federal, 198, and United States vs. Field, 16 Federal, 779, it would seem that an indictment does not have to charge fraudulent intent in alleging the ingredients of a counterfeiting or forging charge. It is quite apparent that the observations in the two cases just cited that these offenses are not felonies, by reason of the repeal of the old statute, when the Act of June 8, 1872, became effective, is forceless under the new sections, because the new Code itself denominates all offenses felonies where the punishment may be confinement for a year.

Notwithstanding the severity of the punishment and the meaning usually given to the words "counterfeit" or "forge" in criminal statutes, which invariably implies venality and corruption, the language of these sections would seem to indicate that it was the intention of Congress to so denounce in definition, and by severe punishment, and to prevent, if possible, even experimenting in the reproduction of facsimiles of postage stamps, envelopes, cards, etc., like those made by the Government, because it may be argued that no one would trouble himself to facsimile such a small article, unless he intended to

work injury. On the other hand, this may be one of those statutes in which Congress has neglected to include all of the elements of the offense, and it thereupon devolves upon the pleader to draw his bill sufficiently broad to define the offense, even though the statute does not do so.

§ 72. **Misappropriation of Postal Funds or Property by Use or Failure to Deposit.**—Section 225 of the new Code, reads as follows:

> Whoever, being a postmaster or other person employed in or connected with any branch of the postal service, shall loan, use, pledge, hypothecate, or convert to his own use, or shall deposit in any bank or exchange for other funds or property, except as authorized by law, any money or property coming into his hands or under his control, in any manner whatever, in the execution or under color of his office, employment, or service, whether the same shall be the money or property of the United States or not; or shall fail or refuse to remit to or deposit in the Treasury of the United States, or in a designated depository, or to account for or turn over to the proper officer or agent, any such money or property, when required so to do by law or the regulations of the Post-office Department, or upon demand or order of the Postmaster General, either directly or through a duly authorized officer or agent, shall be deemed guilty of embezzlement and every such person, as well as every other person advising or knowingly participating therein, shall be fined in a sum equal to the amount or value of the money or property embezzled, or imprisoned not more than ten years, or both. Any failure to produce or to pay over any such money or property, when required so to do as above provided, shall be taken to be *prima facie* evidence of such embezzlement and upon the trial of any indictment against any person for such embezzlement, it shall be *prima facie* evidence of a balance against him to produce a transcript from the account books of the Auditor for the Post-office Department. But nothing herein shall be construed to prohibit any postmaster depositing, under the direction of the Postmaster General, in a national bank designated by the Secretary of the Treasury for that purpose, to his own credit as postmaster any funds in his charge, nor prevent his negotiating drafts or other evidences of debt through such bank, or through United States disbursing officers or otherwise, when instructed or required so to do by the Postmaster General for the purpose of remitting surplus funds from one postoffice to another."

It supplants and takes the place of 4046 and 4053, Revised Statutes of 1878. The prosecution frequently comprised in one indictment against the same defendant violations of the two old statutes, laying a count under 4046

and then a count under 4053. These statutes are for the purpose of affording another guaranty that the government shall take no chances whatever in the result of the judgment of its employees. A postmaster or a postal employee may be honest, and intend to only temporarily use the funds that belong to the Government which are in his custody or possession, but such honest intent with reference to the subsequent replacing is no protection against prosecution under this statute. Any use or appropriation or the failure to deposit, as required by the regulations, constitutes embezzlement within meaning of this section. The Act not only protects money, but it likewise protects any property that may belong to the Postal Department.

The law of embezzlement is statutory. It originated in a bungling attempt to amend the Common Law of larceny, and is indeed a sort of statutory larceny. The methods of use or appropriation, therefore, denounced in the statute, are sufficient to describe this particular statutory embezzlement. In United States vs. Gilbert, 25 Federal Cases No. 15205, the Court used the following language:

"It is evident that an embezzlement such as is contemplated by this section may be proved in either one of two ways: first, by showing that in point of fact the postmaster has converted to his own use money order funds;) second, by his failure to pay over such funds when required either by the law or regulations, or when demand is made by an officer authorized for that purpose—Although it is true that the funds were subsequently paid into the post-office, and although it may also be, and probably was, true that these funds, when thus converted, were intended and expected to be replaced, so that the Government should sustain no loss, which goes very far toward mitigating the offense, yet it is obvious that the enforcement of this section in all its strictness is essential to this class of government funds, and to the discouragement of postmasters from even temporarily using them for private purposes. The intention of replacing them, however honestly entertained, cannot be accepted as an excuse or apology for violating the law, as one may be disappointed by unexpected circumstances, and thus not only endanger the moneys of the Government, but involve himself in difficulty and criminal prosecution. The law intends that funds of this character should be kept absolutely separate and sacred, as the best method, not only of keeping the funds themselves secure, but of guarding the officers themselves

from temptation and delinquency. A diversion of money order funds in any way whatever prohibited by this section, or for any time, however short, constitutes embezzlement under this Act."

See also United States vs. Royer, 122 Federal, 844, which applied the doctrine of refusing to permit the postal employee to use Government money order funds in the payment of private debts by issuing money orders upon blanks in the employee's possession; also Vives vs. United States, 92 Federal, 355. The indictment, under this section, must allege that the funds were intrusted to the employee, so as to show the fiduciary capacity. U. S. vs. Royer, 122 Federal, 844. It will be noticed that the Act provides that a transcript from the account books of the Auditor for the Post-office Department, showing a balance against the officer, shall be prima facie evidence of such embezzlement. This provision, while seemingly harsh, is salutary; for otherwise, the officer could contend that as a matter of fact there was no balance against him, during which period of ascertainment he could be enjoying the use of the funds. In United States vs. Swan, 7 N. M., 311, that portion of the statute was held to be constitutional, and the Court there held that this provision was not in conflict with that section of the Constitution which provides that in all criminal prosecutions the accused shall enjoy the right to be confronted with the witnesses against him. See also Faust vs. United States, 163 U. S., 454; 41 Law Ed., 224.

In an indictment against a public officer for embezzlement of public funds alleged to have been in his possession as such officer, the rule applied that it is sufficient to charge that he embezzled same, without more, see U. S. vs. Mason, 179 Federal, page 552, which case also holds bill sufficient which specifies amount of money and states grand jury is unable to give further information of description.

In United States vs. Young, 25 Federal, 710, the Court passes upon a state of facts, and concludes that they indicate that the prisoner was an adroit criminal rather than an insane man, and, therefore, fixed responsibility upon him for the temporary use of Government money,

under this statute. It must also be borne in mind that in indictments under this section, against employees of the postal service other than postmasters, it is not necessary to allege nor to prove the want of consent of a postmaster to the embezzlement of money order funds. Faust vs. United States, 163 U. S., 454; 41 Law Ed., 224. It must also be remembered that indictments under this section, under the authority of Moore vs. United States, 160 U. S., 269; 40 Law Ed., 424, must allege that the funds came into the possession of the defendant in his official character and by virtue of such employment, and specifically set out the sort of employment he was engaged in for the Govrnment.

72 a. Indictment for Misappropriation of Postal Funds, etc.

Foster vs. U. S., 256 F. 207; Ossendorf vs. U. S., 272 F. 257.

On a trial for a conversion it is improper to admit evidence of failure to deposit, and a proper certificate must be had from the postoffice department. Youmans vs. U. S., 264 F. 425.

§ 73. **Rural Carriers Responsible Under This Section.** —In United States vs. Mann, 160 Federal, 552, District Judge Speer held that the post-office regulations authorizing rural letter carriers to take and receipt for money from patrons of their routes, to purchase and forward money orders to the persons for whom they are designed, did not make the money so received and receipted for by rural carrier from patrons of his route, to be used in the purchasing and forwarding of money orders, while in the possession of such carrier, and before surrender at the post-office, "money order funds," for the embezzlement of which the carrier could be prosecuted under Section 4046. This was the construction placed upon the statute with reference to embezzlements by rural route carriers by many of the trial courts, though there was some difference of opinion. It became and was, however, very necessary that such funds should be protected, and the provision in the new section which protects the money "or property coming into his hands, or under his control in any manner whatever, in the execution or under color of

his employment or service, whether the same shall be the money or property of the United States or not," clearly protects all such funds, and gives to the statute a color and meaning badly needed.

The reasoning with reference to allegations in the indictment in Dimmick vs. United States, 121 Federal, 638, though upon Section 5492 rather than the one under discussion, may be interesting, because under that statute, similarly worded, the Circuit Court of Appeals for the Ninth Circuit held that the jury must find, in order to convict the defendant, that the failure to deposit was intentional and wilful, and that these words intentional and wilful must be read into the statute.

§ 74. **Stealing Post-office Property.**—Section 190 of the new Code enlarges the punishment, and simplifies old Section 5475, and reads as follows:

"Whoever shall steal, purloin, or embezzle any mail bag or other property in use by or belonging to the Post-office Department, or shall appropriate any such property to his own or any other than its proper use, or shall convey away any such property to the hindrance or detriment of the public service, shall be fined not more than two hundred dollars, or imprisoned not more than three years, or both."

The indictment under this section simply contains the ordinary elements for the charging of statutory theft, or Common Law larceny. That portion of the statute which relates to the use of any property demands in the bill of indictment to properly plead the offense the use of the word showing intent and wilfulness. An innocent use or mistaken use under this section it is not thought would be an offense. In United States vs. Yennie, 74 Federal, 221, the Court held that a count might be laid under this Section and a count under 5478 in the same indictment, without being duplicitous. See 67a.

§ 75. **Other Offenses.**—The new Code, in addition to the offenses heretofore mentioned, creates and re-enacts sections relating to the following:

Conducting Post-office without authority: Section 179, old Revised Statutes 3829.

Illegal carrying of mail by carriers and others: Section 180, old Section 3981.

Conveyance of mail by private express forbidden: Section 181, old Section 3982.

Transporting persons unlawfully conveying mail: Section 182, old Section 3983.

Sending letters by private express: Section 183, old Section 3984.

Conveying of letters over post roads: Section 184, old Section 3985.

Carrying letters out of the mail, on board a vessel: Section 185, old Section 3986.

When conveying letters by private person is lawful: Section 186, old Section 3987.

Wearing Uniform of carrier without authority: Section 187, old Section 3867.

Vehicles, etc., claiming to be mail carriers: Section 188, old Section 3979.

Deserting the mail: Section 199, old Section 5474:

Delivery of letters by master of vessel: Section 200, old Section 3977.

Vessels to deliver letters at post-office; oath: Section 204, old Section 3988.

Letters carried in a foreign vessel to be deposited in a post-office: Section 203; old Section 4016.

Using, selling, etc., canceled stamps, and removing cancellation marks from stamps, etc.: Section 305; old Section 3922, 3923, 3924, and 3925.

Poisons and explosives non-mailable: Section 217, Old Section 3878; First Supplement, 247, and Second Supplement, 507.

Enclosing higher class in lower class matter: Section 221, old Section 3887 and First Supplement, 578.

Postmaster illegally approving bond, etc.: Section 222, old Section 3947 and First Supplement, 45.

False evidence as to second-class matter: Section 223, old Section, First Volume Supplement, 593 and 33 St. L., 823.

Inducing or prosecuting false claims: Section 224.

Employees not to become interested in contracts: Section 226; old Section 412.

Fraudulent use of official envelopes: Section 227; old Acts, First Supplement, 135 and First Supplement, 467.

Fraudulent increase of weight of mail: Section 228, old Act, Second Supplement, 778 and 30 St. L., 442.

Offenses against foreign mail in transit: Section 229; old statute 4013.

§ 75a. **Mail—Carrying Illegally.**—Section 3985 of the 1878 Revised Statutes and Section 184 of the new code prohibit the conveying of letters over and along post roads. These inhibitions, however, do not prevent the carrying of letters over a post road when such letters relate to the business of the carrier only. U. S. vs. Erie Ry. Co., 235 U. S. 513, November Term, 1914. See also Section 75 and the statutes therein cited bearing upon the post-office business. The government controls exclusively such business and by various statutes protects such monopoly.

75 b. Poison, etc.,

Poison and explosives are non-mailable, see section 217 of the 1910 Code and section 3878 of the old revised statutes.

In Murray vs. U. S. 247 F. 874, it was held that an indictment which shows the condition of the statute is sufficient to charge this offense.

75 b. b. Advertising or soliciting for Liquor Sales.

By the Act of Mar. 3, 1917, Sec. 9915, Barnes Fed. Code, 1919, it was provided that no letter, postal card, circular, newspaper, pamphlet or publication of any kind containing any advertisement of spirituous, vinous, malted, fermented, or other intoxicating liquors of any kind, or containing a solicitation of an order, or orders for said liquors, or any of them, shall be deposited in or carried by the mails of the United States or delivered, etc., and provides for a thousand dollar fine or six months imprisonment, or both.

CHAPTER IV A.

PRACTICE HELPS.

Sec. 75c. Admiralty Rules.

Imprisonment for debt is likewise abolished in the admiralty court. Admiralty Rules, 267 F.

Sec. 75cc. Court Cannot Instruct a Verdict of Guilty.

Even upon an agreed statement of facts the court is not permitted to instruct the jury to bring in a verdict of guily in a criminal case, Blair vs. U. S. 241 F. 217.

Sec. 75c.c.c. Alibi.

In a prosecution for conspiracy the immediate presence of the defendant after the formation of the conspiracy is not necessary to render him guilty, Ding vs. U. S. 246 F. 80.

Sec. 75d. Alien Property Act.

The trading with the Enemy Act Oct. 6, 1917, passed by Congress after the declaration of war with Germany, was a valid exercise of the war power, Fischer vs. Palmer, 259 F. 355.

Sec. 75d.d. Appeal.

The United States may appeal in a criminal case, when U. S. vs. Oppenheimer vs. U. S. Sup. Ct. Dec. 1916; U. S. vs. Comyns, U. S. Sup. Ct. Jan. 1919.

Sec. 75d.d.d. Arrest of Judgment.

See Andrews vs. U. S. 224 F. 418.

Sec. 75e. Army and Navy.

A person in custody for violation of the state law cannot be released to enter the United States army although subject thereto after his punishment is finished, ex parte Calloway, 246 F. 263.

A minor will be released, when Rush 246 F. 172.

A minor may be released by a civil court before court-martial charges begin, ex parte Avery, 235 F. 248.

For army laws see 239 F. 275.

Under the Act of 1916, the army age is eighteen years and a sixteen year old boy may be re-taken by the parents if no military offense has been committed, since enlistment is not an offense under the above cases.

For a full discussion of the jurisdiction of the civil and military courts see U. S. vs. Brown, 242 F. 983.

One over eighteen cannot be released, Reed vs. Cushman, 251 F. 872.

A person "attached to" the army is amenable to its regulations, exparte Gerlach, 247 F. 616.

The action of the exemption board in classifying is final, why and when 248 F. 141.

The forgery of a discharge from the army is a violation of the Act of Mar. 4, 1917. For a full discussion of the 1917 draft act see the following cases; ex parte Cohen, 245 F. 667; Angelus vs. Sullivan, 246 F. 54; Arver vs. U. S., 245 U. S., 366; U. S. vs. Casey, 247 F. 362; U. S. vs. Koop, 245 F. 871; U. S. vs. Baker, 247 F. 124; Pappens vs. U. S., 252 F. 55; Sugar vs. U. S., 252 F. 79.

The selective act is constitutional, U. S. vs. Olson, 253 F. 232.

A "deserter" is one who is absent without leave and with a manifest intention not to return, while a "straggler" is one who is absent without leave, with the probability that he does not intend to desert but, if his absence continues for ten days, he becomes a deserter, Reed vs. U. S., 252 F. 21.

Sec. 75e.e. Butter Adulterated.

For a discussion of the act of May, 1902, with reference to adulterated butter see, Henningsen vs. Whaley, 238 F. 650.

Sec. 75e.e.e. Bawdy House.

For decisions under the war act relating to the maintenance and establishment of disorderly houses see Holmes vs. U. S., 269 F. 489; Nakano vs. U. S., 262 F. 761; Pappens vs. U. S., 252 F. 55; U. S. vs. Hicks, 256 F. 707; Grancourt vs. U. S., 258 F. 25; Thaler vs. U. S., 261 F. 746. See also U. S. vs Casey, 247 F. 362; Brown vs. U. S. 260 F. 752; Anzine vs. U. S., 260 F. 827; Goublin vs. U. S. 261 F. 5; Pollard vs. U. S., 261 F. 336; McKnight vs. U. S., 249 U. S., 614.

Sec. 75f. Child Labor Law.

The Act of Sep. 1, 1916, C. 432, 39 Stat. 675, was declared unconstitutional by the Supreme Court of the United States of June 3, 1918, in the case of Hammer vs. Dagenhart.

Sec. 75ff. Clayton Act.

See monopoly; trust statute; Sherman law.

For a decision drawing distinction between agencies and sale see Curtis Publishing Company vs. Fed. 270 F. 881; strikes, boycott and injunction in re Duplex 252 F. 722; patents, etc., U. S. vs. United Shoe 264 F. 138.

A contract for exclusive sale is a violation, Standard vs. Magrane 254 F. 493; the agricultural exceptions of the act are construed in U. S. vs. King, 250 F. 908. A contract between the publisher and district agent for exclusive handling of publications is not a violation, Pictorial vs. Curtis Publishing Company, 255 F. 206.

For indictment under this act see Boyle vs. U. S. 259 F. 803; Belfi vs. U. S. 259 F. 822.

Manufacturers binding agents as to re-sale is a violation, U. S. vs. Schrader, U. S. Sup. Ct. Rep, Mar. 1920, 40 Sup. Ct. Rep. 251.

A contract requiring a patent licensee to buy material to make the machinery of the seller is not a violation, Westinghouse vs. Diamond, 268 F. 121.

Labor unions have no right under the Clayton or Sherman Acts to boycott and restrain inter-state trade, Duplex vs. Deering, U. S. Sup. Ct. Jan. 1921, 41 Sup. Ct. Rep. 172.

Sec. 75f.f.f. Common Law Offenses.

There are no common law offenses known to the Federal jurisdiction. There are only such Federal offenses as have been created by Federal negation statutes, Hamburg vs. U. S. 250 F. 747; Couture vs. U. S. 256 F. 525.

Before a man can be punished his case must be plainly and unmistakably within the statute said the Supreme Court in U. S. vs. Lacher, 134 U. S. 624. An offense which may be the subject of criminal procedure is an act committed or omitted in violation of a public law either forbidding or commanding it, U. S. vs. Eaton, 144 U. S. 677. There are no common law offenses against the United States, U. S. vs. Britton, 108 U. S. 199; U. S. vs. Hudson, 7 Cranch, 32; Tenn. vs. Davis, 100 U. S. 257; Benson vs. McMahon, 127 U. S. 457.

Sec. 75g. Corpus Delicti.

Judge Wade speaking for the Circuit Court of Appeals for the 8th Circuit in Goff vs. U. S., 257 F. 294, held that, "we do not hold that declarations of a party may not be considered in finding the corpus delicti; but, standing alone, they are insufficient, and other facts and circumstances cannot be said to be corroborative when they point as directly to some other offense as they do to the crime charged," see also Naftzger vs. U. S. 200 F. 494; Chamberlayne, evidence, Sec. 1600.

Sec. 75g.g. Counsel—Advice.

In order that a defendant may justify himself by showing that he acted on the advice of his attorney it must appear that all of the acts which go to make up the charged criminal offense must have been before the attorney when he gave the advice, Hardy vs. U. S., 256 F. 284.

It is a well settled rule that every one is presumed to know the law and that one's ignorance of it furnishes no exemption for his act. In Hoover vs. State. 59 Ala. 57; Weston vs. Com, 111 P. A. 251; State vs. Foster, 22 R. I. 163; U. S. vs. Anthony, 24 Fed. case, 14459, it was

held to be no defense that the defendant had been advised by counsel that the law whose violation was alleged was unconstitutional and it has been repeatedly held that on a prosecution for bigamy or adultery that it is no defense that the accused believed, on the advice of counsel, that he had a right to marry, State vs. Goodenow 65 Me. 30; People vs. Weed, 29 Hun, 628; Medrano vs. State, 32 Tex. Crim. 214.

Further exceptions to this same rule are, a, where a specific intention is essential, as where a person charged with theft actually believed the property he took to be his own, Com vs. Stebbins, 8 Gray, Mass, 492; People vs. Husband, 36 Mich. 306. But ignorance of the law may be considered a mitigation of punishment, see also further discussion of the question in 12 Cyc. 156-160.

Sec. 75g.g.g. Costs in Criminal Cases.

Sec. 1014 provides that the cost of the preliminary examination shall be at the expense of the United States. The costs of the trial proper may be adjudged against the defendant, as provided by Sec. 974, U. S. vs. Briebach, 245 F. 204.

Sec. 75h. Cross Examination.

The prosecution is bound by the answer of the defendant as to a wholly collateral charge against him and may not resort to the judgment roll to contradict him. Bullard vs. U. S., 245 F. 837.

Cross examination may extend to the subject matter inquired about on direct examination, 232 F. 444.

A defendant's failure to answer may be commented on, Lemore vs. U. S., 253 F. 887.

In a criminal prosecution for, using the mails to defraud, it was prejudicial error to permit counsel for the government, on cross examination of defendant, to inquire as to the property he owned at the time of the alleged offense, and at the time of trial, Culver vs. U. S., 257 F. 63.

Sec. 75h.h. Decoys—see Entrapment.

The employment of decoy letters by a government inspector is not an objection to a conviction for mailing obscene matter, Price vs. U. S., 165 U. S. 311. See postal violations.

Where the deception, in the way of decoys or detectives is of such character as to make it unconscionable for the government to press its case it should prevent prosecution, Goldstein vs. U. S. 813.

A defendant cannot be convicted of a crime which was provoked or induced by a government officer or agent, and which otherwise would not have been committed, U. S. vs. Lynch, 256 F. 983.

Sec. 75h.h.h. Demand on Defendant for Evidence.

It is inexcusable misconduct for a prosecuting attorney to make a demand on the defendant or his attorney in the presence of the jury for the production of evidence in the defendant's possession, Green vs. U. S. 266 F. 779; Mc Knight vs. U. S., 122 F. 926; Heinze vs. U. S., 181 F. 322; Trent vs. U. S., 228 F. 648; Watlington vs. U. S., 233 F. 247. The trial court might remedy the wrong, Chadwick vs. U. S., 141 F. 225; Dunlop vs. U. S., 165 U. S., 486. But the court must act promptly both by chiding the prosecuting officer and by proper instruction to the jury.

In the case of Bryant vs. U. S., 257 F. 383, the Court of Appeals for the 5th Circuit held that where the prosecution traced, by the testimony, before the jury, the documentary evidence into the hands of the defendant, and then introduced secondary evidence, that such action was not error, the District Judge having instructed the jury to disregard such evidence. This ruling is dangerous in the judgment of the writer and is in violation of the spirit of the constitution. No action should be permitted which requires any sort of an explanation by the defendant, nor, which calls the attention of the jury to the fact that the defendant is not making an explanation. The right of the defendant to stand as an innocent man until he has been proven guilty is too sacred in this country to permit it to be undermined or whittled away.

Sec. 75i. Demurrer to Evidence.

The proper practice with reference to the entry of a demurrer to the testimony of the prosecution is outlined in the following cases, Dernberger vs. B. & O., 243 F. 21; Lohman vs. Co., 243 F. 517; Rich vs. U. S., 271 F. 566.

Sec. 75j. Date—In Indictment.

Correct pleading requires a definite allegation as to the date of the offense, but the prosecution is not bound to prove the date as alleged, U. S. vs. Gaag, 237 F. 730; Ledbetter vs. U. S., 170 U. S. 606; Firth v. U. S., 253 F. 37.

Sec. 75j.j. Duress.

In the case of Ford vs. U. S., 259 F. 553, the Circuit Court of Appeals for the 8th Circuit speaking through Circuit Judge Stone very properly held that where testimony vital to conviction is given under duress no conviction based thereon will be permitted to stand.

The courts cannot be too emphatic against the admission of such confessions of such testimony as may disclose that it was the result of official oppression. As the country grows more populous and officers are less close to the community we must be careful indeed that there are no official inquisitions for the alleged purpose of the enforcement of the law. A peace officer has no right to intimidate, nor, to harm, nor, to punish, nor, to bear down in any way upon a citizen for the pretended purpose of securing testimony. The outrage, for such it is, is more serious than at first impression one would think.

Sec. 75j.j.j. Eight Hour Law.

The Act of May 4, 1916, C. 109, 39 Stat. 61, provides certain penalties for violations of what is called the Adamson or Eight Hour Law on interstate railways.

"Any common carrier or any officer or agent thereof, requiring or permitting any employee to go, be or remain on duty in violation of the second section hereof shall be liable to a penalty of not less than one hundred dollars nor more than five hundred dollars for each and every violation, to be recovered in a suit or suits to be brought by the United States District Attorney having jurisdiction in the locality where such violation shall have been committed."

The act also provides "any person violating any provision of this act shall be guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars and not more than one thousand dollars or imprisonment not to exceed one year, or both."

The act also makes provision for appointment of a commission and provision for no reduction in wages pending a report and otherwise regulates the conduct of the labor for such common carriers, Act. Sep. 3, 1916 C. 436, Sec. 1; Secs. 8089-8096, Barnes 1919.

By the Acts of Aug. 1, 1892, C. 352, 27 Stat. 340 and Mar. 3, 1913, C. 106, 37 Stat. 726, an eight hour day for laborers and mechanics on government work is legislated.

Any government officer or agent is deemed guilty of a misdemeanor who violates its provisions and shall be punished upon conviction by fine not to exceed one thousand dollars or by imprisonment for not more than six months or by both fine and imprisonment, Barnes 1919 Fed. Code, pages 1945-1947.

75.j.j.j.j. Federal Employees Injured and Compensated.

The Act of Sep. 7, 1916, provides compensation for disability or death of an employee resulting from a personal injury sustained while in the performance of his duty as an employee of the United States, but no compensation shall be paid if the injury or death is caused by the wilfull misconduct of the employee or by the employee's intention to bring about the injury or death of himself or of another or if intoxication is the proximate cause.

The act provides for an affidavit with reference to the amount of wages and contains many other provisions and then contains this section, "whoever makes, in any affidavit required under section 4, or in any claim for compensation, any statement, knowing it to be false, shall be guilty of perjury and shall be punished by a fine of not more than two thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment," Sec. 39, Act. Sep. 7, 1916, C. 458, 39 Stat. 749; page 1953, 1919 Barnes' Fed. Code.

Sec. 75k. Entrapment—Inducement.

The appointing of professional detectives and agents and deputies and decoys in the securing of testimony and conviction of persons who transgress the law has very naturally, resulted in abuses by persons and the courts have been compelled to refuse to permit convictions to stand where the methods employed seemed to be

an entrapment of the citizen or the inducing of a citizen to do the thing that the government was prosecuting him for having done. The fact that a detective or other person suspected that the defendant was about to commit a crime and prepared for his detection, as a result of which he was entrapped in its commission, is no excuse, if the defendant alone conceived the original criminal design. If, however, the prosecutor in setting his trap waives his legal rights, as where he consented to the act, and the offense required want of consent on his part, the prosecution will fail, 12 Cyc. 160, where many cases are cited form many states. See Decoys.

See also Billingsley vs. U. S., 274 F. 86, which gives the rule; U. S. vs. Eman, 271 F. 353; Butts vs. U. S., 273 F. 35; Peterson vs. U. S., 255 F. 433; Partan vs. U. S., 261 F. 515; Farley vs. U. S., 269 F. 721; Rothman vs. U. S., 270 F. 31.

Sec. 75k.k. Expert Testimony.

The admissibility of expert testimony, as dependent on the qualifications of the expert, is to be determined by the trial judge, and its probative value is to be appraised by the jury, U. S. vs. Fischer, 245 F. 477.

Sec. 75k.k.k. Exceptions—Indictment.

It is always the safest practice to negative the exceptions of a statute, even though, there might be a given state of facts which would render it unnecessary, Young vs. U. S., 249 F. 937; Krause vs. U. S. 267 F. 183; Rothman vs. U. S., 270 F. 31.

Sec. 75k.k.k.k. Indictment and Information.

An indictment need not negative the exceptions in the statute. Especially is this true in view of section 32 of the Act which provides that it shall not be necessary in any indictment to include any defensive negative averments. Davis vs. U. S., 274 F. 928.

Sec. 75l. Free Speech.

For discussion of the constitutional right, see Schaefer vs. U. S., 40 Sup. Ct Rep. 259; Mar. 1, 1920; Seebach vs. U. S. 262 F. 885.

Sec. 75l.l. Habeas Corpus.

Issuance of by Federal court for an United States officer to the state court, see in re Beach, 259 F. 957.

Sec. 75l.l.l Hepburn Act.

For an illustratve conspiracy to violate the Hepburn Act see Dye vs. U. S., 262 F. 6.

Sec. 75m. Income Tax.

A false amended schedule is a violation, Levy vs. U. S., 271 F. 942.

Sec. 75m.m. Argument—Improper.

See U. S. vs. Phelan, 252 F. 891. See Sec. 22.

Sec. 75m.m.m. Injunction.

A Federal court will not grant an injunction to stay the taking of depositions, Stewart vs. Arthur, 267 F. 184.

The Federal court will grant an injunction to prevent a United States Attorney from enforcing a void statute, Lamborn vs. U. S., Attorney, 265 F. 944.

Sec. 75n. Criminal Intent.

The human way of charging the intent is from the act. In Bentall vs. U. S., 262 F. 744, a divided Circuit Court of Appeals held that such presumption is rebuttable, where an act, to be criminal, must be knowingly and wilfully done, not only a knowledge of the act is implied, but a determination, with a bad intent, to do it. The presumption of wrongful intent of a defendant, based upon the natural result of his words or acts, is not conclusive, but rebuttable, and this rebutting evidence may take the form of testimony by defendant that he intended no such results and an instruction in a criminal case, which stated without qualification, that a man could not say that he did not intend to do a certain thing, when such thing was the natural result of his act, was held erroneous where a specific intent was essential to the crime charged, and the defendant testified that he did not have such intent.

In the chapter on National Banks, herein, will be found a number of citations shedding additional light upon the word wilfully and the presumption of the intent from act itself.

Sec. 75n.n. Interest on Criminal Judgment.

Interest is not collectable on a criminal judgment, U. S. vs. Jacob, 254 F. 714.

Sec. 75n.n.n Indian.

A homestead acquired by an indian on public land in a state under the same homestead law is not land "re-

served . . . . . for the exclusive use of the United States," within Criminal Code, 272, and a Federal court is without jurisdiction to try a criminal offense committed thereon, U. S. vs. Lewis, 253 F. 469.

In a prosecution under Sec. 2139, declaring that any person who shall sell intoxicants to any indian ward of the government under the charge of an indian agent shall be punished, it is no defense that the seller did not know the purchaser was an indian ward of the government under charge of an indian agent, the statute not using the words "knowingly or wilfully" in connection with the sale, and the seller is guilty, though he believed the purchaser was a person of another race, Feeley vs. U. S., 236 F. 903.

See the following cases for introducing liquor into the Indian Territory, Fielder vs. U. S., 227 F. 832; Isabell vs. U. S., 227 F. 788.

Sec. 75o. False Claim for Damages to Shipment.

In a prosecution under the Act to Regulate Commerce Feb. 4, 1887, C. 104, Sec. 10, Par. 3, 24 Stat. 382, as amended by the Act of Mar. 2, 1889, against a corporation for fraudulent claim for injury to shipment, a corporate officer who signed letters making claims for injuries to a shipment is entitled to testify as to his intent, it appearing that the claims were prepared by his bookkeeper, for the corporation could act only through is officers or agents, and the intent of the officer is that of the corporation, Laser Grain Company vs. U. S., 250 F. 826.

The criminal portions of the act are as follows:—

"Sec. 2. False billing or classification by carrier or officer for transportation of property at less than regular rates. Any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and wilfully assist, or shall wilfully suffer or permit, any person or persons to obtain transportation for property at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be

subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense

"Sec. 3. Obtaining or attempting to obtain transportation for property at less than regular rates, by false billing or classification or by making false claim for damages. Any person, corporation, or company, or any agent or officer thereof, who shall deliver property for transportation to any common carrier subject to the provisions of this Act, or for whom, as consignor or consignee, any such carrier shall transport property, who shall knowingly and wilfully, directly or indirectly, himself or by employe, agent, officer, or otherwise, by false billing, false classification, false weighing, false representation of the contents of the package or the substance of the property, false report of weight, false statement, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent, or officer, obtain or attempt to obtain transportation for such property at less than the regular rates then established and in force on the line of transportation; or who shall knowingly and wilfully, directly or indirectly, himself or by employe, agent, officer, or otherwise, by false statement or representation as to cost, value, nature, or extent of injury, or by the use of any false bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to be false, fictitious, or fraudulent, to contain any false, fictitious or fraudulent statement or entry, obtain or attempt to obtain any allowance, refund, or payment for damage or otherwise in connection with or growing out of the transportation of or agreement to transport such property, whether with or without the consent or connivance of the carrier, whereby the compensation of such carrier for such transportation, either before or after payment, shall in fact be made less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was wholly or in part committed, be subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court: Provided, That the penalty or imprisonment shall not apply to artificial persons."

The Supreme Court of the United States held that the foregoing penal statutes apply to consignee as well as to consignor, U. S. vs. Union Manufacturing Company, 240 U. S., 605.

Sec. 75o.o. Insanity—From Drugs or Liquor—Defense When.

In the case of Perkins vs. U. S., 228 F. 408, the Circuit Court of Appeals for the 4th Circuit wrights interestingly and learnedly concerning the defense of insanity to a criminal prosecution when such insanity is the result of voluntary intoxication or drunkness or delirium.

One may not hide behind a mental or physical condition produced by a voluntary use of intoxicants, and yet being in that condition the law does not view with the same degree of severity that it does when the doer is sober and normal.

Sec. 75o.o.o. Court—Meaning of.

A trial by a court means by twelve men presided over by a judge and the judge cannot be substituted during the trial, and the judge must be present, Freeman vs. U. S., 227 F. 732.

Sec. 75p. Viruses, Serum, etc.

The Act of 1902, 32 Stat. 728, C. 1378, Sec. 1, which provides certain regulations for the sale, production, labelling, and licensing of the sale of viruses, serums, toxins, anti-toxins, etc., and provides:

"Any person who shall violate, or aid or abet in violating, any of the provisions of the Act shall be punished by a fine not exceeding five hundred dollars or by imprisonment not exceeding one year, or by both such fine and imprisonment, in the discretion of the court, Arts. 8354-8360 Barnes 1919 Fed. Code.

Sec. 75p.p. Lands—Public.

The attempting or pretending to sell public lands is an offense under the Act of Feb. 23, 1917, and is punishable by fine not exceeding three hundred dollars, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment, Sec. 10226A. of 1918 Compiled Statutes.

Sec. 75p.p.p. Lever Act.

The Act of Aug. 10, 1917, Sec. 4, as amended by the Act of Oct. 22, 1919, Sec. 2, is unconstitutional because it does not define the offense with sufficient certainty, denounces the unjust and unreasonable charge, and, of course, there is no standard as to what is unjust or as to what is unreasonable, U. S., vs. Cohen, 264 F. 218; Hillsboro vs. Knotts, 273 F. 221; 41 Sup. Ct. Rep. 298; Weeds

vs. U. S. 41 Sup. Ct. Rep. 306; People vs. U. S., 271 F. 790.

Sec. 75q. Letter Carriers.

Letter carriers by virtue of their appointment from the competitive classified list of the Federal Civil Service Commission, acquire rights which they cannot be deprived of without due process of law, and may not be removed without a hearing on the charges, U. S. vs. Post master, 221 F. 687.

Sec. 75q.q. United States Marshal—Deputies, etc.

For a discussion of appointment and removal see U. S. vs. Lapp, 244 F. 377.

Sec. 75q.q.q. Memory—Refreshing.

For a discussion of the rule in the Federal Court see 232 F. 444. Dewitt vs. Skinner; Bates vs. Breble, 151 U. S., 149; Vicksburg vs. O'Brien, 119 U. S. 99; Putman vs. U. S. 162 U. S.

Sec. 75r. Mandamus—To Compel United States Court, etc.

The Supreme Court of the United States will compel, by mandamus, the judge of a Federal court to perform a service which it is right and lawful should be performed; as the breaking of a seal on evidence and documents, etc., ex parte Uppercu, 239 U. S., 435.

Sec. 75r.r. Motion to Quash.

The overruling of a motion to quash or the granting of a motion to quash is in the discretion of the court, Wetzel vs. U. S., 233 F. 984.

Sec. 75r.r.r. Newspaper.

A false affidavit as to the circulation is not an offense, U. S. vs. Smith, 269 F. 191.

Sec. 75s. Passports.

The Act of June 15, 1917, creates certain offenses with reference to passports, such as forgery or altering, Sec. 9767, Barnes Fed. Code, which provides a fine of one thousand dollars and imprisonment of not more than three years; and the making of false statements in an application for a passport and the use of a passport belonging to another and forging or altering are punishable by a fine of not more than two thousand dollars or im-

prisonment not more than five years, or both, 40 Stat. 227; Sec. 6991 Barnes Fed. Code, 1919.

Sec. 75s.s. Fraud Order—By Postmaster General.

A fraud order may be reviewed, when unlawful, Masses vs. Patten, 244 F. 535; Anderson vs. Patten, 247 F. 382.

Sec. 75s.s.s. Warrant Issued by the President.

The President may issue a warrant, when, Minotto vs. Bradley, 252 F. 600.

Sec. 75t. Prisoner—Prisoners.

Place of confinement and change thereof, Keliher vs. Mitchell, 250 F. 904; Whittaker vs. Brannan, 252 F. 556.

Sec. 75t.t. Subpoena Duces Tecum.

A subpoena duces tecum may issue in a criminal case, when, 248 F. 137.

Sec. 75t.t.t. Regulations by Commissioner Internal Revenue.

Certain regulations are not authorized and are invalid, when, 238 F. 650.

Sec. 75u. Revenue Law—What Is.

Warren vs. Flower, 29 Fed. cases, 255; Ward vs. Congress, 99 F. 598; Bryant vs. Robinson, 149 F. 321; 192 F. 596; 192 F. 583; 162 F. 937; 218 U. S. 517; page 378, Sec. Series Words and Phrases.

Sec. 75u.u. Repeal of Act—Right to Prosecute.

De Four vs. U. S., 260 F. 597.

Sec. 75u.u.u. Sale—What Is.

Scoggins vs. U. S., 255 F. 825.

Sec. 75v. Seamen.

For a discussion of the Act of Mar. 4, 1915, and the preceding acts relating to seamen and their offenses, etc., see 233 F. 708, Hamilton vs. U. S., 268 F. 15.

Must go to end of voyage though time under contract has expired, 274 F. 691.

Sec. 75v.v. Immunity Promises.

The District Attorney should notify the other defendants who may be jointly indicted of any immunity promise made by him to a co-defendant, 244 F. 140; a trade to turn state's evidence made by a Collector of Internal Revenue need not be followed by the District Attorney, Gladstone vs. U. S., 248 F. 117. See Sec. 39 & 39a.

Sec. 75v.v.v. Strikers.

See Clayton Act; 252 F. 722.

Sec. 75w. Trading with the Enemy Act.

See U. S. vs. Van Werkhoven, 250 F. 311; U. S. vs. Welsh, 250 F. 309.

Sec. 75w.w. United States—Suits Against.

It is not a suit against the United States when the law is invalid and an injunction is sought against the officer who would enforce it, Hanna vs. Clyne, 263 F. 599.

Sec. 75w.w.w. Transportation—Government Control.

See Act of March 21, 1918, C. 11, for offenses and punishment for interfering with possession and use and embezzlement, etc.

Sec. 75x. Unknown.

Use in indictment see Coffin vs. U. S., 156 U. S., 862; Roberts vs. U. S., 248 F. 874; Feener vs. U. S., 249 F. 425.

Sec. 75x.x. Venue.

A change of venue on the ground of local prejudice is within the sound discretion of the court, Stroud vs. U. S., 251 U. S., 15; 40 Sup. Ct. Rep. 50.

An indictment must be found in the division of the district where the offense was committed, U. S. vs. Chennault, 230 F. 942; Yeates vs. U. S., 254 F. 60; Sec. 42 Judicial Code; U. S. vs. Lombardo; Brown vs. U. S., 257 F. 46; Brown vs. U. S., 41 Sup. Ct. Rep. 501.

Sec. 75x.x.x. State Court—Jurisdiction.

The intent to deprive state courts of jurisdiction over offenses must be claimed, Caldwell vs. Parker, U. S., Supreme Court, April 1920.

Sec. 75y. Wife—Cannot be Witness for Husband.

This doctrine was announced by the Supreme Court in Jin Foey Moy vs. U. S., 41 Sup. Ct. Rep. 98; rule applies to husband as well as wife, Adams vs. U. S., 259 F. 214.

Sec. 75z. Trial of Defendant While He is Serving a Term of Imprisonment.

In ex parte Lamar, 274 F. 160, Circuit Judge Morton held that a defendant who is serving a term of imprisonment for a criminal offense may be tried for another offense and a judgment upon second conviction is not void for uncertainty which provides that it shall begin to run at the expiration of the first judgment.

CHAPTER V.

COUNTERFEITING AND OTHER OFFENSES AGAINST THE CURRENCY COINAGE AND OTHER SECURITIES.

§ 77. By the terms of Section 147 of the new Code, which is a substantial re-enactment of old Section 5413, the words "obligation or other security of the United States" are defined to mean all bonds, securities of indebtedness, national bank currency, coupons, United States notes, Treasury notes, gold certificates, silver certificates, certificates of deposit, bills, checks or drafts for money drawn by or upon authorized officers of the United

States, stamps and other representatives of value of whatever denomination, which have been or may be issued under any Act of Congress, and the words "gold certificates" and "silver certificates" were not in the old section.

When, therefore, in this chapter, or in any of the sections cited and treated, the words "obligation or other security of the United States" are used, they will be understood to mean and include the securities above mentioned, and any other representatives of value issued by authority of Congress. Judge Wheeler, in discharging Houghton from the custody of the state officers, who held him for violation of a state statute against counterfeiting, held, 7 Federal, 657, that the bills issued by national banks are securities of the United States, which Congress has power to protect by punishing the counterfeiting of them. He also held in the same case that the United States, in pursuance of Constitutional and statutory law, have the exclusive right to prosecute for counterfeiting Federal obligations, even though there be a state statute against the same offense, and that a Federal Court, will, upon habeas corpus, discharge a defendant held by the state authorities for the offense of counterfeiting. To the same effect is the decision by the same judge in the 8 Federal, 897, ex parte Houghton. In United States vs. Albert, 45 Federal, 552, Judge Pardee held that an indictment which charged the defendant with uttering and publishing a certain false, forged, and altered United States Treasury Warrant, was insufficient to sustain a verdict of guilty, when the evidence showed that the defendant had really negotiated a genuine check, drawn by an authorized officer of the United States upon an Assistant Treasurer, but had forged the endorsement of the name of the payee. Of course, the indictment could have been drawn so as to allege the forgery of the endorsement, which would have been entirely sufficient, under the statute; but, inasmuch as the indictment charged the whole instrument to be false and forged, the proof did not sustain the charge, because, as a matter of fact, the instrument itself was not forged, but genuine, the only forged part being the endorsement.

The Circuit Court of Appeals for the Second Circuit, in Krakowski vs. United States, 161 Federal, page 88, held that it was not sufficient to warrant a conviction under Section 5430, which makes it a criminal offense for any person to have or retain in his control or possession "after a definitive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under the authority of the Secretary of the Treasury, or some other proper officer of the United States," where the proof showed that the defendant had in his possession paper which might be used to make counterfeit obligations or securities. In other words, the Court held that that portion of the section included as penal having in possession without authority, of the distinctive paper itself or of some paper adapted to the making of Government obligations and securities. 5430, it will be borne in mind, is

§ 78. **New Section 150** upon which the following cases may be cited:

United States vs. Williams, 14 Federal, 550.
United States vs. Smith, 40 Federal, 755.
United States vs. Stevens, 52 Federal, 120.
United States vs. Barnett, 111 Federal, 369.
United States vs. Pitts, 112 Federal, 522.
United States vs. Conners, 111 Federal, 732.

§ 78a. **Using Plates—Having in Possession Obligation Without Authority, Etc.—Similitude—Unsigned Bank Notes.**—Section 150 of the new Code provides as follows: " Whoever having control, custody, or possession of any plate, stone, or other thing, or any part thereof, from which has been printed, or which may be prepared by direction of the Secretary of the Treasury for the purpose of printing, any obligation or other security of the United States, shall use such plate, stone or other thing, or any part thereof, or knowingly suffer the same to be used for the purpose of printing any such or similar obligation or other security, or any part thereof, except as may be printed for the use of the United States by

order of the proper officer thereof; or whoever by any way, art, or means shall make or execute, or cause or procure to be made or executed, or shall assist in making or executing any plate, stone, or other thing, or bring into the United States or any place subject to the jurisdiction thereof, from any foreign place, any such plate, stone, or other thing, except under the direction of the Secretary of the Treasury or other proper officer, or with any other intent, in either case, than that such plate, stone or other thing be used for the printing of the obligations or other securities of the United States; or whoever shall have in his control, custody, or possession any plate, stone, or other thing, from which any such obligation or other security has been printed, with intent to use such plate, stone, or other thing, or to suffer the same to be used in forging or counterfeiting any such obligation or other security, or any part thereof; or whoever shall have in his possession or custody, except under authority from the Secretary of the Treasury or other proper officer, any obligation or other security made or executed, in whole or in part, after the similitude of any obligation or other security issued under the authority of the United States, with intent to sell or otherwise use the same; or whoever shall print, photograph, or in any other manner make or execute, or cause to be printed, photographed, made, or executed, or shall aid in printing, photographing, making or executing any engraving, photograph, print, or impression in the likeness of any such obligation or other security or any part thereof, or shall sell any such engraving, photograph, print or impression, except to the United States, or shall bring into the United States or any place subject to the jurisdiction thereof, from any foreign place any such engraving, photograph, print or impression, except by direction of some proper officer of the United States; or whoever shall have or retain in his control or possession, after a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under the au-

thority of the Secretary of the Treasury or some other proper officer of the United States, shall be fined not more than five thousand dollars, or imprisoned not more than fifteen years, or both."

The having in possession, under the above statute, of an unsigned and unissued treasury note or national bank note would be an offense, the question, however, of similitude being submitted to the jury for their determination as to whether or not the failure of such note to bear the signatures of the officers of the issuing bank would be calculated to deceive or not deceive a person of ordinary intelligence. In the case of Wiggins vs. The United States, 214 Federal, 970, Judge Adams for the Circuit Court of Appeals, in affirming a conviction under this statute, held that an indictment for the illegal issuing and possession of an unsigned national bank note, under this statute, would not be subject to demurrer, on the mere ground that upon the face of such note it appeared never to have been issued and therefore appeared not to be an obligation of the United States. In overruling such demurrer, it was said, substance, that the indictment definitely enough charged that the instrument in the possession of the defendant was made in part after and in similitude of an obligation or security issued under the authority of the United States and probably for the purpose of demurrer the allegation touching similitude should be treated as true, but as the note was set forth in the indictment, it may be properly said that its contents and display afforded ample evidence for submission to the jury of the question whether it was calculated to deceive an unsuspecting person of ordinary prudence and incline him to accept it as good money, notwithstanding the fact that no president's or cashier's name appeared upon it. If that question is answered in the affirmative, the similitude is sufficiently established within the meaning of the law.

Prior to the Act of July 28, 1892, 27 Stats. 322, which provided in substance, that the provisions of the Revised Statutes of the United States providing for the redemption of national banks notes, shall apply to all national

bank notes that have been or may be issued to or received by any national bank, notwithstanding such notes may have been lost by or stolen from the bank, and put in circulation without the signature or upon the forged signature of the president or vice president and cashier, it would not have been an offense to pass, utter or publish an unsigned national bank note. U. S. vs. Williams, 14 Federal, 550; U. S. vs. Sprague, 48 Federal, 828; U. S. vs. Barrett, 111 Federal, 369.

Judge Rudkin, in U. S. vs. Webber, 210 Federal, 973, in speaking of the meaning of the word similitude or resemblance and similitude as contained in the foregoing statute and the meaning thereof, said that it was not necessary that the similitude or resemblance should be so great as to deceive experts, bank officers or cautious men. It is sufficient if the fraudulent obligation bears such likeness or resemblance to any of the genuine obligations or securities issued under the authority of the United States as is calculated to deceive an honest, sensible and unsuspecting person of ordinary observation and care when dealing with a person supposed to be upright and honest. See Sections 92 and 92a.

§ 79. **The Neall Case.**—The Circuit Court of Appeals for the Ninth Circuit, in the case of Neall vs. United States, 118 Federal, 699, determined that one who forges a certificate of deposit purporting to have been issued on behalf of the United States to an enlisted soldier, by signing thereto the name of the person described as an officer and deputy Paymaster General, has forged an "obligation of the United States," and an indictment therefor which alleged in the same count an intent to defraud both the United States and a soldier in the army, was not bad for duplicity, because, said the Court, it is impossible in such a case to aver or prove with certainty a specific intent to defraud either one rather than the other, and the law will impute to the act an intent to defraud all who might have been thereby defrauded.

That the intent involved in the old statute and in the new is general, is also determined in the case of United States vs. Jolly, 37 Federal, 118. In De Lemos vs. United

States, 91 Federal, 497, the Circuit Court of Appeals for the Fifth Circuit quashed an indictment for forgery under old Section 5414, where the proof showed the forgery of an endorsement on a draft, because the indictment failed to charge that the genuine draft with the forged endorsement, constituted together a forged obligation of the United States. In other words, the decision is in line with the Albert case referred to above. In the De Lemos case, the Court said that an indictment which avers that the draft itself constituted the obligation which was forged, and which, by every averment, shows that the forgery consisted in the false making of the endorsement, is in itself repugnant, and does not properly lay the offense.

§ 80. **Forging or Counterfeiting United States Securities.**—Section 148 of the new Code takes the place and is in the same words as old Section 5414, and what has been observed and the citations that have been given are authorities upon this new section, which reads as follows:

"Whoever, with intent to defraud, shall falsely make, forge, counterfeit, or alter any obligation or other security of the United States shall be fined not more than five thousand dollars and imprisoned not more than fifteen years."

Bearing in mind what has been said with reference to obligation or other security of the United States, it will be interesting to cite in this connection Section 149 of the new Code, which takes the place of the old Section 5415, and which reads as follows:

"Whoever shall falsely make, forge or counterfeit, or cause or procure to be made, forged, or counterfeited, or shall willingly aid or assist in falsely making, forging or counterfeiting, any note in imitation of, or purporting to be in imitation of, the circulating notes issued by any banking association now or hereafter authorized and acting under the laws of the United States; or whoever shall pass, utter, or publish, or attempt to pass, utter, or publish, any false, forged, or counterfeited note, purporting to be issued by any such association doing a banking business, knowing the same to be falsely made, forged, or counterfeited; or whoever shall falsely alter, or cause or procure to be falsely altered, or shall willingly aid or assist in falsely altering, any such circulating notes, or shall pass, utter, or publish, or attempt to pass, utter, or publish as true, any falsely altered or spurious cir-

culating note issued, or purporting to have been issued, by any such banking association, knowing the same to be falsely altered or spurious, shall be fined not more than one thousand dollars and imprisoned not more than fifteen years."

In the same connection, and in place of old Section 5431, is new Section 151, which relates to the passing, selling, concealing, etc., of forged obligations, and which reads as follows:

"Whoever, with intent to defraud, shall pass, utter, publish, or sell, or attempt to pass, utter, publish, or sell, or shall bring into the United States or any place subject to the jurisdiction thereof, with intent to pass, publish, utter, or sell, or shall keep in possession or conceal with like intent, any falsely made, forged counterfeited, or altered obligation or other security of the United States, shall be fined not more than five thousand dollars and imprisoned not more than fifteen years."

Attention is also called to Section 162 of the new Code, which reads as follows:

"Whoever shall so place or connect together different parts of two or more notes, bills, or other genuine instrument issued under the authority of the United States, or by any foreign government, or corporation, as to produce one instrument, with intent to defraud, shall be deemed guilty of forgery, in the same manner as if the parts so put together were falsely made or forged, and shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both."

Section 156, 157, 158, 159, 160 and 161 of the new Code elaborately include the offenses originally comprehended in the first volume of the Supplement, page 429, known as the Act of May 16, 1884, 23 St. Large, page 23, and relate to the offenses of counterfeiting notes, bonds, etc., of foreign governments, passing such forged notes, bonds, etc., counterfeiting notes on foreign banks, passing such counterfeited bank notes, having in possession such forged notes, bonds, etc., and having unlawfully in possession, or using, the plates for any such notes, bonds, etc.

The leading cases under the old act, and, therefore, ranking precedents under the new sections from 156 to 161 inclusive, are, United States vs. Arjona, 120 United States, 479, and Bliss vs. United States, 105 Federal, 508. In the Arjona case, the Supreme Court of the United

States upheld the constitutionality of the Act, and said that the United States not only had the power, but that it was their duty to prevent and punish the counterfeiting within their jurisdiction of the notes, bonds, and other securities issued by foreign governments, or under their authority, and that an act to prevent transgression against foreign securities did not have to declare the offense to be an offense against the law of nations. In Bliss vs. United States, the Court of Appeals for the First Circuit, in affirming a judgment of conviction against Bliss for counterfeiting a number of the notes of the Dominion of Canada of the same series and bearing consecutive numbers, held that the counterfeiting of the same at different times, although all apparently of the same series and apparently from the same plate, constituted distinct offenses, and a conviction for one is no bar to a prosecution for the other.

Sec. 80a. U. S. Securities.

The Supreme Court held in the case of U. S. vs. Sacks, 42 Sup. Ct. Rep. 38, and U. S. vs. Janowitz, 42 Sup. Ct. Rep. 40, that regulations made by the Secretary of the Treasury under the Act of September 24th, 1917, that war savings certificates should not be transferable were binding and that section 37 punishing conspiracy could be used in conjunction with section 148 counterfeiting, to successfully punish parties who purchased war savings stamps from the real owners and detached them from the certificate and conspired to exchange them for other certificates of the value in excess of a hundred dollars.

These two decisions are very comprehensive and should be read with care in order to understand the full sweep of the determination of the government to safeguard the obligations and securities it issues.

Sec. 80a.a. U. S. Securities.

The foregoing statutes with reference to forgery and counterfeiting and altering apply to non-negotiable as well as to the negotiable securities of the United States and, therefore, protect war savings stamps, etc., U. S. vs. Rossi, 268 F. 620.

§ 81. **Forging and Counterfeiting United States Securities and National Bank Notes.**—We now return to a discussion of Sections 148, 149 and 151, heretofore referred to. In these sections, together with Section 162, will be found practically all of the safe-guards that protect the genuine. and prosecute for the forging or counterfeiting of the government obligation or national bank note. Until the adoption of the New Code, there was no statute similar to the new Section 162. Prosecutions for alterations of genuine bills of small denominations, by erasing and pasting and changing the numerals and wording thereon, were had under 5414, which is now Section 148.

We instantly understand that one who prepares, with bad intent, an instrument that pretends to be an obligation of the United States or national bank currency, is within the purview of the statutes. There is a nice question, though, that hinges about the latitude and meaning of the word "imitation" and the word "similitude" as found in these old statutes and in the new ones. In Logan vs. United States, 123 Federal, 291, the defendant had robbed a train and secured a lot of forty thousand dollars of unsigned national bank notes, confined by the Comptroller of the Currency to the National Bank of Montana, and thereupon signed fictitious names to the notes as President and Cashier of the bank, and passed them. The first question raised by the defense was, that inasmuch as the signatures to the notes were those of fictitious persons, no forgery could be laid, which objection the Court overruled, citing United States vs. Turner, 7 Peters, 132, 8 Law. Ed., 633, and said:

"The fact that the names signed as President and Cashier were fictitious is of no importance. The public mischief is the same whether the names forged are those of the genuine officers or of fictitious persons."

To the other defense raised that such performances did not constitute the crime of forging notes under Section 5415, the Court answered that national bank notes to which signatures have been forged, and which have been

put in circulation, are redeemable by the Act of July 28, 1892, 27 St., 322, and this redemption clinches the offense, rather than acting as a defense thereto, and a conviction of the defendants was affirmed.

§ 82. **Confederate Money.**—In United States vs. Wilson, 44 Federal, 751, Judge Hallett, in passing upon an indictment against Wilson for having passed a Confederate States note, said:

"It is only necessary to say that the offense defined in this section and in other sections which have been referred to in argument upon this motion, is that of passing, uttering, or publishing any counterfeit note. The note must purport to be issued by such an association doing a banking business. This, so far as disclosed, was not a counterfeit at all. It was a genuine note;) that is to say, it was a genuine note of the Confederate States of America, and therefore, it was not counterfeit in the sense of this statute, or of any statute, and then it was not on its face, or in any way, a note of any national bank, or of the United States. There were no words to make it such. The counterfeit referred to in the statute must, at all events, have a greater resemblance to the current moneys of the United States than to anything else. This note, in the size and shape and color, and in the denomination of the figures upon it, has some resemblance to the current notes in circulation as money, but that is not enough to make it a counterfeit of the circulating notes of the United States."

To the same effect is United States vs. Kuhl, 85 Federal, 624, the Court saying that an ordinary Confederate States five-dollar note does not bear to the national currency the similitude contemplated in Revised Statutes 5430, notwithstanding such notes are frequently accepted by mistake as money. In this same case, the Court said that the "similitude" contemplated in Revised Statute 5430 is such a likeness or resemblance as to be calculated to deceive an honest, sensible, and unsuspecting man of ordinary care and observation, when dealing with a supposed honest man.

§ 83. **Other Securities, Including State Bank Notes.**—Judge Hanford, in 91 Federal, United States vs. Fitzgerald, left the question of similitude and similarity and imitation to the jury, upon a case against Fitzgerald for having in his possession a hundred shares of the capital stock of the Denver Mining Company, of the par value of

one thousand dollars, the certificate of which stock, in its size, quality of paper, style of printing, resembled a United States bond for the sum of one thousand dollars, and further resembled a United States bond for the said amount in that it had the words "The United States" printed across the face thereof, and the paper also had heavy green border and scroll work resembling somewhat the ornamentation of United States bonds. In leaving the question to the jury, he said:

"The similitude must be in such a degree as to furnish a resemblance so near to the Government obligations or securities that it could be used to deceive a person of ordinary intelligence, who is acting with ordinary care in a business transaction. The resemblance is sufficient for the purpose if you believe that it would probably deceive a person taken unawares in dealing with a person who he believed was acting honestly."

In United States vs. Stevens, 52 Federal, 120, District Judge Paul held in substance that a note that was originally issued by a duly authorized state bank, which was a legal note at the time of its issuance, but afterwards became utterly worthless by the insolvency of the bank, subjected the holder thereof to prosecution under Section 5430, if it was in his possession with intent to sell or otherwise use it, and pass it, as a genuine note or obligation of the United States. It is not thought that this is good law. Congress certainly has no authority to prevent the issuance of state bank notes. It simply taxes them out of existence, and one who passed a worthless state bank note, contending that it was a genuine United States obligation, would only be an offender against the state law for cheating or swindling. His statement with reference to the instrument does not, within the meaning of the law, constitute it a forgery, nor give it such likeness and similitude as will make it contraband under the Federal statute.

Judge Bellinger, in United States vs. Conners, 111 Federal, 734, decided that a bill or note issued by the state bank of New Brunswick, New Jersey, which thereafter became insolvent and worthless, but which was alleged in the indictment to be in the possession of Conners for

evil purposes, and that the same was in similitude of an obligation and security issued under the authority of the United States, was not in the "similitude" within the meaning of Section 5430, since it did not purport to be an obligation or security of the United States, and an indictment for a violation of that section did not charge an offense where it showed that the instrument referred to was such a bank bill.

In United States vs. Beebe, 149 Federal, 618, Judge Archbald, in passing upon a case which was based upon the defendant passing a genuine note, which had theretofore been issued by a state bank, even though at that time the note was worthless, and may have had some resemblance, by reason of its color, to a United States note, determined that no offense against the United States had been committed. He said:

"There must at least be such a resemblance if not simulation, as is not only calculated to deceive a person of ordinary intelligence, but as enables us to say with some degree of certainty that in disposing of or using it, the party charged was evidently trying to palm it off as a genuine obligation of the United States.....(citing and distinguishing cases). A broader ruling would make all state bank issues obnoxious; with regard to which, it may also be further observed that state currency is not prohibited, but is simply taxed out of existence: notwithstanding which, if anyone desires to put out notes or bills to pass as money, there is nothing to prevent it, to say nothing of being charged with counterfeiting, if they happen to prove worthless. ..... The Federal Government is only concerned with protecting the people against spurious or counterfeited imitations of the money to which it gives currency, and to those the Act is to be confined. It cannot, indeed, be extended further, without entrenching upon the reserved rights of the states, which we must be careful to respect, if the dual form of government which we have is to be preserved."

§ 84. **Allegation of Knowledge.**—These statutes being highly penal, and being given life only when there is evil intent, make it absolutely necessary that the indictment allege, and the proof show, either by circumstantial or direct evidence, the intent to defraud in making, forging, or altering, and the knowledge of such falseness, before the passing is unlawful. The Circuit Court of Appeals for the First Circuit, in Gallagher vs. United

States, 144 Federal, page 87, held that in a prosecution under Section 5415, for passing false or forged national bank notes, knowledge that they were falsely made is an essential element of the offense, and there must be some evidence of such knowledge, circumstantial or otherwise, aside from proof merely that the spurious note was passed. The Court says:

"The fact of knowledge may be proven in a variety of ways. There should, however, always be some evidence tending to show knowledge beyond that which results from mere proof that the spurious bill was passed. This rule results from the nature of the transaction, because, as is very well known, spurious notes are so skilfully fashioned that one might naturally and innocently, as is oftentimes the case, receive and pass them in the whirl of business. In such a case, intent and guilty knowledge, within the meaning of the statute, would be absent; hence, the rule requiring something more than evidence of the mere passage of the counterfeit paper."

It is very true that such evidence may be gathered from a field of circumstances, the manner in which the payment was made, the fact that a large bill was offered when the defendant had convenient change at hand; the placing of the money quietly and sliding it along the table or counter or receptacle; previous attempts to pass the same coin or bill and the rejection thereof, or the frequent passing of the same sort; conflicting statements, etc., etc. In United States vs. Carll, 105 United States, 611, the Supreme Court held that the allegation knowingly and wilfully was absolutely necessary to the validity of the indictment.

Sec. 84a. Allegation of Knowledge Continued.

The case of Baender vs. U. S., 260 F. 832, does not seem to be the law as it holds that the intent may be inferred from possession and need not be averred in the indictment. The statute under consideration, however, had been framed by Congress with the purpose of eliminating the words "with intent to fraudulently use the same" omitted. The possession of opium, from which analogy the opinion proceeds, was made presumptive, on certain incriminating facts but the statute itself creates such presumption.

Of course, one could not be in possession of a mold without knowing it, while one might be in possession of a counterfeit and not know it.

The allegation of knowledge is indispensable, says the Supreme Court in the Baender case, 41 Sup. Ct. Rep. 271, when the case reached that court.

An indictment for having in possession a falsely altered and spurious bank note, but containing no averment that the accused knew it to be altered or spurious does not charge an offense, Hill vs. U. S., 275 F. 187.

§ 85. **Description.**—Accurateness and preciseness are indispensable in the allegations of the indictment, when it comes to describing the false instrument passed or made. In United States vs. Howell, 64 Federal, 110, the Court held that an indictment which specified the particular kind of obligation, the denomination of such obligation, the allegation that the bill purported to be a United States note, and giving the denomination thereof, was sufficient. It is thought however, to be the better practice to set out the main features of the front and back of the bill or security. Of course, it is not meant to say that pictures or impossible delineations, or even difficult drawings, are to be incorporated in the bill, but the large numbers and wording, and identifying issues or series of both the front and back of the bill should be specifically set forth. It is fatal variance for the indictment to incorrectly describe the alleged conterfeit bills in respect to the bill number, U. S. vs. Mason, 12 Blatch, (U. S.) 497. If the grand jury does not have the bill it may so allege and describe as well as the circumstances will permit. U. S. vs. Howell, 64 Federal, 110.

§ 86. **Circulating Bills of Expired Corporation.**—Section 174 of the New Code practically re-enacts Section 5437. We have seen that under ordinary circumstances, unless there be some fatally misleading similarity, imitation, or similitude, the passing of the note of a defunct bank is not a Federal offense. Section 174 of the new Code inhibits the issuing or uttering of any note or obligation or bill or check or draft by any officer of an expired banking corporation. The statute, of course, does

not apply to one who is not, or was not, connected with the institution during its life.

§ 87. **Mutilating or Defacing National Bank Note.**—Section 5189 of the old statutes has been so changed as to read as follows, in Section 176 of the new Code:

"Whoever shall mutilate, cut, disfigure, or perforate with holes, or unite or cement together or do any other thing to any bank bill, draft, note or other evidence of debt, issued by any national banking association, or shall cause or procure the same to be done, with intent to render such bank bill, draft, note, or other evidence of debt unfit to be re-issued by said association, shall be fined not more than one hundred dollars, or imprisoned not more than six months, or both."

Under the old statute, the person doing the things therein denounced was liable to a penalty of fifty dollars, recoverable by the association, but under the new statute, the act becomes an offense punishable by indictment. Under the present section, as well as under the old statute, the prosecution must allege, and the proof must show that the mutilation, defacing, etc., of the note, bill, or draft, must have been with the intent to unfit the same to be re-issued by the association issuing it.

§ 88. **Imitating National Banking Notes with Printed Advertisement Thereon.**—Section 175 of the new Code takes the place of Section 5188, and reads as follows:

"It shall be unlawful to design, engrave, print, or in any manner make or execute, or to utter, issue, distribute, circulate, or use any business or professional card, notice, placard, circular, handbill, or advertisement in the likeness or similitude of any circulating note or other obligation or security of any banking association organized or acting under the laws of the United States which has been or may be issued under any act of Congress, or to write, print, or otherwise impress upon any such note, obligation, or security, any business or professional card, notice, or advertisement, or any notice or advertisement, or any matter or thing whatever. Whoever shall violate any provision of this section shall be fined not more than one hundred dollars, or imprisoned not more than six months, or both."

The new section becomes an offense wherein the penalties are recovered by the public prosecutor through indictment or information. Under the old statute, the offender was liable to a penalty of one hundred dollars,

recoverable on the suit of the informer, one-half of which went to the informer. Under the authority of United States vs. Laeseki, 29 Federal, 699, the penalty provided by the old section could only be recovered by a qui tam action brought by an informer, and could not be recovered by indictment at the instance of the Government.

This section is intended alone for the purpose of protecting national bank notes, and does not, by construction or otherwise, relate to the protection of any other government security or obligation. The statute really contains two offenses: the one against making any token, advertisement, circular, etc., in the likeness or similitude of any circulating note or other obligation; and the other is directed against the placing of any writing, printing notice, or any other advertisement upon one of the circulating notes or bills of the national bank currency. "Advertisement" to be read into entire statute, Kaye vs. U. S., 177 Federal, page 147.

§ 89. **Imitating United States Securities or Printing Business Cards on Them.**—Closely akin to the section above discussed is new Section 177, which reads as follows:

"It shall not be lawful to design, engrave, print, or in any manner make or execute, or to utter, issue, distribute, circulate, or use any business or professional card, notice, placard, circular, hand-bill, or advertisement, in the likeness or similitude of any bond, certificate of indebtedness, certificate of deposit, coupon, United States note, or other obligation or security of the United States which has been or may be issued under or authorized by any Act of Congress heretofore passed or which may hereafter be passed; or to write, print, or otherwise impress upon any such instrument, obligation, or security, any business or professional card, notice or advertisement, or any notice or advertisement of any matter or thing whatever. Whoever shall violate any provision of this section shall be fined not more than five hundred dollars."

This section takes the place of old Section 3708, and is more severe in penalty. The penalty of the old section was not recoverable except upon the suit of an informer, and the authority of the United States vs. Laeseki, 29

Federal, 699, governed. The new section authorizes prosecution by information or indictment, and by the government, instead of waiting for an informer to move. This statute, like the preceding, protects from defacement securities, moneys, notes, and other obligations of the United States, and also prevents the making, for advertising purposes, of any card or other circular in likeness or similitude to any such government security or obligation.

§ 90. **Notes of Less Than One Dollar Not to Be Issued.**—Section 3583 of the Revised Statutes of the United States, that has been the law since 1878, has simply been re-enacted in Section 178 of the new Code, which went into effect January 1, 1910. This section reads as follows:

"No person shall make, issue, circulate, or pay out any note, check, memorandum, token, or other obligation for a less sum than one dollar, intended to circulate as money, or to be received or used in lieu of lawful money of the United States; and every person so offending shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both."

The old section simply had the additional words, "at the discretion of the Court." These words were left off of the new section, which, however, does not alter the punishment, because the same is in the discretion of the Court under the new section, and he may assess either or both, as he pleases.

There seems to be no doubt, so far as the decisions are concerned, that a personal check drawn upon a bank in the settlement of an obligation, and not to be circulated as money is entirely lawful, and is not interfered with by the above section. So early as 1878 the Supreme Court of the United States, in the case of the United States against Van Auken, 96 U. S., page 366, determined that the section was intended to prevent the issuance of tokens which were to circuate as money. That decision has since been followed, directly and persuasively, in Hollister vs. Merchant Institute, 111 U. S., 63; United States vs. White, 19 Federal, 724; in re Aldrich, 16 Federal, 370; United States vs. Rousopulous, 95 Federal, 978; Zion

Institute, etc., vs. Hollister, 3 Utah, 301; Martin Lumber Company vs. Johnson, 70 Ark., 219; 66 S. W., 925.

Of course anything I have said here does not mean that individuals or business concerns should issue, for the payment of help, any sort of a token that the employees could not immediately take to a bank and receive the cash thereon.

The statute is simply for the purpose of confining the power to issue money in the Constitutional channel, to wit, the hands of Congress, and not to individuals, or firms, or concerns.

§ 91. **Counterfeiting Gold or Silver Coins or Bars.**— Without substantial alteration, old Section 5457 and the Amendment as contained in the First Supplement, 128, becomes Section 163 of the new Code, in the following words:

"Whoever shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or shall willingly aid or assist in falsely making, forging, or counterfeiting, any coin on bars in resemblance or similitude of the gold or silver coins or bars which have been, or hereafter may be coined or stamped at the mints and assay offices of the United States, or in resemblance or similitude of any foreign gold or silver coin, which by laws, is, or hereafter may be, current in the United States, or are in actual use and circulation as money within the United States; or whoever shall pass, utter, publish, or sell, or attempt to pass, utter, publish, or sell, or bring into any foreign place, knowing the same to be false, forged, or counterfeit, with intent to defraud any body politic or corporate, or any person or persons whomsoever, or shall have in his possession any such false, forged, or counterfeited coin or bars, knowing the same to be false, forged, or counterfeited, with intent to defraud anybody politic or corporate, or any person or persons whosoever, shall be fined not more than five thousand dollars and imprisoned not more than ten years."

The same care in the drafting of indictments, in the alleging of the fraudulent intent, is necessary, as in prosecutions for passing other forged instruments. When the indictment is for forging or making, the allegation of knowledge is unnecessary, because the law presumes that one who makes has knowledge of its falseness. U. S. vs. Otney, 31 Federal, 68; U. S. vs. Bicksler, 1 Mackey, 341; U. S. vs. Peters, 2 Abb. (U. S.), 494; U. S. vs. Russell,

22 Federal, 390. When, however, the charge is for passing, knowledge must be alleged and shown. Of course, such knowledge may be shown by either direct or circumstantial evidence, but there must be something from which the jury can conclude, beyond a reasonable doubt, that the person passing had knowledge that the coin was spurious; otherwise, the act is entirely innocent.

Sec. 91a. Counterfeit Gold and Silver Coins and Bars Continued.

For minor coins see Sec. 93. It is not necessary to allege "not a minor coin," Linnigen vs. Morgan, 241 F. 645.

§ 92. **Resemblance or Similitude.**—The same difficulties have been encountered and overcome by the Courts under the coin statutes as were discussed under Sections 148 and 149, supra. A coin or bar would not be called counterfeit, within the meaning of a criminal statute, unless there appeared to be some resemblance or similitude and an effort to make such resemblance and similitude. It would seem to be the better public policy to accept the test prescribed in United States vs. Hargrave, 26 Federal Cases No. 15306, where it was said that it was not a question whether the spurious coin would deceive a person of ordinary skill and caution, but whether it was capable and designed to be used for deceiving the incautious and unskillful, to test which seems to be more broadly determined in the following words, to wit: "If the spurious article has not a resemblance strong enough to deceive persons exercising ordinary caution, then the passing is not a crime," as cited in and supported by Second Volume Federal Statutes Annotated, page 311; United States vs. Aylward, 24 Federal Cases No. 14484. A very fair test is that prescribed in United States vs. Hopkins, 26 Federal, 443, where the Court said:

"It is not necessary that the resemblance should be exact in all respects. The resemblance is sufficient if the coins are so far alike that the counterfeit coin is calculated to deceive a person exercising ordinary caution and observation in the usual transaction of business.

though the counterfeit would not deceive a person who was expert, or has particular experience in such matters."

See also U. S. vs. Abrams, 18 Federal, 823; U. S. vs. Russell, 22 Federal, 390. In United States vs. Lissner, 12 Federal, 840, the Court held that the removal of an appreciable amount of the silver from a coin, which was replaced with an inferior metal, amounted to counterfeiting.

In United States vs. Owens, 37 Federal, 112, District Judge Hammond held that in a prosecution under a general statute of the sort under discussion, it was not essential for the indictment to aver that the alleged counterfeits were in the likeness and similitude of genuine notes (coins) authorized by the act of Congress under which they purported to have been issued. Such an allegation may be necessary under a special statute, but in providing a general law for forgery, such specific allegation is unnecessary. The words "false, forged, and counterfeited obligation of the United States" are sufficient to imply that the alleged counterfeit purports to be a genuine obligation of the United States, and are a sufficient averment that there is, or was, outstanding, authorized by law, genuine obligations of the sort the alleged imitation was intended to be a forgery or counterfeit.

An indictment under this section must aver the intention to defraud, but it need not specify the person, if, as a matter of fact, the grand jury does not know in particular, and the indictment may, therefore, allege that the forging and having in possession was for the purpose of defrauding persons to the grand jurors unknown, if such be the facts. Of course, in a count for passing or uttering, the indictment should allege the intent to defraud the person upon whom the coin was passed. Whether for having in possession or for passing, there must be, as above stated, an allegation of knowledge with reference to its vice. U. S. vs. Bejandio, 1 Woods, 294.

§ 92a. **Resemblance and Similitude, Continued.**—An unsigned national bank note contains the elements of similitude and resemblance required by the statute. Wig-

gins vs. U. S., 214 Federal, 970. Similitude and resemblance is a jury question and must be submitted by the Court to the jury. U. S. vs. Weber, 210 Federal, 973. See Sections 78 and 78a. The meaning of similitude is that the counterfeit must resemble the genuine. Whether it does is a question of fact for the jury, but the Court will instruct them that the likeness need not be perfect. The rule is sometimes stated to be that it will suffice if the counterfeit looks so much like the original as to be capable of deceiving a person using ordinary caution. 2nd Vol. Bishop's New Criminal Law, Section 291, page 167. There need be no impression on the counterfeit, says one authority for it may be in the likeness of the worn coin. 2nd Vol. Bishop's New Criminal Law, Section 291, page 167.

§ 92b. **Advertisements Like Coins, Etc.**—Section 171 provides: "Whoever, within the United States or any place subject to the jurisdiction thereof, shall make, or cause or procure to be made, or shall bring therein, from any foreign country, or shall have in possession with intent to sell, give away, or in any other manner use the same, any business or professional card, notice, placard, token, device, print, or impression, or any other thing whatsoever, in the likeness or similitude as to design, color, or the inscription thereon, of any of the coins of the United States or of any foreign country that have been or hereafter may be issued as money, either under the authority of the United States or under the authority of any foreign government, shall be fined not more than one hundred dollars. But nothing in this section shall be construed to forbid or prevent the printing and publishing of illustrations of coins and medals, or the making of the necessary plates for the same, to be used in illustrating numismatic and historical books and journals and the circulars or legitimate publishers and dealers in the same." Act February 15, 1912.

§ 93. **Counterfeiting Minor Coins.**—Section 5458 of the old statutes is displaced by Section 164 of the new Code, in the following terms:

"Whoever shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or shall willingly aid or assist in falsely making, forging, or counterfeiting any coin in the resemblance of similitude of any of the minor coins which have been, or hereafter may be, coined at the mints of the United States; or whoever shall pass, utter, publish, or sell, or bring into the United States or any place subect to the jurisdiction thereof from any foreign place, or have in his possession any such false, forged, or counterfeited coin, with intent to defraud any person whomsoever, shall be fined not more than one thousand dollars and imprisoned not more than three years."

This statute, it will be noticed, includes all of the elements and ingredients, both with reference to allegation and proof that have been treated under Sections 163, 148 and 149. It must be understood that the minor coins referred to in the section are those defined and created by Section 3515 of the old statute, which were a five-cent piece, a three-cent piece, and a one-cent piece. An indictment, therefore, which charged the forging and counterfeiting of minor silver coinage is contradictory, and alleges no offense. U. S. vs. Bicksler, 1 Mackey, 341.

§ 94. **Making or Uttering Coins in the Resemblance of Money.**—New Section 167, in the following words:

"Whoever, except as authorized by law, shall make or cause to be made, or shall utter or pass, or attempt to utter or pass, any coins of gold or silver or other metal, or alloys of metals, intended for the use and purpose of current money, whether in the resemblance of coins of the United States or of foreign countries, or of original design, shall be fined not more than three thousand dollars, or imprisoned not more than five years, or both."

displaces old Section 5461. Sections 163 and 164, above mentioned, related alone to gold and silver coins or bars, and the minor coinage while Section 167 is what may be termed a blanket statute, that denounces as unlawful, any making, uttering, or passing etc., of any coin, whether of gold or silver or other metal, intended for the use and purpose of current money, and this whether the design be in imitation of any United States obligation, or whether it be in original design.

This statute, if enforced, is capable of being used for much good, in the stamping out of the practice of certain

large industries, that pay their labor, and thus enforce a practical serfdom, with checks or due bills or trade vouchers which pass as current money in the camp or town that such industry owns or dominates. The fact part of the statute is found in the words "intended for the use and purpose of current money," and, of course, this can be made to appear either by direct or circumstantial testimony. The jury should be instructed that the tokens were intended for the use and purpose expressed in the statute, and they should so find, beyond a reasonable doubt, before a conviction could be had.

§ 95. **Making or Issuing Devices of Minor Coins.**—For the protection of the minor coinage, as defined by old statute 3515, as hereinbefore noticed, the old section 5462 becomes Section 168 in the new Code, which reads as follows:

"Whoever, not lawfully authorized, shall make, issue, or pass, or cause to be made, issued, or passed, any coin, card, token, or device in metal, or its compounds, which may be intended to be used as money for any one-cent, two-cent, three-cent, or five-cent piece, now or hereafter authorized by law, or for coins of equal value, shall be fined not more than one thousand dollars, and imprisoned not more than five years."

In United States vs. Roussopulous, 95 Federal, 977, the Court held that circular metal tokens, which, though of similar color, differed in size and wholly undesigned from any coin of the United States, and are only from one-sixth to one-fifteenth the weight of the coin the nearest the same size, and which do not purport to be money or obligations to pay money, but contain the names of business concerns, with the statement that they are good for a certain value in merchandise, are not tokens in the likeness and similitude of coins of the United States, nor intended to circulate as money, and to be received and used in lieu of lawful money, within the prohibition of Section 5462, Section 3583, or the Act of February 10, 1891.

It will be borne in mind, however, that Section 168 is not nearly so broad as Section 167. It is true of 168, as it was of 167, that there must be an intent to use the

token as money, which must be charged, proven, and found, as other essential facts in criminal cases.

§ 96. **Other Statutes Relating to the Coinage.**—Section 165 takes the place of the old Section 5459, as amended by the Act shown at page 579 of the Second Supplement. This section punishes the fraudulent mutilation or lightening of the coinage. There seems to be nothing in the old law or in the new law that inhibits the bona fide use of a coin. If, however, there be a mutilation, for the purpose of defrauding some person, the statute is so broad as to include every possible method. It was said in United States vs. Lissner, 12 Federal, 840, that where one punched a hole with a sharp instrument through a coin, leaving all the silver in the coin, though crowding it into different shape, he committed no offense.

Section 166 relates to the debasement of the coinage by officers of the mint, and is a practical re-enactment of old Section 150. Section 169 relates to counterfeiting, etc., of the dies for coins of the United States, and incorporates all the features of the Act shown in First Supplement, page 889.

Section 170 denounced the counterfeiting of dies for foreign coins, and is based upon the Act shown in the First Supplement, page 890.

Section 171 is an incorporation of the Act shown in First Supplement, page 890, and the Act of the Third of March, 1903, page 1223 of the 32 St. Large, and treats of the making, importing, or having in possession, tokens, prints, etc., similar to United States or foreign coins.

§ 96a. **Counterfeit Dies, Hubs, Molds, Etc.**—The Act of February 10, 1891, Chap. 127, 26 Stats. L., 742, which makes it an offense to make any die, hub or mold in the likeness of any die, hub or mold designed for the coining of any of the coins of the United States "without authority from the Secretary of the Treasury," makes it necessary that the indictment must aver the want of such authority and a general averment that the die, hub or mold was unlawfully and feloniously made by defendant is not sufficient. Wroclawsky vs. U. S., 183 Federal, 312.

Sections 169 and 170 of the Criminal Code do not contain the words "Secretary of the Treasury" but do con-

tain the words "without lawful authority." It would appeal that an indictment without the words "without lawful authority" would be generally demurrable and yet the proof of such an allegation could only be made by the testimony of the Treasury Department of the United States, and from the lips of such authority in that department as would be able to speak with reference to the custody of all of such property as belonged to the Government. It might be that this proof could be made by a duly commissioned secret service officer who would be sufficiently familiar with the dies and hubs and molds of the United States, but it is hardly seen how he could qualify and how his testimony would meet the measure of these two sections.

Sec. 96b. Die and Mold.

It is immaterial that the word die is used instead of mold, Cole vs. U. S., 269 F. 250.

§ 97. **Counterfeit Obligations, Etc., to be Forfeited.**—By the terms of Section 172, which reads as follows:

"All counterfeits of any obligation or other security of the United States or of any foreign government, and all material or apparatus fitted or intended to be used, or that shall have been used, in the making of any such counterfeit obligation or other security or coins hereinbefore mentioned, that shall be found in the possession of any person without authority from the Secretary of the Treasury or other proper officer to have the same, shall be taken possession of by any authorized agent of the Treasury Department, and forfeited to the United States, and disposed of in any manner the Secretary of the Treasury may direct. Whoever having the custody or control of any such counterfeits, material, or apparatus, shall fail or refuse to surrender possession thereof upon request by any such authorized agent of the Treasury Department, shall be fined not more than one hundred dollars, or imprisoned not more than one year, or both."

any counterfeit obligation, security, coin, or other material, is to be forfeited. This section is an enlargement of the Act shown in the First Supplement, page 890, in that it adds a penalty. Whoever, having custody of the material, refuses to surrender, upon request, is liable to one hundred dollars fine, or imprisonment for not more than one year, or both.

§ 98. **Search Warrant.**—In aid of the above statute, and particularly for the suppression of all sorts of counterfeiting, we have Section 173 of the new Code, in the following words:

"The several judges of courts established under the laws of the United States and United States commissioners may, upon proper oath or affirmation, within their respective jurisdictions, issue a search warrant authorizing any marshal of the United States, or any other person specially mentioned in such warrant, to enter any house, store, building, boat, or other place named in such warrant, in which there shall appear probable cause for believing that the manufacture of counterfeit money, or the concealment of counterfeit money, or the manufacture or concealment of counterfeit obligations or coins of the United States or of any foreign government, or the manufacture or concealment of dies, hubs, molds, plates, or other things fitted or intended to be used for the manufacture of counterfeit money, coins, or obligations of the United States or of any foreign government, or of any bank doing businesss under the authority of the United States, or of any State or Territory thereof, or any bank doing business under the authority of any foreign government, or of any political division of any foreign government, is being carried on or practiced, and there search for any such counterfeit money, coins, dies, hubs, molds, plates, and other things, and for any such obligations, and if any such be found, to seize and secure the same, and to make return thereof to the proper authority; and all such counterfeit money, coins, dies, hubs, molds, plates, and other things, and all such counterfeit obligations so seized shall be forfeited to the United States."

The only difference between the new section and the old section as shown in First Supplement, page 890, is the leaving out of the provision that a search warrant may be served or acted upon only in the day-time. Under the new law, officers may act under the search warrant, when issued as therein provided, at any time, unless, perchance, the Constitutional prohibition against unreasonable searches and seizures may be read into the statute, and it doubtless is.

Sec. 98a. Search Warrant Continued.

There is no general power reposed in a court to issue a search warrant, U. S. vs. Jones, 230 F. 263.

CHAPTER VI.

OFFENSES AGAINST PUBLIC JUSTICE.

§ 99. **Perjury.**—Section 125 of the new Code, which contains 5392 of the old statutes without changing the same, reads as follows:

"Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall wilfully and contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than two thousand dollars, and imprisoned not more than five years."

Common law perjury was practically the same as this statutory offense. Perjury, at Common Law, was the wilful and corrupt giving, upon a lawful oath, or in any form allowed by law to be substituted for an oath in a judicial proceeding or course of justice, of false testimony material to the issue or matter of inquiry.

§ 100. **Form of Oath Immaterial.**—An oath, as understood in prosecutions under this statute, is one's solemn asseveration, uttered in an appeal to the Supreme Being, under the sanction of his religion, that a thing stated or to be stated by him is true, made to a civil officer authorized to administer or receive it. It must, therefore, be a lawful one; that is, it must be legally administered, by an officer duly authorized, but the form is immaterial, provided the witness professes it to be binding on him. When a witness comes to be sworn, it is to be assumed that he has settled with himself in what way he shall be sworn, and he should make it known to the Court, and should be sworn with uplifted hand, or by any other unusual mode, though not conscientiously opposed to swearing on the Gospel, and depose falsely, he subjects himself to prosecution for perjury. See Clark, Bishop, and Wharton on Perjury. In United States vs. Mallard, 40 Federal, 151, the Court held that the affiant, being unable to write, the Commissioner reduced his statement to writing, ending with the jurat, "Sworn to before me," and said to him, "If you swear to this statement, put your mark here." The affiant put his mark. This was held to be an oath. In United States vs. Baer, 6 Federal, 42, the evi-

dence of a notary public showed that he had used a form substantially as that required by the local state statute, in swearing a witness, and the Court held that the oath was sufficient to sustain a verdict of guilty of perjury.

§ 101. **Competent Tribunal, Officers, Etc.**—Having been satisfied that the person took an oath in some form recognized as religiously binding, the next question under the statute is whether such an oath was taken before a competent tribunal, officer, or person, in a case in which a law of the United States authorized an oath to be administered. Under the Common Law, the false testimony must be in a judicial proceeding, or in the course of justice; but the statute under consideration includes much more than the Courthouse testimony and oath. It does not, however, include every affidavit or declaration. In United States vs. Babcock, 4 McLean, 113, it was held that an oath administered to a witness by the Clerk of the Circuit Court, as to the distance from the Court to his home, taken by the witness to support his claim for mileage, was not taken under any law of the United States, and, therefore, a prosecution for perjury could not be sustained. In United States vs. Maid, 116 Federal, 650, the Court held that an affidavit of the non-mineral character of the land, made in support of a homestead entry, although a regulation of the land office required such an affidavit to be made in certain states, since it was not required by Revised Statutes 2290, which prescribed the contents of a homestead affidavit, would not sustain a prosecution for perjury.

In United States vs. Howard, 37 Federal, the facts showed that the defendant entered a homestead claim, and on application to commute his entry to a cash entry, he made affidavit that he had actually moved on the land in December, etc., taking his oath before a Judge of Probate. The statute did not authorize a Judge of Probate to administer such an oath; and the Court, upon demurrer, held the indictment to be fatally defective, upon the proposition that the defendant had not taken his oath before some competent tribunal, officer, or person. In United States vs. Manion, 44 Federal, page 800, the Court held that perjury cannot be assigned upon affidavit made

before a notary public, by a person in support of his claim to a preference right to purchase coal land under certain sections of the Revised Statutes, because notaries public are not authorized by any law of the United States to administer oaths to affidavits required by the rules and regulations of the general land office, the regulations showing that persons desiring to make affidavits for coal lands must do so before a Register or Receiver of the Land office. Judge Paul, in United States vs. Law, 50 Federal, 915, held that Section 778 of the Revised Statute, which authorized notaries public to administer oaths in all cases in which Justices of the Peace had power to administer them, gave no power to administer an oath in an investigation by the Post-office Department, as to the alleged loss of a registered letter, for there was no statute which gave Justices such power, and, therefore, no indictment for perjury could be based upon false statements in an affidavit made before a notary public in such an investigation. Before the Act of February 26, 1881, a notary public had no authority to administer oaths to officers of national banks for the verification of their reports to the Comptroller, and false statements in such reports, where verification was had before a notary public, would not have sustained prosecution for perjury. United States vs. Curtis, 107 U. S., 671. An oath taken before a Commissioner of the Circuit Court in taking bail, where the laws of the State do not authorize the State officers mentioned in the statute to administer oaths for similar purposes, will not sustain a prosecution for perjury. United States vs. Garcelon, 82 Federal, 611. Under the authority of United States vs. Lamson, 165 Federal, page 80, an affidavit under Section 6 of the Oleomargarine Act, which requires wholesale dealers to keep such books and render such returns as the Commissioner of Internal Revenue, may, by regulation, require, under prescribed penalties for its violation, and the regulation thereunder made requiring an oath to the returns, does not have the force of law in such sense that a false oath to a return subjects the maker to prosecution for perjury, and an indictment so laid was quashed by Judge Brown.

§ 101a. **Oath Must Be Authorized.**—A perjury cannot be assigned upon an oath that was not authorized or required by law. In the case of U. S. vs. George, 228 U. S., page 14, the Supreme Court of the United States affirmed the judgment of the lower Court, wherein it was held that an affidavit made by a homestead claimant in pursuance of a regulation promulgated by the Secretary of the Interior and by the officers of the Land Department, but which was not authorized or demanded by any law of the United States, could not be the predicate for the successful assigning of perjury. The Court observed that there was a distinction between legislative and administrative functions and that under a statutory power to make regulations an administrative officer could not abridge or enlarge the conditions imposed by statute.

The bankruptcy statute authorizes the making of schedules under oath and the examination of the bankrupt and various other under-oath proceedings, and perjury committed in any of such examinations or disclosures is venal. Daniels vs. U. S., 196 Federal, 459. Ulmer vs. U. S., 219 Federal, 641; U. S. vs. Rosenstein, 211 Federal, 738; oaths made in the various steps of a patent application are corrupt. Patterson vs. U. S., 202 Federal, 208; a notary public is a competent officer or tribunal and authorized to administer oaths. Patterson vs. U. S., 202 Federal, 708. But the affidavit required under Section 4886 by an inventor may not be enlarged by the Commissioner of Patents so as to make an assignment of perjury possible under such enlarged order. Patterson vs. U. S., 181 Federal, 970. An importer is guilty of perjury in making an affidavit which was untrue with reference to concealed or suppressed articles which were subject to duties, U. S. vs. Salen, 216 Federal, 420.

Grand jurors have authority to administer oaths and false testimony is perjury. Brzezinski vs. U. S., 198 Federal, 65.

A United States Commissioner is authorized to administer oaths as demanded by this statute. Cohen vs. U. S., 214 Federal, 23.

Sec. 101b. A United States Commissioner is a Competent Tribunal, 252 F. 471.

An oath taken on a Civil Service blank is an offense, U. S. vs. Crandol, 233 F. 331.

§ 102. In the following cases, perjury has been successfully laid:

False oath by a director of a national bank, before a notary public. United States vs. Neal, 14 Federal, 767.

Affidavit of an applicant for an entry to land, made before the clerk of the County Court, United States vs. Hearing, 26 Federal, 744.

False oath under the Timber Culture Act, which authorized the oath to be administered in the District where the land is situated. United States vs. Madison, 21 Federal, 628; United States vs. Shinn, 14 Federal, 447.

False swearing in an affidavit made before a Justice of the Peace, in conformity to a regulation of the Secretary of the Treasury. United States vs. Bailey, 9 Peters, 238.

Also where oath is administered by state officer authorized by the usage of the Treasury Department, when Congress required an oath to be made. United States vs. Winchester, 2 McLean, 135.

An affidavit made before a Justice of the Peace, to support a pension claim. United States vs. Boggs, 31 Federal, 337.

An affidavit made before a notary public, in support of an application for pension. Noah vs. United States, 128 Federal, 270; also Williamson vs. United States, U. S. Supreme Court, October Term, 1907.

Officer of the General Land Office of the United States, hearing a contest with respect to a homestead entry, in accordance with the rules promulgated by the Interior Department, constitutes a competent tribunal. Caha vs. United States, 152 U. S., 211.

A verification of a cashier of a national bank, of a report of the condition of the bank. United States vs. Bartow, 10 Federal, 873.

Judge Speer, in United States vs. Hardison, 135 Federal, 419, held that where a defendant swore falsely as to his qualifications to become a surety on a distiller's bond, before a Deputy Internal Revenue Collector, he was

properly charged with perjury, even though the oath thereto was taken before a United States Commissioner.

In United States vs. Patterson, 172 Federal, 241, Judge Woolverton held that a wilful false statement in an oath to an application for patent, made as required by Section 4892 of the Revised Statutes, that the applicant verily believes himself to be the original, first, and sole inventor of the device for which the patent is sought, is of a material matter, and constitutes perjury.

In United States vs. Voltz, 14 Blatchf., page 15, the Court held that the qualification of a surety to a bail bond is a case within the meaning of the perjury section, and upon which perjury can be based.

In Brace vs. United States, 149 Federal, 871, a land affidavit is sufficient, as the foundation for a perjury prosecution.

Naturalization affidavits, in Schmidt vs. U. S., 133 F., 257, and U. S. vs. Dupont, 176 F., 823.

102a. Additional Perjury Cases.

False oath to an application for continuance is, Holmes vs. U. S., 269 F. 96.

An acquittal on the merits usually precludes prosecution for perjury on such trial, though prosecution may be had for perjury in subordinating evidential matter, Youngblood vs. U. S., 266 F. 795.

Oath to application for passports as to length of acquaintance with the applicant is not perjury, U. S. vs. Robertson, 257 F. 195.

Affidavit to questionary is, Hardwick vs. U. S., 257 F 505.

An oath by homesteader for the General Land office is, U. S. vs. Morehead, U. S. Sup. Ct. April 1917.

An oath for the restoration of property in bankruptcy is not "material," Morris vs. U. S., 261 F. 175.

§ 103. **Materiality and Wilfulness.**—The indictment must aver unmistakably the materiality of the oath, and the wilfulness of the falsification. U. S. vs. Ammerman, 176 Federal, 636. A false statement, declaration, or testimony, upon a collateral issue, will not sustain perjury, and neither will mistake or innocent falseness make one guilty of the offense.

It is sufficient to charge generally that the false testimony was in respect to a matter material to the issue, without setting out the facts from which such materiality appears. If, however, the facts are also stated, and it clearly appears that the testimony was not material, a formal allegation of materiality will not save the indictment. United States vs. Pettus, 84 Federal, 791. So, also, where in an indictment for perjury it is apparent from the averments that the evidence which is charged to be false was material, it is not essential to state the legal conclusion by alleging that the evidence was material. The Court being apprised of the facts, may draw the conclusion without the allegation. So, also, where the averments as to the materiality of what is alleged to have been sworn falsely are defective, the indictment is, nevertheless, good, if such materiality sufficiently appears on its face. 30 Cyc., 1435.

§ 103a. **Materiality, Continued.**—In Hogue vs. U. S., 184 Federal, 245, the Court held that even though there was a general allegation of materiality and, thereafter an attempt to set forth the facts, such facts must in themselves show materiality, and in the absence of such showing the indictment would be held defective. Complying with this rule, a new indictment was drawn in that case and it was subsequently affirmed in Hogus vs. U. S., 192 Federal, 918. I am firmly of the opinion that it is the law as supported by the vast majority of decisions that the indictment must allege the materiality of the statement complained of which may be done by a simple allegation or by pleading the facts from which the Court may determine its materiality. U. S. vs. Salen, 216 Federal, 420; Ammerman vs. U. S., 185 Federal, 1.

The Circuit Court of Appeals, in Ammerman vs. U. S., 185 Federal, page 1, in which they reversed the same case shown in 176 Federal, 635, announced the doctrine contended for here that is to, say, that it must be alleged in the indictment that the matter sworn to was material or the facts set forth as false must be sufficient in themselves to show such materiality. U. S. vs. Nelson, 199 Federal, 464; U. S. vs. Rhodes, 212 Federal, 518; Markham vs. U. S., 160 U. S., 325. If an indictment alleges materiality

but thereafter shows that the alleged false statements were not material, then no offense is plead; U. S. vs. Rose, 212 Federal, 518. A general averment of materiality is sufficient. Baskin vs. U. S., 209 Federal, 740; Hendricks vs. U. S., 223 U. S., 178.

Sec. 103b. Materiality Continued.

See Morris vs. U. S., 261 F. 175.

Illustrations of "non-material" oath see Epstein vs. U. S., 271 F. 282.

§ 104. **Sufficiency of Indictment.**—As before noticed, great particularity was required at Common Law; and while procedings of the Federal Courts are assimilated to the Common Law forms, all Federal crimes are statutory, and the Common Law rules in passing upon the sufficiency of a perjury indictment in the Federal Court would necessitate the same strictness with reference to its proper alleging as did the Common Law, but Congress provided a saving statute in Section 5396 of the old statutes, which is still the law, and reads as follows:

"In every presentment or indictment prosecuted against any person for perjury, it shall be sufficient to set forth the substance of the offense charged upon the defendant, and by what court, and before whom the oath was taken, averring such court or person to have competent authority to administer the same, together with the proper averment to falsify the matter wherein the perjury is assigned, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding, either in law or equity, or any affidavit, desposition, or certificate, other than as hereinbefore stated, and without setting forth the commission or authority of the court or person before whom the perjury was committed."

The ordinary rules of criminal pleading, and the above statute being clearly in mind, all that is necessary under the Federal statute is to draw the bill in such plain and intelligible terms, and with such particularity as to apprise the accused with reasonable certainty of the offense for which he is sought to be punished, and state the substance of the controversy upon which the false oath was taken, specify the Court or officer by whom it was administered, aver or show that such Court or officer had authority to administer an oath, allege the falsity of the oath, and assign perjury thereon. Noah vs. U. S., 128

Federal, 270; U. S. vs. Cuddy, 39 Federal, 696; U. S. vs. Walsh, 22 Federal, 622; Markham vs. U. S., 160 U. S., 319, 40 Law Ed., 441, 30 Cyc., 1425. This section demands that the oath must have been wilful and an allegation that it was corruptly taken is not sufficient. The indictment must allege that the oath was wilfully taken. United States vs. Edwards, 43 Federal, 57; U. S. vs. Lake, 129 Federal, 499; United States vs. Hearing, 26 Federal, 744.

Wilfulness and a corrupt intent being essential elements of the crime of perjury, evidence to prove such issues goes to the very substance of the offense, and is, therefore, admissible. All of the record, including the judgment of the case in which the perjury is alleged to have been committed is, therefore, admissible upon the question of motive. If perjury were committed by one in his own defense in the trial of a criminal case, the indictment and judgment would be admissible, not for the purpose of showing that the defendant had been convicted of an offense, but for the purpose of showing his motive to testify untruly in the original case; but it is thought that the Court should limit the consideration of the judgment by proper instructions, to the consideration of motive alone, or inducement, as some authorities put it. A judgment so introduced and so restricted by the Court, is material and competent. In United States vs. Berkhardt, 31 Federal, 141, the trial Court set aside a judgment of conviction of perjury, because he had admitted the judgment in the original case for all purposes, and without limiting it. Wharton, Criminal Evidence, Section 602a. The same rights that exist in favor of the prosecution to show the corrupt motive and wilfulness are equally pertinent for the defense, and it is at all times admissible and competent for him to show the lack of corrupt motive, or to rebut the existence of such a motive.

§ 105. **Proof.**—Perjury must be proven by two witnesses, or by one witness and corroborating circumstances, and the jury should be informed, in some part of the instructions, that before they can convict, the fact that the oath was false must be shown to their satisfac-

tion in such way; and it is thought in this connection that the instructions must also somewhere inform the jury what is meant by "corroborated." State vs. Hunter, 181 Missouri, 316; 80 S. W., 915; People vs. Wells, 103 Calif., 631; U. S. vs. Hall, 44 Federal, 864.

§ 105a. **Proof, Continued.**—As stated in the foregoing paragraph proof must be by two witneses or by one witness with corroborating circumstances. Kahn vs. U. S., 214 Federal, 54; Allen vs. U. S., 194 Federal, 664.

§ 105b. **Other Cases.**—Perjury committed during the trial on oneself. In Allen vs. U. S., 194 Federal, 664, the Court of Appeals for the Fourth Circuit said that one may be convicted of perjury for testifying falsely in his own behalf wherein he was acquitted, but the government should not institute a prosecution for perjury on substantially the same evidence presented on the first trial.

In that opinion the Court mentions authorities supporting the position that one may be indicted for swearing falsely on his own trial, and also cites authorities against the correctness of that doctrine. In the latter list of cases, however, it fails to notice or mention the case of Coffey vs. U. S., 116 U. S., 436.

In the Coffey case the Supreme Court of the United States, speaking through Judge Blatchford, said: "Where an issue raised as to the existence of the Act or fact denounced has been tried in a criminal proceeding instituted by the United States, and a judgment of acquittal has been rendered in favor of a particular person, that judgment is conclusive in favor of such person on the subsequent trial of a suit in rem by the United States where, as against him the existence of the same Act or fact is the matter in issue, as a cause for the forfeiture of the property prosecuted in such suit in rem."

See also the case of Chelson vs. Hoyt, 3 Wheat., 245, 4 L. Ed., 381; U. S. vs. McDee, 4 Dill., 128; Murff vs. State, 68 Tex. Crim. App. ——. There should be no attempt by the Government and its prosecuting officers to disregard the verdict and judgments of its own Courts by seeking one jury to find that another gave a wrong verdict upon what is in all material respects the same testimony.

Sec. 105c. Other Cases Continued.

An indictment alleging that the oath was taken before a "District Judge," the proof followed that the oath was taken before the court and administered by the clerk, held sufficient, in, West vs. U. S., 258 F. 413.

§ 106. **Subornation of Perjury.**—Section 126 of the new Code reads as follows:

"Whoever shall procure another to commit any perjury is guilty of subornation of perjury, and punishable as in the preceding section prescribed,"

which are the substantial words of old Section 5393. An indictment is sufficient which alleges that the witness knew the testimony to be false and that the defendant, knowing it was perjury, procured her to commit it. Babcock vs. United States, 34 Federal, 873; United States vs. Thompson, 31 Federal, 331. In United States vs. Dennee, 3 Woods, (U. S.) 39, the Court held that an indictment must allege that the defendant knew that the testimony which he instigated the witness to give was false, and the defendant knew that the witness knew that the testimony she was instigated to give was false. The same particularity and accurateness is required in an indictment under this section, and the same general law relates thereto, as under that for perjury. The following cases may be interesting:

U. S. vs. Evans, 19 Federal, 912.

U. S. vs. Howard, 132 Federal, 325.

U. S. vs. Cobban, 134 Federal, 290.

U. S. vs. Brace, 144 Federal, 869.

U. S. vs. Boren, 144 Federal, 801; 30 Cyc., at page 1440, gives the following elements of an indictment for subornation, with supporting authorities, which it is thought is the law:

"An indictment for subornation of perjury, must state all the essential elements constituting the crime of perjury, as well as of suboration of perjury. It must set forth the nature of the proceeding in which the alleged perjury was committed; the court or officer in which, or before whom, the false oath was taken; that the witness was duly sworn; that the testimony was material, and false; that defendant knowingly and wilfully procured another to swear falsely; that the party did knowingly swear falsely; that defendant knew that the

testimony of the witness would be false; and that he knew that the witness knew said testimony was false."

A charge of subornation of perjury may be joined with a charge of perjury in the same indictment, and the perjurer and the suborner may both be included in it. Commonwealth vs. Devine, 155 Mass., 224; 29 N. E., 515.

§ 106a. **Attorney Suborning.**—An attorney who advises a witness to testify falsely before a United States Commissioner in order that she might assist to obtain the discharge of her husband, is guilty of subornation, even though the indictment charging such uses the word "trial" and the word "issue," in presenting the case, and even though a trial and an issue within the technical meaning of those words cannot be held before a United States Commissioner. Cohen vs. U. S., 214 Federal, 23.

Subornation may be successfully laid against one who induces two entrywomen to make false affidavits to the settlement, residence and cultivation of the lands as required by Section 2291 of the Revised Statutes. Hallock vs. U. S., 185 Federal, 424.

§ 106b. **Elements of Subornation.**—1. A witness must have testified falsely knowing or believing the testimony to be false. (2) The accused must have known or believed that the testimony would be false. (3) The accused must have known or believed the witness would give the false testimony with like knowledge or belief. (4) The accused must have induced or procured the witness to do so. Hallock vs. U. S., 185 Federal, 417; 2nd Vol. Bishop's New Criminal Law, Section 1197. Inciting to false swearings which are not perjuries is not subornation of perjury. Bishop New Criminal Law, Vol. 2, page 689.

§ 107. **Stealing or Altering Process; Procuring False Bail, Etc.**—Old Section 5394 is practically re-enacted in Section 127 of the new Code, except that under the old statute the Court was not authorized to impose both penalties of fine and imprisonment. The new section reads as follows:

"Whoever shall feloniously steal, take away, alter, falsify, or otherwise avoid any record, writ, process, or other proceeding, in any court

of the United States, by means whereof any judgment is reversed, made void, or does not take effect; or whoever shall acknowledge, or procure to be acknowledged, in any such court, any recognizance, bail, or judgment, in the name of any other person not privy or consenting to the same, shall be fined not more than five thousand dollars, or imprisoned not more than seven years, or both; but this provision shall not extend to the acknowledgment of any judgment by an attorney, duly submitted, for any person against whom such judgment is had or given."

Most of the annotators cite United States vs. Crecilius, 34 Federal, page 30; Barber vs. United States, 35 Federal, 886, and 5 Attorney General's Opinion, 523.

The two first cases contain practically no assistance, by decision or argument, for the construction of the statute. In one of them the word "alter" is treated at some inconsiderate length. Andersen's Dictionary of Law defines the word alter to mean "to make a thing different from what it was." The definition in the Century Dictionary is practically the same, and is in the following words: "to become different in some respect; to vary; to change."

The statute, of course, does not make an innocent, thoughtless, or mistaken alteration or falsification an offense. The charge must include an unlawful and felonious alteration or falsification.

The statute also includes the acknowledgment of any recognizance or bail or judgment by one in the name of another without authority.

§ 108. **Obstructing Process, or Assaulting an Officer, Etc.**—In the new Code Section 140 takes the place of Section 5398 in the 1878 statutes. The new section, which reads as follows:

"Whoever shall knowlingly and wilfully obstruct, resist, or oppose any officer of the United States, or other person duly authorized, in serving, or attempting to serve or execute, any mesne process or warrants, or any rule or order, or any other legal or judicial writ or process of any court of the United States, or United States Commissioner, or shall assault, beat or wound any officer or other person duly authorized, knowing him to be such officer, or other person so duly authorized, in serving or executing any such writ, rule, order, process warrant, or other legal or judicial writ or process, shall be fined not

more than three hundred dollars, and imprisoned not more than one year."

contains some interpolated phrases that seem to strengthen and broaden the old statute. In other words, under the new statute, the words, "or other person duly authorized" would protect any person who happened to be a messenger conveying any Court process, though such person would not be an officer of the United States, within the meaning of the decisions, which requires a person to have been nominated and commissioned by the Executive Department. So also, the words, "or any other legal or judicial writ or process" are placed in the new statute; and to meet that line of decisions which has held in contempt proceeding that a United States Commissioner does not hold any United States Court, and is, therefore, not a Court, or Judge, the statute specially includes the words, "or United States Commissioner."

The new statute also includes the words "knowing him to be such officer or other person so duly authorized," which is but an enactment of what the best authorities had already determined was necessary before one could be convicted for an alleged violation of the Section. Necessarily, one who, by mistake or without knowledge, obstructed process or an officer should not be prosecuted.

In United States vs. Terry, 41 Federal, 771, Judge Ross held that the Section related to an oral order of a Court, to remove from a Court room a prisoner who was disturbing the proceedings of a Court. In that case, it was conceded in argument, and is recognized by the Court in his opinion, that at the time the defendant resisted the marshal who attempted to eject her from the court room under the order of the Judge, that such order was oral, and had not been entered of record. The distinction is drawn in the following words:

"Undoubtedly, in judicial proceedings, an 'order' as distinguished form a 'judgment' is often defined as one reduced to writing and entered in the records of the Court, and such is the purport of many of the cases referred to by counsel for the defendant, but this is by no means saying that such only is an order. There must, in the nature of things, be an order of a Court made before it is, or can be, writ-

ten out in the records of the Court by the Clerk. When written out, the writing becomes a record of the order, and is evidence of it. Orders are almost daily given to the Marshal concerning matters to be performed in the presence of the Court, and they are as constantly executed before being written out. Indeed, many of them are never reduced to writing at all. Yet there can be no doubt of their validity. The language of the statute in question is broad enough to include all valid oral orders. The natural ordinary meaning of the word includes written, as well as unwritten orders, and there is no reason in the policy of the law or in the nature of things, for excluding unwritten orders. Indeed, the contrary is true. There is just as much reason and necessity for making it an offense to resist the execution of a lawful unwritten order, brought distinctly and authoritatively to the notice of the offending party, as for making it an offense to resist the execution of one in writing." United States vs. Terry, 41 Federal, 773.

The essential elements of a charge under this section are three: first, the issuance of a legal process, warrant, writ, rule, or order, by a Court of the United States or a United States Commissioner; second, that such legal process, warrant, writ, rule, or order, after the same was issued, was in the hands of some officer of the United States, or other person duly authorized, for service; and, third, that such legal process, warrant, writ, rule, or order was knowingly and wilfully obstructed or interfered with. United States vs. Tinklepaugh, 3 Blatchf., 425. If the Tinklepaugh case seems in a measure to conflict with the Terry case, reason and public justice would seem to demand that the Terry case be the ranking authority.

It must be borne in mind that it is not at all necessary that actual force be used in obstructing. Passive force, such as the congregation of a large number of individuals, knowingly and determinedly, in the way of the officer who is attempting to serve the writ or process, would be within the decisions, and within reason, an obstruction which would come within the statute. Such was the construction used by the Court in charging a grand jury in 2 Curtis, 637; 30 Federal Cases, No. 18250. Obstruction must, therefore, under the authorities, include not only resistance but all impediments or opposition or obstacles, as outlined in the case of the United States vs. McDonald, 8 Biss., 439; 26 Federal Cases, No.

15667. The lexicographers, in treating the word "obstruct," determine it to mean "to impede or retard action; to hinder; to render passage difficult or impossible; to pile up against." The ordinary meaning of the word, therefore, has been accepted in its lawful interpretation, when used in the statute under discussion. The officer is not obliged to risk his life, or expose himself to personal violence. Threats by a person in possession is a violation, as has been determined in United States vs. Lowry, 2 Wash., 169; 26 Federal Cases No. 15636; U. S. vs. Smith, 1 Dill, 212; 27 Federal Cases No. 16333. If one in possession of property opposes and obstructs the execution of a writ of possession by refusing to yield possession, and by threats of violence, he has committed an offense against this statute. United States vs. Lowry, 2 Wash., 169; 26 Federal Cases, No. 15636.

Under this statute, a state jailer who holds Federal prisoners by commitments from United States Courts under the statute of a State, is protected, and a forcible release of a prisoner in his hands would be an offense against this statute, as well as the statute for rescuing a prisoner, which is new Section 143 and old Section 5401. See in this connection, Matthews vs. United States 32 Court of Claims, 123. By following the cases of Blake vs. United States, 71 Federal, 286; United States vs. Mullin, 71 Federal, 682; and United States vs. Cover, 46 Federal, 284, in construing an indictment under this section, there can be no difficulty at arriving at its lawful essentials and ingredients. The allegation of knowledge can be included generally, it is thought, in the words knowingly and wilfully in the first part of the bill, for they will, therefore, be construed to apply to each of the necessary averments of substance, though it may be considered the best pleading, and surely pleading that leaves no room for doubt, if the allegation of knowledge is repeated in the body of the bill, with reference to the process and the person handling the same. In other words, in addition to the general words knowingly and wilfully at the first part of the indictment, let the pleading show that the person charged knew that the person attemping to serve the writ or order was an authorized person, and

really had a writ or order from a competent tribunal or Court, as the case may be. In the case of United States vs. McDonald, 8 Biss., page 439, the Court held that the custodian of property for the Marshal was an officer within the meaning of the old Section. In United States vs. Martin, 17 Federal, 150, the Court held under a prosecution for a violation of the old section that a Deputy Marshal was an officer of the United States, within the meaning of the section, as is also the keeper of a State-jail, and process issued by a Commissioner of the Circuit Court, under Section 1014 of the Revised Statutes, in causing the arrest or imprisonment of a person, was entitled to the protection of the provisions of the section.

The discussion of the Judge in the 13 Federal, United States vs. Huff, at page 639, of the words "disobedience" and "resistance" under a prosecution for violations of Sections 5359 and 5360, will be found to be in line with the views heretofore expressed with reference to there being no distinction between the definitions of the words as found in the dictionaries and as found in the decisions of the Courts.

Of course, there is no offense when one resists unauthorized arrest. A reasoning under a case of this sort will be found in the case of the United States vs. Mundell, 1 Hughes, 415; 27 Federal Cases, No. 15834.

Blackstone, in his division of crime, made five heads: first, offenses against God and religion; second, offenses against the law of nations; third, offenses against the king and Government; fourth, offenses against the commonwealth, as against public justice, public peace, public trade, public health, public economy; fifth, offenses against individuals—that is, against their persons, their habitations, and their property.

Of course, such division is arbitrary, but serves to furnish a plan for the student and the legislator. The offense we are considering comes under the fourth head, and at Common Law included many things, such as resisting arrest or process, obstructing officers, rescue, escapes, preventing attendance, briberies, perjuries, and contempts, etc. Mr. Bishop says that "no government is

perfect, and some are simply terrible, but the worst is immeasurably better than none." To interfere, therefore, with the performance of an official function, is a most serious concern, since the public good requires a due performance of all official functions, and any person who interferes therewith is an enemy to the Government.

§ 108a. **Advice to Avoid Service of Process May Be Obstruction.**—One who advises and induces another to leave the country to avoid service of a grand jury subpoena is guilty of impeding the administration of justice. Heinz vs. U. S., 181 Federal, 323.

Sec. 108b. Obstructing Processes Continued.

A peron need not be present to be guilty, but he must have knowledge, etc., Coleman vs. U. S., 268 F. 468.

§ 109. **Destroying or Stealing, Etc., Public Records.** Section 128 of the new Code, which changes materially, in both wording and punishment, old Section 5403, reads as follows:

"Whoever shall wilfully and unlawfully conceal, remove, mutilate, obliterate, or destroy, or attempt to conceal, remove, mutilate, obliterate, or destroy, or, with intent to conceal, remove, mutiltate, obliterate, destroy, or steal, shall take and carry away any record, proceeding, map, book, paper, document, or other thing filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined not more than two thousand dollars, or imprisoned not more than three years, or both."

The very wording of the statute itself incorporates the idea that there must be the specific intent to destroy or steal, or do the things denounced by the statute. Wherever the word "wilful" is used, or wherever the context of the statute clearly indicates that it should be read into the body of the Act, such specific intent is absolutely necessary, before the offense can be committed. In United States vs. De Groat, 30 Federal, 764, the facts showed that the Government, for want of space, had stored a vast quantity of old Internal Revenue records in an out-house, from which they were stolen by the defendants, and sold as waste paper to junk dealers. The Court, in instructing a verdict of not guilty, told the jury in substance that

the Act was for the specific purpose of the protection of records, and did not carry punishment for mere theft of Government property, and the case not showing any intent on the part of the defendants to destroy records, but only to steal something that belonged to another, would not support an indictment under old Section 5403.

It must be borne in mind, however, that the old Common Law definition of record and document is not to be used in circumscribing and limiting the purpose of the statute under discussion. It was manifestly intended to protect all sorts of Court and public office records, including all papers that are filed, whether such papers be accurately or inaccurately drawn. To this purpose and construction is the case of McInerney vs. United States, 143 Federal, 729, by the Circuit Court of Appeals for the First Circuit. In that case, the Court held in substance that the rule that a criminal or penal statute must be strictly construed does not mean that its language must be given the narrowest interpretation, but contemplates a reasonable construction, in aid of the purposes of the Act, and Courts should adopt that sense of the words which harmonize best with the context, and promotes in the fullest manner the apparent policy and objects of the legislature; and, therefore, the statute under consideration, which makes it a criminal offense to steal or destroy any record, paper, or proceeding of a Court of justice, or any paper or document or record filed or deposited in any public office or with any judicial or public officer, will not be construed so as to limit the meaning of the word "record" and "document" to the technical Common Law record of Courts as unrolled, or to technical documents, but will be used in the ordinary and common sense, and include all and every part, not only of such technical records or documents, but of any paper filed, which becomes a part of the records of the Court or office, and that a prosecution for stealing or destroying a record of a Court cannot be defeated by showing that the record was technically imperfect or incorrectly kept. The following cases may be interesting upon one or the other phases of the statute: People vs. Bussey, 82 Mich., 49; State vs. Bloor, 20 Mont., 574; People vs.

Peck, 138 N. Y., 386; ex parte Tongue, 29 Oregon, 48; Georgia vs. Jennings, 50 S. C., 156.

§ 110. **Destroying Records by Officer in Charge.**— Old Section 5408 is practically re-enacted in Section 129, which reads as follows:

"Whoever, having the custody of any record, proceeding, map, book, document, paper, or other thing specified in the preceding section, shall wilfully and unlawfully conceal, remove, mutilate, obliterate, falsify, or destroy any such record, proceeding, map, book, document, paper, or thing, shall be fined not more than two thousand dollars, or imprisoned not more than three years, or both; and shall moreover forfeit his office and be forever afterward disqualified from holding any office under the Government of the United States."

The substance of this section, as well as the substance of Section 128, were in the original Act of February 26, 1853, 10 St. at Large, 170, and are companion statutes. It is necessary, in prosecutions under Section 129, that the party have lawful custody of the record or other document or paper, as the case may be, before the penalty under this statute can be inflicted. In Martin vs. United States, 168 Federal, 198, the Circuit Court of Appeals of the Eighth Circuit held that a Clerk in the office of one who had charge of certain Government records could not be prosecuted under this section, because he was not lawfully "in custody." The meat of that decision is that "custody" means keeping and implies responsibility for the protection and preservation of the person or thing in custody; and a document in a public office in the general custody of a Commissioner, and in the particular custody of his Chief Clerk, under whom five or six subordinate clerks are employed, who have access to it, in order to discharge their duties, is not in the custody of one of the latter. There is this difference, however, in the old and new sections: the old section contained the word "fraudulently," while the new section contains the word "wilfully." Under the old section, an intent to injure or alter the rights or interests of another, or an effect to so injure or alter some of them was essential to a fraud, and in the absence of such intent, attempt, and effect, an act could not be done fraudulently under

that section. Martin vs. United States, 168 Federal, 198. Under the instant section, however, fraudulent intent is not an ingredient. This section, like the preceding, denounces the acts therein specified when they are wilfully done; that is, when they are committed with the specific intent, as defined in McInerney vs. United States, 143 Federal, 729, cited and discussed supra.

Under the authority of Martin vs. United States, an indictment drawn in the language of the statute would be insufficient.

§ 111. **Forging Signature of Judge, Etc.**—Section 130 of the new Code re-enacts Section 5419 of the old Statutes, and reads as follows:

"Whoever shall forge the signature of any judge, register, or other officer of any court of the United States, or of any Territory thereof, or shall forge or counterfeit the seal of any such court, or shall knowingly concur in using any such forged or counterfeit signature or seal, for the purpose of authenticating any proceeding or document with a false or counterfeit signature of any judge, register, or other officer, or a false or counterfeit seal of the court subscribed or attached thereto, knowing such seal to be false or counterfeit, shall be fined not more than five thousand dollars, and imprisoned not more than five years."

An indictment under the latter portion of this section, which relates to the use of any false signature or counterfeit seal, would be fatally defective, unless it alleged that the act was knowingly done.

Certificate of Bankruptcy, register subject of. See ex parte Parks, 93 U. S., 18.

§ 112. **Intimidation or Corruption of Witness or Grand or Petit Juror or Officer.**—Section 135 of the new Code contains all of the elements of the old Statutes 5399 and 5404, changing the punishment of both, and incorporating new words and a somewhat broader meaning, and reads as follows:

"Whoever corruptly, or by threats or force, or by any threatening letter or communication, shall endeavor to influence, intimidate, or impede any witness, in any court of the United States, or before any United States Commissioner, or officer acting as such commissioner, or any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination of other pro-

ceeding before any United States Commissioner or officer acting as such by threats or force, or by any threatening letter or threatening communication, shall influence, obstruct, or impede, or endeavor to influence, obstruct, or impede the due administration of justice therein, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both."

The offenses covered by this section are not new. They are Common Law crimes. The word "corrupt," as used in each portion of the statute, is defined by Bishop to mean an evil purpose, and is not restricted to the form of evil. No particular definition of the sort of corruption or threats or intimidation or force can be given. The length and breadth of the same must depend upon the facts of the particular case, as coming, within the judgment of a jury and Court, within the purview of the statute, and which would, if left unpunished, result in a perversion of trammeling of our courts, witnesses, officers, or litigants. When such would appear to be the natural result of something done or undone, then the statute would seem to apply. In the case of Wilder et al vs. United States, 143 Federal, 433, a form of indictment is given that was approved by the Circuit Court of Appeals for the Fourth Circuit, and a state of facts which showed that the defendant corruptly endeavored to induce other persons to have knowledge of facts in a civil case which would be material to a party to conceal or deny their knowledge, so as to prevent such party from obtaining knowledge or procuring evidence of such facts, was a violation of the old Section 5399, which is, in a large measure, the first part of the new Section. In that case, certain parties to a civil action arranged and agreed to testify with reference to certain corner trees that were supposed to be the starting point and one of the boundary lines of the tract of land in controversy.

The words "due administration of justice" import a free and fair opportunity to every litigant in a pending case in a Federal Court to learn what he may learn, if not impeded or obstructed, concerning material facts, and to exercise his option as to introducing testimony of such facts, and a violation of this law may consist in

preventing a litigant from learning facts which he might otherwise learn, and in thus preventing him from deciding for himself whether or not to make use of such facts.

Pettibone vs. United States.—The ranking authority under these statutes is probably the case of Pettibone vs. United States, 148 U. S., 197, 37 Law Ed., 419. The case gives excerpts from the indictment. The following propositions are announced in the case, which must be recognized and adhered to in drafting indictment:

1. There must be a specific allegation of an intent to obstruct the administration of justice in the Federal Court.

2. There must be an allegation that the defendant knew of the proceedings that he was interfering with. The indictment must, therefore, contain the words knowingly and wilfully. The general doctrine of the penal law that ignorance of the law constitutes no defense to an indictment for their violation, is a rule that has no application here. Knowledge of the court proceedings and of the relation thereto of the party intimidated or otherwise improperly approached is necessary. Among the cases cited by the Court in the Pettibone case is United States vs. Bittinger, (Mo.), 15 Am. Law Reg. N. S., 49, 24 Federal Cases No. 14,598, in which it was held that a person is a witness, under Section 5399, who is designated as such, either by the issue of a subpoena or by the endorsement of his name on the complaint, but that before anyone could be said to have endeavored to corruptly influence a witness under that Section, he must have known that the witness had been properly designated as such. Under this authority, the designation of a witness by the District Attorney, as the including of the name of the witness in the complaint, or in the grand jury docket, or by issuing a subpoena therefor, would be, it seems, sufficient. In United States vs. Kee, 39 Federal, 603, the Court instructed the jury that the defendant would be guilty of violating 5399, when he beats one summoned as a witness before a United States Commissioner, for the purpose of intimidating or influencing him in giving his testimony, but if the defendant did not know that

the one was a witness before the United States Commissioner, and beats him, on account of insulting language, the beating having no relation to the character of the party as a witness, he would not be guilty of a violation of the section. In United States vs. Keen, 5 Mason, 453, it was held that it was no defense to an indictment for forcibly obstructing or impeding an officer of the customs in the discharge of his duty that the object of the party was personal chastisement, and not to obstruct or impede the officer in the discharge of his duty, if he knew the officer to be so engaged. It is the official character that creates the offense, and the scienter is necessary.

In Savin's Petitioner, 131 U. S., 267; ex parte McLeod, 120 Federal, 10; in re Brule, 71 Federal, 943, the position is taken that the mode of punishment prescribed by these old sections was not exclusive, if the offense was committed under such circumstances as to bring it within Section 725, which authorizes the Court to punish for contempts. In Sharon vs. Hill, 24 Federal, 726, it was held that the carrying of weapons into a court room, while Court was in session, and threatening the life of the lawyer and counsel engaged in conducting the litigation was an offense under this statute, as was also the assaulting of a commissioner in United States vs. McLeod, 119 Federal, 416.

Under the authority of United States vs. Thomas, 47 Federal, 807, and United States vs. McLeod, 119 Federal, 416, which is supported by the intent and purpose of the statute, there must be a pending cause. In the Thomas case, Thomas was a witness on behalf the United States before a United States Commissioner. The cause was dismissed. Two months afterwards Thomas was assaulted and beaten by a gang of men at his house in the night time. The men were indicted under Section 5399. The position was taken by the defendant, and sustained by the Court, that as Thomas was not, at the time of the beating, a witness in any Court of the United States, or in any cause pending therein, the defendant could not be prosecuted under that section. In this connection, also may be cited ex parte Robinson, 19 Wallace, 505; in re Nagle, 135 U. S., 63; U. S. vs. Memphis Rail-

road Company, 6 Federal, 237; U. S. vs. Kilpatrick, 16 Federal, 765; U. S. vs. Polite, 35 Federal, 58; in re Nagle, 39 Federal, 833; U. S. vs. Armstrong, 59 Federal, 568. In in re Brule, 71 Federal, 943, District Judge Hawley held upon a contempt proceeding, that the bribing of a person who is known to be a material witness in a pending cause to hide himself and remain away from the Court, thereby preventing his testifying in such case, is punishable by indictment under Section 5399.

§ 112a. **Illustrations of Intimidation.**—The protection of the statute reaches grand jury proceedings. Davy vs. U. S., 208 Federal, 238; Heinze vs. U. S., 181 Federal, 322. An effort by threats and force to influence and intimidate witnesses before a United States Commissioner is within the statute. Charles vs. U. S., 213 Federal, 717.

Sec. 112b. Intimidation, etc., of Witnesses and Others Continued.

See U. S. vs. Russell, 41 Sup. Ct. Rep. 300; U. S. Sup. Ct. Rep. Apr. 1921.

The alteration of records is "corruptly impeding justice," Bosselman vs. U. S., 239 F. 82.

See also Sec. 114.

§ 113. **Conspiring to Intimidate Party, Witness, or Jury.**—Section 136 of the new Code, which supersedes old Section 5406, reads as follows:

"If two or more persons conspire to deter by force, intimidation, or threat, any party or witness in any court of the United States, or in any examination before a United States Commissioner or officer acting as such commissioner, from attending such court or examination, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property, on account of any verdict, presentment or indictment lawfully assented to by him, or on account of his being or having been such juror, each of such persons shall be fined not more than five thousand dollars, or imprisoned not more than six years, or both."

The old section contained a minimum punishment of six months.

The most interesting change in the new section is the addition of the words, "or in any examination before a United States Commissioner, or officer acting as such commissioner." The Supreme Court of the United States, in the case of Todd vs. United States, 158 United States, page 278, Book 39 Law Ed., 982, held that a preliminary examination before a Commissioner is not a proceeding "in any court of the United States" within the meaning of the old Section 5406. In that case the Court observed that it doubtless was within the power of Congress to legislate so as to fully protect every witness called upon by the laws of the United States to give testimony in any case and under any circumstance, but that the wording of 5406 limited such protection to those who head dealing with a "court" of the United States. Under the new section, as above quoted, Congress has seen fit to legislate as suggested by the Supreme Court, and the present statute, therefore, punishes all conspiracies to deter by either force, intimidation, or threat, any party or any witness in any court of the United States, or in any examination before a United States Commissioner, or officer acting as such commissioner.

This legislation was made necessary because of the decision in the Todd case, and because of that line of decisions therein cited, which clearly distinguished United States Commissioners and Circuit Court Commissioners from Judges and United States Courts.

The form of indictment given in the Todd case is thought to contain all of the elements that are necessary in charging an offense under the new statute, with the possible exception that the bill could be made stronger, and undoubtedly good, if it contained an allegation of knowledge.

Sec. 113a. Conspiracy to Intimidate Party, etc., Continued.

A conspiracy to prevent a witness from testifying in a land contest is an offense under this section, Foss vs. U. S., 266 F. 881.

§ 114. **Attempt to Influence Jury.**—New Section 137, in the following words:

"Whoever shall attempt to influence the action or decision of any grand or petit juror of any court of the United States upon any issue or matter pending before such juror, or before the jury of which he is a member, or pertaining to his duties, by writing or sending to him any letter or any communication in print or writing, in relation to such issue or matter, shall be fined not more than one thousand dollars, or imprisoned not more than six months, or both."

replaces old Section 5405.

There have been few, if any, adjudications under this section, as disclosed by the annotators and court reports. It is almost universal in its broadness, and would seem to cover practically any communication. In United States vs. Kilpatrick, 16 Federal, 765, is a distinguished Court opinion covering communications by officers and others to grand jurors, and, in general, the conduct of such body.

This statute, in connection with Sections 135 and 132, are intended directly and primarily for the preservation of the purity of the juror in the performance of his official duty.

Sec. 114a. Attempt to Influence Jury.

An attorney drinking, etc., with a jury is in contempt of the court in re Kelly, 243 F. 696; see also Sec. 112.

§ 115. **Allowing Prisoner to Escape.**—Section 138 of the new Code is in the exact words of Section 5409 of the old statutes, and reads as follows:

"Whenever any marshal, deputy marshal, ministerial officer, or other person has in his custody any prisoner by virtue of process issued under the laws of the United States by any court, judge, or commissioner, and such marshal, deputy marshal, ministerial officer, or other person voluntarily suffers such prisoner to escape, he shall be fined not more than two thousand dollars, or imprisoned not more than two years, or both."

This statute, of course, applies to a State Deputy Sheriff, or Jailer, who has control, under legal authority and process, of a Federal prisoner. By section 139, the above statute applies not only to domestic prisoners, but any prisoner in custody, charged with an offense against a foreign government with which the United States has a treaty of extradition, and also to prisoners held in cus-

tody for removal to the Philippine Islands. It is practically the same as old Statute 5410.

§ 115a. **Applies to State Jailor.**—Since the United States has a right to put prisoners in state jails, a state jailer who allows a prisoner to go, is liable in contempt, as well as to the penalties of the section under discussion. Ex parte Shores, 195 Federal, 627. A conspiracy to allow a prisoner to escape is reached by the statute. Ex parte Lyman, 202 Federal, 303.

Sec. 115b. Allowing a Prisoner to Escape.

Is a contempt though purpose seems good, O'Rourke 251 F. 768; there is a difference between assisting to escape and what is not an assistance and also harboring, Orth vs. U. S., 252 F. 566.

§ 116. **Rescuing, Etc., Prisoner; Concealing, Etc., Prisoner for Whom Warrant Has Issued.**—Section 141 of the new Code, in the following words:

"Whoever shall rescue or attempt to rescue from the custody of any officer or person lawfully assisting him, any person arrested upon a warrant or other process issued under the provisions of any law of the United States, or shall, directly or indirectly, aid, abet, or assist any person so arrested to escape from the custody of such officer or other person, or shall harbor or conceal any person for whose arrest a warrant or process has been so issued, so as to prevent his discovery and arrest, after notice or knowledge of the fact that a warrant or process has been issued for the apprehension of such person, shall be fined not more than one thousand dollars, or imprisoned not more than six months, or both,"

is a substitute for old Sections 5401 and 5516. The new statute, it will be noted, creates several offenses: that of rescuing or attempting to rescue; that of directly or indirectly aiding, abetting, or assisting any person to escape; that of harboring or concealing any person for whose arrest a warrant has been issued. A successful prosecution could not be had under either of the provisions of this statute, unless the person attempted to be rescued was in the possession of an officer lawfully, and it is thought that the indictment must contain an allegation of knowledge. The latter section of the statute, which relates to concealing, requires that before one can

offend he must have knowledge that process has been issued for the prisoner.

§ 117. **Rescue at Execution; Rescue of Prisoner, and Rescue of Body of Executed Offender.**—The above three offenses are covered by Sections 142, 143, and 144 of the new Code, and were originally old Sections 5400, 5401, and 5402 of the 1878 Statutes. These new statutes, in their order, read as follows:

"Sec. 142. Whoever, by force, shall set at liberty or rescue any person found guilty in any court of the United States of any capital crime, while going to execution or during execution, shall be fined not more than twenty-five thousand dollars and imprisoned not more than one year."

"Sec. 143. Whoever, by force, shall set at liberty or rescue any person who, before conviction, stands committed for any capital crime; or whoever, by force, shall set at liberty or rescue any person committed for or convicted of any offense other than capital, shall be fined not more than five hundred dollars and imprisoned not more than one year."

"Sec. 144. Whoever, by force, shall rescue or attempt to rescue from the custody of any marshal or his officers, the dead body of an executed offended, while it is being conveyed to a place of dissection as provided by section three hundred and thirty-one hereof, or by force shall rescue or attempt to rescue such body from the place where it has been deposited for dissection in pursuance of that section, shall be fined not more than one hundred dollars, or imprisoned not more than one year, or both."

§ 118. **Extortion by Internal Revenue Informers.**—Section 145 of the new Code is a substantial re-enactment of old Section 5484, and reads as follows:

"Secc. 145. Whoever shall, under a threat of informing, or as a consideration for not informing, against any violation of any law of the United States, demand or receive any money or other valuable thing, shall be fined not more than two thousand dollars, or imprisoned not more than one year, or both."

§ 119. **Misprision of Felony.**—Section 146 of the new Code re-enacts old Section 5390, in the following words:

"Sec. 146. Whoever, having knowledge of the actual commission of the crime of murder or other felony cognizable by the courts of the United States, conceals and does not as soon as may be disclosed and make known the same to some one of the judges or other persons in civil or military authority under the United States, shall be fined

not more than five hundred dollars, or imprisoned not more than three years, or both."

This section is a companion to Section 145, above quoted, and the two together are thought to guarantee publicity for violators, and immunity of such violators from those who would prey upon them. Prosecutions under either of these are not disclosed by prision to be criminal neglect, either to prevent the commission of crime, or to bring to justice the offender after its commission. Bishop in his new Criminal Law, defines Misprision of misdemeanor as unknown to the language of the law, but misprision of treason was held to be a Common Law treason. We will later see that by Federal statute, misprision of treason is denounced in old Section 5333 and new Section 3.

§ 120. **Bribery.**—In four sections, the new code covers the offenses denounced by Sections 5449 and 5499 of the old Statutes, and then creates new offenses.

Sec. 120a. Bribery Continued.

Giving different titles to officers in different counts is permissible, Sneierson vs. U. S., 264 F. 268.

Inspectors performing "official functions" are "government official," Sears vs. U. S., 264 F. 257.

A porter at a railway is an "official" and is protected by the statute from bribe when the railroad is under government control, Krichman vs. U. S., 263 F. 538.

"Approach" to a juror is an attempt to bribe—provided there is knowledge, U. S. vs. Russell, 41 Sup. Ct. Rep. 260.

§ 121. **Bribery of a Judge or Judicial Officer.**—Section 131 of the new code amplifies and enlarges old Section 5449, and reads as follows:

"Whoever, directly or indirectly, shall give or offer, or cause to be given or offered, any money, property, or value of any kind, or any promise of agreement therefor, or any other bribe, to any judge judicial officer, or other person authorized by any law of the United States to hear or determine any question, matter, cause, proceeding, or controversy, with intent to influence his action, vote, opinion, or decision thereon, or because of any such action, vote, opinion, or decision, shall be fined not more than twenty thousand dollars, or imprisoned not more than fifteen years, or both; and shall forever be

disqualified to hold any office of honor, trust, or profit under the United States."

§ 122. **Judge or Judicial Officer Accepting Bribe, Etc.**—Section 132 of the new Code practically re-enacts old Section 5499, and reads as follows:

"Sec. 132. Whoever, being a judge of the United States, shall in any wise accept or receive any sum of money, or other bribe, present, or reward, or any promise, contract, obligation, gift, or other security for the payment of money, or for the delivery or conveyance of anything of value, with the intent to be influenced thereby in any opinion, judgment, or decree, in any suit, controversy, matter, or cause depending before him, or because of any such opinion, ruling, decision, judgment, or decree, shall be fined not more than twenty thousand dollars, or imprisoned not more than fifteen years, or both; and shall be forever disqualified to hold any office of honor, trust, or profit under the United States."

This section relates only to the acceptance of a bribe by a judge, but the following section covers practically every person authorized by any law of the United States to hear or determine any question. See also Sections 160 and 185.

§ 123. **Juror, Referee, Master, U. S. Commissioner, or Judicial Officer, Etc., Accepting Bribe.**—Section 133 of the new Code, in the following words:

"Sec. 133. Whoever, being a juror, referee, arbitrator, appraiser, assessor, auditor, master, receiver, United States Commissioner, or other person authorized by any law of the United States to hear or determine any question, matter, cause, controversy, or proceeding, shall ask, receive, or agree to receive, any money, property, or value of any kind or any promise or agreement therefor, upon any agreement or understanding that his vote, opinion, action, judgment, or decision, shall be influenced thereby, or because of any such vote, opinion, action, judgment, or decision, shall be fined not more than two thousand dollars, or imprisoned not more than two years, or both"

creates offenses that were unknown to the old statute.

§ 123a. **Indictment—Who is Officer?**—An indictment must show, as must also the proof, that the act charged was an official act. U. S. vs. Birdsall, 195 Federal, 980. The person charged with violating this statute, must at the time of the violation have been an officer as within the statute provided and described. U. S. vs. Birdsall, 206 Federal, 818.

An "officer" within the meaning of this section where applicable, and Section 117 of the Code, means one who is either appointed by the President by and with the advice and consent of the Senate, or by the president alone, the Courts of law, or the heads of some executive department, and a special officer appointed by the Commissioner of Indian Affairs for the suppression of the liquor traffic among the Indians is not an officer of the United States. U. S. vs. Van Wert, 195 Federal, 974.

Sec. 123b. Who is an Officer.

See Burnap vs. U. S., 40 Sup. Ct. Rep. 374; U. S. Sup. Ct. Apr. 1921.

A person not appointed in the manner declared under constitution article 2, section 2, is not an "official of the United States" but only an agent or employee of the government; but Income Tax Inspectors appointed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, were officials of the United States within Criminal Code Section 117, relating to bribery and constitution, article 2, section 2, McGrath vs. U. S., 275 F. 295.

It is not necessary that one should be an official of the United States in order to act for, or, on behalf of the United States or in any official capacity within the meaning of section 117 of the Criminal Code, relating to bribery, McGrath vs. U. S., 275 F. 295.

§ 124. **Witness Accepting Bribe.**—Section 134 of the new Code, which reads as follows:

> "Sec. 134. Whoever, being, or about to be, a witness upon a trial, hearing, or other proceeding, before any court, or any officer authorized by the laws of the United States to hear evidence or take testimony, shall receive, or agree or offer to receive, a bribe, upon any agreement or understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial, hearing, or other proceeding, or because of such testimony, or such absence, shall be fined not more than two thousand dollars, or imprisoned not more than two years, or both."

is likewise an entirely new statute, without any parallel in the Statutes of 1878.

§ 125. **Members of Congress Accepting Bribes, Etc.** —In the next Chapter, under the head of Offenses Relating to Official Duties, will be found a discussion and citation of the statutes of the new Code, that inhibit members of Congress and other United States officers from accepting bribes, such statutes and treatment, however, being a different Chapter, for the reason that they do not relate directly to offenses against public justice.

CHAPTER VII.

OFFENSES RELATING TO OFFICIAL DUTIES.

§ 153. Member of Congress, Etc., Soliciting or Accepting Bribe: 1781 and 5500 and 5502—110.
154. Offering, Etc., Member of Congress Bribe: 5450—111.
155. Member of Congress Taking Consideration for Procuring Contracts, Offices, Etc.; Offering Member Consideration, Etc.: 1781—112.
156. Member of Congress Taking Compensation in Matters to Which the United States Is a Party: 1782—113.
157. Member of Congress Not to Be Interested in Contract: 3739—114.
158. Officer Making Contract with Member of Congress: 3742—115.
159. Contracts to Which the Two Preceding Sections Do Not Apply: 3740—116.
160. United States Officer Accepting Bribe: 5501 and 5502—117.
161. Political Contributions Not to Be Solicited by Certain Officers: New Code, 118.
162. Political Contributions Not to Be Received in Public Offices: New Code, 119.
163. Immunity from Official Proscription, Etc.: New Code, 120.
164. Giving Money, Etc., to Officials for Political Purposes Prohibited: New Code, 121.
165. Penalty for Violating the Provisions of the Four Preceding Sections, New Code, 122.
166. All of the Above, Civil Service Act: 1 Sup., 396.
167. Government Officers, Etc., Giving Out Advance Information Respecting Crop Reports: New Code, 123.
168. Government Officer, Etc., Knowingly Compiling or Issuing False Statistics Respecting Crops: New Code, 124.
169. Counterfeiting Weather Forecasts Interfering with Signals, Etc.: 33 St. L., 864.

§ 126. **Extortion.**—At the Common Law, extortion was one of the forms of malfeasance in office. Mr. Bishop, in his second volume of Criminal Law, at page 225, says that those who assume official position place themselves thereby in circumstances to exert a certain power, which brings with it corresponding obligations, cognizable by the Criminal Law, and among wrongful official acts, extortion is particularly reprehensible. Hence it is, that the law separates it from the rest under a name of its own. Anderson, in his Dictionary of Law, defines extortion to be "that abuse of public justice which consists in an officer's unlawfully taking, by color of his office, from any man, any money or thing of value that is not due to him, or more than is due, or before it is due,

obtaining money or other valuable thing by compulsion or force of motives applied to will." Wharton, in his second volume of Criminal Law, paragraph 1574, defines extortion as any oppression by color of right. Bishop, in his second volume of Criminal Law, page 225, defines it as the "corrupt demanding or receiving by a person in office of a fee for services which should be rendered gratuitously; or, where compensation is permissible, of a larger fee than the law justifies, or a fee not yet due." Corruption, as used in these definitions, and as applied to the offense of extortion, implies an evil mind; hence it is not committed when the fee comes voluntarily, in return for real benefits conferred, by extra exertions put forth. Second Bishop's Criminal Law page 226; State vs. Stotts, 5 Black., 460; Rex vs. Baines, 6 Mod., 192; Williams vs. S., 2 Sneed, 160; Evans vs. Trenton, 4 Zab., 764.

§ 127. **Federal Offense.**—The general statute against extortion was old Section 5481, which limited extortion to an "officer" of the United States. Under the authorities of United States vs. Schlierholz, in 137 Federal, 616, and United States vs. same, in 133 Federal, 333, and the cases therein cited, it appeared that the various bureaus of the Executive and Judicial Departments of the Government were administering their respective affairs through so many agents and clerks and employees, who, in turn, could and did practice extortion and such sort of malfeasance, but who are not really "officers" within the meaning of the Act and the decisions and authorities above referred to, that Congress passed the Act of June 28, 1906, amending Section 5481, which is now practically re-enacted in Section 85 of the new Code, which is in the following words:

"Sec. 85. Every Officer, Clerk, agent, or employee of the United States, and every person representing himself to be or assuming to act as such officer, clerk, agent, or employee, who, under color of his office, clerkship, agency, or employment, or under color of his pretended or assumed office, clerkship, agency, or employment, is guilty of extortion, and every person who shall attempt any act which if performed would make him guilty of extortion, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both."

The above statute includes not only every officer of the United States, but every clerk, agent, employee, and every other person.

The Supreme Court of the United States, in Williams vs. United States, 168 U. S., 382, 42 Law Ed., 512, held that a Chinese Inspector could be guilty of extortion under the old Section. Other cases of more or less interest are United States vs. Germane, 99 U. S., 508; U. S. vs. Waitz, 3 Sawy., 28 Federal Cases No. 16,631.

In United States vs. Harned, 43 Federal, 376, a District Judge, in passing upon a motion to dismiss the prosecution, held that the word "extortion" implies that the money paid was extorted on the part of the one who received it, and was paid unwillingly by the party paying the same, and that, therefore, where there was a voluntary payment by the witness, knowing at the time that it was in excess of the amount that was required to be paid, and that the same was willingly paid, and not demanded, would not support a prosecution, and therefore the motion to dismiss was granted.

Bearing in mind the definitions above quoted, and that there must be an allegation of corruptness, as above defined, it is not believed that the Harned case states the rule correctly. The purpose of the statute is to prevent the receipt by an officer of money in excess of that to which he is legally entitled, and if he asks for more, with knowledge and corrupt purpose, the asking, it is thought, would be the demand comprehended in the definitions, and the payment thereof would be sufficiently unwilling under the law to constitute the offense of extortion. It is not here argued that an innocent overcharge or an overpayment or an overdemand, or a taking of property or money without the corrupt thought and intent, would constitute the offense; but when an officer, knowing he is entitled to a certain sum, deliberately and corruptly makes his bill or demand for a larger sum, public policy would demand that he suffer prosecution under this statute.

The case of United States vs. Moore, in the 18 Federal, page 686, is a prosecution under old Section 5485, for de-

manding or receiving a greater sum than ten dollars in a pension case, and its reasoning may be of interest in studying the instant statute. Under the Revenue Acts, considered elsewhere, will be found a statute relating to extortion by revenue officers or agents. Under the old law, this inhibition was contained in Section 3169. The case of United States vs. Deaver, 14 Federal, 595, in passing upon this particular statute, defines extortion to be the taking or obtaining of anything from another by a public officer, by means of illegal compulsion or oppressive exaction, and holds that an officer who collects a sum of money as special taxes from a person as wholesale and retail dealer in spirits, when no such taxes have been regularly assessed against him, is guilty of oppression, although such party has been guilty of selling spirits at wholesale and retail, without a license, as required by law, and the fact that he reported such taxes to the Collector of the District as received, and the Collector of the District, in his settlement with the Revenue Department was required to pay the sum collected after the manner of its collection was fully known to the Department, will not render legal the acts of the defendant, knowingly and wilfully done without authority of law.

That same case, in considering further the offense, decided in substance, that the principle and policy of the Common Law that a ministerial officer who had arrested a person, and who takes from such person money, or other reward under a pretense or promise of getting the offender discharged, is guilty of a criminal offense, and under the Section 3169 is extended to officers of the Revenue, and any such officer who accepts or attempts to collect, directly or indirectly, as payment or gift or otherwise, any sum of money or other thing of value, for a compromise of a violation of the Revenue laws, is guilty of a misdemeanor.

§ 128. **Receipting for Larger Sums than are Paid.**—Section 5483 of the old Statutes, is changed by Section 86 of the new Code, which reads as follows:

"Sec. 86. Whoever, being an officer, clerk, agent, employee, or other person charged with the payment of any appropriation made by

Congress, shall pay to any clerk or other employee of the United States a sum less than that provided by law, and require such employee to receipt or give a voucher for an amount greater than that actually paid to and received by him, is guilty of embezzlement, and shall be fined in double the mount so withheld from any employee of the Government, and imprisoned not more than two years."

The old statute, was limited by the word "officer," just as was old Section 5481. New Section 86, however, includes not only "officer," but clerk, agent, or employee, or other person, and in such broadness includes, it is thought, every paying officer of the Federal Government. In United States vs. Mayers, 81 Federal, page 159, which was a decision under the old statute, a postmaster was held to be an "officer" within the meaning of that statute, and subject to indictment for having received a receipt for a larger amount than that which he actually paid a letter carrier employed in his office. That decision also contains a copy of the indictment in that case, which was held to be sufficient.

§ 129. **Species of Embezzlement.**—Sections 5488, 5489, 5490, 5491, 5492, 5493, 5494, 5495, 5496, and 5497 of the 1878 Revised Statutes, denominate certain acts with reference to handlers of the public money, such as disbursing officers and depositories, to be statutory embezzlements, the specific elements of which are respectively therein included. These statutes are practically re-enacted under the following sections of the new Code.

§ 130. **Disbursing Officer Unlawfully Converting, Etc., Public Money.**—Section 87 of the new Code reads as follows:

"Sec. 87. Whoever, being a disbursing officer of the United States, or a person acting as such, shall in any manner convert to his own use, or loan with or without interest, or deposit in any place or in any manner, except as authorized by law, any public money intrusted to him; or shall, for any purpose not prescribed by law, withdraw from the Treasurer, or any assistant treasurer, or any authorized depository, or transfer, or apply, any portion of the public money intrusted to him, shall be deemed guilty of an embezzlement of the money so converted, loaned, deposited, withdrawn, transferred, or applied, and shall be fined not more than the amount embezzled, or imprisoned not more than ten years, or both."

§ 131. **Failure of Treasurer to Safely Keep Public Moneys.**—Section 88 of the new Code is in the following words:

"Sec. 88. If the Treasurer of the United States, or any assistant treasurer, or any public depository, fails safely to keep all moneys deposited by any disbursing officer or disbursing agent, as well as all moneys deposited by any receiver, collector, or other person having money of the United States, he shall be deemed guilty of embezzlement of the moneys not so safely kept, and shall be fined in a sum equal to the amount of money so embezzled and imprisoned not more than ten years."

§ 132. **Custodians of Public Money Failing to Safely Keep, Etc.**—New Section 89 reads as follows:

"Sec. 89. Every officer or other person charged by any Act of Congress with the safe-keeping of the public moneys, who shall loan, use, or convert to his own use, or shall deposit in any bank or exchange for other funds, except as specially allowed by law, any portion of the public moneys intrusted to him for safekeeping, shall be guilty of embezzlement of the money so loaned, used, converted, deposited, or exchanged, and shall be fined in a sum equal to the amount of money so embezzled and imprisoned not more than ten years."

§ 133. **Failure of Officer to Render Accounts, Etc.**—New Section 90 reads as follows:

"Sec. 90. Every officer or agent of the United States who, having received public money which he is not authorized to retain as salary, pay, or emolument, fails to render his accounts for the same as provided by law shall be deemed guilty of embezzlement, and shall be fined in a sum equal to the amount of money embezzled and imprisoned not more than ten years."

§ 134. **Failure to Deposit, as Required.**—Section 91 of the new Code reads as follows:

"Sec. 91. Whoever, having money of the United States in his possession or under his control, shall fail to deposit it with the Treasurer, or some assistant treasurer, or some public depository of the United States, when required so to do by the Secretary of the Treasury, or the head of any other proper department, or by the accounting officers of the Treasury, shall be deemed guilty of embezzlement thereof, and shall be fined in a sum equal to the amount of money embezzled and imprisoned not more than ten years."

It has been determined, in the case of United States vs. Dimmick, reported in 112 Federal, 350, and affirmed in Dimmick vs. United States, 121 Federal, 638, that to constitute the offense of failing to deposit, as required, in these sections, it is not necessary that a person having such moneys in his possession should have been "required" to deposit the same by a specific order directed to him which he failed to obey, but such requirement may be made by a general rule or regulation of the Treasury Department, requiring such moneys to be deposited at stated times, and a wilful failure to comply with such rule is within the statute.

So also, it seems that a similar general rule made by the Postmaster General, or any other executive officer, concerning the deposit of moneys by subordinates in that particular branch of the Government, would likewise be all that was necessary to meet the requirement of the statute under the word "required."

§ 135. **Provisions of the Five Preceding Sections—How Applied.**—New Section 92 reads as follows:

"Sec. 92. The provisions of the five preceding sections shall be construed to apply to all persons charged with the safe-keeping, transfer, or disbursement of the public money, whether such persons be indicted as receivers or depositaries of the same."

§ 136. **Record Evidence of Embezzlement.**—New Section 93 is in the following words:

"Sec. 93. Upon trial of any indictment against any person for embezzling public money under any provision of the six preceding sections, it shall be sufficient evidence, *prima facie*, for the purpose of showing a balance against such person, to produce a transcript from the books and proceedings of the Treasury, as required in civil cases, under the provisions for the settlement of accounts between the United States and receivers of public money."

§ 137. **Prima Facie Evidence.**—New Section 94 is in the following words:

"Sec. 94. The refusal of any person, whether in or out of office, charged with the safe-keeping, transfer, or disbursement of the public money to pay any draft, order, or warrant drawn upon him by the proper accounting officer of the Treasury, for any public money in his hands belonging to the United States, no matter in what capacity

the same may have been received, or may be held, or to transfer or disburse any such money, promptly, upon the legal requirement of any authorized officer, shall be deemed, upon the trial of any indictment against such person for embezzlement, *prima facie* evidence of such embezzlement."

§ 138. **Evidence of Conversion.**—Section 95 of the new Code is in the following words:

"If any officer charged with the disbursement of the public moneys accepts, receives, or transmits to the Treasury Department to be allowed in his favor any receipt or voucher from a creditor of the United States without having paid to such creditor in such funds as the officer received for disbursement, or in such funds as he may be authorized by law to take in exchange, the full amount specified in such receipt or voucher, every such act is an act of conversion by such officer to his own use of the amount specified in such receipt or voucher."

The above three sections are general statutes that apply to and regulate the method of proof, and create new rules of evidence that apply to Sections 87, 88, 89, 90 and 91, above quoted.

§ 139. **Banker, Etc., Receiving Deposit from Disbursing Officer.**—Section 96 of the new Code is in the following words:

"Sec. 96. Every banker, broker, or other person not an authorized depositary of public moneys, who shall knowingly receive from any disbursing, officer, or collector of internal revenue, or other agent of the United States, any public money on deposit, or by way of loan or accommodation, with or without interest, or otherwise than in payment of a debt against the United States, or shall use, transfer, convert, appropriate, or apply any portion of the public money for any purpose not prescribed by law; and every president, cashier, teller, director, or other officer of any bank or banking association who shall violate any provision of this section is guilty of embezzlement of the public money so deposited, loaned, transferred, used, converted, appropriated, or applied, and shall be fined not more than the amount embezzled, or imprisoned not more than ten years, or both."

See Cook County National Bank vs. United States, 107 U. S., 445, 27 Law Ed., page 537, which discusses, in a general way, the priority right of the United States as against insolvents. See also 15 Opinions of Attorney General, 288.

Under the authority of United States vs. Green et al, 146 Federal, 778, old Section 5497, all the terms of which are included in the statute under discussion, extended the crime of embezzlement of public money to every person who used, transferred, converted, appropriated, or applied any portion of the same for any purpose not prescribed by law.

§ 140. **Embezzlement by Internal Revenue Officers, Etc.**—Section 97 of the new Code is in the following words:

"Sec. 97. Any officer connected with, or employed in the Internal Revenue Service of the United States, and any assistant of such officer, who shall embezzle or wrongfully convert to his own use any money or other property of the United States, and any officer of the United States, or any assistant of such officer, who shall embezzle or wrongfully convert to his own use any money or property which may have come into his possession or under his control in the execution of such office or employment, or under color or claim of authority as such officer or assistant, whether the same shall be the money or property of the United States or of some other person or party, shall, where the offense is not otherwise punishable by some statute of the United States, be fined not more than the value of the money and property thus embezzled or converted, or imprisoned not more than ten years, or both."

This section contains a part of what was originally in Section 5497 of the old Statutes, as does Section 96, above considered. By the specific terms of the section, an embezzlement may be properly laid thereunder, even though the money or property so embezzled is not the money or property of the United States, provided that such money or property came into the possession or control of the United States officer by reason of his office, or under color thereof, or under claim of authority; as, for instance, one paying to a Deputy Collector a partial payment or installment payment on a license not yet issued, or giving to a rural route carrier money to purchase a money-order, which remains the property of the intended purchaser. All these, and many other offenses, would be punishable under this statute.

Sec. 140a. Embezzlement, etc., by United States Officers.

Under the foregoing section a clerk of the United States District Court who embezzles may be convicted, U. S. vs. Davis, U. S. Sup. Ct. Apr. 1917.

A receiver of a National Bank is an officer of the United States, within the meaning of this section and may be prosecuted for embezzlement of the funds of the bank he is administering, Wetzel vs. U. S., 274 F. 101.

§ 141. **Officer Contracting Beyond Specific Appropriation.**—Section 98 of the new Code, which practically re-enacts old Section 5503, and the substance of the amendment thereto, is in the following words:

"Sec. 98. Whoever, being an officer of the United States, shall knowingly contract for the erection, repair, or furnishing of any public building, or for any public improvement, to pay a larger amount than the specific sum appropriated for such purpose, shall be fined not more than two thousand dollars and imprisoned not more than two years."

§ 142. **Officer of United States Court Failing to Deposit Moneys, Etc.**—Section 99 of the new Code, which substantially re-enacts old Section 5504, is in the following words:

"Sec. 99. Whoever, being a clerk or other officer of a court of the United States, shall fail forthwith to deposit any money belonging in the registry of the court, or hereafter paid into court or received by the officers thereof, with the Treasurer, assistant treasurer, or a designated depositary of the United States, in the name and to the credit of such court, or shall retain or convert to his own use or to the use of another any such money, is guilty of embezzlement, and shall be fined not more than the amount embezzled; or imprisoned not more than ten years, or both; but nothing herein shall be held to prevent the delivery of any such money upon security, according to agreement of parties, under the direction of the court."

Some civil cases that merely mention old Section 5504 are the following: Henry vs. Sowles, 28 Federal, 481; United States vs. Bixby, 10 Bis., 238.

§ 143. **Receiving Loan or Deposit from Officer of Court.**—Section 100 of the new Code, which takes the place of the old Statute 5505, reads as follows:

"Sec. 100. Whoever shall knowingly receive from a clerk or other officer of a court of the United States, as a deposit loan, or

otherwise, any money belonging in the registry of such court, is guilty of embezzlement, and shall be punished as prescribed in the preceeding section."

§ 144. **Failure to Make Returns or Reports.**—Section 101 of the new Code which re-enacts old Section 1780, is in the following words:

"Sec. 101. Every Officer who neglects or refuses to make any return or report which he is required to make at stated times by any Act of Congress or regulation of the Department of the Treasury, other than his accounts, within the time prescribed by such act or regulation, shall be fined not more than one thousand dollars."

§ 145. **Aiding in Trading in Obscene Literature, Etc.**—Old Section 1785, which is to be regulated by the decisions under the old Section 3893 and its amendments, which have heretofore been treated under postal crimes and offenses, is replaced by Section 102 of the new Code, in the following words:

"Sec. 102. Whoever, being an officer, agent, or employee of the Government of the United States shall knowingly aid or abet any person engaged in violating any provision of law prohibiting importing, advertising, dealing in, exhibiting, or sending or receiving by mail, obscene or indecent publications or representations, or means for preventing conception or producing abortion, or other article of indecent or immoral use or tendency, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both."

§ 146. **Collecting and Disbursing Officers Forbidden to Trade in Public Funds.**—Old Sections 1788 and 1789 are re-enacted into new Section 103 in the following words:

"Sec. 103. Whoever, being an officer of the United States concerned in the collection or the disbursement of the revenues thereof, shall carry on any trade or business in the funds or debts of the United States, or of any State, or any public property of either, shall be fined not more than three thousand dollars, or imprisoned not more than one year, or both, and be removed from office, and thereafter be incapable of holding any office under the United States."

§ 147. **Judges, Clerks, Deputies, Marshals, and Attorneys, and their Deputies Forbidden to Purchase Wit-**

ness Fees, Etc.—The statute contained in the 29 Statute at Large, 595, is re-enacted into new Section 104, in the following words:

"Sec. 104. Whoever, being a judge clerk, or deputy clerk of any court of the United States, or of any Territory thereof, or a United States district attorney, assistant attorney, marshal, deputy marshal, commissioner, or other person holding any office, or employment, or position of trust or profit under the Government of the United States, shall, either directly or indirectly, purchase at less than the full face value thereof, any claim against the United States for the fee, mileage, or expenses of any witness, juror, deputy marshal, or any other officer of the court whatsoever, shall be fined not more than one thousand dollars."

§ 148. **Falsely Certifying, Etc., as to Record of Deeds.**—Section 105 of the new Code, creates a new offense, in the following words:

"Sec. 105. Whoever, being an officer or other person authorized by any law of the United States to record a conveyance of real property, or any other instrument which by law may be recorded, shall knowingly certify falsely that such conveyance or instrument has or has not been recorded, shall be fined not more than one thousand dollars, or imprisoned not more than seven years, or both."

§ 149. **Other False Certificates.**—Section 106 of the new Code creates a new offense in the following words:

"Sec. 106. Whoever, being a public officer or other person authorized by any law of the United States to make or give a certificate or other writing, shall knowingly make and deliver as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not elsewhere expressly provided by law, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both."

§ 150. **Inspector of Steamboats Receiving Illegal Fees.**—Section 5482 of the old Statutes is re-enacted in Section 107 of the new Statutes in the following words:

"Every inspector of steamboats who, upon any pretense, receives any fee or reward for his services, except what is allowed to him by law, shall forfeit his office, and be fined not more than five hundred dollars, or imprisoned not more than six months, or both."

§ 151. **Pension Agent Taking Fee, Etc.**—Section 108, which displaces old Section 5487, reads as follows:

"Every pension agent, or other person employed or appointed by him, who takes, receives, or demands any fee or reward from any pensioner for any service in connection with the payment of his pension, shall be fined not more than five hundred dollars."

In the cases of United States vs. Kessel, 62 Federal, page 57, and United States vs. Van Leuven, 2 Federal, 62, successful prosecutions were laid by the Government against members of the Board of Examining Surgeons for receiving and asking outside compensation and gratuity for services rendered and to be rendered, respecting certain certificates from the board of Surgeons. An indictment in the first case, which charged that the defendant, a member of a Board of Surgeons, did unlawfully ask "a gratuity, the nature of which is unknown," with intent to have his official action influenced, was held to be had, in that it failed to sufficiently inform the defendant of what he was to meet. These two decisions held that a member of a Board of Examining Surgeons, appointed by the Commissioner of Pensions, though not an officer of the United States, was a person acting for, or in behalf of, the United States, and in an official capacity, and under authority of an office of the Government, and distinguished the case of the United States vs. Germaine, 99 U. S., 508.

§ 152. **Officer not to Be Interested in Claims Against United States.**—Section 109 of the new Code is substantially in the words of the old Statute 5498, and reads as follows:

"Sec. 109. Whoever, being an officer of the United States, or a person holding any place of trust or profit, or discharging any official function under, or in connection with, any Executive Department of the Government of the United States, or under the Senate or House of Representatives of the United States, shall act as an agent or attorney for prosecuting any claim against the United States, or in any manner, or by any means, otherwise than in discharge of his proper official duties, shall aid or assist in the prosecution or support of any such claim, or receive any gratuity, or any share of or interest in any claim from any claimant against the United States, with intent to aid or assist, or in consideration of having aided or assisted in the prosecution of such claim, shall be fined not more than five thousand dollars, or imprisoned not more than one year, or both."

To this statute, as well as most of the others that we are considering in this Chapter, the thought is applicable that a political office is merely a trust, which is to be conferred upon whatever conditions the Government chooses to impose. If the conditions are unacceptable to the office-holder, he is under no obligation to take the office, and he has no Constitutional or other right to require the conditions of trusts he accepts to be subsequently altered or removed. In United States vs. Curtis, 12 Federal, 824, the Court, in expressing this thought, said:

"No citizen is required to hold a public office, and if he is unwilling to do so, upon such conditions as are prescribed by that Department of the Government which creates the office, fixes its tenure and incidents, it is his duty to resign."

The Curtis case was an indictment, in 1882, against a Federal employee for soliciting and receiving money from other Federal employees, to be used by the Republican State Committee. The indictment was found under Section 6 of the Act of August 15, 1876, First Supplement, 245, 19 Statute-at-Large, 169. The defendant was convicted, and thereafter sought, by writ of habeas corpus from the Supreme Court of the United States, his discharge; but the Supreme Court, through Chief Justice Waite, in 106 U. S., 371, ex parte Curtis; Lawyers' Co-Operative Edition, Book 27, page 232, refused to discharge the petitioner, and in effect, therefore, confirmed the conviction.

§ 153. **Member of Congress, Etc., Soliciting or Accepting Bribe.**—Sections 1781, 5500, and 5502 have contributed to new Section 110, which is in the following words:

"Sec. 110. Whoever, being elected or appointed a Member of or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment, and either before or after he is qualified, and during his continuance in office, directly or indirectly, ask, accept, receive, or agree to receive, any money, property, or other valuable consideration, or any promise, contract, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or

conveyance of anything of value to him, or to any person with his consent, connivance, or concurrence, for his attention to, or services, or with the intent to have his action, vote, or decision influenced on any question, matter, cause, or proceeding, which may at any time be pending in either house of congress or before any committee thereof, of which by law or under the constitution may be brought before him in his official capacity, or in his place as such member, delegate, or resident commissioner, shall be fined not more than three times the amount asked, accepted, or received, and imprisoned not more than three years; and shall, moreover, forfeit his office or place, and thereafter be forever disqualified from holding any office of honor, trust, or profit, under the Government of the United States."

§ 154. **Offering, Etc., Member of Congress Bribe.**—New Section 111 contains the meat of old Section 5450, and is in the following words:

"Sec. 11. Whoever shall promise, offer, or give, or cause to be promised, offered, or given, any money or other thing of value, or shall make or tender any contract, undertaking, obligation, gratuity, or security for the payment of money or for the delivery or conveyance of anything of value, to any Member of either House of Congress, or Delegate to Congress, or Resident Commissioner, after his election or appointment, and either before or after he has qualified, and during his continuance in office, or to any person with his consent, connivance, or concurrence, with intent to influence his action, vote, or decision, on any question, matter, cause, or proceeding which may at any time be pending in either House of Congress, or before any committee thereof, or which by law or under the Constitution may be brought before him in his official capacity or in his place as such member, delegate, or resident commissioner, shall be fined not more than three times the amount of money or value of the thing so promised, offered, given, made, or tendered, and imprisoned not more than three years."

§ 155. **Member of Congress Taking Consideration for Procuring Contracts, Offices, Etc.; Offering Member Consideration, Etc.**—New Section 110, quoted above, together with new Section 112, which is in the following words:

"Sec. 112. Whoever, being elected or appointed a Member of or Delegate to Congress, or a Resident Commissioner, shall after his election or appointment, and either before or after he has qualified and during his continuance in office, or being an officer or agent of the United States, shall directly or indirectly take, receive, or agree to receive, from any person, any money, property, or other valuable consideration whatever, for procuring or aiding to procure any contract, appointive office, or place to any person whomsoever; or who-

ever, directly or indirectly shall offer, or agree to give, or shall give, or bestow, any money, property, or other valuable consideration whatever, for the procuring, or aiding to procure, any such contract, appointive office, or place, shall be fined not more than ten thousand dollars and imprisoned not more than two years; and shall moreover, be disqualified from holding any office of honor, profit, or trust under the Government of the United States. Any such contract or agreement may, at the option of the President, be declared void."

enlarge upon the provisions of old Statute 1781.

Upon the question of policy, the Curtis case, cited supra may be considered as an authority under this section. In United States vs. Driggs, 125 Federal, 520, Congressman Driggs was indicted for assisting a contractor by the name of Miller in making a contract with the Government for certain automatic cash registers, for a consideration of twelve thousand dollars. In the case of United States vs. Dietrich, 126 Federal, 676, which grew out of an indictment against Senator Dietrich, of Nebraska, for an alleged agreement to procure, or aid in the securing of, a post-office, for one Fisher, the Court held, of course, that it was necessary to allege in the indictment the election, qualification, and oath of Dietrich as such Senator, and for the facts to show that the offense was committed while he was such officer; and there being an interim before his actual qualification to such office, during which time he made the contract for the disposition of the post-office, if he made it at all, the Court determined that no offense was committed. In that opinion, the Court said:

"The defendant was not admitted to a seat in the Senate and did not enter upon the discharge of the duties of that office, until December 2, 1901, not until that date did the Senate consider or act upon his election, credentials, and qualifications. Until then, it was not known, and could not have been, in the absence of an earlier session of the Senate, whether his election, credentials, and qualifications, would be deemed by the Senate, the sole and exclusive judge, to be such as to entitle him to membership in that body. Immediately following the favorable action of the Senate upon his election, credentials, and qualifications, the defendant took the oath of office as a Senator, which was an assumption of the duties of that office; but until then he had not accepted the office, and was not obligated to its acceptance. Until then, it was optional with him to accept or decline; and if, on December 2, 1901, he had exercised that office by declining instead

of accepting, he would not have been a Senator at all, under the election of March 28, 1901."

It is quite true that the Common Law made it an offense for one not to accept an office to which he was elected, but no such jurisdiction is recognized by the Federal Courts. If it be true, therefore, that Dietrich agreed to sell the office between the date of his election, in March, and the date of his qualification, in December, he committed no offense under the Statute under discussion. The case of United States vs. Burton, reported in 131 Federal, 552, grew out of an alleged practice by Senator Burton before the Post-office Department of the United States, with reference to a certain fraud order that the Postmaster General had issued. The conviction that resulted upon that case was finally reversed, Burton vs. United States, 196 U. S., 283, but upon a retrial another conviction was affirmed, United States vs. Burton, 202 U. S., 344; 50 Law Ed., 1057. The Court held, in the last writ of error, that a fraud order inquiry pending before the Post-office Department is a proceeding in which the United States, although having no direct money or pecuniary interest in the result, is directly or indirectly interested within the meaning of Section 1782, making it a misdemeanor for a United States Senator to receive or agree to receive compensation for services rendered before any Department, in relation to any proceeding in which the United States is so interested.

The Court also in that case said that the agreement to receive, and the receipt of, the forbidden compensation are made two separate and distinct offenses under Section 1782.

In the case of McGregor vs. United States, 134 U. S., 188, the Circuit Court of Appeals for the Fourth Circuit affirmed a conviction of the defendants, who were clerks in the Post-office Department, under Section 1781 and 1782, for conspiring with a dealer in leather goods for the sale of mail pouches to the Federal Government.

This case discusses the introduction of evidence before a grand jury, the joinder of various counts, and the sufficiency in general of a bill alleging the elements of such

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enlarge upon the provisions of old Statute 1781.

Upon the question of policy, the Curtis case, cited supra may be considered as an authority under this section. In United States vs. Driggs, 125 Federal, 520, Congressman Driggs was indicted for assisting a contractor by the name of Miller in making a contract with the Government for certain automatic cash registers, for a consideration of twelve thousand dollars. In the case of United States vs. Dietrich, 126 Federal, 676, which grew out of an indictment against Senator Dietrich, of Nebraska, for an alleged agreement to procure, or aid in the securing of, a post-office, for one Fisher, the Court held, of course, that it was necessary to allege in the indictment the election, qualification, and oath of Dietrich as such Senator, and for the facts to show that the offense was committed while he was such officer; and there being an interim before his actual qualification to such office, during which time he made the contract for the disposition of the post-office, if he made it at all, the Court determined that no offense was committed. In that opinion, the Court said:

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of accepting, he would not have been a Senator at all, under the election of March 28, 1901."

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This case discusses the introduction of evidence before a grand jury, the joinder of various counts, and the sufficiency in general of a bill alleging the elements of such

an offense. The Court refused to revise the judgment of the grand jury stating that,

"It is doubtless true that grand juries frequently consider testimony that would be held inadmissible by a trial court, for such juries are not usually well informed concerning the rules of evidence, nor the rights and privileges of the parties whose alleged offenses they are examining into.....In cases like this, where the record discloses that many witnesses were examined, and much documentary evidence considered by the grand jury, it is quite apparent that it would be subversive of our criminal procedure and destructive of the rules formulated to promote the due administration of justice, to establish a practice under which indictments might be quashed, because of a consideration by the grand jury of the improper testimony given by one witness among many, or the reading by such jury of a statement irregularly submitted to it, which may likely have had but little influence in the conclusion reached by the jury."

In other words, the Court said, later on, that even though evidence might have been improperly considered by the grand jury, that the Court would not say that the jury did not, nevertheless, have before it sufficient of legal and pertinent testimony to warrant the returning of the indictment, and cites cases in support.

In United States vs. Booth, 148 Federal, 112, will be found a complete copy of an indictment under Section 1782, which was approved by the Court. In that case, a Receiver of the Land Department of the United States was held to commit an offense against the statute under discussion, when he gave advance information respecting the lands, for which advance information he received compensation, and the Court held that the United States has a direct interest, within the meaning of the section, in all public lands, and in the right of entry or purchase thereof, through proceedings to be had at any of its land offices. Under the reasoning of this last case, any compensation whatever is construed to be a violation of the statute. It will be remembered, however, that the distinction drawn in the Dietrich case, with reference to election and qualification, can never arise under new Sections 112 and 113, for the reason that those sections expressly provide either before or after qualification.

§ 156. **Member of Congress Taking Compensation in Matters to Which the United States is a Party.**—New Section 113, which is closely akin to 112, just discussed, and which re-enacts the salient features of old Section 1782, and under which the citations and suggestions made with reference to 112 are also applicable, is in the following words:

"Sec. 113. Whoever, being elected or appointed a Senator, Member of or Delegate to Congress, or a Resident Commissioner, shal, after his election or appointment and either before or after he has qualified, and during his continuance in office, or being the head of a department, or other officer or clerk in the employ of the United States, shall, directly or indirectly, receive, or agree to receive, any compensation whatever, for any services rendered or to be rendered to any person, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter or thing in which the United States is a party or directly or indirectly interested, before any department, court-martial, bureau, officer, or any civil, military, or naval commission whatever, shall be fined not more than ten thousand dollars and imprisoned not more than two years, and shall, moreover, thereafter be incapable of holding any office of honor, trust, or profit under the Government of the United States."

§ 157. **Member of Congress Not to be Interested in Contract.**—Sections 109, 110, 111, 112, and 113, provide, in various ways, for the conservation of official fidelity. To these, has been added new Section 114, which takes the place of old Section 3739, and which is in the following words:

"Sec. 114. Whoever, being elected or appointed a Member of or Delegate to Congress, or a resident Commissioner, shall, after his election or appointment and either before or after he is qualified, and during his continuance in office, directly or indirectly, himself, or by any other person in trust for him, or for his use or benefit, or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract or agreement made or entered into in behalf of the United States by any officer or person authorized to make contracts on its behalf, shall be fined not more than three thousand dollars. All contracts or agreements made in violation of this section shall be void; and whenever any sum of money is advanced by the United States, in consideration of any such contract or agreement is shall forthwith be repaid; and in case of failure or refusal to pay the same when demanded by the proper officer of the Department under whose author-

ity such contract or agreement shall have been made or entered into, suit shall at once be brought against the person so failing or refusing and his sureties, for the recovery of the money so advanced."

The case of the United States vs. Dietrich, 126 Federal, 671, cited supra under 112 and 113, may be read with interest by those seeking light upon the instant statute; also Second Attorney's General Opinion, 697, 15 Attorney's General Opinion, 280. This statute, it will be noticed, is directed against Members of Congress being interested in contracts with the Government, whatever such interest may be, whether direct or indirect, and whether before qualification or after qualification, which meets, as heretofore observed, the objections that were raised by the Court in the Dietrich case, to a successful prosecution.

§ 158. **Officer Making Contract with Member of Congress.**—Old Section 3742 becomes new Section 115, which is in the following words:

"Sec. 115. Whoever, being an officer, of the United States, shall on behalf of the United States, directly or indirectly make or enter into any contract, bargain, or agreement, in writing or otherwise, with any Member of or Delegate to Congress, or any Resident Commissioner, after his election or appointment as such member, delegate, or resident commissioner, and either before or after he has qualified, and during his continuance in office, shall be fined not more than three thousand dollars."

This section, as the other sections of the new Code bearing upon this phase of official wrong, is so worded as to punish the offender, whether before or after his qualification to office.

§ 159. **Contracts to Which the Two Preceding Sections Do Not Apply.**—By Section 116 of the new Code, which was Section 3740 of the old Code, the two preceding sections—that is, Sections 114 and 115—do not apply to certain contracts, as is shown by the following words:

"Sec. 116. Nothing contained in the two preceding sections shall extend, or be construed to extend, to any contract of agreement made or entered into, or accepted, by any incorporated company, where such contract or agreement is made for the general benefit of such incorporation or company; nor to the purchase or sale of bills of

exchange or other property by any Member of or Delegate to Congress, or Resident Commissioner, where the same are ready for delivery, and payment therefor is made at the time of making or entering into the contract or agreement."

§ 160. **United States Officer Accepting Bribe.**—In the discussion of Section 110, supra, cases were cited and suggestions were made concerning old Sections 5501 and 5502. These two sections are broadly re-enacted in new Section 117, which is in the following words:

"Whoever, being an officer of the United States, or a person acting for or on behalf of the United States, in any official capacity, under or by virtue of the authority of any department or office of the Government thereof; or whoever, being an officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or of both Houses, shall ask, accept, or receive any security for the payment of money, or for the delivery or conveyance of anything of value with intent to have his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, influenced thereby, shall be fined not more than three times the amount of money or value of the thing so asked, accepted, or received, and imprisoned not more than three years, and shall, moreover, forfeit his office or place and thereafter be forever disqualified from holding any office of honor, trust, or profit under the Government of the United States."

The cases of the United States vs. Kissel, 62 Federal, 57, and United States vs. Van Lauven, 62 Federal, 62, heretofore discussed under Section 110, are authorities under this section. The statute is so broad that it covers not only one who is an officer of the United States, but any person acting for or on behalf of the United States in any official capacity.

The case of United States vs. Boyer, 85 Federal, 425, correctly, it seems, announces a doctrine that would be equally applicable to the new Section: that is, that though one be a United States officer, if he be attempting to perform a function which under the laws and limitations of the United States, he is not entitled to perform, even though he may think that he has such duty, and even though the person offer him a gratuity not to perform such duty may think that he has a right to per-

form it, yet he would not be guilty under the section, for the reason that he was acting outside of his authority. In the Boyer case, an Inspector for the Agriculture Department of the United States was indicted for receiving money from the packing house to which he was assigned, as an Inspector of the Bureau of Animal Industry. The point was raised that Congress did not have the power, under the Constitution, to send an inspector into a packing house located within a State, and impose upon him the duties set out in the indictment. The Court held that the facts set out in the indictment did not constitute an offense against the United States, for the reason that it was intended to induce him not to do a thing which no valid law of Congress imposed upon him to do.

In the case of United States vs. Ingham, 97 Federal, 935, which was a prosecution under Section 5451 of the old Statutes, which is closely akin to the one under discussion, the Court held that the statute applied to any person acting for or on behalf of the United States, whether such person was an officer or not; and, therefore, applied the section to a Secret Service operative employed by the Secretary of the Treasury, holding that the bribery or attempted bribery of such a person to collude in or allow a fraud on the United States, was an offense within the terms of the statute.

In King vs. United States, 112 Federal, is a state of facts which showed an offense under Section 5501 of the old Statutes, in the receiving of a large sum of money by a Captain in the United States Quartermaster's Department, for the acceptance and rejection of material to be used in the construction of a public building, such payment having been made him by the Contractor. The Circuit Court of Appeals for the Fifth Circuit sustains a conviction under such facts, but reverses the case upon another question. In the opinion is a copy of the indictment.

An indictment under these sections should charge that the bribe was given with the intent to influence the official action of the person. An indictment should also clearly specify the official capacity of the person who has accepted the bribe, or to whom an attempt has been made

to give a bribe. It was said, however, in the King case, that after the verdict, a general allegation which seems to show capacity of supervision over a particular Governmental function would be sufficient.

In the case of Sharp against the United States, 138 Federal, 878, the Circuit Court of Appeals for the Eighth Circuit, while reversing the case upon another question, held that an indictment against a United States Indian Agent for bribery, which alleged that he, having charge of the execution and completion of certain leases for certain contracts of land in a specified Indian reservation, commonly known as the Ponca Pasture, etc., feloniously and corruptly accepted and received the sum of fifteen hundred dollars from one A., for the purpose of influencing his action on the completion of such leases, was sufficient to charge the offense under 5501. The case also directly holds that an Indian Agent, in the execution and completion of leases of Government lands, was charged with such an official trust that his receiving a bribe to influence his official action rendered him subject to punishment under the above section.

The case of United States vs. Haas, 163 Federal, 908, was an indictment under the old Conspiracy Statute, for a violation of the old bribery section, which was 5451, and is interesting in this connection, because in that case the Court held that a person employed by the United States as an Assistant Statistician in the Department of Agriculture, in the performance of the duties with which he is charged by the rules of the Department, acts for the United States in an official function within the meaning of Revised Statutes No. 5451, making it a criminal offense to bribe any such person, to induce him to do or to omit to do any act in violation of his lawful duty.

Sec. 160a. United States Officer.

A baggage porter, while the railways are under government supervision is an officer within the meaning of the foregoing section, U. S. vs. Krichman, 256 F. 974.

An officer must not induce the crime, U. S. vs. Lynch, 256 F. 983. See Krichman vs. U. S. 41 Sup. Ct. Rep. 514, which reverses.

§ 161. **Political Contributions Not to be Solicited by Certain Officers.**—Section 118 of the new Code reads as follows:

"Sec. 118. No Senator or Representative in, or Delegate or Resident Commissioner to Congress, or Senator, Representative, Delegate, or Resident Commissioner-elect, or officer or employee of either House of Congress, and no executive, judicial, military or naval officer of the United States, and no clerk or employee of any Department, branch, or bureau of the executive, judicial, or military or naval service of the United States, shall directly or indirectly, solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever, from any officer, clerk, or employee of the United States, or any Department, branch, or bureau thereof, or from any person receiving any salary or compensation from moneys derived from the Treasury of the United States."

§ 162. **Political Contributions Not to be Received in Public Offices.**—Section 119 of the new Code reads as follows:

"Sec. 119. No person shall, in any room or building occupied in the discharge of official duties by any officer or employee of the United States mentioned in the preceding section, or in any navy-yard, fort, or arsenal, solicit in any manner whatever or receive any contribution of money or other thing of value for any political purpose whatever."

§ 163. **Immunity from Official Proscription, Etc.**—Section 120 is in the following words:

"Sec. 120. No officer or employee of the United States mentioned in section one hundred and eighteen, shall discharge, or promote, or degrade, or in any manner change the official rank or compensation of any other officer or employee, or promise or threaten so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose."

§ 164. **Giving Money, Etc., to Officials for Political Purposes Prohibited.**—Section 121 of the new Code is as follows:

"Sec. 121. No officer, clerk, or other person in the service of the United States shall, directly or indirectly, give or hand over to any other officer, clerk, or person in the service of the United States, or to any Senator or Member of or Delegate to Congress, or Resident Commissioner, any money or other valuable thing on account of or

to be applied to the promotion of any political object whatever."

§ 165. **Penalty for Violating the Provisions of the Four Preceding Sections.**—Section 122 is in the following words:

"Sec. 122. Whoever shall violate any provision of the four preceding sections shall be fined not more than five thousand dollars, or imprisoned not more than three years, or both."

The above sections are taken from the First Volume of the Supplements, 396, and were what was originally known as the Civil Service Act. The case of the United States vs. Thayer, in 154 Federal, 508, originated on that portion of the original law which is now Section 119, above quoted, and was a prosecution based upon the sending of letters by mail to the Federal employes, soliciting political contributions for use by the Republican State Committee, such letters to be delivered to such Federal employee in the Federal building at Dallas, Texas. The lower Court held that the sending of such a letter addressed to an Internal Revenue employee at his office in the Federal Building, by a defendant who was neither an officer nor an employee of the United States, did not constitute an offense within the Act. The Government sued out a writ of error under the new statute, authorizing the United States to go direct to the Supreme Court of the United States under certain conditions, and the Supreme Court of the United States reversed the judgment of the lower Court, and held that,

"solicitation by letter, intended to be received and read by an Internal Revenue employee in the Post-office Building, and which was so received and read in such building, is embraced by the provision of the Civil Service Act now under discussion, that no person shall in any room or building occupied in the discharge of official duties by any officer or employee of the United States mentioned in such Act, solicit 'in any manner whatever' or receive any contribution of money or any other thing of value, for any political purpose whatever."

In the course of opinion, the Court says:

"The solicitation was made at some time, somewhere, The time determines the place; it was not completed when the letter was dropped into the post. If the letter had miscarried or been burned the defendant would not have accomplished the solicitation. The court below was misled by cases in which, upon an indictment for obtaining

money by false pretenses, the crime was held to have been committed at the place where drafts were put into the post by a defrauding person, but these stand on the analogy of the acceptance by mail of an officer, and throw no light.....Therefore, we repeat, until after the letter had entered the building, the offense was not completed, but when it had been read. The case was not affected by the nature of the intended means by which it was put into the hands of the person addressed. Neither can the case be affected by speculation as to what the position would have been if the receiver had put the letter in his pocket and had read it later, at home. Offenses usually depend for their completion upon events that are not wholly within the offender's control, and that may turn out in different ways." U. S. vc. Thayer, 209 U. S. p. 39.

In the case of United States vs. Smith, 163 Federal, 926, District Judge Jones held that the personal delivery to a postmaster, in his office, of a sealed letter containing a request for a contribution for a political campaign constitutes a criminal offense under the Act under discussion.

§ 167. **Government Officer, Etc., Giving Out Advance Information Respecting Crop Reports.**—The new Code, at Section 123, contains an entirely new statute, which is the fruit of stock exchanges and the alternate rage of the American bull and bear, and is in the following words:

"Whoever, being an officer or employee of the United States or a person acting for or on behalf of the United States in any capacity under or by virtue of the authority of any Department or office thereof, and while holding such office, employment, or position, shall, by virtue of the office, employment or position held by him, become possessed of any information which might exert an influence upon or affect the market value of any product of the soil grown within the United States, which information is by law or by the rules of the Department or office required to be withheld from publication until a fixed time, and shall wilfully impart, directly or indirectly, such information, or any part thereof, to any person not entitled under the law or the rules of the Department or office to receive the same; or shall, before such information is made public through regular official channels, directly or indirectly speculate in any such product respecting which he has thus become possessed of such information, by buying or selling the same in any quantity, shall be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both: *Provided*, That no person shall be deemed guilty of a violation of any such rule, unless prior to such alleged violation he shall have had actual knowledge thereof."

§ 168. **Government Officer, Etc., Knowingly Compiling or Issuing False Statistics Respecting Crops.**—Section 124 of the new Code is likewise pioneer legislation, and is in the following words:

"Whoever, being an officer or employee of the United States, and whose duties require the compilation or report of statistics or information relative to the products of the soil, shall knowingly compile for issuance, or issue, any false statistics or information as a report of the United States, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both."

§ 169. **Counterfeiting Weather Forecasts, Interfering with Signals, Etc.**—In the 33 Statute at Large, page 864, there was annexed to the Agricultural Department Appropriation Act the following statute, with reference to the protection and reliability of weather reports and forecasts, including signals issued by and under the control of the Agricultural Department:

"Any person who shall knowingly issue or publish any counterfeit weather forecasts or warnings of weather conditions, falsely representing such forecasts or warnings to have been issued or published by the Weather Bureau or other branch of the Government Service. or shall molest or interfere with any weather or storm flag or weather map or bulletin displayed or issued by the United States Weather Bureau, shall be deemed guilty of a misdemeanor, and on conviction thereof, for each offense, be fined in the sum not exceeding five hundred dollars, or imprisoned not to exceed ninety days, or be both fined and imprisoned, in the discretion of the Court."

CHAPTER VIII.

OFFENSES AGAINST OPERATIONS OF THE GOVERNMENT

§ 170. In the new Criminal Code, which went into effect January 1, 1910, there are fifty-eight sections, from 27 to 58 inclusive, which treat of various offenses under the above general head, many of which sections will not be considered herein, other than to copy them, and refer to the old Section of the Revised Statutes of like nature, for the reason that such offenses are scarcely ever committed.

§ 171. **Forgery of Letters Patent.**—The Act of March 3, 1825, which became Section 5416 of the Revised Statutes, and which the Court, in the case of United States vs. Irwin, 5 McLean, 178, determined had repealed the fourteenth section of the Act of April 30, 1790, which pro-

made clear by the opinion in the case of United States vs. Wentworth, 11 Federal, 52.

It is absolutely necessary that the indictment allege that the acts were committed for the purpose of defrauding the United States, and that the persons so committing the offense had such intent; and if the facts completely show upon their face that the result would not have been a fraud upon the United States, or that the United States could not have been defrauded, then and in that event, no offense is plead.

In the case of United States vs. Barnhart, 33 Federal, 459, which grew out of a forged affidavit with reference to the selection of certain Government lands, the Court held that even though the affidavit was false and forged, no offense was committed, for the reason that the affidavit could not be legally used before the Land Office or before the Secretary of the Interior, for the reason that those officers had theretofore superseded such affidavits; hence, such affidavits could not be legally used to defraud the United States.

In United States vs. Gowdy, 37 Federal, 333, the Court held that a false affidavit in support of a pension would support a prosecution hereunder, because the same was in support of a claim against the Government, which would have resulted in defrauding the Government.

In United States vs. Bunting, 82 Federal, 883, an applicant for a Government clerkship filed a sworn application in the form required for an examination by the Civil Service Commission, and was afterwards notified by postal card to appear for examination at a time stated. By previous arrangement, another person, impersonating the applicant, presented himself for examination, and filled out a paper known as the declaration sheet, which contained questions concerning the applicant, and signed the applicant's name thereto. The Court held that Section 5418 covered such a case, and sustained the indictment, and observed that the acts were an attempt to prejudice the rights of the United States in the administration of the Civil Service Statutes, and had the defendant been successful, he would have obtained a privilege which would have placed him in a favored class, and

have entitled him to an advantage over others in the appointment to office, which privilege was a valuable one, and would have been in prejudice of the Government.

In the case of Staton vs. United States, 88 Federal, 253, the Circuit Court of Appeals for the Eighth Circuit, in passing upon a case wherein the defendant had been convicted while a postmaster for making out his quarterly accounts and forging the name of the Justice of the Peace thereto, and thus pretending to show that he had taken his oath to the correctness of his accounts before the Justice of the Peace, and upon the trial of which the defendant had contended that, as a matter of fact, his accounts were just and true, and had thereupon requested the trial court to instruct the jury that if, as a matter of fact, his accounts were true and just, that then and in that event the United States could not have been defrauded, said:

"Inasmuch as the trial Court, in its charge, altogether ignored the intent with which the acts complained of had been committed, and instructed the jury that the accused was guilty of the crime of forgery, if he signed the name of the Justice to his reports, ... it is manifest that there was error."

The Court further said that the accused was entitled to have the jury determine the intent involved, because it was a necessary ingredient of the offense charged in the indictment, as to whether he had been actuated with an intent to defraud the United States.

So, also, in the case of the United States vs. Ah Won, 97 Federal, 494, it was held that the making of a blank form of a certificate of residence, such as when filed are issued by the United States to Chinese and entitled them to remain in the country, is not within Section 5418, making it a crime to counterfeit any writing for the purpose of defrauding the United States.

In United States vs. McKinley, 127 Federal, 166, the Court held that the forgery of homestead applications and affidavits with intent to thereby obtain title to public lands of the United States, constitutes an offense under Section 5418, although the land was described as in Township 24 South of Range East, without naming the

meridian, where, in fact, all the townships in the state are numbered from the same meridian, and the description was, therefore, sufficient to identify the lands to the officers acting on the papers, and such papers were capable of effecting the intended fraud.

In the case of Neff vs. United States, 165 Federal, 273, the Circuit Court of Appeals for the Eighth Circuit, held that when a false instrument or affidavit is so palpably and absolutely invalid that it cannot defraud or inflict loss or injury under any circumstances, it may not form the basis of a charge of forging it or of uttering it, or of transmitting it, to the officer, to defraud the United States; but if, under any contingency, it may have the effect to deceive and defraud, it is sufficient to found a conviction of such an offense upon. This decision arose in a case where the defendant had forwarded to the officers of the Land Department affidavits that were forged and false, which were erroneously received by the Land Office, but which, if acted upon, would have caused the issuance by the United States of a patent to the land, which purchase could not have been successfully attacked collaterally if the land had passed into the hands of an innocent purchaser, and the United States would thereby have been defrauded.

§ 172a. **Covers Civil Service Examination.**—This statute is broad enough to make unlawful a fraudulent civil service examination or the forging of a voucher in a bid. Hass vs. Henkle, 216 U. S., 462; Curley vs. U. S., 130 Federal, 1; U. S. vs. Bunting, 82 Federal, 883; U. S. vs. Plyler, 222 U. S., 15. It is not necessary that there should be a pecuniary loss to the Government. Hass vs. Henkle, 216 U. S. 462.

Sec. 172b. False Claim, etc., Continued.

Sec. 28, above, will not support a prosecution for a false claim if the claim was not forged; the prosecution in such a case will be under Sec. 29, U. S. vs. Smith, 262 F. 191.

§ 173. **Forging Deeds, Powers of Attorney, Etc.**—Section 29 of the new Code, in the following words:

"Whoever shall falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or willingly aid or assist in the false making, altering, forging, or counterfeiting, any deed, power of attorney, order, certificate, receipt, contract, or other writing, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States, or any of their officers or agents, any sum of money, or whoever shall utter or publish as true, or cause to be uttered or published as true, any such false, forged, altered, or counterfeited deed, power of attorney, order, certificate, receipt, contract, or other writing, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited; or whoever shall transmit to, or present at, or cause or procure to be transmitted to, or presented at, any office or officer of the Government of the United States, any deed, power of attorney, order, certificate receipt, contract, or other writing, in support of, or in relation to, any account or claim, with intent to defraud the United States, knowing the same to be false, altered, forged, or countered, shall be fined not more than one thousand dollars and imprisoned not more than ten years."

takes the place of old Section 5421, and contains all of the elements of the old Section, and adds thereto the word "contract," and changes the punishment, fixing a maximum fine and imprisonment.

Considered abstractly, the Section comprises three offenses: first, the making of any forged or counterfeited deed or other writing as therein enumerated for the purpose of obtaining any sum of money from the United States or any of its officers; second, the uttering of any such forged or counterfeited paper, with the intent to defraud the United States, knowing it to have been so forged; third, the transmitting or presenting to any office or officer of the Government any such writing, with knowledge that it is false, or forged, with the intent to defraud the United States. An indictment, therefore, under either of the three parts, must contain the elements as above set out, and must specially plead the intent and knowledge where requisite. So, likewise, a bill that includes in one count allegations that set up acts covering the entire statute, would be bad for duplicity.

In the case of United States vs. Fout, 123 Federal, 625, District Judge Adams divided the statute as above in-

dicated. In the case of United States vs. Swan, 131 Federal, page 140, the same judge, in passing upon this statute, held that the forgery of an affidavit by a pensioner, to be used in contesting his deserted wife's claims for one-half of his pension, as authorized by the Act of March 3, 1899, was not a offense within old Section 5421, which provided that any person who falsely forges any writing for the purpose of obtaining or receiving, or enabling any other person, directly or indirectly, to receive from the United States, any sum of money, shall be imprisoned, etc., was not an offense thereunder. The decision is based upon the ground that the purpose of Swan seemed to be to make use of the forged writing to prevent his wife from obtaining half of the pension, which had already been allowed to him. He was, therefore, making no claim against the United States for himself. His right to a pension had already been established, and he, therefore, did not have the necessary intent under the statute to obtain or receive from the United States, etc., any sum of money.

Carrying out this distinction, the cases of United States vs. Barney, 5 Blatchf., 294, and United States vs. Myler, 27 Federal Case No. 15849, can be read with profit, since they hold that the first and second parts of the old section, and, therefore, of course, of the new statute, are confined to instruments designed to obtain money from the United States, and a count alleging the forgery and uttering of a certain false and fraudulent bond on the exportation of distilled liquors charges no offense under the section. To the same effect is the case of United States vs. Reese, 4 Sawyer, 629, which held in substance that an indictment for uttering and presenting as true to the Board of Land Commissioners, a false writing purporting to be a grant of certain described lands from the Mexican Government, with intent to defraud the United States, knowing the same to be false, was subject to demurrer on the ground that the section applied only to instruments altered or forged for the purpose of obtaining moneys from the United States or their officers or agents. To the same effect is Staton vs. United States, 88 Federal, 253, where it was held that an indictment which

alleged the signing of the name of a Justice of the Peace to an affidavit, with the intent to defraud the United States, charged no offense under the section.

In United States vs. Wilson, 28 Federal Case No. 16732, it was held that the words "other writing" did not embrace a forged endorsement of a genuine instrument, as the forgery to a bank check drawn by a Pension Agent upon a depository of the United States.

In the case of the United States vs. Rohmstormm, 5 Blatchf., 222, it was held that a claim against the Government under this section need not be in favor of the party presenting the false writing or instrument or paper in support thereof.

In United States vs. Glasener, 81 Federal, 566, the Court held that false statements in the certificate of a notary public did not come within the provisions of the section; to the direct contrary of which holding is the case of the United States vs. Hartman, 65 Federal, 490, the courts being of equal dignity. In that case, the Court held that the statement in a certificate of something that was not true, if taken with the intent and knowledge required by the statute, would authorize prosecution thereunder, and subject the offender to punishment. To the same effect, is the decision in the case of United States vs. Moore, 60 Federal, 738.

In the cases of United States vs. Wilcox, 4 Blatchf., 385, and United States vs. Bickford, 4 Blatchf., 337, it was held that where a writing did not state all the facts, if made with the intent to defraud denounced by the statute, it would constitute an offense under this section.

It must be remembered, as a general proposition, that the false statements so made must be material, just as materiality is meant in a prosecution for perjury. Every false oath is not perjury. United States vs. Corbin, 11 Federal, 238.

In the case of United States vs. Moore, 60 Federal, 738, District Judge Cox in passing upon a demurrer to an indictment under this section, says that,

"the authorities are unanimous in holding that the first paragraph of this Section 5421 is a forgery, and not a perjury, statute. It pun-

ishes one who falsely makes an affidavit, and not one who makes a false affidavit. The words of the statute are *ejusdem generis*, and are the words usually adopted to describe the crime of forgery. False making may almost be said to be synonymous with forging. United States vs. Statts, 8 Howard, 41; U. S. vs. Barney, 5 Blatchf., 294; U. S. vs. Wentworth, 11 Federal, 52; U. S. vs. Reese, 4 Sawyer, 629; U. S. vs. Cameron, 4 Dakota, 141, 13 N. W., 561; State vs. Wilson, 28 Minnesota, 52, 9 N. W., 28; Mann vs. People, 15 Hun., 155; State vs. Young, 46 N. H., 266; Commonwealth vs. Baldwin, 11 Gray, 197; Barb. Criminal Law, 97; Wharton Criminal Law, 653. It is clear, then, if the indictment merely charges the defendants with making an affidavit which contains a false statement of fact, that the offense cannot be punished under the paragraph quoted. For reasons stated hereafter, it is thought that the indictment is defective under any construction of the statute; but assuming now that it contains a full and clear statement of the acts of omission and commission attending the fabrication of the affidavit and jurat, it amounts only to an averment that the notarial certificate is false. The names signed to the affidavit and jurat are all genuine. No part of the affidavit has been altered, forged, or counterfeited. In short, the certificate contains a number of false statements. It is a false certificate, but not a forged certificate. No authority has been cited or found by the Court, holding that a notary who signs a certificate containing untruthful statements, is guilty under a forgery statute. The statute must be construed strictly, and until such authority is presented, I shall hold that the paragraph quoted does not cover such an offense."

Of course, the indictment must allege that the forged or altered paper was transmitted to the officer of the Government in support of, or in relation to, a pending claim. In other words, it must appear that there was an account or claim against the United States. United States vs. Kessell, 62 Federal, 59. See also U. S. vs. Albert, 45 Federal, 552; United States vs. Kuentsler, 74 Federal, 220; United States vs. Hansee, 79 Federal, 303; De Lemos vs. United States, 91 Federal, 497.

In De Lemos vs. United States, 91 Federal, 499, the case arose by reason of the forgery of an endorsement to a genuine Government draft, and the Circuit Court of Appeals for the Fifth Circuit held that an indictment, to be good under 5421, on such a state of facts, should lay the charge on the endorsement, and not on the draft because it was the endorsement that was forged, and not the draft.

Sec. 173a. Illustrative Cases.

U. S. vs. Smith, 262 F. 191; U. S. vs. Davis, 231 U. S. 183. These cases are illustrative of prosecutions under Sec. 29.

§ 174. **Having Forged Papers in Possession.**—Section 30 of the new Code is in the following words:

"Sec. 30. Whoever, knowingly and with intent to defraud the United States, shall have in his possession any false, altered, forged, or counterfeited deed, power of attorney, order, certificate, receipt, contract, or other writing, for the purpose of enabling another to obtain from the United States, or from any officer or agent thereof, any sum of money, shall be fined not more than five hundred dollars, or imprisoned not more than five years, or both."

The new section fixes a maximum punishment, and contains the word "contract." The old statute 5422 left the punishment to the discretion of the Court. These are the only two differences between the old and the new.

§ 175. **False Acknowledgments.**—Section 31 of the new Code reads as follows:

"Sec. 31. Whoever, being an officer authorized to administer oaths or to take and certify acknowledgments, shall knowingly make any false acknowledgment, certificate, or statement concerning the appearance before him or the taking of an oath or affirmation by any person with respect to any proposal, contract, bond, undertaking, or other matter, submitted to, made with, or taken on behalf of, the United States, and concerning which an oath or affirmation is required by law or regulation made in pursuance of law, or with respect to the financial standing of any principal, surety, or other party to any such proposal, contract, bond, undertaking, or other instrument, shall be fined not more than two thousand dollars, or imprisoned not more than two years, or both."

This is an entirely new section. In the 1909 Supplement of the Federal Statutes annotated, it is said in speaking of this section, that,

"This section is new. As originally drafted, it was designed to reach officers making false acknowledgments in contracts, etc., with the Post-office Department, that department having strongly recommended such a section, in order to put a stop to abuses which frequently occured with respect to mail and other contracts. The Committee on Revision of Laws approved the recommendation, and broadened the section so as to punish false acknowledgments with respect to *any* contract made with or on behalf of the Government."

This statute would seem to answer the cases cited under Section 29, which held that a false certificate of a notary was not punishable.

§ 176. **Falsely Pretending to be a United States Officer.**—Section 32 of the new Code, in the following words:

"Whoever, with intent to defraud either the United States or any person, shall falsely assume or pretend to be an officer or employee acting under the authority of the United States, or any department, or any officer of the Government thereof, and shall take upon himself to act as such, or shall in such pretended character demand or obtain from any person or from the United States, or any department, or any officer of the Government thereof, any money, paper, document, or other valuable thing, shall be fined not more than one thousand dollars, or imprisoned not more than three years, or both,"

contains a general statute, which was originally a special statute against one falsely representing himself to be a Revenue Officer, as set out in old Section 5448. This section was amended in the 23 Statute at Large, page 11, Chapter 26, First Supplement 425, and passes into the new Code as shown above.

In the case of the United States vs. Ballard, 118 Federal, 757, District Judge Phillips, in passing upon an indictment drawn under the above mentioned amendment, held that this statute covered the obtaining of some valuable thing by means of the fraudulent standing or credit secured by holding one's self out as such an officer, and that a month's lodging is a valuable thing within the meaning of the law.

The opinion sets out the indictment that was being passed upon, which charges that the defendant pretended to be a Deputy United States Marshal, and in such pretended character, did demand and obtain from Julia Eggeling a thing of value, to wit, lodging of the value of twenty dollars. A second count therein pleads the same fact in a different manner. While the indictment is in general terms, the Court, in passing thereon, upon objection, held that the offense was statutory, and a bill sufficiently describes the same, which follows the language of the statute and describes in addition thereto the act that was done to constitute the offense.

Judge Adams, in United States vs. Taylor, 108 Federal, held that the section created two offenses, the first of which included as an essential element, the use of such assumed position to extort money or property by wrongfully asserting a pretended claim of the United States, and the second comprehending the extortion of money not under the guise of asserting a claim due the United States, but including the holding out of the offender as an officer for the purpose of giving him such credit as will entitle him to successfully demand money from another for his private use, with intent to defraud, and, therefore, an indictment charging that the defendant feloniously, with the intent to defraud H., did falsely assume and pretend to be an officer acting under the authority of the United States Treasury Department, and did then and there feloniously, and with intent to defraud said H., take upon himself to act as such officer, and as a part of the same sentence including the charge, "and did then and there in such assumed and pretended character as such officer, demand and receive the sum of ten dollars," was demurrable for duplicity. Judge Simonton, in charging the jury under this statute, told them that it was necessary to find that the defendant assumed to be the officer mentioned in the indictment; that such assumption was false; that he made such false assumption with the intent to defraud; and that he carried out such intent. That was in the case of United States vs. Curtain, 43 Federal, 433, which was an indictment growing out of one pretending to be a Post-office Inspector, and in such pretended capacity, visited a postmaster, and charged him with an illegal sale of stamps, which illegal sale the postmaster admitted; whereupon, the imposter received one hundred fifty dollars from the postmaster, giving him a receipt in full for the stamps illegally used, and signing it as Post-office Inspector. The same judge in United States vs. Bradford, 53 Federal, 542, charged the jury to find the defendant not guilty upon the following state of facts: A Postal Clerk was in his postal car, assorting his mail, and he discovered Bradford concealed in a corner of the car. He sprang and seized him by the collar. The defendant at once said, "I am Bradford, and in the

service." The Postal Clerk denied that he was in the service, and Bradford then said, "I have been discharged, but am trying to steal a ride to Florence." The facts not showing that Bradford claimed at the time to be an employee of the United States, he was not guilty of a violation of this section.

In United States vs. Farnham, 127 Federal, 478, District Judge McPherson set aside a conviction, and discharged the defendant, in a case under this statute, which showed the following facts: The defendant, while stopping at the prosecutor's hotel as a guest, falsely represented himself to the prosecutor as a Secret Service operative in the employ of the Government, and exhibited to the prosecutor a metal badge, inscribed, "Secret Service, U. S." Ten months thereafter, the defendant returned, and represented himself as a traveling salesman, spending several days at the hotel. Prosecutor believed defendant to be a Free Mason, and took special care of him during sickness on that account, after which the defendant presented a check which he alleged had been signed by his employer in payment of his salary, and obtained seventy dollars thereon from prosecutor. The check was drawn on a bank which did not exist; was returned unpaid, and the prosecutor declared that he cashed the check because he continued to believe that the defendant was a Secret Service operative.

In discharging the defendant, the Court held that the facts were not sufficient to sustain a conviction for pretending to be an employee of the United States, and as such, knowingly and feloniously obtaining from another a sum of money, etc.

§ 176a. **Intent to Defraud, Etc.**—The intent to defraud is an essential element of Section 32, hence one would not be guilty under it who induces another to purchase certain books through representations that the seller was an employee acting under the authority of the United States, if the purchaser was not defrauded but had received just what he bargained for. U. S. vs. Rush, 196 Federal, 580. There must really be an officer such as is personated and one who sells a book as an U. S. officer

by representing that the money therefor goes into U. S. Treasury is not guilty under this section. U. S. vs. Barnow, 221 Federal, 140.

Sec. 176 b. Falsely Pretending to be United States Officer Continued.

A detective who pretends to be an officer in order to arrest sailors for whom reward was offered violates the foregoing statute, Reeder vs. U. S., 252 F. 21.

It is an offense under this section even though there be no such officer as that pretended, U. S. vs. Barrow, U. S. Sup. Ct. Oct. 1915.

A congressman is such an "officer" as is protected by this statute, Lamar vs. U. S., Sup. Ct. Oct. 1915.

It is unlawful to use the name of any government officer in advertising and practicing before any United States department, but there is no penalty therefor, see Act April 27, 1916, under head false personation.

It is an offense under this section even though whiskey is received and even though one already is an officer of the United States, Russell vs. U. S., 271 F. 684.

In the foregoing case the Circuit Court of Appeals said that the act should be construed in harmony with its aim which is not merely to protect innocent persons from actual loss, but to maintain the general good repute and dignity of the federal service itself.

The substance of the offense is the various exemptions of federal authorities when accompanied with fraudulent intent and an indictment need not allege that the defendant pretended to be any particular officer but it is sufficient to charge that he claimed authority under the United States, 248 F. 873, Roberts vs. U. S.,

§ 177. **False Personation of Holder of Public Stocks.** —Section 33 of the new Code, which re-enacts old Section 5435, is in the following words:

"Sec. 33. Whoever shall falsely personate any true and lawful holder of any share or sum in the public stocks or debt of the United States, or any person entitled to any annuity, dividend, pension, prize money, wages, or other debt due from the United States, and, under color of such false personation, shall transfer or endeavor to transfer such public stock or any part thereof, or shall receive or endeavor to receive the money of such true and lawful holder thereof, or the

money of any person really entitled to receive such annuity, dividend, pension, prize money, wages, or other debt, shall be fined not more than five thousand dollars, and imprisoned not more than ten years."

§ 178. **False Demand or Fraudulent Power of Attorney.**—Old Section 5436 is displaced by the new Code in Section 34, as follows:

"Sec. 34. Whoever shall knowingly or fraudulently demand or endeavor to obtain any share or sum in the public stocks of the United States, or to have any part thereof transferred, assigned, sold, or conveyed, or to have any annuity, dividend, pension, prize money, wages, or other debt due from the United States, or any part thereof, received, or paid by virtue of any false, forged, or counterfeited power of attorney, authority, or instrument, shall be fined not more than five thousand dollars, and imprisoned not more than ten years."

§ 179. **Making or Presenting False Claims.**—Section 5438 of the old statutes is replaced by Section 35 of the new Code, in the following words:

"Sec. 35. Whoever shall make or cause to be made, or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department, or officer thereof, knowing such claim to be false, fictitious, or fraudulent; or whoever, for the purpose of obtaining, or aiding to obtain the payment or approval of such claim, shall make or use, or cause to be made or used, any false bill, receipt, voucher roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry; or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government, of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim; or whoever, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, with intent to defraud the United States, or wilfully to conceal such money or other property, shall deliver or cause to be delivered, to any other person having authority to receive the same, any amount of such money or other property less than that for which he received a certificate or took a receipt; or whoever, being authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, shall make or deliver the same to any other person without full knowledge of the truth of the facts stated therein, and with intent to defraud the United States, shall be fined not more than five thousand dollars, or imprisoned not more than five years,

or both. And whoever shall knowingly purchase or receive in pledge for any obligation or indebtedness from any soldier, officer, sailor, or other person called into or employed in the military or naval service, any arms, equipments, ammunition, clothes, military stores, or other public property, whether furnished to the soldier, sailor, officer, or other person under a clothing allowance or otherwise, such soldier, sailor, officer, or other person not having the lawful right to pledge or sell the same, shall be fined not more than five hundred dollars, and imprisoned not more than two years."

This section contains several offenses, and sets out two different punishments. It is necessary, in alleging an offense under the first portion of the section that there be an averment that the false claim, etc., was made for he purpose of being presented; in other words, a false claim that was not made for such a purpose is not inhibited by the statute. In prosecutions under this portion of the statute, it is not necessary to set out the name of the officer or person to whom the claim was presented, if such person be sufficiently designated by his position, as First Auditor of the Treasury. So, also, different items of the account may all be included in one count of the indictment. United States vs. Ambrose, 2 Federal, 764.

In United States vs. Coggin, 3 Federal, 492, the Court held that old Section 5438 includes a false claim presented by a person as a pensioner, demanding money as a pensioner. In that case, the defendant, by fraud, secured a pension certificate from the Government, and thereby had his name entered on the pension roll. This certificate he presented to the Pension Agent, and obtained money from the United States. The indictment alleged that the grounds upon which the application was sustained before the Commissioner of Pensions and his name entered upon the list of pensioners, were all false, fictitious, and fraudulent, and that in fact he was not injured at the battle at Corinth in any way, and was not entitled to a pension. The Court held that the facts alleged were sufficient to constitute an offense under that section.

In the case of United States vs. Hull, 14 Federal, 324, it was held by a District Court, that the section was not limited in its operation to false claims presented by the accused on his own behalf, but applied as well to such claims presented by an attorney, agent, officer, or other

person presenting or aiding in the collection of a false claim, knowing it to be false. Of course, the allegation of "knowledge" is absolutely necessary, as is also the proof. An indictment under this section that the defendant "presented and caused to be presented," is not bad for duplicity, because the statute employs the disjunctive "or" instead of "and." In United States vs. Franklin, 174 Federal, 161, the same question was passed upon, and the Court held that an indictment was not bad for duplicity because it charges that the accused "made and presented." In the Franklin case the indictment, which set out the claim showing it to be an itemized account, and averred that certain sums charged therein "should have been" certain smaller sums, sufficiently shows wherein the claim is false and fraudulent. In that case it was alleged that the fraudulent claim was against the War Department of the United States, and described the officer to whom the claim was presented as a Brigadier-General in the Army, and Superintendent of the Military Academy at West Point, and alleged that he was an officer authorized to approve such claim. Held, that such allegation was sufficient to show authority. Affirmed by U. S. Supreme Court, March 14, 1910.

The case of United States vs. Ingraham, 49 Federal, 155, was an indictment for presenting for payment and approval to the Third Auditor of the Treasury Department of the United States of America, a certain claim against the Government of the United States, and also in the second count for using a false affidavit in support thereof. An objection of uncertainty, charging no offense and duplicity, was overruled by the trial court, and the same questions were presented to the Supreme Court in the same case, reported in 155 U. S., page 436; 39 Law Ed., page 213, and the conviction was affirmed, the Court holding that it was not error, of course, to join distinct offenses of the same class in one indictment in separate counts, and that a paper presented to the Third Auditor of the Treasury of the United States, in support of a claim against the Government, purporting to be an affidavit certified to by a Justice of the Peace, is admissible in evi-

dence without formal proof that he had been duly commissioned and qualified as a Justice of the Peace, and that the person indicted for presenting for payment a false and fictitious claim to the Auditor of the Treasury, and using a false affidavit in support thereof, if he knew it to be false, is not the less guilty because the person purporting to be a Justice of the Peace before whom the affidavit was sworn to, had not been commissioned as such, and was not entitled to administer an oath.

In the case of United States vs. Michael, 153 Federal, 609, Judge Maxey instructed the jury that the receiving in pledge by a civilian from a soldier, of clothing issued to the latter, during the term of his enlistment, does not constitute a penal offense within Revised Statutes 5438, providing that every person who purchases or receives in pledge from a soldier any arms, equipment, ammunition, clothing, military stores, or other public property, such soldier not having the lawful right to pledge or sell the same, shall be imprisoned, etc., since the clothing, on being issued to the soldier, becomes his individual property, and ceases to belong to the United States. In conflict with this opinion, seems to be the case of United States vs. Koplik, 155 Federal, 919, in which Judge Chatfield holds that it is not a defense to a prosecution under such statute, 5438, for receiving property in pledge from a soldier while in the service, that such property consisted of clothing which he had paid for out of his clothes allowance, or which had been charged against it. The policy of the statute seems to be best served by Judge Chatfield's decision. In United States vs. Hart, 146 Federal, 202, a decision of District Judge Bethea seems in a measure to support Judge Chatfield's construction of the statute. It is there said:

"On motion to take from the jury, the question arose as to whether certain articles of clothing, namely, caps, gloves, shoes, and goods which had been issued to soldiers in the service of the United States, and by them sold and pledged to the defendant, are public property under Section 5438 of the Revised Statutes. Clothing is issued to soldiers of the United States for use by them in the capacity of soldiers. The Government determines the character, quality, and kind of clothing to be issued to the soldiers; and when the clothing is

issued, although it is charged against the soldiers on their clothing account, they receive but a qualified interest therein."

The Seventeenth Article of War punishes the soldier by Court Martial if he loses or spoils his clothing or accoutrements, and Section 3748 authorizes the Government to seize such property wherever found. This would indicate that the title to clothing issued to soldiers remains in the United States.

The case of United States vs. Smith, 156 Federal, 859, while it is a prosecution under the same portion of the statute, does not raise or discuss the conflict noted in the above two cases. Judge Hanford, in the Smith case, in charging the jury, says:

"You will observe that the provisions of this statute, 5438, apply to persons who knowingly purchase or receive in pledge any of the kinds of property described here from a soldier, officer, or sailor in the service of the United States. The elements of the crime are guilty knowledge, and the actual purchase of and receiving in pledge the kind of property named, and receiving it from a person in the military service of the United States. All those things are necessary to be proven, in order to make out a criminal case. The guilty knowledge that is a necessary element of the crime is not knowledge that the act is unlawful. The law does not permit ignorance of the provisions of the law to avail as a defense in any case, but the knowledge must be knowledge of the facts—knowledge that the property offered for sale or pledge is the military stores or property of the United States—that is, arms, clothing, or property that is provided by the United States for use in the military service, and knowledge that the person offering to sell or to pledge it is a person in the military service at the time."

It must be borne in mind that Sections 3748 and 1242 of the old statutes in short make the possession of such property of the United States by a person not in the service of the United States, prima facie evidence that it had been sold or pledged.

Other cases bearing upon the statute in its entirety, are the following: United States vs. Daubner, 17 Federal, 793; U. S. vs. Russell, 19 Federal, 591; U. S. vs. Griswold, 24 Federal, 361; U. S. vs. Frisbie, 28 Federal, 808; U. S. vs. Rhodes, 30 Federal, 431; U. S. vs. Griswold, 30 Federal, 604, also same Volume, 762; U. S. vs. Reichurt, 32 Federal, 142; U. S. vs. Jones, 32 Federal, 482; U. S. vs.

Route, 33 Federal, 246; U. S. vs. Gowdy, 37 Federal, 332; U. S. vs. Wallace, 40 Federal, 144; U. S. vs. Newton, 48 Federal, 218; U. S. vs. Strobach, 48 Federal, 902; U. S. vs. Adler, 49 Federal, 733; U. S. vs. Van Leuven, 62 Federal, 62; U. S. vs. Hartman, 65 Federal, 490; Rhodes vs. U. S., 79 Federal, 740; Dimmick vs. U. S., 116 Federal, 825; U. S. vs. Lair, 118 Federal, 98; Pooler vs. U. S., 127 Federal, 509; Franklin vs. U. S., U. S. Sup. Ct., Oct., 1909, term.

In Bridgeman vs. United States, 140 Federal, 577, the Circuit Court of Appeals for the Ninth Circuit held that inasmuch as the statutory provisions and rules and regulations of the Indian Department required accounts and vouchers for claims and disbursements connected with Indian affairs to be transmitted to the Commissioner of Indian Affairs, that a transmission to such commissioner by an agent of the Department, of a false voucher, etc., was an offense under 5438. This case also authorizes the use of the words "making and presenting," as was considered to be correct in the cases cited above. Two of the counts in that indictment are set out in the decision and approved by the Court, as is also the full charge of the trial judge.

Sec. 179 a. Making or Presenting False Claims Continued.

By Act of Oct. 23, 1918, C. 194, Sec. 35, above, was amended to read as follows:—

"Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, or for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, shall knowingly and wilfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate,

affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry; or whoever shall take and carry away or take for his own use, or for the use of another, with intent to steal or purloin, any personal property of the United States, or any branch or department thereof, or any corporation in which the United States of America is a stockholder; or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim; and whoever, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, with intent to defraud the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, or wilfully to conceal such money or other property, shall deliver or cause to be delivered to any person having authority to receive the same any amount of such money or other property less than that for which he received a certificate or took a receipt; or whoever, being authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, shall make or deliver the same to any other person without a full knowledge of the truth of the facts stated therein and with intent to defraud the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, shall be fined not more than $10,000 or imprisoned not more than ten years, or both. And whoever shall purchase, or receive in pledge, from any person any arms, equipment, ammunition, clothing, military stores, or other property furnished by the United States, under a clothing allowance or otherwise, to any soldier, sailor, officer, cadet, or midshipman in the military or naval service of the United States or of the National Guard or Naval Militia, or to any person accompanying, serving, or retained with the land or naval forces and subject to military or naval law, having knowledge or reason to believe that the property has been taken from the possession of the United States or furnished by the United States under such allowance, shall be fined not more than $500 or imprisoned not more than two years, or both."

For cases bearing upon some phase of the statute see U. S. vs. Christopherson, 261 F. 225; Bolland vs. U. S., 238 F. 529.

§ 180. **Embezzling Arms, Stores, Etc.**—As a companion to the section treated above, appears Section 36 in the new Code, which displaces old Section 5439, and is in the following words:

"Sec. 36. Whoever shall steal, embezzle, or knowingly apply to his own use, or unlawfully sell, convey, or dispose of, any ordnance, arms, ammunition, clothing, subsistence, stores, money, or other property of the United States, furnished or to be used for the military or naval service, shall be punished as prescribed in the preceding section."

As somewhat enlightening upon the question as to what steps one should take in order to be in the military service of the United States, may be read the case of Johnson vs. Sayre, 158 U. S., 109. In that particular case, the Court held that a postmaster's clerk in the navy, appointed by the Secretary of the Navy with the approval of the President, is in the naval service of the United States; but in the reasoning of the opinion will be found a number of authorities and reasons that apply to other conditions.

Section 36 above quoted occupies the same position to Section 35 as old Section 5439 did to old Section 5438, and, therefore, the observation of District Judge Swing, in the case of United States vs. Murphy, 9 Federal, page 26, is applicable and pertinent. In that case the indictment was drawn under Section 5439. It contained two counts, charging that the defendant had applied to his own use an overcoat, which had been issued to an inmate of the National Military Home at Dayton, to be used by him for the military service of the United States. A demurrer to the bill raised the question whether clothing so issued to inmates of that institution was within the prohibition of that section. The Court said:

"The preceding section (5438) prohibits the purchase of clothing, etc., from any soldier or other person called into or employed in the military service of the United States, such soldier or person not having the lawful right to sell the same. This section (5439), then, prohibits any person from knowingly applying to his own use any clothing or other property of the United States, furnished or to be furnished for the military service. Under Section 5438, the clothing must be purchased from a person 'in the military service;' under Section 5439, it must be clothing or other property of the United States 'furnished or to be used for the military service.' The indictment, it is true, charges in one count that the overcoat in question was 'furnished for the military service,' and in the other that it was 'to be used for the military service;' but in each it appears it had been issued to an inmate of the home. It is claimed in argument on behalf of the Government that these military homes are a part of the military establish-

ment, and clothing issued to the inmates is furnished and used for the military service. It is clear that the inmates of these homes are not in the military service. It is not claimed that Section 5438 applies to the purchase of clothing from them; nor do I think that the clothing issued to them is used in the military service of the United States. Congres could probably prohibit the purchase or clothing from these inmates, and punish any one applying it to other purposes than for which it is issued;) but the law in force does not apply to it, and a demurrer must be sustained."

Sec. 180 a. Embezzling, Arms, Stores, etc., Continued. The Circuit Court of Appeals for the 5th Circuit holds that Sec. 36 is ineffective because of two punishments, Apr. 1920; to the same effect as Holmes vs. U. S., 267 F. 529.

§ 181. **Conspiracies to Commit Offenses Against the United States; All Defendants Liable for Acts of One.**— One of the most useful and comprehensive statutes in the old revision was Section 5440, which is re-enacted in the new Code in Section 37, in the following terms:

"Sec. 37. If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than ten thousand dollars, or imprisoned not more than two years, or both."

The old and the new sections are practically identical with the single exception that there is no minimum punishment under the latter. Indictments under this statute must comprehend in allegation, not only whatever averments are necessary under it, but also the necessary allegations and ingredients of the offense or statute for which the conspiracy was formed. An indictment that fails to set out the elements of the offense conspired to be committed is bad. A conspiracy as commonly understood, is a corrupt agreeing together of two or more persons to do, by concerted action, something unlawful, either as a means or an end. The word "corrupt," as used, means unlawful. The intendment of this definition is that to conspire to do an unlawful act; or to conspire to accomplish a result which may in itself be

lawful, but to do it in an unlawful manner; or an unlawful agreement to accomplish an unlawful result, are conspiracies. The unlawful combination may be expressly proven, or it may be provable from concerted action in itself unlawful. If one join the conspiracy at any time after the formation of the conspiracy, he becomes a conspirator, and the acts of the others become his, by adoption.

That there is, or may be, a difference between the punishment prescribed in this section, and that prescribed in the statute that the conspiracy was formed to violate, is immaterial. Congress has the power, says the Supreme Court of the United States, in Clune vs. United States, 159 U. S., 590, to enact a statute making a conspiracy to do an act punishable more severly than the doing of the act itself. The power exists to separate the offenses, and to affix distinct and independent penalties to each.

As above indicated, there need be no proof of the express agreement. The full measure of the law is met if the facts and circumstances indicate with the requisite lawful certainty the existence of a preconcerted plan. Reilley vs. United States 106 Federal, 896; U. S. vs. Cassidy, 67 Federal, 698; U. S. vs. Barret, 65 Federal, 62; U. S. vs. Wilson, 60 Federal, 890; U. S. vs. Newton, 52 Federal, 275; U. S. vs. Sacia, 2 Federal, 754. So, under the same authorities, it need only be shown that one or more of the overt acts charged in the indictment have been committed, and that they were done in furtherance of the conspiracy. Federal Statutes Annotated, Volume 2, page 250.

Texts-books and Courts unite in the proposition that where there is a prima facie showing of conspiracy, all of the acts done, and all of the declarations made in pursuance of the originally concerted plan, and with reference to the common object, by any one of the conspirators, are admissible against all. The rule, however, ceases after the conspiracy, has been ended; for, upon the completion of the conspiracy, acts and declarations of co-

conspirators are evidence only against the one so acting or declaring. Logan vs. U. S., 144 U. S., 263.

In Taylor vs. U. S., 89 Federal, 954, the Court of Civil Appeals for the Ninth Circuit, in a conspiracy prosecution against certain defendants for entering into a conspiracy to counterfeit and utter counterfeit coins of the United States, the Court determined that the evidence showing that one of the defendants resided with another of the conspirators for six weeks, during which time the coins were made, and that he wrote the letter ordering the machine with which they were made, and that after the arrest he wrote one of the defendants offering to assist in procuring bail, was entirely sufficient to authorize the admission against him of the statements of his co-conspirators. In that case, it was also determined that the order of proof rests in the sound discretion of the Court; in other words, the Court was not bound to exclude evidence of declarations until the prosecution should first have shown the connection of the defendant with the offense. 1 Greenleaf, Section 111; 6 Am. and Eng. Enc. of Law, Second Ed., 689; State vs. Winner, 17 Kansas, 298.

§ 181a. **Indictment.**—An indictment under this section is not duplicitious which shows a completed offense. Stanley vs. U. S., 195 Federal, 896. The offense created by this statute is a conspiracy and not an overt act. Dwinnell vs. U. S., 186 Federal, 754. The collection of commissions under a conspiracy to defraud the United States through purchases for the commissary department is an overt act. U. S. vs. Burke, 218 Federal, 83. Woman who is victim in white slave violation may also be conspirator under this act. U. S. vs. Holte, 236 U. S. 140. An indictment under this section must charge the act constituting the offense with reasonable certainty and not mere inference. U. S. vs. Atlanta Journal Co., 185 Federal, 656. A crime under this statute is sufficiently charged if it be stated that two or more persons named agreed together to commit some act declared to be a crime by some statute of the United States and it is also charged that one or more of such persons did an act to carry out the ob-

ject of such conspiracy. U. S. vs. Wupperman et al. 215 Federal, 135.

Sec. 181 b. Conspiracy to Commit offenses Against United States Continued.

Sec. 37 does not make it a criminal offense to vote illegally, when, see U. S. vs. Gradwell, U. S. Sup. Ct. Apr. 1917.

For an indictment which is defective because of time allegation under this statute see U. S. vs. Baker, 243 F. 746.

A conspiracy to resist the draft is a conspiracy to defraud the United States, U. S. vs. Galleanni, 245 F. 977. It is a violation of the statute in the following cases:—

To divert cars under the Hepburn Act, Dye vs. U. S., 262 F. 6; to violate the bank act, U. S. vs. Baker, 243 F. 741; to defraud by black mailing suits, McKelvy vs. U. S., 241 F. 801; to bring Chinamen into the United States, Dahl vs. U. S., 234 F. 618.

To increase price of sugar, U. S. vs. Robinson, 266 F. 240; to bribe officer, Hardy vs. U. S., 269 F. 134, by shipping port employees, etc., U. S. vs. Carlin, 259 F. 904; U. S. vs. Union, 259 F. 907; to defraud doctors, Holsman vs. U. S., 248 F. 193; to violate Espoinage Act, U. S. vs. Ault, 263 F. 800; U. S. vs. Listman, 263 F. 798; U. S. vs. Strong, 263 F. 789.

The following cases bear upon the necessity of a distinct allegation of overt act and of time, U. S., vs. Rogers, 226 F. 512; Tillinghast vs. Richards, 225 F. 226; Birdseye, 244 F. 972; Pettibone vs. U. S., 148 U. S; U. S. vs. Robinson, 266 F. 240.

It is not a variance because the conspiracy is laid in one district and the overt act in another, since the prosecution may be had in either, Bernstein vs U. S., 238 F. 923; Harrington vs. U. S., 267 F. 97.

This statute will not protect against corrupt state elections, U. S. vs. Gradwell, 234 F. 446, Sup. Ct. Apr. 1917; nor can a prosecution be had for defrauding the Panama Railway, Salas vs. U. S., 234 F. 842.

The War Department is not a government department under Keane vs. U. S., 272 F. 577.

For accomplice testimony under this section see McGinnis, vs. U. S., 256 F. 621.

The prosecution may be had where the overt act is committed, Easterday vs. McCarthy, 256 F. 651. A conspiracy indictment is insufficient when the conspiracy is not fully discribed and statements as to the overt act will not aid, Anderson vs. U. S., 260 F. 557.

The charging of the statutory crime is ordinarily sufficient if the words of the statute are used but there are some important exceptions, Jelke vs. U. S., 255 F. 264.

The statement of one defendant is not admissible against another after the completion of the conspiracy, Feder vs. U. S., 257 F. 694.

The act of one is the act of all during conspiracy, U. S. vs. Schenck, 253 F. 212.

For good definition of conspiracy see U. S. vs. McHugh, 253 F. 224.

A single count may allege a conspiracy to commit two or more offenses and not be duplicitous, Frohwerk vs. U. S., U. S. Sup. Ct. Mar. 1919.

The most difficult question that arises in the treatment of conspiracies is the merger of the conspiracy into the completed act. The mistake frequently made of using the completed act, in the pleading, as an overt act, to establish the conspiracy, when the completed act makes an entirely different offense of, perhaps, lesser grade.

The following authorities, carefully considered may be of assistance; U. S. vs. Kissel, 173 F. 823; Grant vs. U. S., 252 F. 693; McKnight vs. U. S., 252 F. 687; U. S. vs. Bopp, 237 F. 283; Bishop Criminal Law, Vol. 1, page 492; C. vs. Kingsbury 5 Mass. 106; C. vs. Delaney, 1 Grant Pa. 224.

The confession of one conspirator against another is admissible if the jury is properly instructed, Hagan vs. U. S., 268 F. 344; U. S. vs. Freedman, 268 F. 655.

A confession which is not "voluntary" is not admissible, U. S. vs. Kallas, 272 F. 743.

A prosecution may be brought, as heretofore stated, where the conspiracy is formed or where the overt act is committed, Grayson vs. U. S., 272 F. 554. For a definition of conspiracy by the Supreme Court of the United States

see Duplex vs. Deering, 41 U. S. Sup. Ct. Rep. 173.

There can be no conspiracy when there is only one criminal intent, there must be two or more; thus an officer who seeks to entrap another would not be a basis for a conspiracy indictment, Yick vs. U. S., 240 F. 60.

When the offense is not proven letters written by one are mere hearsay and inadmissible, Stager vs. U. S., 233 F. 510.

§ 182. **Sufficiency of Description.**—In Cling vs. United States, 118 Federal, 538, the Circuit Court of Appeals for the Fourth Circuit held that the offense intended to be committed as the result of the conspiracy need not be described as fully as would be required in an indictment in which such matter was charged as a substantive crime. To the same effect is United States vs. Stevens, 44 Federal, 132. In United States vs. Stamatopoulos, 164 Federal, 524, Judge Chatfield, in passing upon a demurrer, said:

"The indictment sets forth a conspiracy to defraud the United States, and it is unnecessary to allege either the consummation of the fraud, or to include an allegation that the fraud could have been accomplished unless detected. It is sufficient to show that the conspiracy so to do the act charged constituted a fraud upon the United States."

§ 183. **Venue.**—The venue for the prosecution may be laid in the District in which the overt act was committed, and it does not matter where the conspiracy was formed or the unlawful agreement entered into; and where the offense has been commenced in one district and consummated in another, the venue may be laid and the trial may be had in either district.

Sufficient to Warrant Conviction.—If the indictment alleges, in proper terms, the formation of the conspiracy for either one of the inhibited purposes mentioned in the statute, and then sets out the offense for which the conspiracy was formed with sufficient certainty to apprise the defendant thereof, and then the proof shows that the conspiracy existed as charged in the indictment, and that if such conspiracy existed, the overt act charged was committed in furtherance of such conspiracy, and that the

defendant was one of the conspirators, a case will have been made out, both by allegation and proof. United States vs. Cassidy, 67 Federal, 698; United States vs. Newton, 52 Federal, 275.

§ 183a. **Special Charge on Venue.**—The defendant must ask an affirmative charge on venue before error can be laid when the general charge of the Court uses the customary language with reference to the place of the commission of the offense. Lipman vs. U. S., 219 Federal, 882.

§ 184. **Illustrative Cases.**—While the Courts have held, as above cited, that a good conspiracy charge will be one which alleges the accomplishment of the fraud or fails to allege its accomplishment, so, also, they have held that a conspiracy may be charged, though the indictment charges the accomplishment. In Scott vs. United States, 165 Federal, 172, the Circuit Court of Appeals, for the Fifth Circuit held that an indictment will lie for conspiracy to remove distilled spirits on which the tax had not been paid, in violation of Section 3296, although it is charged that the purpose of the conspiracy was accomplished.

In United States vs. Stevens, 44 Federal, 132, it was held that a conspiracy may be entered into even when the overt act constituting the criminal offense can only be done by one of the parties to the conspiracy; as where a census enumerator and another conspired to make false certificates or fictitious returns. The same sort of an offense was approved in the Ching case by a Circuit Court of Appeals, 118 Federal, 538. So, also, a conspiracy may be laid against a person not connected with the bank for conspiring with the cashier to commit one of the offenses described in Section 5209. U. S. vs. Martin, 4 Cliff. (U. S.), 156. And in United States vs. Boyer, 4 Dill., 407, the Court held that a conspiracy could be charged against persons conspiring with a bankrupt to commit an offense thereunder, even if it could be held that only the bankrupt could commit the offense there charged with having agreed to violate. See also U. S. vs. Swett, 2 Hask., 310, 28 Federal Cases No. 16427.

In Johnson vs. United States, 158 Federal, 69, the Circuit Court of Appeals for the Fifth Circuit, it seems to the writer, held contrary to the above views. In that case, the bankrupt, his trustee, and one other, were indicted for conspiring to conceal from the Trustee, one of the indicted parties, assets of the bankrupt. There were convictions. Upon appeal, the Court held that an indictment will not lie under 5440, for a conspiracy to effect the concealment by a bankrupt, of property, from his trustee, where the trustee, is himself charged as one of the conspirators and the averments of the indictment show that there was in fact no concealment of property from him and no purpose that there should be such concealment. In considering that case, the Court cited the case where Lord Audley was convicted of rape upon his wife; being present, aiding and abetting one of his minions to perpetrate this monstrous crime, and for which this devil-crazed nobleman was hung; but differentiated that case from the one they were discussing, and said:

"The defect in the indictment is not that it charges a conspiracy by three persons to commit an offense which only one of the three could commit. That may not be a defect. The fatal defects is that it charges Johnson, one of the alleged conspirators, with participation in, and knowledge of, a transaction which could only be an offense against the law when it was concealed from him."

In United States vs. Melfi, 118 Federal, 899, there was a prosecution against conspirators to secure, illegally, naturalization papers, but the Court held against the indictment, not because such a conspiracy would not be unlawful, but because the indictment failed to allege sufficient ingredients of the statute for the breaking of which the conspiracy was formed.

In United States vs. Clark, 164 Federal, page 75, the Court upheld a prosecution against an agent of a railroad company and others for conspiring to issue interstate freight passes in the name of the railroad to those not entitled thereto, under the provisions of the Hepburn Act, June 29, 1906.

In United States vs. Lonabaugh, 158 Federal, 314, a prosecution was sustained upon a conspiracy to induce

the Land Department of the United States, by fraudulent means, to dispose of public lands in a way not authorized by the statute, and this even though the Government received payment for the lands, and suffered no pecuniary loss.

In United States vs. Haas et al, 163 Federal, 908, an indictment was sustained which charged a confederated effort to deprive the national government of the right and privilege of proper service in the Department of Agriculture, by corrupting an employee of such department, and inducing him to secretly furnish advance information of crop conditions, contrary to the rules of the department, and to issue false reports to the public as to such conditions. The main offense in that case was laid under the bribery statute, 5451, and the Court held that an Assistant Statistician in the Department of Agriculture, in the performance of the duties with which he was charged by the rules of that department, acted for the United States in an official function. This case was practically affirmed, and the case of United States vs. Haas, 167 Federal, 211, overruled, by the Supreme Court of the United States in Haas vs. Henkle, February 21, 1910. The Supreme Court, in passing directly upon the indictment, uses this language:

"These counts do not expressly charge that the conspiracy included any direct pecuniary loss to the United States; but as it is averred that the acquiring of the information and its intelligent computation, with deductions, comparisons, and explanations, involved great expense, it is clear that practices of this kind would deprive these reports of most of their value to the public, and degrade the Department in general estimation, and that there would be a real financial loss. But it is not essential that such a conspiracy should contemplate a financial loss, or that one should result. The statute is broad enough in its terms to include any conspiracy for the purpose of impairing, obstructing, or defeating the lawful function of any Department of the Government. Assuming, as we have, for it has not been challenged, that this statistical side of the Department of Agriculture is the exercise of a function within the purview of the Constituion, it must follow that any conspiracy which is calculated to obstruct or impair its efficiency and destroy the value of its operations and reports, as fair, impartial, and reasonably accurate, would be to defraud the United States, by depriving it of its lawful right and duty of promulgating or diffusing information so officially acquired in the way and at the time required by law or Departmental regulation. That it

is not essential to charge or prove an actual financial or poperty loss to make a case under the statute, has been more than once ruled. Hyde vs. Shine, 199 U. S., 62; U. S. vs. Keitel, 211 U. S., 370; Curley vs. U. S., 130 Fed., 1; McGregor vs. U. S., 134 Fed., 195."

In United States vs. Hirsch, 100 U. S., 33, the Supreme Court held that a conspiracy to defraud the United States out of duties on imported merchandise is not a crime arising under the revenue laws, and is, therefore, barred by the three years statute of limitations.

For other cases arising under the old section, see

United States vs. Dietrich, 126 Federal, 664.

Gantt vs. U. S., 108 Federal, page 61;

U. S. vs. Bradford, 148 Federal, 413;

U. S. vs. Mitchell, 141 Federal, 666;

Wright vs. United States, 108 Federal, 805 (This case approves a general form of indictment); Lehman vs. U. S., 127 Federal, 41; Conrad vs. U. S., 127 Federal, 798 (That was a conspiracy to violate Section 3995, or in other words a conspiracy to knowingly and wilfully delay the United States mail); Wan Din vs. United States, 135 Federal, 704, (The Court sets out the elements of the conspiracy); United States vs. Curley, 122 Federal, 738; affirmed in 130 Federal, page 2 (This was a conspiracy to violate the Civil Service Examination Act); U. S. vs. Richards, 149 Federal, 443. In Crawford vs. U. S., an opinion rendered by the Supreme Court of the United States, on February 1, 1909; sets forth the elements of a conspiracy under this section. In in re Miller, 114 Federal, 963, there was a prosecution for conspiracy to return one to peonage. See United States vs. Green, 115 Federal, 343, for conspiring to conceal assets in violation of the bankrupt Act; United States vs. Goodsay, 164 Federal, 157; United States vs. Biggs, 157 Federal, 264; United States vs. Brace, 149 Federal, 874. The case of Bradford vs. United States, 129 Federal, page 49, was a prosecution for conspiring to execute straw bail. In the case of United States vs. Stevenson, decided by the Supreme Court of the United States in November, 1909, a conviction for a conspiracy to violate the Immigration Act was sustained.

In Williamson vs. U. S., 207 U. S., 425, 52 Law Ed., page 207, the Supreme Court reversed and remanded a conviction of a Congressman for conspiring to suborn perjury, in proceedings to purchase public land, but held among other things, that an indictment alleging a conspiracy to suborn perjury need not, with technical precision, state all the elements essential to the commission of the crimes of subornation of perjury and of perjury, and that the precise persons to be suborned, or the time and place of such suborning need not be agreed upon in the minds of the conspirators, in order to constitute the crime of conspiracy to suborn perjury in proceedings for the purchase of public land. U. S. vs. Railey, 173 Federal, 159; Richards vs. U. S., 175 Federal, 911; U. S. vs. Kane, 23 Federal, 748; U. S. vs. Milner, 36 Federal, 890. In United States vs. Keitel, 211 U. S., 370, the Supreme Court held that a charge of conspiracy to defraud the United States can be predicated on acts made criminal after the enactment of the statute. This case was reversed, on some other minor points, United States vs. Keitel, 157 Federal, 396. In United States vs. Biggs, 211 U. S., which was a writ of error by the United States from the sustaining of a demurrer to an indictment brought for a conspiracy to defraud the United States of public lands, reported in United States vs. Biggs, 157 Federal, 264, the Supreme Court affirmed the decision of the lower Court, and held that an indictment for conspiracy to defraud the United States by improperly obtaining title to public lands, will not lie under 5440, where the only acts charged were permissible under the land laws. In other words, the acts charged in the indictment appeared to be lawful under the laws relating to such lands. United States vs. Briton, 108 U. S., 192; Mackin vs. U. S., 117 U. S., 348; U. S. vs. Hess, 124 U. S., 483; *in re* Coy, 312 Federal, 794; 127 U. S., 731; U. S. vs. Perrin, 131 U. S., 55; U. S. vs. Barber, 140 U. S., 177; Pettibone vs. U. S., 148 U. S., 197; *ex parte* Lennon, 150 U. S., 393; Dill vs. U. S., 152 U. S., 539; Bannon vs. U. S., 156 U. S., 464; Stokes vs. U. S., 157 U. S., 187; France vs. U. S., 164 U. S., 696. In the case of Crawford vs. U. S., 212 U. S., page 183, the Supreme Court sus-

tained the sufficiency of the indictment, but reversed the case on other points. The prosecution grew out of a conspiracy between the defendant and a Government official, by which the Government would be defrauded by means of a contract between the Postal Device and Lock Company, a corporation, and the Post-office Department of the United States, by which the company was to furnish certain satchels to the Department for the use of the letter carriers in the free delivery system of the United States. U. S. vs. Bridgeman, 140 Federal, 577; U. S. vs. Marx, 122 Federal, 964; U. S. vs. McKinley, 126 Federal, 242; U. S. vs. Wilson, 60 Federal, 890; U. S. vs. Debs, 63 Federal, 436; Huntington vs. U. S., 175 Federal, 950.

§ 184a. **Illustrative Cases Continued.**—Scheme to secure reduced postage rate for newspapers may be subject of but when it is alleged that the rate sought to be procured is no less than a regular rate then authorized for second class matter, no offense is charged. U. S. vs. Atlanta Journal Co. 185 Federal, 656, affirmed in same case, 210 Federal, 275. A conspiracy to transport explosives in violation of Section 232, interstate shipment of explosives, is a violation of this section. Ryan vs. U. S., 216 Federal, 13.

A conspiracy to secure for a postmaster a larger salary by purchasing at his office large quantities of postage stamps for use outside of territory served by such office was not a conspiracy to defraud the United States, since as the statute makes the postmaster's salary dependent on the gross receipts, without excluding receipts from such sales, the postmaster was legally entitled to the salary which it was the object of the alleged conspiracy to secure, and a conspiracy to obtain by improper methods what one is legally entitled to is not punishable as a conspiracy to defraud. U. S. vs. Foster, 211 Federal, 206.

Woman who is victim in white slave violation may also be conspirator under this section. U. S. vs. Holte, 236 U. S., 140. Agreement to defraud Government through purchases for the commissary department. U. S. vs. Burke, 218 Federal, 83. Conspiracy to defraud the United States by collusive bids for coal, Houston vs. U. S., 217 Federal,

852. A conspiracy to defraud of customs dues. U. S. vs. Sherlin, 212 Federal, 343. Conspiracy to liberate prisoner, *ex parte* Lyman, 202 Federal, 303. See also U. S., vs. Munday, 186 Federal, 375. Lipman vs. U. S., 219 Federal, 882. Conspiracy to conceal property from bankruptcy trustee, Radin vs. U. S., 189 Federal, 568.

§ 185. **Bribery of United States Officer.**—Section 5451 of the old statutes is re-enacted into Section 39 of the new Code in the following words:

"Whoever shall promise, offer, or give, or cause or procure to be promised, offered, or given, any money or other thing of value. or shall make or tender any contract, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, to any officer of the United States, or to any person acting for or on behalf of the United States in any official function, under or by authority of any department or office of the Government thereof, or to any officer or person acting for or on behalf of either House of Congress, or of any Committee of either House, or both Houses thereof, with intent to influence his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, or with intent to influence him to commit, or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be fined not more than three times the amount of money or value of the thing so offered, promised, given, made, or tendered, or caused or procured to be so offered, promised, given, made, or tendered, and imprisoned not more than three years,"

One must be a Federal official or some other person performing an official function, and he must be offered some gratuity or thing of value to assist in the defrauding of the United States in some manner, or to fail to perform his lawful duty, before he can be guilty of the crime alleged in the foregoing section. For instance, in the case of the United States vs. Gibson, 47 Federal, 833, the Court quashed an indictment under this section, which set out in substance that the defendant had offered a bribe to an internal revenue officer to set fire to a distillery within the limits of a State. He very properly held that this was the offering of a bribe to perform an act which was not in

any sense within the official function of the revenue officer, and, therefore, not an offense under the section. The crime of arson, of course, unless committed upon some Government reservation, is not cognizable in the United States Courts, and is not a United States offense. So, also, in the case of United States vs. Boyer, it was determined that an Inspector of the Agriculture Department of the United States, charged with the enforcement of unconstitutional regulations, and offered a bribe not to perform such regulations, the offering of such a bribe was not an offense under 5451, for the reason that the Inspector, in the failure to perform an unconstitutional duty, would not in any sense, defraud the United States, nor fail to perform an act which it was his lawful duty to perform. In United States vs. Kessel, 62 Federal, 57, and United States vs. Van Leuven, 62 Federal, 62, District Judge Shiras, in passing upon old Section 5501, determined that a member of a Board of Examining Surgeons is a person acting in behalf of the United States in an official capacity, and, therefore, subject to an indictment for receiving a bribe. The same reasoning adopted by the judge in those two cases will apply to offenses under Section 5451.

The case of United States vs. Ingham, 97 Federal, 935, was a prosecution based upon an attempt to bribe a Secret Service operative employed by the Secretary of the Treasury; and in passing directly upon the question as to whether or not such operative was an officer of the United States within the necessary meaning of 5451, the Court held that he was not such an officer, but that the prosecution would lie under the phrase in the statute, "official function," and held that official function, as spoken of in the statute is not necessarily a function belonging to an office held by a person acting on behalf of the United States. It may also be a function belonging to an office held by his superior which function has been committed to the subordinate, whether he be also an officer or a mere employee for the purpose of executing the function.

In the case of United States vs. Green, 136 Federal, 618, the doctrine was announced that the giving of a

check as a bribe will not necessarily be an offense under the statute, unless there be sufficient allegations in the indictment to show that the check was good, and that the bank upon which it was drawn was a going concern, and that the same would be honored, and other allegations to show that as a matter of fact the check was valuable. A bank check not thus defined in the bill of indictment is not an obligation for the payment of money, within the legal meaning of such term, as used in the section, and the tendering by a person of his personal check, drawn on a bank, and payable to an officer of the United States to such officer, with intent thereby to affect his official action, does not constitute the crime of bribery, since the check made and delivered for such illegal purpose is void and not within any of the classes of instruments enumerated in the statute. In the case of Vernon vs. U. S., 146 Federal, 121, the Circuit Court of Appeals for the Eighth Circuit sets out a count of an indictment under this section. That was a prosecution for an alleged attempt to bribe an agent of the Treasury Department, charged with the location of public buildings. The evidence, however, was held to be insufficient by the Court of Appeals.

The Supreme Court, in the case of Palliser vs. United States 136 U. S., 268; 34 Law Ed., 514, held that a letter written and sent from New York to a postmaster in Connecticut, asking him to put postage stamps on circulars and send them out at the rate of fifty to one hundred daily, and promising him that if he would do so, the writer of the letter would remit to him the price of stamps, was a tender of a contract for the payment of money to induce him to sell postage stamps for credit in violation of his lawful duty, and contrary to Section 5451: and such an offer for an unlawful sale of postage stamps on credit is not the less within the statute because the postmaster's commission on the sale would be no greater than upon a lawful sale for cash.

§ 185a. **Officer.**—An immigrant inspector is an officer within the meaning of Section 39. Becharias vs. U. S., 208 Federal, 143.

Sec. 185 b. Bribery etc., Continued.

A porter of a railway train while under government control is not and "officer", Krichman vs. U. S., 41 Sup. Ct. Rep. 514, reversing U. S. vs. Krichman in 256 F. 974,

§ 186. **Unlawfully Taking or Using Papers Relating to Claims.**—Section 40 reads as follows:

"Sec. 40. Whoever shall take and carry away, without authority from the United States, from the place where it has been filed, lodged, or deposited or where it may for the time being actually be kept by authority of the United States, any certificate, affidavit written statement of facts, power of attorney, receipt, voucher, assignment, or other document, record, file, or paper, prepared, fitted, or intended to be used or presented in order to procure the payment of money from or by the United States, or any officer or agent thereof, or the allowance or payment of the whole or any part of any claim, account, or demand against the United States, whether the same has or has not already been so used or presented, and whether such claim, account, or demand, or any part thereof, has or has not already been allowed or paid; or whoever shall present, use, or attempt to use, any such document, record, file, or paper so taken and carried away, in order to procure the payment of any money from or by the United States, or any officer or agent thereof, or the allowance or payment of the whole or any part of any claim, account, or demand against the United States, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both."

§ 187. **Persons Interested Not to Act as Agents of the Government.**—Section 1783 of the old statutes becomes Section 41 of the new Code in the following words:

"Sec. 41. No officer or agent of any corporation, joint stock company, or association, and no member or agent of any firm, or person directly or indirectly interested in the pecuniary profits or contracts of such corporation, joint stock company, association, or firm, shall be employed or shall act as an officer or agent of the United States for the transaction of business with such corporation, joint stock company, association, or firm. Whoever shall violate the provision of this section shall be fined not more than two thousand dollars and imprisoned not more than two years."

Old Section 1783 applied only to officers of "banking or other commercial" corporations, but in the new statute these words have been omitted, so that the section, as it now stands is applicable to the officers of any corporation. It has likewise been made more comprehensive,

in that it now covers officers and agents of any "joint stock company or association."

§ 188. **Enticing Desertions from the Military or Naval Service.**—Section 42 of the new Code re-enacts the substantial provisions of Sections 1553 and 5455 of the old Code in the following words:

"Sec. 42. Whoever shall entice or procure, or attempt or endeavor to entice or procure, any soldier in the military service, or any seaman or other person in the naval service of the United States, or who has been recruited for such service, to desert therefrom, or shall aid any such soldier, seaman, or other person in deserting or in attempting to desert from such service; or whoever shall harbor, conceal, protect, or assist any such soldier, seaman, or other person who may have deserted from such service, knowing him to have deserted therefrom, or shall refuse to give up and deliver such soldier, seaman, or other person on the demand of any officer authorized to receive him, shall be imprisoned not more than three years and fined not more than two thousand dollars."

The only substantial addition is the word "seaman," which the old statutes did not include. In the case of Kurtz vs. Moffitt, 115 U. S., 487, the Supreme Court held that a deserter from the United States army could not be arrested by a police officer or private citizen without warrant or authority from the United States.

Sec. 188 a. Enticing Desertions Continued.

"Harbor" means some physicial act, Firpo vs. U. S., 261 F. 850.

§ 189. **Enticing Away Workman.**—Section 43 of the new Code re-enacts the provisions of Sections 1668 of the old statutes, adding thereto the word "artificer" instead of the word "armorer," and is in the following words:

"Sec. 43. Whoever shall procure or entice any artificer or workman retained or employed in any arsenal or armory, to depart from the same during the continuance of his engagement, or to avoid or break his contract with the United States; or whoever, after due notice of the engagement of such workman or artificer, during the continuance of such engagement, shall retain, hire, or in anywise employ, harbor, or conceal such artificer or workman, shall be fined not more than fifty dollars, or imprisoned not more than three months, or both."

§ 190. **Injuries to Fortifications, Harbor Defenses, Etc.**—Section 44 of the new Code re-enacts the meat of the Act of July 7, 1898; Second Supplement, 885, and simplifies the original Act by omitting the words "wantonly or maliciously" before "trespass," since authorities are a unit that the word "wilful" will include any wanton or malicious act, and is in the following words:

"Sec. 44. Whoever shall wilfully trespass upon, injure, or destroy any of the works or property or material of any submarine mine or torpedo, or fortification or harbor-defense system owned or constructed or in process of construction by the United States, or shall wilfully interfere with the operation or use of any such submarine mine, tropedo, fortification, or harbor-defense system, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both."

Sec. 190 a. Injuries to Fortifications, etc.,

Section 44 has been greatly enlarged upon by the Acts of May 22, 1917, and of March 4, 1917. See page 1683, 1918 Complied Statutes, Sec. 10208, the punishment continues the same but the protection extends to all fortifications and harbors and defenses, including the canal zone, and of any submarine mine or torpedo or harbor-defense system as well as any order or regulation of the President governing persons or vessels within the limits of defensive sea areas.

§ 191. **Unlawfully Entering Upon Military Reservation, Fort, Etc.**—Section 45 of the new Code is an entirely new Act, and is in the following words:

"Sec. 45. Whoever shall go upon any military reservation, army post, fort, or arsenal, for any purpose prohibited by law or military regulation made in pursuance of law, or whoever shall re-enter or be found within any such reservation, post, fort, or arsenal, after having been removed therefrom or ordered not to re-enter by any officer or person in command or charge thereof, shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both."

§ 192. **Robbery or Larceny of Personal Property of the United States.**—Old Section 5456 is re-enacted into new Section 46, in the following words:

"Sec. 46. Whoever shall rob another of any kind or description of personal property belonging to the United States, or shall feloniously take and carry away the same, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both."

In the case of Jolly vs. United States, 170 Federal, 402; 42 Law Ed., 185, the Supreme Court held that there are two distinct offenses mentioned in the statute: one is the offense of robbery, and the other is the crime of feloniously taking and carrying away any kind or discription of personal property belonging to the United States. This is a distinct and separate offense from that of robbery. "If the statute required the taking to be forcible in all cases, the language providing against the felonious taking and carrying away of the personal property of the United States would be surplusage, the forcible taking being already implied and included in the use of the word 'rob'; but in addition to robbery, the offense of feloniously (not forcibly) taking the personal property of the United States, is created."

Postage stamps which have not been issued or sold, and are in the possession of the Government, are personal property belonging to the United States within the meaning of this section, which makes it a crime to feloniously take and carry away such property.

Under authority of United States vs. Jones, 69 Federal, 973, a count under this statute may be joined with a count under another statute for a separate offense, when the offense is the same transaction. In that case, Judge Hawley held that it was immaterial that one might be classed as larceny and the other as embezzlement, or that the punishment was different. That case also gives a form of indictment.

§ 193. **Embezzling, Stealing, Etc., Public Property.**—New Section 47 re-enacts a part of the Act of March 3, 1875; First Supplement, page 88, in the following words:

"Sec. 47. Whoever shall embezzle, steal, or purloin any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattles, records, or property of the United States, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both."

In drafting indictments for the various offenses created by this section, to wit, the offenses of embezzlement, larceny, and purloining, it is believed that it will be necessary to set out the elements of these particular offenses as understood in the Common Law, for the reason that the statute itself does not specify just what acts shall constitute the offense therein denominated. The cases of Moore vs. United States, 160 U. S., 268; 40 Law Ed., 422, and Faust vs. United States, 163 U. S., 452; 41 Law Ed., page 224, will be instructive in determining the principles that must be adhered to in setting out offenses under this statute. For the crime of embezzlement, of course, the indictment must allege that the sum alleged to have been embezzled came into the possession of the defendant in the capacity in which he was an employee of the United States; that is, as assistant, clerk, or employee in whatever department of the Government he served. Want of consent of the postmaster to embezzlement of money-order funds by his assistant is not necessary to make the latter liable for the crime, under the authority of Faust vs. United States, cited *supra*.

It was held in Dimmick vs. United States, 135 Federal, 257, that an indictment which charged the defendant with stealing money "belonging to" the United States sufficiently averred the ownership of the property stolen.

Of course, it is necessary to allege specific intent before the offenses here denominated shall be properly plead. As was well said in United States vs. De Groat, 30 Federal, 764, the Federal Criminal Jurisprudence is entirely destitute of any substratum of a Common Law of crimes and misdemeanors upon which to draw for supplying elements of the offense, and the Courts look only at the statute, using the Common Law, if necessary, to furnish a definition of the terms used, but never any ingredient of the offense. That case will be recalled as an indictment for having stolen papers which were public records, but the facts showed that they were stolen from a barn where they were stored, under the belief that they were old papers, and without knowledge of the fact that

they were public records, and the Court ordered a verdict of not guilty.

Sec. 193 a. Embezzling, Stealing, etc., Public Property, Continued.

Section 47 of the Code is in addition to Sec. 36 which we have just discovered was inoperative Edwards vs. U. S., 266 F. 848.

The indictment must charge that the property was United States property and it is insufficient to say that it was requisitioned, Thompson vs. U. S., 256 F. 616.

Under this section the court has held that a prosecution may be had for theft of an interstate shipment when the railroads were in the hands of the government, Kambeitz vs. U. S., 262 F. 378.

For illustrative cases see Schell vs. U. S., 261 F. 593; Clark vs. U. S., 268 F. 329, this last case is for theft of a mail carrier's check.

§ 194. **Receivers, Etc., of Stolen Public Property.**—Section 48 of the new Code enacts the substantial features of the Act of March 3, 1875; First Supplement, 88, and is in the following words:

"Sec. 48. Whoever shall receive, conceal, or aid in concealing or shall have or retain in his possession with intent to convert to his own use or gain, any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, which has theretofore been embezzled, stolen or purloined by any other person, knowing the same to have been so embezzled, stolen, or purloined, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both; and such person may be tried either before or after the conviction of the principal offender."

This statute leaves out that provision of the old statute which made the judgment of conviction of the principal conclusive evidence in the prosecution against such receiver. That provision was declared to be unconstitutional by the Supreme Court in the case of Kirby vs. United States, 174 U. S., 47; Book 43 Law Ed., page 890. In that case, the Supreme Court held that the provision that the judgment of conviction against the principal felons shall be evidence in the prosecution against the receiver of the property of the United States alleged to

have been embezzled, stolen, or purloined, is in violation of the clause of the United States Constitution that in criminal prosecutions the accused shall be confronted with the witnesses against him.

Allegations of Ownership.—Under the authority of the Kirby case, cited above, it is sufficient if an indictment for receiving stolen property of the United States alleges its ownership when it was feloniously received by the accused, by alleging that the property was that of the United States when stolen, and was stolen two days previously to its being received by the defendant, and that he received it knowing that it had been stolen. It was further held in that case that the indictment need not state from whom the accused received it or need not state that the name of such person is unknown to the grand jurors.

An indictment under this section would be entirely insufficient that did not allege knowledge on the part of the receiver, and the words "unlawfully, knowingly, and wilfully" should be used.

§ 195. **Timber Depredations on Public Lands.**—The Act of August 4, 1892, 27 Statutes at Large, 348, Second Supplement, 65, extended the Act of June 3, 1878, 20 Statute at Large, 90, First Supplement, 168, to include all the public land States, and these Acts are substantially re-enacted into new Section 49, in the following words:

"Sec. 49. Whoever shall cut, or cause or procure to be cut, or shall wantonly destroy, or cause to be wantonly destroyed, any timber growing on the public lands of the United States; or whoever shall remove, or cause to be removed, any timber from said public lands, with intent to export or to dispose of the same; or whoever, being the owner, master, or consignee of any vessel, or the owner, director, or agent of any railroad, shall knowingly transport any timber so cut or removed from said lands, or lumber manufactured therefrom, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both. Nothing in this section shall prevent any miner or agriculturalist from clearing his land in the ordinary working of his mining claim, or in the preparation of his farm for tillage, or from taking the timber necessary to support his improvements, or the taking of timber for the use of the United States. And nothing in this section shall interfere with or take away any right

or privilege under any existing law of the United States to cut or remove timber from any public lands."

Some of the cases decided by the Courts under some of the timber statutes of the old Code will be of assistance in determining some of the elements of this new section. For instance, in United States vs. Stores, 14 Federal, 824, it was determined that the term "timber," as used in Section 2461 of the Revised Statutes, applies not alone to large trees fit for house or ship-building, but includes trees of any size, of a character or sort that may be used in any kind of manufacture, or the construction of any article; and it was also there determined that the using of trees for fire-wood or burning into charcoal was no justification for the cutting.

In United States vs. Garretson, 42 Federal, 22, the District Judge held, on demurrer, that the general public domain is open to private entry, and lands cannot be said to be reserved for such entry. The lands reserved are thus severed from the mass of public lands, and appropriated for Government purposes.

In a prosecution under Old Section 5388, as amended by the Act of June 4, 1888, which forbade the cutting or wanton destruction of timber upon military or Indian Reservation, the Court, in the case of the United States vs. Konkapot, 43 Federal, 64, held that that statute did not apply to one who removed and used for building purposes timber which had been cut on an Indian Reservation by another person without his aid or encouragement. Of course, the present section not only covers the cutting and causing or procuring to be cut, or wanton destruction, but also removal of any timber from such public lands.

Intent.—Prosecutions under this section should include the allegation of knowledge and wilfulness, and a depredation by mistake, it is thought, would not be an offense; that is, for one who got upon the public domain thinking that he was upon his own property. When, however, he has knowledge that it is Government lands, on the authority of Taylor vs. United States, 113 Federal, which was an opinion by the Circuit Court of Appeals for the

Eighth Circuit, he would not be protected by a general custom in that particular locality, which was known to the General Land Office, of entering on land and cutting the timber therefrom before the patent was obtained; nor would the defendant be protected for unlawfully cutting timber on public land by the fact that he acted in accordance with a general custom, nor by the fact that prior to the time he unlawfully cut timber he endeavored to ascertain whether the land was surveyed, and had also notified a Special Agent of the Government that he was cutting the timber, and was not warned off for three weeks. None of these facts, says the Court, in that case, are evidence of an honest intent. It was also determined in that case that an occupant of a mineral claim, who has applied for a patent before the purchase price is paid, and before he receives a certificate, has no right to cut the timber on such claim with the intent to export or remove the same, and a license from him to so cut the timber gives no protection to the licensee as against the Government.

Indictment.—In Morgan vs. United States, 148 Federal, 189, the Circuit Court of Appeals for the Eighth Circuit, held that in a prosecution for cutting timber from the public domain, the defendant was not prejudiced by the fact that the indictment charged that he cut the timber with intent unlawfully to export and with intent to dispose of the same, and that a conviction could not be set aside because of such duplicity, since section 1025 provided that no indictment shall be deemed insufficient or the proceedings under it affected, by any defect in matter of form, which does not tend to prejudice the defendant.

Sec. 195 a. Timber Depredations on Public Lands, Continued.

A mistaken belief may excuse, U. S. vs. Hammond, 246 F. 40.

§ 196. **Timber, Etc., Depredations on Indian and Other Reservations.**—Section 5388 of the old statutes, and the Acts of March 3, 1875, First Supplement, 91, and

the Fourth of June, 1888, 4 Supplement, 588, are included in substance in new Section 50, which reads as follows:

"Sec. 50. Whoever shall unlawfully cut, or aid in unlawfully cutting, or shall wantonly injure or destroy, or procure to be wantonly injured or destroyed, any tree, growing standing, or being upon any land of the United States which, in pursuance of law, has been reserved or purchased by the United States for any public use, or upon any Indian Reservation, or lands belonging to or occupied by any tribe of Indians under the authority of the United States, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both."

In the case of United States vs. Pine River Logging and Improvement Company, 89 Federal, 907, the Circuit Court of Appeals for the Eighth Circuit announced the doctrine that the title to the timber growing or standing on Indian Reservations is in the United States, and in the absence of legislative authority, Indians have no right to cut or dispose of it; and where an Indian made a contract with a purchaser to cut and deliver to such purchaser a certain quantity of timber, "more or less, or about," to be taken from the dead timber on a reservation, which contract to sell was permitted by an Act of Congress empowering the President, in his discretion, to authorize certain sales, such contract would be limited to the amount stated, and the fact that the purchaser had paid for a large quantity, delivered and received, in excess of that stated in the contract, did not give him title thereto, and it was no defense to a suit for its recovery by the Government.

In that suit it was also determined that a Government agent could not legalize a trespass committed by the cutting of living trees in violation of the statute, by agreeing, after they were cut and had thus become dead timber, that they might pass under a contract, and such an agreement would not estop the Government from recovering the value of such trees.

§ 197. **Boxing, Etc., Timber on Public Lands for Turpentine, Etc.**—The Act of June 4, 1906, 34 Statute at Large, 208, is practically re-enacted into new Section 51:

"Sec. 51. Whoever shall cut, chip, chop, or box any tree upon any lands belonging to the United States, or upon any lands covered by or embraced in any unperfected settlement, application, filing, entry, selection, or location, made under any law of the United States, for the purpose of obtaining from such tree any pitch, turpentine, or other substance, or shall knowingly encourage, cause, procure, or aid in the cutting, chipping, chopping, or boxing of any such tree, or shall buy, trade for, or in any manner acquire any pitch, turpentine, or other substance, or any article or commodity made from any such pitch, turpentine, or other substance, when he has knowledge that the same has been so unlawfully obtained from such trees, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both."

This statute became necessary by reason of the depredations which the Courts held were not violations of any existing statutes. In United States vs. Garretson, 42 Federal, 22, the Court held that Section 5388 of the old Statute, making the wanton destruction of timber on lands reserved for public uses a crime, did not cover turpentine boxing or wanton destruction of timber on lands open for pre-emption, homestead, and cash entries. So also, to the same effect was the case of Bryant vs. United States, 105 U. S., 941, where the Circuit Court of Appeals for the Fifth Circuit held that old Section 2461, which prohibited the cutting or removing of oak trees or other timber from the public lands of the United States, with intent to export, dispose of, use, or employ, the trees or timber for any purpose except for the use of the navy, was not violated by boxing pine trees on public lands for the purpose of the manufacture of turpentine, since the same was not a cutting of trees within the meaning of the statute. The present statute, however, inhibits the cutting, chipping, chopping, or boxing for the purposes therein denounced. An indictment, of course, should contain the words "unlawful, wilful, and knowing."

§ 198. **Setting Fire to Timber on Public Lands.**—New Section 52, which incorporates the salient features of the Act of the 24th of February, 1897; Second Supplement, 562, and the Act of May 5, 1900, Second Supplement, 1163, is in the following words:

"Sec. 52. Whoever shall wilfully set on fire, or cause to be set on fire, any timber, underbrush, or grass upon the public domain, or shall leave or suffer fire to burn unattended near any timber or other inflammable material, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both."

§ 199. **Failing to Extinguish Fires.**—Section 53 of the new Code is made from a part of the Acts of which 52 was constructed, and reads as follows:

"Sec. 53. Whoever shall wilfully set on fire, or cause to be set on fire, any timber, underbrush, or grass upon the public domain, or shall leave or suffer fire to burn unattended near any timber, or other inflammable material, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both."

The fines arising from Sections 52 and 53 are to be paid into the Public School Fund of the county in which the lands where the offense was committed are situated, and this is provided by Section 54 of the new Code.

§ 200. **Breaking Fence or Gate Enclosing Reserve Lands, or Driving or Permitting Live Stock to Enter Upon.**—Section 56 of the new Code reads as follows:

"Sec. 56. Whoever shall knowingly and unlawfully break, open, or destroy any gate, fence, hedge, or wall inclosing any lands of the United States, which, in pursuance of any law, have been reserved or purchased by the United States for any public use; or whoever shall drive cattle, horses, hogs, or other live stock upon any such lands, for the purpose of destroying the grass or trees on said lands, or where they may destroy the said grass or trees; or whoever shall knowingly permit his cattle, horses, hogs, or other live stock, to enter through any such inclosure upon any such lands of the United States, where such cattle, horses, hogs, or other live stock may or can destroy the grass or trees or other property of the United States on the said lands, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both; *Provided*, That nothing in this section shall be construed to apply to unreserved public lands."

§ 201. **Injuring or Removing Posts or Monuments.** Section 57 the new Code is as follows:

"Sec. 57. Whoever shall wilfully destroy, deface, change, or remove to another place any section corner, quarter-section corner, or meander post, on any Government line of survey, or shall wilfully

cut down any witness trees or any tree blazed to mark the line of a Government survey, or shall wilfully deface, change, or remove any monument or bench mark of any Government survey, shall be fined not more than two hundred and fifty dollars, or imprisoned not more than six months, or both."

§ 202. **Interrupting Service.**—Section 58 of the new Code reads in the following words, and takes the place of old Section 2412:

"Sec. 58. Whoever in any manner, by threats or force, shall interrupt, hinder, or prevent the surveying of the public lands, or of any private land claim which has been or may be confirmed by the United States, by the persons authorized to survey the same, in conformity with the instructions of the Commissioner of the General Land Office, shall be fined not more than three thousand dollars and imprisoned not more than three years."

§ 203. **Agreement to Prevent Bids at Sale of Lands.**—Old Section 2373 becomes new Section 59, which is in the following words:

"Sec. 59. Whoever, before or at the time of the public sale of any of the lands of the United States, shall bargain, contract, or agree, or attempt to bargain, contract, or agree with any other person, that the last-named person shall not bid upon or purchase the land so offered for sale, or any parcel thereof; or whoever by intimidation, combination, or unfair management shall hinder or prevent, or attempt to hinder or prevent, any person from bidding upon or purchasing any tract of land so offered for sale, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both."

§ 204. **Injuries to United States Telegraph, Etc., Lines.**—The Act of the twenty-third of June, 1874, 18 Statute at Large, 250, First Supplement, 46, did not include telephone and cable lines and systems, but Section 60 of the new Code, in the following words, does:

"Sec. 60. Whoever shall wilfully or maliciously injure or destroy any of the works, property, or material of any telegraph, telephone, or cable line, or system, operated or controlled by the United States, whether constructed, or in process of construction, or shall wilfully or maliciously interfere in any way with the working or use of any such line, or system, or shall wilfully or maliciously obstruct, hinder, or delay the transmission of an communication over any such line,

or system, shall be fined not more than one thousand dollars, or imprisoned not more than three years, or both."

§ 205. **Counterfeiting Weather Forecasts.**—All of the salient features of the Act of August 8, 1894, 28 Statute at Large, 274; Second Supplement, 233; the Act of March 2, 1895, 28 Statute at Large, 737; Second Supplement, 406; and the Act of April 25, 1896, 29 Statute at Large, 108, Second Supplement, 459, are re-enacted in the new Section 61, which reads as follows:

"Sec. 61. Whoever shall knowingly issue or publish any counterfeit weather forecast or warning of weather conditions falsely representing such forecast or warning to have been issued or published by the Weather Bureau, United States Signal Service, or other branch of the Government service, shall be fined not more than five hundred dollars, or imprisoned not more than ninety days, or both."

§ 206. **Interfering with Employees of Bureau of Animal Industry.**—The Act of March 3, 1905, 33 Statute at Large, 1265, is re-enacted, with few unimportant changes, in Section 62 in the following words:

"Sec. 62. Whoever shall forcibly assault, resist, oppose, prevent, impede, or interfere with any officer or employee of the Bureau of Animal Industry of the Department of Agriculture in the execution of his duties, or on account of the execution of his duties, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both; and whoever shall use any deadly or dangerous weapon in resisting any officer or employee of the Bureau of Animal Industry of the Department of Agriculture in the execution of his duties, with intent to commit a bodily injury upon him or to deter or prevent him from discharging his duties or on account of the performance of his duties, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both."

§ 207. **Forgery of Certificate of Entry.**—Section 63 of the new Code re-enacts the substantial provisions of old Section 5417, in the following words:

"Sec. 63. Whoever shall forge, counterfeit, or falsely alter any certificate of entry made or required to be made in pursuance of law by any officer of the customs, or shall use any such forged, counterfeited, or falsely altered certificate, knowing the same to be forged, counterfeited, or falsely altered, shall be fined not more than ten thousand dollars and imprisoned not more than three years."

§ 208. **Concealment or Destruction of Invoices, Etc.**—Old Section 5443 is re-enacted into Section 64 in the following words:

"Sec. 64. Whoever shall wilfully conceal or destroy any invoice, book, or paper, relating to any merchandise liable to duty, which has been or may be imported into the United States from any foreign port or country, after an inspection thereof has been demanded by the collector of any collection district, or shall at any time conceal or destroy any such invoice, book, or paper for the purpose of suppressing any evidence of fraud therein contained, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both."

§ 209. **Resisting Revenue Officers; Rescuing or Destroying Seized Property, Etc.**—The provisions of old Section 5447 become in substance Section 65 of the new Code, in the following words:

"Sec. 65. Whoever shall forcibly assault, resist, oppose, prevent, impede, or interfere with any officer of the customs or of the internal revenue, or his deputy, or any person assisting him in the execution of his duties, or any person authorized to make searches and seizures, in the execution of his duty, or shall rescue, attempt to rescue, or cause to be rescued, any property which has been seized by any person so authorized; or whoever before, at, or after such seizure, in order to prevent the seizure or securing of any goods, wares, or merchandise by any person so authorized, shall stave, break, throw overboard, destroy, or remove the same, shall be fined not more than two thousand dollars, or imprisoned not more than one year, or both; and whoever shall use any deadly or dangerous weapon in resisting any person authorized to make searches or seizures, in the execution of his duty, with intent to commit a bodily injury upon him, or to deter or prevent him from discharging his duty, shall be imprisoned not more than ten years."

Sec. 209 a. Resisting Officer, etc., Continued.

The indictment must show the legality of the act that the officer was attempting to do otherwise is defective. U. S. vs. Hallowell, 271 F. 795.

§ 210. **Falsely Assuming to be Revenue Officer.**—There is little difference between Section 5448 of the old Statutes and new Section 66, which is as follows:

"Sec. 66. Whoever shall falsely represent himself to be a revenue officer, and, in such assumed character, demand or receive any

money or other article of value from any person for any duty or tax due to the United States, or for any violation or pretended violation of any revenue law of the United States, shall be fined not more than five hundred dollars and imprisoned not more than two years."

This statute is in addition to Section 32 of the new Code, which has been heretofore noticed, and which was old Section 5448. Section 32 makes it an offense for any person to pretend to be any United States officer, while Section 66 makes it an offense to assume to be a revenue officer, when in such assumed character a demand is made for, or any money or other article of value is received from any person for any duty or tax due the United States, or for any violation or pretended violation of any of the revenue laws of the United States. In other words, a bare assumption or pretention that one is a United States revenue officer, without demanding or receiving any money or article of value, as set out in the statute, would not be an offense under this section, nor would it be an offense under Section 32.

Indictment.—An indictment should charge the unlawful, felonious, and false representation of the defendant to be a revenue officer of the United States, and that in such assumed character he did demand and receive certain money or valuable thing, as the case may be, as a duty or tax, or in settlement of some violation or pretended violation of the Government revenue laws.

In United States vs. Browne, 119 Federal, 482, District Judge Thomas held good, on demurrer, an indictment which jointly indicted two defendants under old Section 5448, the first count of which charged that the defendants unlawfully and feloniously falsely represented themselves to be revenue officers of the United States, and in such assumed character did demand and receive certain money, to wit, two hundred dollars, of and from one A. Isaacs, for a pretended violation by the said Isaacs of a revenue law of the United States; that is to say, of Section 8 of an Act of Congress concerning internal revenue taxation, approved June 13, 1898, as amended in the respect of knowingly and wilfully buying washed revenue stamps, etc. The second count was like the first, except that it

charged that the defendants had in possession washed and restored revenue stamps, knowingly, and without lawful excuse. The third count charged that the defendants, with intent to defraud one Isaacs, unlawfully and feloniously, did falsely assume and pretend to be officers and employees acting under the authority of the United States, to wit, revenue officers and employees, and in such pretended character did fraudulently demand and obtain from him, the said Isaacs, a sum of money, to wit, two hundred dollars. This third count, it will be noticed, is laid under what is now new Section 32. The defendants' counsel contended that the averments of the indictment were not sufficiently defined, particularly as to the designation of the sort of revenue officer meant. The Court held that the words of the indictment were technically sufficient to charge an offense under the statute.

The case of the United States vs. Farnham, 127 Federal, 478, was discussed in considering Section 32 supra, but it is not out of place to cite it here again to support the theory that there must not be a remoteness between the pretended character, and the demand or receipt of the money or thing of value. In the Farnham case, the defendant pretended to be a secret-service operative, wearing a badge, etc. Ten months afterwards he returned to the same hotel, representing himself to be a traveling salesman, and secured the cashing of a worthless check. At the time of the cashing of the worthless check, he did not make any further representation of his Government employment, and the Court held that the facts were insufficient to sustain a conviction for pretending to be an employee of the United States, and as such knowingly and feloniously obtaining from another a sum of money, etc.

§ 211. **Offering Presents to Revenue Officers.**—Section 67 of the new Code, which re-enacts the substantial provisions of old Statute 5452, is as follows:

"Sec. 67. Whoever, being engaged in the importation into the United States of any goods, wares, or merchandise, or being interested as principal, clerk, or agent in the entry of any goods, wares, or merchandise, shall at any time make, or offer to make, to any officer

of the revenue, any gratuity or present of money or other thing of value, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both."

The offense herein denounced is a species of bribery, and without the using the ugly word "bribery," is for the purpose of covering such gratuities and gifts as might otherwise be received by the public official, even thought such official would not think of accepting a bribe. The statute is limited in that it only applies to such gratuities or presents as are made by importers to any officer in the Federal revenue service. Smuggling of merchandise from foreign countries into the United States would doubtless be facilitated to a more or less extent by gifts or gratuities from such smugglers to revenue inspectors and officers. The purpose, therefore, of the statute, seems to be to prevent such friendships between importers and revenue officials as would facilitate importations of goods into this country without the payment of legal duties.

§ 212. **Admitting Merchandise to Entry for Less Than Legal Duty.**—Old Section 5444 becomes new Section 68, which reads as follows:

"Sec. 68. Whoever, being an officer of the revenue, shall, by any means whatever, knowingly admit or aid in admitting to entry, any goods, wares, or merchandise, upon payment of less than the amount of duty legally due thereon, shall be removed from office and fined not more than five thousand dollars, or imprisoned not more than two years, or both."

District Judge Chatfield, in the case of United States vs. Mescall, 164 Federal, 584, which was an indictment under old Section 5444, held that that section did not refer merely to the act of filing at the customs-house the document known as an entry, but comprises the transaction of entering the goods into the body of the commerce of the country; that is, the whole process of passing the goods from the customs-house, which cannot be deemed completed until liquidation has been had. He further held that the words in the statute, "aid in the illegal admission of imports," includes aid given both before and after the fact, and where a custom officer aids one who

had made wrongful entry, by concealing the falsity of the entry, or by supporting it by false official returns, he is within the prohibition of the section.

Indictment.—In the above case, the Court held that an indictment which charged that certain goods had been imported into the United States, and entered by the importer with the collector of the port under an entry number, that such goods were subject to a specific duty, and that the defendant, who was an officer of the customs service, as a part of his official duties, was to weigh the goods included in this particular importation, and to return to the collector a true statement of the result of that weighing from which statement the amount of duty to be collected was to be liquidated and paid, and that in fact the defendant returned a false statement of weight, upon which false weight duty was paid, (the amount of this payment being too little, in proportion to the amount by which the false weight was less than the actual weight), and that the defendant, by so doing, unlawfully admitted, or aided in admitting, to entry, goods specified upon payment of less than the amount of duty legally due thereon, was not subject to demurrer for failing to describe an offense under this statute. See also United States vs. Browne, 126 Federal, 766, and United States vs. Legg, 105 Federal, 933. See United States vs. Mescall, by the same judge, for other points, 164 Federal, 587.

§ 213. **Securing Entry of Merchandise by False Samples, Etc.**—Section 69 in the new Code is the same as Section 5445 of the old Statutes, and is as follows:

"Sec. 69. Whoever, by any means whatever, shall knowingly effect, or aid in effecting, any entry of goods, wares, or merchandise, at less than the true weight or measure thereof, or upon a false classification thereof as to quality or value, or by the payment of less than the amount of duty legally due thereon, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both."

The allegations and proof under this section should show knowledge on the part of the defendant of the improper weight or measure or classification of the goods

or articles imported; and while in United States vs. Rosenthal, 126 Federal, 766, District Judge Thomas held that an indictment under 5445 which charged that the defendant, on a day named, "with intent .... that the United States should be wrongfully deprived of a portion of the lawful duties due" on certain imported goods which were specifically dutiable according to weight, effected an entry thereof at less than their true weight, and by payment of less than their legal duty, sufficiently charged that the entry was knowingly effected; yet, it is believed that the correct practice is to use the word knowingly in the indictment when the statute makes knowledge a constituent of the offense.

With the above qualification, the indictment as epitomized by Judge Thomas in that case, may be relied upon as good under this statute, such epitome comprehending that the defendants, on the day named, and with intent to defraud the United States of duty on goods specifically dutiable according to weight, effected an entry thereof, which was an entry for warehousing the goods, and by payment of less than the legal duty. They effected said entry, (1) by making it in accordance with false statements as to weight in the invoice, which invoice had by their direction been made, consulated, and forwarded by their agent in Japan; (2) by corruptly procuring said invoice to be wrongfully approved, passed, and reported, by Browne, the examiner, to the collector. In other words, the offense described in the statute is knowingly effecting an entry of goods, (a) at less than their true weight or measure; (b) upon a false classification; or (c) by payment of less than legal duty.

§ 214. **False Certification by Consular Officers.**—Old Statute 5442 has been changed by the omission of the words "commercial agent or vice-commercial agent," substituting therefor, "or other person employed in the Consular Service of the United States," in new Section 70, which is in the following words:

"Sec. 70. Whoever, being a consul, or vice-consul, or other person employed in the consular service of the United States, shall knowingly certify falsely to any invoice, or other paper, to which his

certificate is by law authorized or required, shall be fined not more than ten thousand dollars and imprisoned not more than three years."

This is the only difference between the new and the old law.

Query.—An United States Consul or other person in the Consular Service who committed the offense denounced by the statute while he was in some foreign country would be beyond the jurisdiction of the Federal Government, because of venue. The incorporation of the word "knowingly" in the section also requires it in the proof and indictment.

§ 215. **Taking Seized Property from Custody of Revenue Officer.**—There is practically no difference between the wording of old Section 5446 and new Section 71, which reads as follows:

"Sec. 71. Whoever shall dispossess or rescue, or attempt to dispossess or rescue, any property taken or detained by any officer or other person under the authority of any revenue law of the United States, or shall aid or assist therein, shall be fined not more than three hundred dollars and imprisoned not more than one year."

While this statute does not contain the word "knowingly," there is no doubt but that an indictment should allege that the person charged knew that the property rescued or taken from the revenue officer was in fact in possession of such officer as a revenue officer of the United States.

§ 216. **Forging, Etc., Certificate of Citizenship.**—The Act of June 29, 1906, 34 Statute at Large, 602, known as the Naturalization Law, contained at Section 16 a provision for the prosecution of falsely making, forging, etc., certificates, when such certificate was for the use of the person so falsely making or for the use of someone else. In other words, to constitute an offense under the statute, the certificate must have been so falsely made, etc., to be used, and such allegation is necessary in the bill, and must be made in the proof. The section, as it passes into the new Code, becomes Section 74, which reads as follows:

"Sec. 74. Whoever shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or shall knowingly aid or assist in falsely making, forging, or counterfeiting any certificate of citizenship, with intent to use the same, or with the intent that the same may be used by some other person, shall be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both."

Sec. 216 a. Cancellation of Illegally Secured Certificate of Citizenship.

The United States may bring a suit to cancel an illegally secured certificate of citizenship, Grahl vs. U. S., 261 F. 487.

§ 217. **Engraving, Etc., Plate for Printing or Photographing, Concealing, or Bringing Into the United States, Etc., Certificate of Citizenship.**—From the same law, and being Section 17 thereof, comes Section 75 of the new Code, which reads as follows:

"Sec. 75. Whoever shall engrave, or cause or procure to be engraved, or assist in engraving, any plate in the likeness of any plate designed for the printing of a certificate of citizenship; or whoever shall sell any such plate, or shall bring into the United States from any foreign place any such plate, except under the direction of the Secretary of Commerce and Labor, or other proper officer; or whoever shall have in his control, custody, or possession any metallic plate engraved after the similitude of any plate from which any such certificate has been printed, with intent to use or to suffer such plate to be used in forging or counterfeiting any such certificate or any part thereof; or whoever shall print, photograph, or in any manner cause to be printed, photograph, made, or executed, any print or impression in the likeness of any such certificate, or any part thereof; or whoever shall sell any such certificate, or shall bring the same into the United States from any foreign place, except by direction of some proper officer of the United States; or whoever shall have in his possession a distinctive paper which has been adopted by the proper officer of the United States for the printing of such certificate, with intent unlawfully to use the same, shall be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both."

§ 218. **False Personation, Etc., In Procuring Naturalization.**—Section 5424 of the old statutes was construed in the cases of United States vs. York, 131 Federal, 323, and United States vs. Raisch, 144 Federal, 486, by reason of its peculiar wording, as follows:

"It will be observed that after the word 'or' and before the words 'who tries,' etc., are omitted the words 'every person,' with which the section opens. The same omission occurs in the third auxiliary clause of the section; hence 'who,' as so used, and whenever used in the section, refers to the initial 'every person.' But such words 'every person' are modified by the words 'applying to be admitted a citizen, or appearing as a witness for any such person'; hence, as the section literally reads, a person uttering a certificate can only be punished in case he was a 'person applying to be admitted a citizen, or appearing as a witness for any such person'." United States vs. York, 131 Fed., 327.

To the same effect is United States vs. Raisch, by Judge De Haven, who limits the application of the old section to the person applying to be admitted a citizen, or appearing as a witness for any such person. To meet such construction, and to remedy what was evidently a mistake, we have Section 76 of the new Code, in the following words:

"Sec. 76. Whoever, when applying to be admitted a citizen, or when appearing as a witness for any such person, shall knowingly personate any person other than himself, or shall falsely appear in the name of a deceased person, or in an assumed or fictitious name; or whoever shall falsely make forge, or counterfeit any oath, notice, affidavit, certificate, record, signature, or other instrument, paper, or proceeding required or authorized by any law relating to or providing for the naturalization of aliens; or whoever shall utter, sell, dispose of, or shall use as true or genuine, for any unlawful purpose, any false, forged, antedated, or counterfeit oath, notice, certificate, order, record, signature, instrument, paper, or proceeding above specified; or whoever shall sell or dispose of to any person other than the person for whom it was originally issued any certificate of citizenship, or certificate showing any person to be admitted a citizen, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both."

This section clearly applies generally to every person, whether he be applying to be admitted a citizen, or whether he be appearing as a witness for any such person. The use of the word "whoever" before each of the clauses in the section which denounce various phases of the offense, meet clearly the limitations found in the old statute, and render the new section general in its application.

§ 219. **Using False Certificate of Citizenship, or Denying Citizenship, Etc.**—Section 5425 of the old statute was enlarged by the Act of June 29, 1906, 34 Statute at Large, 602, which now passes into the new Code as Section 77, in the following words:

"Sec. 77. Whoever shall use or attempt to use, or shall aid, assist, or participate in the use of any certificate of citizenship, knowing the same to be forged, counterfeit, or antedated, or knowing the same to have been procured by fraud or otherwise unlawfully obtained; or whoever, without lawful excuse, shall knowingly possess any false, forged, antedated, or counterfeit certificate of citizenship purporting to have been issued under any law of the United States relating to naturalization, knowing such certificate to be false, forged, antedated, or counterfeit, with the intent unlawfully to use the same; or whoever shall obtain, accept, or receive any certificate of citizenship, knowing the same to have been procured by fraud or by the use or means of any false name or statement given or made with the intent to procure, or to aid in procuring, the issuance of such certificate, or knowing the same to have been fraudulently altered or antedated; or whoever, without lawful excuse, shall have in his possession any blank certificate of citizenship provided by the Bureau of Immigration and Naturalization with the intent unlawfully to use the same; or whoever, after having been admitted to be a citizen, shall, on oath or by affidavit, knowingly, deny that he has been so admitted, with the intent to evade or avoid any duty or liability imposed or required by law, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both."

The rule announced in United States vs. Melfi, 118 Federal, 902, which was a prosecution for conspiracy to commit an offense against the United States by causing a violation of Section 5425, is applicable to the drafting of indictments under the new section, and it will, therefore, be observed that one of the essential ingredients of the offense is that the person who should obtain, accept, or receive a certificate of citizenship, who should do so with knowledge on his part that it had been procured by means of false statements made with intent to procure or aid in procuring the issue of such certificate.

Running throughout these naturalization laws, is the use of the word "knowingly," and the pleader must not assume that such word was used by Congress unintentionally. It is absolutely necessary to show knowledge, both in allegation and in proof.

Sec. 219 a. Using False Certificates of Citizenship Continued.

Sec. 79 of the Code denounces a false representation as to being a United States citizen; also see Christopoulo vs. U. S., 230 F. 789.

§ 220. **Using False Certificate, Etc., as Evidence of Right to Vote.**—Section 78 of the new Code displaces old Section 5426, and is in the following words:

"Sec. 78. Whoever shall in any manner use, for the purpose of registering as a voter, or as evidence of a right to vote, or otherwise unlawfully, any order, certificate of citizenship, or certificate, judgment, or exemplification, showing any person to be admitted to be a citizen, whether heretofore or hereafter issued or made, knowing that such order, certificate, judgment, or exemplification has been unlawfully issued or made; or whoever shall unlawfully use, or attempt to use, any such order or certificate, issued to or in the name of any other person, or in a fictitious name, or the name of a deceased person, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both."

Bearing in mind the observation that has been so often repeated as to the use of the word "knowledge" or "knowingly" in these naturalization statutes, it is well to call attention to the case of United States vs. Lehman, 39 Federal, 768, where Judge Thayer held that an indictment for a violation of such statute, which describes the fraud without describing the facts constituting the fraud, is bad, though the allegation be made that such acts are unknown to the grand jury. In the matter of Coleman, 15 Blatchf., 406, it was held that knowledge that the certificate was unlawfully issued or made was necessary to constitute an offense under the section. There can be no conviction when it appears that the defendant complied fully with all the conditions imposed on him as prerequisite to his admission and that the unlawfulness, if any, was in the want of form in the record of the Court. So, in United States vs. Burley, 14 Blatchf., U. S., 91, where the defendant was indicted under this section and the proof showed that the defendant had registered as a voter upon the protection of the certificate, which certificate, had been issued when the applicant was not in Court, and without any oath taken by him, the certificate being

regular upon its face, the mere fact that the defendant knew that the certificate had been issued without his presence in Court, and without any oath being taken by him, was not sufficient to warrant a conviction.

§ 221. **Falsely Claiming Citizenship.**—Section 5428 of the old statutes, becomes Section 79 of the new Code in the following words:

"Sec. 79. Whoever shall knowingly use any certificate of naturalization heretofore or which hereafter may be granted by any court, which has been or may be procured through fraud or by false evidence, or which has been or may hereafter be issued by the clerk or any other officer of the court without any appearance and hearing of the applicant in court and without lawful authority; or whoever, for any fraudulent purpose whatever, shall falsely represent himself to be a citizen of the United States without having been duly admitted to citizenship, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both."

The word "duly" in the section on the authority of Judge Chatfield in United States vs. Hamilton, 157 Federal, 569, applies to a regular compliance with requirements, rather than to the truth of the facts involved in the admission, and where the person charged was granted a certificate of citizenship by an order of Court, both of which are regular in form, and have not been vacated, it is impossible to charge unlawful use, based solely upon a further allegation of knowledge that the certificate had not been duly made.

In Green vs. United States, 150 Federal, 560, the Circuit Court of Appeals for the Ninth Circuit held that an alien who knowingly makes a false affidavit that he has been duly naturalized as a citizen of the United States, before a Registration Officer for the purpose of procuring himself to be registered as a voter at an approaching election in a State, commits an offense under this section. That Court also held that it is not necessary that the false certificate be actually used for an unlawful purpose to constitute the offense denounced by the statute.

Sec. 221 a. Falsely Claiming Citizenship Continued. See Christopoulo vs. U. S., 230 F. 789.

§ 222. **Taking False Oath in Naturalization.**—Section 80 of the new Code re-enacts old Section 5395 in the following words:

"Sec. 80. Whoever, in any proceeding under or by virtue of any law relating to the naturalization of aliens, shall knowingly swear falsely in any case where an oath is made or affidavit taken, shall be fined not more than one thousand dollars and imprisoned not more than five years."

In United States vs. Moore, 144 Federal, 962, the Circuit Court of Appeals passes upon a form of an indictment under this section, and says that in prosecutions for perjury and in prosecutions akin thereto, it is a fundamental rule that an indictment must show that the tribunal before which the offense is alleged to have occurred had jurisdiction over the issue to which it related. It is also a fundamental rule that it is not sufficient to allege in general terms that the tribunal named had jurisdiction over the issue alleged to have been involved, because such an allegation includes matters of law, as well as fact; while it is the duty and right of the court before which an indictment is pending to be so far advised of the facts that it can determine for itself whether the issue was of such a character as to give the tribunal named jurisdiction thereof, and such as to render the alleged offense material thereto.

In the case of Schmidt vs. United States, 133 Federal, 257, the Circuit Court of Appeals for the Ninth Circuit held that on the trial of a defendant for perjury committed in a naturalization though such affidavits, when signed, were in blank. So, too, in that case the Court held that a defective final order was admissible as evidence of the facts therein stated. The Supreme Court, in Holgren vs. United States, October Term, 1909, affirms same case, 156 Federal, 439, the principal question being whether, under this section, a conviction can be had in a Federal Court for a false oath thereunder in a State Court. Held, that it could.

§ 222a. **Oath Must be Material.**—No prosecution for false swearing under Section 80 can be successfully main-

tained unless the oath was a material oath. U. S. vs. Bressi, 208 Federal, 369.

§ 223. **Provisions Applicable to All Courts of Naturalization.**—Section 5429 of the old statutes is re-enacted into Section 81 of the new Code, and some new words are added for the purpose of showing that the penal provisions above treated are applicable to proceedings had or taken in any Court, and reads as follows:

"Sec. 81. The provisions of the five sections last preceding shall apply to all proceedings had or taken, or attempted to be had or taken, before any court in which any proceedings for naturalization may be commenced or attempted to be commenced, and whether such court was vested by law with jurisdiction in naturalization proceedings or not."

See Holgren vs. United States, 156 Federal, 439, affirmed by Supreme Court, October Term, 1909.

§ 223a. **To Cancel Certificate.**—A suit to cancel certificate of naturalization must show either fraud or that the evidence before the Court which granted the certificate was insufficient to warrant the finding of residence. U. S. vs. Roekteschell, 208 Federal, 530. The word "reside" as used in the naturalization suit is capable of different meanings. Generally however, it signifies nothing more nor less than domicile. U. S. vs. Roekteschell, 208 Federal, 530.

Sec. 223 b. A Certificate May be Cancelled.

For acts subsequent to the issuance, U. S. vs. Kramer, 262 F. 395.

§ 224. **Corporations, Etc., Not to Constribute Money for Political Elections, Etc.**—The Act of January 26, 1907, 34 Statute at Large, becomes Section 83 of the new Code, in the following words:

"Sec. 83. It shall be unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a money contribution in connection with any election to any political office. It shall also be unlawful for any corporation whatever to make a money contribution in connection with any election at which Presidential and Vice-Presidential electors or a Representative in Congress is to be voted for, or any election by any state legislature of a United States Senator. Every corporation which shall make any contribution in violation of the foregoing provisions shall be fined

not more than five thousand dollars; and every officer or director of any corporation who shall consent to any contribution by the corporation in violation of the foregoing provisions shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both."

CHAPTER IX.

OFFENSES AGAINST THE EXISTENCE OF THE GOVERNMENT.

§ 225. **Treason.**—At the time of the formation of this Republic, treasons were numerous in England. They were divided into high and petit. By the old Common Law, there were several forms of petit treason, which later, by English statute, were reduced to three. These were: the killing by a servant of his master; the killing of a husband by the wife; and the killing of a prelate by an ecclesiastic owing him obedience. All these petit treasons were abolished, however, in 1828, and there remains now but one sort, and that is high treason. So, when the word "treason" is used, it means high treason. Under the United States laws, there are no Common Law crimes, and treason, as defined in the Constitution of the United States, consists only in levying war against them, or in adhering to their enemies, giving them aid and comfort. The meaning of the words "levying war," and the other words, "adhering to their enemies, giving them aid and comfort," is to be found in the Common Law doctrine of and aider at the fact, as applicable to the levying of war in treason. The meaning of war, as defined by Bishop, is an attempt, by force, either to subjugate or to overthrow the Government against which it is levied. Ordinarily, where the overthrow is not contemplated, a treaty acknowledging rights previously denied is expected. If a body of men, mistakenly deeming a particular statute to violate fundamental or constitutional right, combine

to oppose by force its execution, and commit therein an overt act, they are undoubtedly guilty of treason, provided, it is their determination also to resist by violence every attempt to bring them to justice and to continue this course until the Government is compelled to yield to them. Bishop's New Criminal Law, Second Volume, page 703. The same writer, in answering the question, What is levying war? says that in legal reason a levying of war consists of two elements, neither of which can be dispensed with: the one is the intent existing as of fact in the mind of the accused person, either to overthrow the Government, or to compel it, through fear, to yield something to which it would not voluntarily assent; the other is some overt act in the nature of war or preparation therefor, or threatening it, as an array of persons assembled for war, or some war-like violence, or some other step menacing war. Yet, we must admit that it is legally possible for one man alone to levy war upon his Government, and be guilty of treason. Second Bishop's Criminal Law, 704.

§ 226. **The Statute.**—In line with the Constitutional definition of treason was old Statute 5331, which is re-enacted into Section 1 of the New Code, which reads as follows:

"Sec. 1. Whoever, owing allegiance to the United States levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason."

In 1 Story, U. S., 614, 30 Federal Case, 18275, the following charge was given to a grand jury:

"It is not every act of treason by levying war that is treason against the United States. It may be, and often is, aimed altogether against the sovereignty of a particular state. Thus, for example, if the object of an assembly of persons met with force is to overthrow the Government or Constitution of a State, or to prevent the due exercises of its sovereign powers, or to resist the exercises of any one or more of its general laws, but without any intention whatsoever to intermeddle with the relations of that State with the national Government, or to displace the national laws or sovereignty therein:—every overt act done with force toward the execution of such a treasonable purpose is treason against the State, and against the State only. But treason may be begun against a State and may be mixed up or

merged in treason against the United States. Thus, if the treasonable purpose be to overthrow the Government of the State and forcibly to withdraw it from the Union, and thereby to prevent the exercise of the national sovereignty within the limits of the State, that would be treason against the United States."

In United States vs. Wiltberger, 5 Wheat., U. S., 76, treason was defined as a breach of allegiance, and can be committed by him only who owes allegiance, either perpetual or temporary. In the case of United States vs. Greiner, 26 Federal Case No. 15262, it was held that every step taken by anyone of an armed body of men mustered into military array for a treasonable purpose, by marching or otherwise, in part execution of that purpose, is an overt act of treason in levying war. See also U. S. vs. Vilato, 2 Dall., 370; the Insurgents, 2 Dall., 385; ex parte Bohman et al, 4 Cranch, 75; U. S. vs. Burr, 4 Cranch, 469; Carlyle vs. U. S., 16 Wallace, 147; U. S. vs. Burr, 1 Burr's Trial, 14, 16; Second Burr's Trial, 402, page 25, Federal Case, 2, 52, 55, and 210; U. S. vs. Cathcart, 1 Bond, 556; 25 Federal Case, 344; U. S. vs. Greathouse, 26 Federal Case, 818; U. S. vs. Hodges, 26 Federal Cases, 332; U. S. vs. Hoxie, 26 Federal Case, 397; U. S. vs. Mitchell, 2 Dall., 26, Federal Case, 1277; U. S. vs. Vigol, 28 Federal Case, 376; U. S. vs. Pryor, 27 Federal Case, 628; Charges to Grand Jury, 2 Curt., 630, 30 Federal Case, 1024, 4 Blatchf., 518; 30 Federal Case, 1032; 5 Blatchf., 549; 30 Federal Case, 1034; 1 Bond, 609, 30 Federal Case, 1036; 30 Federal Case, 1039; 30 Federal Case, 1042; 30 Federal Case, 1046; 30 Federal Case, 1047; 30 Federal Case, 1049. One of the most interesting cases, in its treatment of the evidence necessary to establish the offense, will be found in United States vs. Burr, 25 Federal Case, No. 14693.

Sec. 226 a. Treason Continued.

The harboring or concealing of a spy of the government against which the United States were at war is treason, U. S. vs. Fricke, 259 F. 673.

Treason embraces the existence both of a state of mind and of an overt act, U. S. vs. Werner, 247 F. 709.

§ 227. **Punishment.**—The punishment for treason is the same under Section 2 of the new Code as it was under the old Statute 5332, the new section reading as follows:

"Sec. 2. Whoever is convicted of treason shall suffer death; or, at discretion of the court, shall be imprisoned not less than five years and fined not less than ten thousand dollars, to be levied on and collected out of any or all of his property, real or personal, of which he was the owner at the time of committing such treason, any sale or conveyance to the contrary notwithstanding; and every person so convicted of treason shall, moreover, be incapable of holding any office under the United States."

In Davis case, Chase, U. S., page 1, 7 Federal Case No. 3621a, it was held that treason under this section in bailable.

It was held in Wallace vs. Van Riswick, 92 U. S., 202, 23 Law Ed., 473, that after an adjudicated forfeiture and sale of an enemy's land, under the Confiscation Act of Congress of July 7, 1862, and the general resolution of even date therewith, that there was not left in him any interest which he could convey by deed.

In Windsor vs. McVeigh, 93 U. S., 274, 23 Law Ed., page 914, the Supreme Court held that the jurisdiction acquired by the seizure of the property in a proceeding in rem for its condemnation, is not to pass upon the question of forfeiture absolutely, but to pass upon that question after opportunity has been offered to its owner and parties interested to appear and be heard upon the charges for which the forfeiture is claimed. To that end, some notification of the proceedings, beyond that arising from the seizure prescribing the time within which the appearance must be made, is essential.

§ 228. **Misprision of Treason.**—Section 3 of the new Code, which takes the place of the old Statute 5333, is in the following words:

"Sec. 3. Whoever, owing allegiance to the United States and having knowledge of the commission of any treason against them, conceals, and does not, as soon as may be, disclose and make known the same to the President or to some judge of the United States, or to the govenor or to some judge or justice of a particular State, is guilty of misprision of treason and shall be imprisoned not more than seven years and fined not more than one thousand dollars."

Cases of more or less interest, bearing upon the statute, are United States vs. Wiltberger, 5 Wheat., 97; Confiscation cases, 1 Woods, 221, 6 Federal Case, 270; U. S. vs. Tract of Land, 1 Woods, 475; 28 Federal Case, 203.

Misprision, whether of felony or of treason, is defined by the text-book writers as criminal negligence either to prevent it from being committed, or to bring to justice the offender after its commission. The statute under consideration seems to be limited by its terms, not to a prevention of the offense of treason, but to the disclosure of the knowledge of the commission as soon as may be.

Sec. 228a. Misprision of Treason—Continued.

The mere expression of an opinion is not a violation of this statute. Sandberg vs. U. S., 257 F. 643.

§ 229. **Inciting or Engaging in Rebellion or Insurrection.**—Section 5334 of the old Statutes becomes Section 4 of the new Code, in the following words:

"Sec. 4. Whoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States or the laws thereof, or gives aid or comfort thereto, shall be imprisoned not more than ten years, or fined not more than ten thousand dollars, or both; and shall, moreover, be incapable of holding any office under the United States."

§ 230. **Criminal Correspondence with Foreign Governments.**—Section 5335 of the old statutes becomes section 5 of the new Code, which reads as follows:

"Sec. 5. Every citizen of the United States, whether actually resident or abiding within the same, or in any place subject to the jurisdiction thereof, or in any foreign country, without the permission or authority of the Government, directly or indirectly, commences or carries on any verbal or written correspondence or intercourse with any foreign government or any officer or agent thereof, with an intent to influence the measures or conduct of any foreign government or of any officer or agent thereof, in relation to any disputes or controversies with the United States, or to defeat the measures of the Government of the United States; and every person, being a citizen of or resident within the United States or in any place subject to the jurisdiction thereof, and not duly authorized, counsels, advises, or assists in any such correspondence with such intent, shall be fined not more than five thousand dollars, and imprisoned not more than three years; but nothing in this section shall be construed to abridge the right of a citizen to apply himself or his agent, to any foreign government or the agents thereof for redress, of any injury which he may have sustained from such government or any of its agents or subjects."

§ 231. **Seditious Conspiracy.**—Section 5336 of the old statutes becomes Section 6 of the new Code, and is as follows:

"Sec. 6. If two or more persons in any State or Territory or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined not more than five thousand dollars, or imprisoned not more than six years, or both."

Sec. 231 a. Seditious Conspiracy Continued.

It is a violation to conspire against the neutrality of the government, Act of May 7, 1917, Criminal Code, Sec. 10, as against enlisting for foreign service.

For conspiracy against the Espionage Act and to violate the draft and against our declarations of war see: Masses vs. Patten, 244 F. 535; U. S. vs. Casey, 247 F. 362; Orear vs. U. S., 261 F. 259; Wells vs. U. S., 257 F. 605; Reeder vs. U. S., 262 F. 36.

§ 232. **Recruiting Soldiers or Sailors to Serve Against the United States.**—Section 5337 of the 1878 statutes becomes Section 7 of the new Code, and is as follows:

"Sec. 7. Whoever recruits soldiers or sailors within the United States, or in any place subject to the jurisdiction thereof, to engage in armed hostility against the same, or opens within the United States, or in any place subject to the jurisdiction thereof, a recruiting station for the enlistment of such soldiers or sailors to serve in any manner in armed hostility against the United States, shall be fined not more than one thousand dollars and imprisoned not more than five years."

§ 233. **Enlistment to Serve Against the United States.**—Section 8 of the new Code displaces Section 5338 of the old statutes, and is as follows:

"Sec. 8. Every person enlisted or engaged within the United States or in any place subject to the jurisdiction thereof, with intent to serve in armed hostility against the United States, shall be fined one hundred dollars and imprisoned not more than three years."

§ 233a. **Ordinance, Purchase, Sale, or Disposal of.**—Sections 1242 and 3748 of the Revised Statutes prohibit the purchase, sale, pledge, loan or gift by a soldier of any of his clothing, arms, military outfit and accouterments, and the Government, in supplying the soldier or recruit with equipments suitable and necessary for the discharge of his military duties, retains title to the same. It is regarded as public property, whether remaining in a public depot or in the possession of the individual soldier. Lobosco vs. U. S., 183 Federal, 742. Section 5438 of the Revised Statutes makes it an offense for any person to knowingly purchase or receive in pledge from a soldier or sailor any arms, equipment, ammunition, clothing, stores, or any other public property, and it is not material that the clothing purchased by accused from certain marines was not a part of their equipment, but was furnished to them under their clothing allowance. Lobosco vs. U. S., 183 Federal, 742. Since the Government is required to prove guilty knowledge under this section, evidence of the commission of other similar offenses by accused than those charged in the indictment is admissible. Lobosco vs. U. S., 183 Federal, 742. See also Carter vs. McClaughry, 183 U. S., 365. It is not essential that the voucher or other thing should in itself contain false matter, but whether the claim is honest or fraudulent is to be determined from all the facts. Dimmick vs. U. S., 116 Federal, 825.

CHAPTER X.

OFFENSES AGAINST NEUTRALITY.

§ 234. The word "neutrality," as used with reference to governments and international law, has no different meaning than that given to it in the ordinary course of affairs. The Century Dictionary defines it as "the state of being neutral, or of being unengaged in a dispute or contest between others; the taking of no part on either side; in international law, the attitude and condition of a nation or state, which does not take part, directly or indirectly, in a war between other states, but maintains relations of amity with all the contending parties." The 29 Volume of the "Cyc.," at page 675, citing the Three Friends, 166 U. S., page 1, 41 Law Ed., page 897, deduces that neutrality, strictly speaking, consists in abstinence from any participation in a public, private, or civil war, and impartiality of conduct toward both parties. That authority, continuing, says:

"The nation which, while preserving its natural liberty and its independence, remains at peace while other nations are at war, and which continues to maintain with the two belligerent nations the friendly relations of commerce, or only of sociality, or of humanity, existing before the out-break of hostilities, may call itself neutral. This quality imposes upon it the obligations which may be summed up

in two principles, and which embraces all the others: abstaining from all acts of hostility, direct or indirect: and perfect impartiality between the two nations at war, respecting all matters affecting the war."

From these definitions, one readily discovers that neutrality, in a measure, interferes with the liberty and independence of the nation preserving that status.

The United States was one of the earliest countries to preserve by law its neutrality with reference to conflicts between other governments and nationalities. While there are international punishments for a failure to observe the full measure of neutrality, the most effective preventive is the penal Code, which creates offenses under this head, and affixes punishments therefor; and in construing such statutes, the same rules are to be applied and observed as govern the construction of other penal statutes.

§ 234a. **President's Power to Enforce Neutrality.**—District Judge Maxey in ex parte Orozco, 201 Federal, 106, questioned the power of the President to use the military power of the United States to arrest and imprison for neutrality violations and held that the fifth amendment to the Federal constitution guaranteeing immunity against being deprived of liberty without due process of law, and the fourth amendment declaring that warrants shall not be issued except on probable cause supported by oath or affirmation and the sixth amendment guaranteeing to the accused a speedy and public trial by a jury in the district where the crime was committed, were applicable to aliens sojourning in the United States, as well as to citizens, and in time of peace the President has no right to use the military force for arrest.

The relator, who was a Mexican citizen, was discharged from the custody of the military authorities upon habeas corpus.

The same district judge, in the case of United States vs. Chavez, held that the word export, which was used in the joint congressional resolution of March 14, 1912, which authorized the president to make proclamation against the exporting of arms or munitions of war under certain

conditions, was limited to a transportation of arms or munitions of war from any place in the United States to "such country," that is, such foreign country; and hence a charge that accused with intent to export munitions of war from the city of El Paso to a place in Mexico in violation of the Presidential proclamation, did make a shipment of cartridges, etc., by transporting them on his person from one point in the city of El Paso to another point therein, did not charge a violation of the resolution, and sustained a demurrer to the indictment.

Sec. 234 b. Belligerent has no Right to Bring Prize into U. S. Port.

A belligerent has no right to bring prizes into a United States port for an indefinite stay, Berg vs. Bas Company & Harrison, U. S. Supreme Ct. Oct. term, 1916, Mar. 6, 1917.

§ 235. **Accepting Foreign Commission.**—Section 9 of the new Code re-enacts old Section 5281, and is in the following language:

"Sec. 9. Every citizen of the United States who, within the territory or jurisdiction thereof, accepts and exercises a commission to serve a foreign prince, state, colony, district, or people, in war, by land or by sea, against any prince, state, colony, district, or people with whom the United States are at peace, shall be fined not more than two thousand dollars and imprisoned not more than three years."

The wording of the statute bears the construction that the mere acceptance of a commission of the sort therein described would not create the offense. It is necessary that some overt act be committed under the commission, such as raising men for the enterprise, collecting provisions, munitions of war, or any other act which shows an exercise of the authority which the commission is supposed to confer. 29 Cyc., 678; in re Charge to Grand Jury, 30 Federal Case No. 18265, 2 McLean, 1.

§ 236. **Enlisting in Foreign Service.**—Old Section 5282 becomes Section 10 of the new Code, in the following words:

"Whoever, within the territory or jurisdiction of the United States, enlists, or enters himself, or hires or retains another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the

United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people, as a soldier, or as a marine or seaman, on board of any vessel of war, letter of marque, or privateer, shall be fined not more than one thousand dollars, and imprisoned not more than three years."

The Courts have held, in construing this section, United States vs. Obrien et al, 75 Federal, 900, that persons are not only prohibited from enlisting in this country as a soldier of any foreign power, but they are also prohibited from hiring or retaining any other person to enlist or to go abroad for the purpose of enlisting. The Court also observes in that case, which seems to have been followed, that the statute does not prohibit persons within our jurisdiction, whether citizens or not, going as individuals to foreign states, and there enlisting in their armies, and that individuals may go abroad to enlist in any number and in any way they see fit; by regular line of steamers, by chartering a vessel, or in any other manner, either separately, or associated, provided always, that they do not go as a military expedition, or set on foot or begin within our jurisdiction a military expedition or enterprise, to be carried on for this country, or provide or prepare the means therefor.

If, however, a military expedition or enterprise has in fact been prepared in this country, and carried by sea to a foreign shore, then all persons who planned for it, or prepared for it here, or knowingly took part in the transportation of it, are guilty under the statute. U. S. vs. Obrien, 75 Federal, page 900.

Sec. 236 a. Enlisting in Foreign Service, Continued.

Sec. 10, quoted above is given a proviso in the Act of May 7, 1917, to the effect that a nation which is at war with a nation with which the United States is at war is excepted.

§ 237. **Arming Vessels Against People at Peace with the United States.**—Old Section 5238 becomes new Section 11, and is as follows:

"Sec. 11. Whoever, within the territory or jurisdiction of the United States, fits out and arms, or attempts to fit out and arm, or procures

to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out, or arming of any vessel, with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, or whoever issues or delivers a commission within the territory or jurisdiction of the United States for any vessel, to the intent that she may be so employed, shall be fined not more than ten thousand dollars, and imprisoned not more than three years. And every such vessel, her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores which may have been procured for the building and equipment thereof, shall be forfeited; one-half to the use of the informer and the other half to the use of the United States."

The statute contains two methods of punishment, it will be noticed: one against the person, and one against the property; that is, the imprisonment of the offender and the forfeiture of his vessel. The Supreme Court of the United States in Wiborg et al. vs. United States, 163 U. S., page 632, 41 Law Ed., page 289, in passing upon a case that originated in Pennsylvania, under Section 5286, hereinafter noted, the facts of which showed in substance, that the "Horsa," a Danish steamer engaged in the fruit business at Philadelphia, cleared from Philadelphia for Jamaica, having only a small cargo; that thereafter, near Barnegat, off the Jersey coast, she was loaded with a cargo of men and rifles, swords, machettes, cartridges, and other munitions of war, which cargo was subsequently delivered to Cuba, where there was an insurrection of the Cubans against the Spaniards, said in substance, a military expedition or enterprise is entered upon when men with knowledge of the enterprise combine and organize in this country, and are carried with arms and ammunition under their control, by a tug, thirty or forty miles out to sea, to a steamer, on which they embark and drill, and by which they are taken to Cuba, where they disembark to effect an armed landing on the coast, with intent to make war against a government with which the United States is at peace; and in determining whether the combination was lawful or not, the declarations of those engaged in it, explanatory of acts done in further-

ance of its object, are competent evidence after the combination has been proved.

Another interesting authority under this section, as well as other sections under this chapter, is the Lauradra, 85 Federal, 760, which was a case that originated upon a similar state of facts to the Wiborg case, and was the loading of a fruit vessel off the American coast, near Barnegat, with men and munitions, for engagement in the Cuban revolution. In that case, the Court observed that while it was not the purpose of our neutrality laws in any manner to check or interfere with the commercial activity of citizens of the United States, or of others residing therein, and interested in commercial transactions, nor to render unlawful mere commercial ventures in contraband of war, they were designed to prohibit acts and preparations on the soil or waters of the United States not originating with a due regard for commercial interest, but of a nature distinctly hostile in a material sense to a friendly power engaged in hostilities, and calculated or tending to involve this country in war, whether an incidental or direct commercial profit does or does not result therefrom.

District Judge Bradford, in considering the above-mentioned case, held that it was necessary, for the forfeiture of the vessel under 5283, that the furnishing, fitting out, or arming of her for the prohibited should be completed within the limits of the United States. It was also determined that it was sufficient, if by pre-arrangement within the limits of the United States, the vessel having been procured there, the furnishing, fitting out, or arming was to be effected or completed after she had gone beyond the limits of the United States; and further, that the intent that a vessel furnished, fitted out, or armed to cruise or commit hostilities against the subjects or property of a foreign prince with whom the United States is at peace, shall be formed within the limits of the United States, and shall be of a fixed and unconditional nature. If such intent originates on the high seas, beyond the limits of the United States, though on an American vessel,

which then, for the first time, is intended to commit such hostilities, no forfeiture accrues under the section.

Sec. 237 a. Arming Vessels Against People at Peace with the United States Continued.

See the Act of June 15, 1917.

§ 238. **Forfeiture Without Conviction.**—On the authority of the United States against the Three Friends, 166 U. S., page 1, Lawyers' Edition, Book 41, page 915, it may be stated as the law that a civil suit in rem for the condemnation of the vessel is not a criminal prosecution, and the success of such suit does not depend upon the conviction of a person or persons doing the acts denounced in the statute. The two proceedings are wholly independent, and pursued in different courts. Indeed, forfeiture might be decreed, if the proof showed the prohibited acts were committed, though lacking as to the identity of the person by whom they were committed. In deciding the Three Friends case, and giving expression to the opinion as above quoted in substance, the Supreme Court cited the "Palmyra," 25 U. S., 12 Wheat., 1; 6 Law Ed., 531; "Ambrose Light," 25 Federal, 408; the "Meteor," 17 Federal Cases, 178. The Supreme Court also held in the Three Friends case, cited supra, that the release on bond of a vessel charged with liability to forfeiture under this section, before answer or hearing, and against the objection of the United States, when such release might result in a hostile expedition against a friendly power, should not be allowed; and if such an order of release is improvidently made, the vessel should be recalled.

§ 239. **Augumenting Force of Foreign Vessel of War.**—Revised Statutes 5285 becomes Section 12 of the new Code, in the following words:

"Sec. 12. Whoever, within the territory or jurisdiction of the United States, increases or augments, or procures to be increased or augmented, or knowingly is concerned in increasing or augmenting, the force of any ship of war, cruiser, or other armed vessel which, at the time of her arrival within the United States, was a ship of war, or cruiser, or armed vessel, in the service of any foreign

prince or state, or of any colony, district, or people, or belonging to the subjects or citizens of any such prince or state, colony, district, or people, the same being at war with any foreign prince or state, or of any colony, district, or people with whom the United States are at peace, by adding to the number of the guns of such vessel, or by changing those on board of her for guns of a larger caliber, or by adding thereto any equipment solely applicable to war, shall be fined not more than one thousand dollars and imprisoned not more than one year."

This statute, in substance, makes it an offense for any person to increase or augment, within the territory of the United States, any war vessel belonging to a foreign power. Such equipment, within the meaning of the statute, must be intended solely for the purpose of war. See Alerta vs. Moran, 9 Cranch, 359; U. S. vs. Grassin, 3 Washington, 65; 26 Federal Cases, 10.

§ 240. **Military Expeditions Against People at Peace with the United States.**—Old Section 5286 becomes Section 13, as follows:

"Sec. 13. Whoever, within the territory or jurisdiction of the United States, begins, or sets on foot, or provides or prepares the means for, any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, shall be fined not more than three thousand dollars and imprisoned not more than three years."

In the language of Judge Bradford, as cited in United States vs. Murphy, 84 Federal, 609, the broad purpose of Section 5286 of the United States Revised Statutes is to prevent complications between this Government and foreign powers. It is not the intent of that section in any manner to check or interfere with the commercial activities of citizens of the United States, or of others residing within the United States and interested in commercial transactions; but to prevent the use of the soil or waters of the United States as a base from which military expeditions or military enterprises shall be carried on against foreign powers with which the United States is at peace. And under the authority of that case, the providing of the means of transportation of a military enterprise to be carried on from the United States against the Spanish

rule in Cuba, was, within the meaning of that section, a preparing of the means for such military enterprise, to be so carried on; and if done with knowledge on the part of the person so providing the means of transportation, of the character and purpose of such enterprise, the same is denounced by the statute.

In Wiborg vs. United States, 163 U. S., 632, the Supreme Court held that a hostile expedition dispatched from the ports of the United States, is within the words "carried on from thence."

Under the authority of Hart vs. United States, 84 Federal, 799, the question as to whether the men and munitions of war, for which the accused furnished transportation, constituted a "military expedition" in the meaning of the statute, or the men were traveling as individuals, without organization or concert of action, and the arms and munitions were carried as articles of legitimate commerce, and whether the accused had guilty knowledge of the facts constituting the military expedition (if it were such), are all questions for the jury, under proper instructions.

The words in the statute, "begins, or sets on foot," are construed to mean, in charge to grand jury, 1838 Second McLain, U. S., 1;. 30 Federal Case No. 18265, the making of preparations which showed an intent to set such an expedition on foot; as, for instance, the contribution of money, clothing for troops, provisions, arms, or any other contribution which shall tend to forward the expedition or to add to the comfort or maintenance of those who are engaged in it.

District Judge Brown, in United States vs. Nunez et al, 82 Federal, 599, uses the following language:

"What constitutes a military expedition? What are some of the features that mark a military enterprise or expedition as different from a peaceable transportation of passengers, arms, ammunition, or goods. The essential features of military operations are evident enough. They are concert of action, unity of action by a body organized and acting together, acting by means of weapons of some kind, acting under command, leadership: these are the three most essential elements of military action."

The Court held in United States vs. O'Sullivan, 27 Federal Cases No. 15975, that it is not essential to the case that the expedition should start, much less that it should have been accomplished. To "begin" is not to finish; to "set on foot" is not to accomplish; to provide a powder, is not to put to it the match or the percussion. It is not necessary that the vessel should actually sail, nor is it necessary that war should exist between the nation on which the descent is to be made with another nation.

District Judge Brawley, in United States vs. Hughes, 70 Federal, 972, held upon preliminary examination that testimony which showed that the steamship of which the defendant was captain, after leaving the port of New York, and passing outside of Sandy Hook, stopped two or three miles from shore; that two tugs approached and put on board thirty-five men with several boxes and three boats; that the boxes were opened and guns and arms were taken out; that during the voyage the men so taken on board were constantly drilled; that the men spoke Spanish, and some of them said they were going to Cuba to fight; that when the steamer approached the coast of Cuba at night, the lights were extinguished and that the men disembarked there, taking their arms with them, using their own three boats and one lent by the steamer, was sufficient to raise probable cause to believe that the captain had violated the statute.

The necessary ingredients of the offense denounced by this statute are plainly set out in charges to the grand jury, 5 McLean, 306, 30 Federal Case, 18267.

Other cases bearing upon different phases, and illustrating the construction of the statute with reference to such phases by the Court, are the following: U. S. vs. Pirates, 5 Wheat., 184; U. S. vs. Hallock, 154 U. S., 537; Duvall vs. U. S., 154 U. S., 548; the "Chapman," 4 Saw., 501; the "Carondelet," 37 Federal, 799; City of Mexico, 32 Federal, 105; U. S. vs. the "Resolute," 40 Federal, 543; U. S. vs. the "Robert" and "Minnie," 47 Federal, 84; U. S. vs. Trumbull, 48 Federal, 99; the "Itata," 46 Federal, 646; U. S. vs. Ybanez, 53 Federal, 536; Hendricks vs. Gonzales, 67 Federal, 351; U. S. vs. Pena, 69 Federal, 983; U. S. vs. O'Brien, 75 Federal, 900. The

Supreme Court, in United States vs. Quincey, 6 Peters, 445, gives the substance of the form of an indictment. This was a case for the fitting out of a foreign vessel in an American port.

Sec. 240 a. Military Expeditions With People at Peace With the United States, Continued.

See Act of June 15, 1917.

To send a spy is a violation of the foregoing section, U. S. vs. Sander, 241 F. 417.

The Wellard Canal case is, U. S. vs. Tauscher, 233 F. 597.

Expeditions against Great Britian, U. S. vs. Chakraberty, 244 F. 287.

A single individual may violate this section, U. S. vs. Ram, 254 F. 635.

For other phases of the statute, including the sufficiency of the indictment, acts and evidence see Jacobsen vs. U. S., 272 F. 399; Orozco vs. U. S., 237 F. 1008; U. S. vs. Bopp, 230 F. 723.

§ 241. **Enforcement of Foregoing Provisions.**—Section 5287 of the 1878 Statutes becomes Section 14 of the new Code, in the following words:

"Sec. 14. The district courts shall take cognizance of all complaints, by whomsoever instituted, in cases of capture made within the waters of the United States, or within a marine league of the coasts or shores thereof. In every case in which a vessel is fitted out and armed, or attempted to be fitted out and armed, or in which the force of any vessel of war, cruiser, or other armed vessel is increased or augmented, or in which any military expedition or enterprise is begun or set on foot, contrary to the provisions and prohibitions of this chapter; and in every case of the capture of a vessel within the jurisdiction or protection of the United States as before defined; and in every case in which any process issuing out of any court of the United States is disobeyed or resisted by any person having the custody of any vessel of war, cruiser, or other armed vessel of any foreign prince or state, or of any colony, district, or people, or of any subjects or citizens of any foreign prince or state, or of any colony, district, or people, it shall be lawful for the President, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, for the purpose of taking possession of and detaining any such vessel, with her prizes, if any, in order to enforce the execution of the prohibitions and penalties of this chapter, and the restoring of such

prizes in the cases in which restoration shall be adjudged; and also for the purpose of preventing the carrying on of any such expedition or enterprise from the territory or jurisdiction of the United States against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace."

In Gelston vs. Hoyt, 3 Wheat., 246, the Supreme Court, delivering its opinion through Mr. Justice Storey, held that a plea, to justify a seizure and detention under this statute as it was originally, which is the soul of the present statute, must aver that the naval or military force of the United States was employed for that purpose, and that the seizor belonged to the force so employed. The Court also held that the Act was not to be resorted to, except in cases where a seizure or detention could not be enforced by the ordinary civil power. See also Stoughton vs. Dimick, 3 Blatchf., 356. The Attorney General, in 17 Opinions of Attorneys General, 242, held that the authority given by this section may be exercised when there is an organized armed body of men who intend to invade the territory of a people with whom the United States are at peace, when the object of such invasion is plunder.

§ 241a. **The President's Authority Under This Section.**—Ex parte Orozco, 201 Federal, 107.

§ 242. **Compelling Foreign Vessels to Depart.**—Old Section 5288 becomes new Section 15, which is as follows:

"Sec. 15. It shall be lawful for the President, or such person as he shall empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, as shall be necessary to compel any foreign vessel to depart the United States in all cases in which, by the laws of nations or the treaties of the United States, she ought not to remain within the United States."

§ 243. **Armed Vessels to Give Bond on Clearance.**—Section 5289 of the old statutes is re-enacted into Section 16 of the new Code, as follows:

"Sec. 16. The owners or consignees of every armed vessel sailing out of the ports of, or under the jurisdiction of, the United States, belonging wholly or in part to citizens thereof, shall, before clearing out the same, given bond to the United States, with sufficient sureties, in double the amount of the value of the vessel and cargo on board,

including her armament, conditioned that the vessel shall not be employed by such owners to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace."

The Supreme Court, in United States vs. Quincey, 6 Peters, 445, 8 Law Ed., 458, held that the statute did not prohibit armed vessels belonging to citizens of the United States from sailing out of our ports. It only requires the owners to give security that such vessels shall not be employed by them to commit hostilities against foreign powers at peace with the United States.

§ 244. **Detention by Collector of Customs.**—Section 5290 of the old statutes becomes Section 17 of the new Code, and is as follows:

"Sec. 17. The several collectors of the customs shall detain any vessel manifestly built for warlike purposes, and about to depart the United States, or any place subject to the jurisdiction thereof, the cargo of which principally consists of arms and munitions of war, when the number of men shipped on board, or other circumstances, render it probable that such vessel is intended to be employed by the owners to cruise or commit hostilities upon the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace, until the decision of the President is had thereon, or until the owner gives such bond and security as is required of the owners of armed vessels by the preceding section."

In United States vs. Quincey, 6 Peters, 445, Law Ed., 8, 458, the Supreme Court held that Collectors are not authorized to detain vessels, although manifestly built for warlike purposes, and about to depart from the United States, unless circumstances shall render it probable that such vessels are intended to be employed by the owners to commit hostilities against some foreign power at peace with the United States. All the latitude, therefore, necessary for commercial purposes, is given to our citizens and they are restrained only from such acts as are calculated to involve the country in war.

In Hendricks vs. Gonzales, 67 Federal, 351, the Circuit Court of Appeals for the Second Circuit used this language:

"It is not an infraction of the international obligation, to permit an armed vessel to sail, or munitions of war to be sent, from a neutral country to a belligernt port for sale as articles of commerce; and neutrals may lawfully sell at home to a belligerent purchaser, or carry themselves to the belligerents, articles which are contraband of war. It is the right of the other belligerent power to seize and capture such property in transit; but the right of the neutral state to sell and transport, and of the hostile power to seize, are conflicting rights, and neither can impute misconduct to the other. The penalty which affects contraband merchandise is not extended to the vessel which carries it, unless ship and cargo belong to the same owner, or the owner of the ship is privy to the contraband carriage; and ordinarily the punishment of the ship is satisfied by visiting upon her the loss of time and freight and expenses which she incurs in consequence of her complicity. On the other hand, it is the duty of every Government to prevent the fitting out, arming, or equipping of vessels which it has reasonable ground to believe are intended to engage in naval warfare with a power with which it is at peace."

§ 245. **Construction of this Chapter.**—Section 5291 of the old Revised Statutes becomes Section 18 of the new Code, in the following words:

"Sec. 18. The provisions of this chapter shall not be construed to extend to any subject or citizen of any foreign prince, state, colony, district, or people who is transiently within the United States and enlists or enters himself on board of any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States was fitted and equipped as such, or hires or retains another subject or citizen of the same foreign prince, state, colony, district, or people who is transiently within the United States to enlist or enter himself to serve such foreign prince, state, colony, district, or people on board such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such foreign prince, state, colony, district, or people. Nor shall they be construed to prevent the prosecution or punishment of treason, or any piracy defined by the laws of the United States."

CHAPTER XI.

OFFENSES AGAINST ELECTIVE FRANCHISE AND CIVIL RIGHTS OF CITIZENS.

§ 246. Our system of government, being dual in its nature, brings to the native or naturalized individual who maintains his citizenship in this country, two protections, each of which is, however, distinct from the other, and jealous of its particular territory and jurisdiction. The State has certain duties which it must fulfill toward its citizens, to the complete and satisfactory meeting of which the Federal Government stands as sponsor and guarantor. On the other hand, the Federal Government must exercise its superior power with extreme care, lest it encroach upon the rights and sovereignties of the respective States. There are also some Federal citizenship rights, but they are few in comparison to State citizenship rights. While the Federal Government has authority, under the Federal Constitution, and particularly under Amendments Six, Thirteen, and Fourteen to that instrument, to enforce certain private rights for the individual at the hands of the State, the vast majority of

individual rights are to be enforced by the State Governments.

Among the rights and privileges which have been recognized by the Courts as being secured to the citizens of the United States by the Constitution, are the right to petition Congress for a redress of grievances; the right to vote for Presidential Electors or Members of Congress; and the right of every judicial and executive officer, or every person engaged in the service or kept in the custody of the United States in the course of the administration of justice, to be protected from lawless violence. There is a peace of the United States. These Federal rights have been announced by the Supreme Court in their order as above stated, in the following cases: United States vs. Cruikshank, 92 U. S., 542, 23 Law Ed., 588; ex parte Yarbrough, 110 U. S., 651, 28 Law Ed., 274; in re Neagle, 135 U. S., 1, 34 Law Ed., 55; U. S. vs. Logan, 12 Supreme Court, 617, 36 Law Ed., 429.

These Supreme Court discovered rights have been somewhat added to by later cases, that will be noticed in the discussion under old Section 5508, which becomes new Section 19.

Difficult, indeed, it is to invariably trace the line between the authorities and limitations of the two sovereignties; and this difficulty is somewhat increased by the desire to see that a wronged individual secures his rights, regardless of setting precedent or the overriding of limitations that must, for the perpetuity of our republic, be observed.

§ 247. **Conspiracy to Injure, Etc., Citizens in the Exercise of Civil Rights.**—Section 5508 of the 1878 Revised Statutes becomes Section 19 of the new Code, in the following words:

"Sec. 19. If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than five thousand dollars and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible

to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States."

Bearing in mind the two sorts of rights that each individual citizen in this country is supposed to enjoy, namely, those original rights which he has as a citizen of the United States and those which he has as a citizen of the State in which he resides, it will be at once understood that the foregoing section can only relate to and protect such rights as are guaranteed to the citizen of the United States; that is, to the rights pertaining to citizens as citizens of the United States. The easiest way for us to find the line as blazed by the Courts, is to review some of the decisions.

In United States vs. Eberhart, 127 Federal, 254, District Judge Newman held that an indictment which charged the defendants with conspiring, etc., to intimidate B, a citizen of the United States, in the free exercise of his privilege to contract and being contracted with, his right of personal security and personal liberty, and the overt act charged was the seizing of B, the placing of hand cuffs on him and compelling him, by force and against his will, to enter into a pretended contract to work for a long period of time, stated no Federal offense, because the citizens right to personal liberty and security was within the primary jurisdiction of the State.

In McKenna vs. United States, 127 Federal, page 88, the Circuit Court of Appeals for the Sixth Circuit held that an indictment under this section, which charged that the defendants conspired to injure, etc., certain male citizens of Kentucky in the free exercise and enjoyment of a right and privilege secured to them, was bad, as indefinite, in that it failed to state what particular right and privilege it meant. The opinion, in discussing the demurrer, leaves us under the impression that the prosecution would have sustained, (it being for a conspiracy to prevent certain persons from voting), had the indictment been sufficient.

The Circuit Court of Appeals for the Eighth Circuit, in Haynes vs. United States, 101 Federal, page 819, held in substance, that an indictment against certain persons for

conspiring to prevent a citizen of the United States from the free exercise and enjoyment of a certain right and privilege secured to him by the laws of the United States, (that is to say, the right to then and there peaceably enter upon, prospect for minerals, initiate, locate, establish, and perfect a mining claim upon the public lands of the United States under the public land of the United States, etc.), was good, and that a prosecution therefor could be sustained under this section.

In Davis vs. United States, 107 Federal, 753, the Circuit Court of Appeals for the Sixth Circuit affirmed a conviction had upon an indictment charging a conspiracy under this section to prevent the arrest of certain parties who were sought by the United States Deputy Marshals for alleged violations of the Federal Revenue Laws, the overt act charged therein being the murder of one of the Federal officials.

In Karem vs. United States, 121 Federal, 250, the Circuit Court of Appeals for the Fifth Circuit, in a prosecution under this section, held that the power of Congress, to legislate on the subject of voting at purely State elections, is entirely dependent upon the Fifteenth Constitutional Amendment, and is limited by such amendment to the enactment of appropriate legislation to prevent the right of a citizen of the United States to vote, from being denied or abridged by a State, on account of race, color, or condition; and since the amendment is in terms addressed to action by the United States or a State, appropriate legislation for its enforcement must also be addressed to State action, and not to the action of individuals. In that case, the Court held, in substance, that a penal act of Congress cannot be sustained, as an exercise of the power given by a Constitutional provision, to enact appropriate legislation for its enforcement, where the Act is broader in its terms than the Constitutional provision, and the language used covers wrongful acts without as well as within, the same. In that particular case, the defendant had been convicted under an indictment framed under this section, which charged in substance that he and others had conspired, etc., to intimidate certain persons of color, who were citizens of the United

States and of the State of Kentucky, qualified voters, etc., from exercising a right and privilege secured by them by the Constitution and laws of the United States, to wit, the right and privilege to vote at the election (setting out the election, etc.) such election being for State and municipal officers of Kentucky only. The defendants were convicted. The contention of the Government before the Circuit Court of Appeals was, that Sections 2004 and 5508 of the old Statutes, guaranteed the individual the right to vote at a State election, and that the Federal Government protected him in his right, even against the acts of individuals. The Fifteenth Amendment to the Constitution reads as follows:

"Sec. 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.

"Section 2. The Congress shall have the power to enforce this Article by appropriate legislation."

The Courts had already decided that this Constitutional Amendment did not confer the right of suffrage upon anyone, United States vs. Reeves, 92 U. S., 214, 23 Law Ed., 563; United States vs. Cruikshank, 92 U. S., 542; 23 Law Ed., 588. The right to vote is conferred by the State laws. The Amendment, therefore, merely guaranteed that no State should interfere with the right to vote, by legislation based upon a distinction as to race, color, or previous condition of servitude. "State action, therefore, and not individual action," said the Court, "is the subject of this Article. The right to vote in purely State elections being, as we have seen, a right granted by, and dependent upon, the law of the State, is, therefore, a right which can only be denied or abridged by the State. The Amendment is, therefore, in terms addressed to State action .... With the exception of the first clause of the first section of the Fourteenth Amendment, that section is, like the Fifteenth Amendment, addressed broadly to the State. The other clauses of that Section, reading as follows:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall

any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person, within its jurisdiction, the equal protection of thhe laws,"

have been authoritatively construed as addressed to State action in some form, and not to mere individual conduct. The Slaughter house case, 10 Wallace, 36, 21 Law Ed., 394; ex parte Virginia, 100 U. S., 339, 25 Law Ed., 676, the Cruikshank case, cited supra; United States vs. Harris, 106 U. S., 629, 27 Law Ed., 290; Virginia vs. Rives, 100 U. S., 313, 25 Law Ed., 667; Civil Rights case, 109 U. S., 3, 37 Law Ed., 835; Chicago, etc. Railroad vs. Chicago, 166 U. S., 226, 41 Law Ed., 979." Of course, if the individual acts as an instrument or agency of the State, and presumes to act by the authority of the State, then this section would be operative. Same authorities. And the Court reversed the conviction, and sustained the demurrer.

§ 247a. **Indiana Election Case.**—U. S. vs. Aczel et al. 219 Federal, 917. Right to vote for United States representatives, Felix vs. U. S., 186 Federal, 685, which also gives form of indictment. U. S. vs. Stone, 197 Federal, 483. A ballot difficult to understand and purposely made so in Congressional elections is a violation of this statute. U. S. vs. Stone, 188 Federal, 836.

Sec. 247 b. Illustrative Cases Under Foregoing Section.

Sec. 19, quoted above, does not prohibit kidnapping; and does not punish for deporting from a state, U. S. vs. Wheeler, 254 F. 611.

Nor does it apply for bribery of voters, U. S. vs. Bathgart, U. S. Sup. Ct. Mar. 1918; also U. S. vs. Gradwell, U. S. Sup. Ct. Apr. 1917.

The intent is most material under this section, Buchanan vs. U. S., 233 F. 257.

The section cannot be violated by "ordering" etc., U. S. vs. Wilcox, 243 F. 993 and U. S. vs. Welch, 243 F. 996.

For form of indictment see Montoya vs. U. S., 262 F. 759.

It is a violation to prevent colored persons from voting, Guinn vs. U. S., 228 F. 104.

One has the right to vote for members of congress, etc., Aczel vs. U. S., 232 F. 652.

Personal rights and not general rights are safeguarded and an indictment which does not recognize this distinction is invalid, Chavez vs. U. S., 261 F. 174.

The protection of this amendment does not extend to primaries, U. S. vs. O'Toole, 236 F. 993.

§ 248. **Right to Labor.**—District Judge Trieber, in United States vs. Morris, 125 Federal, 322, in overruling a demurrer to an indictment, found under this section, which charged a conspiracy, etc., to prevent negro citizens from exercising the right to lease and cultivate land, because they were negroes, etc., held that Congress has the power, under the Thirteenth Constitutional Amendment, to protect citizens of the United States in the enjoyment of those rights which are fundamental and belong to every citizen, if the depredation of those rights is solely because of race or color. In his opinion, Judge Trieber follows the distinction made by Justice Bradley in the Civil Rights Cases, 109 U. S., 3, 27 Law Ed., 835, in considering the Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution. By the wording of the Fourteenth and Fifteenth Amendments, encroachments by State authority alone are mentioned; but the Thirteenth Amendment includes everybody within the jurisdiction of the national Government. That Amendment provides that neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. The abolition of slavery, said Mr. Justice Field in the Slaughter-house case, and involuntary servitude, was intended to make everyone born in this country a free man; and as such, to give him the right to pursue the ordinary avocations of life, without other restraint than such as affects all others, and to enjoy equally with them the fruits of his labor. The right to lease land, said Judge Trieber, and to accept employment as a laborer for hire, are fundamental rights, inherent in every free citizen, and a conspiracy to prevent the negro from exercising these rights, because he is a negro, is a conspiracy to

deprive him of the privilege secured by the Constitution and laws of the United States, within the meaning of the Section 5508.

The Circuit Court of Appeals for the Eighth Circuit, in Smith vs. United States, 157 Federal, 721, affirmed a judgment of conviction had upon an indictment found under the section now being considered, for conspiring, etc., to effect by arresting, imprisoning, guarding, and compelling by threats and intimidation, a certain negro to work against his will. This prosecution was also predicated upon the Thirteenth Constitutional Amendment. The evidence in this case showed that one of the defendants went to Memphis, Tennessee, and there hired fifteen or more negroes to go with him to his place in Missouri, to work in a mill, promising liberal wages. On their arrival in the night, they were met at the station by another of the defendants with hacks and taken to a farm twelve miles distant, where they were searched for weapons, and then placed in a cabin under the guard of others armed with repeating rifles and revolvers. They were kept under such guards night and day, and worked on the farm in clearing and ditching, few, if any, receiving the promised wage. All of the defendants were convicted.

§ 249. **Other Illustrations.**—In United States vs. Davis, 103 Federal, 458, Judge Hammond overruled a motion for new trial, and assessed the full penalty of the statute against a defendant who was indicted for violating this section, the specific conspiracy being to injure and intimidate, etc., a United States Marshal and his posse, and to deprive them of their Constitutional right to arrest him on legal process; as a result of which conspiracy the Deputy Marshal was killed.

The Supreme Court of the United States, in United States vs. Mason, 213 U. S., page 115, passed technically upon a similar prosecution against certain parties who conspired to intimidate, and finally killed, an agent of the Department of Justice of the United States; upon the trial of whom the defense was raised that they had been acquitted in the State Court for murdering the identical person; and the Supreme Court of the United States, in

that case, says that inasmuch as the State Court had acquitted for murder of the identical person alleged as the overt act for the Federal crime, there could be no Federal offense. In other words, "the language of Section 5509 is entirely satisfied, and the ends of justice met, if the statute is construed as not embracing, nor intended to embrace, any felony or misdemeanor against the State, of which, prior to the trial in the Federal Court of the Federal offense charged, the defendants had been lawfully acquitted of the alleged State offense, by a State Court having full jurisdiction in the premises. This interpretation recognizes the power of the State, by its own tribunals, to try offenses against its laws, and to acquit or punish the alleged offender, as the facts may justify. This construction," continued that Court, "will not prevent the trial of the defendants upon the charge of conspiracy, and their punishment, if guilty, according to 5508; namely, by a fine of not exceeding five thousand dollars and imprisonment not more than ten years. The only result of the views we have expressed is that in the trial of this case in the Federal Court, 5509 cannot be applied, because it has been judicially ascertained and determined by a tribunal of competent jurisdiction—the only one that could finally determine the question—that the defendants did not murder Walker. The Federal Court may, therefore, proceed as indicated in 5508, without reference to 5509."

Morris Case, Hodges Case, Riggins Case, and Powell Case.—We have discussed above Judge Trieber's opinion in 125 Federal, 322. The Supreme Court of the United States, in Hodges vs. United States, 27 Supreme Court, 6; 51 Law Ed., page 65; 203 U. S., page 1, which was a case from the Eastern District of Arkansas, where the defendants were convicted under this section for conspiring, etc., to compel negro citizens, by force and intimidation, to desist from performing their contracts of employment, reversed and dismissed the prosecution; the reasoning of the Court being in direct conflict with the reasoning of Judge Trieber in the Morris case, cited supra. The opinion of the Court, by Judge Brewer suggests that prior to

the post-bellum Amendments to the Constitution, the national Government had no jurisdiction over a wrong like that charged in this indictment. The Fourteenth and Fifteenth Amendments do not justify the legislation, (that is, Section 5508), for they, as have been repeatedly held, are restrictions upon State action. Unless, therefore, said the Court, the Thirteenth Amendment vests in the nation the jurisdiction claimed, the remedy must be sought through State action, and in State tribunals, subject to the supervision of this Court, by writ of error, in proper cases. The things denounced by the Thirteenth Amendment are slavery and involuntary servitude, and Congress is given power to enforce that denunciation. While the inciting cause of the Amendment was the emancipation of the colored race, yet it is not an attempt to commit that race to the care of the nation. It is the denunciation of the condition, and not a declaration of favor of a particular people. It reaches every race and every individual; and if in any respect it commits one race to the nation, it commits every race and every individual thereof. Slavery or involuntary servitude of the Chinese, of the Italian, of the Anglo Saxon, are as much within its compass as slavery or involuntary servitude of the African. It is no answer to say that one of the indicia of the existence of slavery is the existence of the disability to make or perform contracts. The Court continues:

"At the close of the Civil War, when the problem of the emancipated slaves was before the nation, it might have left them in a condition of aliens; or established them as wards of the Government, like the Indian tribes, and thus retained jurisdiction for the nation over them; or it might, as it did, give them citizenship. It chose the latter. By the Fourteenth Amendment, it made citizens of all born within the limits of the United States, and subject to its jurisdiction. By the Fifteenth, it prohibited any State from denying the right of suffrage, on account of color, race, or previous condition of servitude; and by the Thirteenth, it forbade slavery or involuntary servitude anywhere within the limits of the land .... Congress gave them citizenship, doubtless believing that thereby, in the long-run, their best interests would be subserved, they taking their chances with other citizens in the States where they should make their homes. For these reasons, we think that the United States Court had no jurisdiction of the wrong charged in the indictment."

District Judge Jones, in United States vs. Powell, 151 Federal, 648, follows the Hodges case, and sustained a demurrer to an indictment which charged the defendant, with one Riggins, ex parte Riggins, 134 Federal, 404; Riggins vs. United States, 199 U. S., 546, 50 Law Ed., 303, with conspiring to injure, etc., a negro citizen in the enjoyment of certain rights, to wit, by depriving him of the right of trial, etc., by taking him from the sheriff, who had him in custody, and mobbing him. Judge Jones, in the Riggins case, 134 Federal, 404, decided the question on demurrer differently from the way he decided in the Powell case; but between the time of the rendition of the Riggins opinion and the rendition of the Powell opinion, the Supreme Court had spoken in the Hodges case, cited supra.

Voting.—In United States vs. Lackey, District Judge Evans overruled demurrers to an indictment which was brought under this section for conspiring to intimidate and prevent negro citizens from exercising the right to vote; and he placed his decision upon the guarantee of the Fifteenth Amendment.

The right to vote for a United States representative is secured by the United States constitution and is within the statute under discussion. Felix vs. U. S., 186 Federal, 685. A conspiracy to deprive colored voters of their right to vote for a member of Congress. U. S. vs. Stone, 197 Federal, 483. A conspiracy to deprive one of his right to vote at a Congressional election is "injuring" him within the meaning of the statute. U. S. vs. Stone, 188 Federal, 836, which is the same case as 197 Federal cited above except that in the 188th report the Court is overruling the demurrer to the indictment and in the 197th the Court is imposing the punishment.

In the Indiana case, United States vs. Aczel et al., 219 Federal, 917, the Court held on demurrer that under section 2 of Article 1 of the Constitution providing that the House of Representatives shall be composed of members chosen by the people of the several states and the electors in each state shall have the qualifications of the electors of the most numerous branch of the State Legislature,

and Constitutional Amendment 17 making similar provisions for United States senators, and the Act of June 4, 1914, 38 Stats. 384, providing for the election of United States senators by direct vote of the people, the election to be conducted as near as may be in accordance with the laws of the state regulating the nomination and election of representatives, the right to vote for representatives in Congress and United States senators, and to serve as members of the election boards where such representatives or senator is to be elected, are rights secured by the Constitution and laws of the United States within the provision of Section 19 of the Criminal Code.

Right to Inform of Violations of the Law.—It is the right and privilege of one, in return for the protection enjoyed under the Constitution and laws of the United States, to aid in the execution of the laws, by giving information to the proper authorities of violations of those laws. Conspiracy to injure one who had given information about violations of the Revenue Laws, is an offense under this Section. 1 Federal Stat., 803; Motes vs. United States, 178 U. S., 458; in re Quarrels, 158 U. S., 532. A conspiracy to intimidate a citizen of African descent in the exercise of his right to vote for a Member of Congress and in the execution of that conspiracy, beating and maltreating him, is an offense under Section 5520. First Federal Statutes Annotated, 803; ex parte Yarbrough, 110 U. S., 651; U. S. vs. Butler, 1 Hughes, 457.

Right of One in Custody to Protection.—The leading case upon this question is the case of Logan vs. United States, 144 U. S., 263, where it was decided that a person in the custody of a United States Marshal, has the right to be protected against unlawful interference; and the conspiracy to deprive him of such right is an offense under this section.

Other Cases.—Cases not cited in the above discussion, but which bear upon various phases of the statute under consideration are the following: Strauder vs. West Virginia, 100 U. S., 303; ex parte Virginia, 100 U. S., 339; ex parte Siebold, 100 U. S., 371; ex parte Clark, 100 U. S., 399; Neal vs. Delaware, 103 U. S., 370; United States vs. Harris, 106 U. S., 629; Civil Rights cases, 109 U. S.,

17; Baldwin vs. Frank, 120 U. S., 678; in re Coy, 127 U. S., 731; in re Neagel, 135 U. S., 1; in re Lancaster, 137 U. S., 393; Brown vs. United States, 150 U. S., 93; in re Quarrels, 158 U. S., 532; Rakes vs. U. S., 212 U. S., 55; Le Grand vs. U. S., 12 Federal, 577; in re Baldwin, 27 Federal, 187; U. S., vs. Lancaster, 44 Federal, 885; U. S. vs. Sanges, 48 Federal, 78; U. S. vs. Patrick, 53 Federal, 356; also 54 Federal, 338.

It may, therefore, be stated with comparative satisfaction and confidence in the ability to demonstrate its correctness from the above decisions, that the Federal Government has no jurisdiction to prosecute under these statutes for offenses which interfere with the privileges and immunities of citizens of the several States. The difficulty seems to be to determine just what are such privileges and immunities. "They are," in the language of Mr. Justice Washington, which is approved in the Slaughter-house Cases, cited supra, "such privileges and immunities as are fundamental; which belong of right to the citizens of all free Governments, and which have, at all times, been enjoyed by citizens of the several States which compose this Union, from the time of their becoming free, independent, and sovereign. What these fundamental principles are, it would be more tedious than difficult to enumerate. They may all, however, be comprehended under the following general heads: protection by the Government, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the Government may prescribe for the general good of the whole." On the other hand, the Federal Government, under the above statutes, will protect the person in the right to vote for any Federal official; will protect a person in his right to give information of the violation of Federal laws; will protect the Federal Government, and all of its agencies, persons, and entire officialdom; will protect the person of any prisoner that may be in the hands of its officers; and will protect its officers in the execution of any and all of their functions; and will, in the enforcement of the Thirteenth Amendment, punish all sorts of peonage and enforced labor.

Any mob, however, or aggregation of private individuals that act independently of a State or Government that attacks the negro race or other races, commit no Federaly offense. Such offenders are to be punished by the laws of the State.

§ 250. **Other Crimes Committed While Violating the Preceding Section.**—Section 5509 of the old 1878 Statutes reads as follows:

"Sec. 5509. If in the act of violating any provision in either of the two preceding sections any other felony or misdemeanor be committed, the offender shall be punished for the same with such punishment as is attached to such felony or misdemeanor by the laws of the State in which the offense is committed."

The section does not embrace any felony or misdemeanor against a State, of which, prior to the trial in the Federal Court of the Federal offense, the defendants had been lawfully acquitted by a State Court having full jurisdictoin. As the Federal Court accepted the judgment of a State Court, construing the meaning and scope of the State enactment whether civil or criminal, it should also accept the judgment of a State Court based on a verdict of acquittal of a crime against the State. United States vs. Mason, 213 U. S., 115.

§ 251. **Depriving Persons of Civil Rights Under Color of State Law.**—Section 5510 of the old statutes becomes Section 20 of the new Code, which is in the following words:

"Sec. 20. Whoever, under color of any law, statute, ordinance, regulation, or custom, wilfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both."

The Court, in charging the jury in United States vs. Buntin, 10 Federal, 730, which was a prosecution under this section, said, "He, the child, must have been excluded under some color of law, statute, ordinance, reg-

ulation, or custom of the State, and on account of his color." See also Civil Rights Cases, 109 U. S., 16.

§ 252. **Conspiracy to Prevent Person from Holding Office or Officer from Performing His Duty Under United States, Etc.**—Section 5518 of the old Statutes becomes Section 21 of the new Code, as follows:

"Sec. 21. If two or more persons in any State, Territory, or District conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, Territory, District, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties, each of such persons shall be fined not more than five thousand dollars, or imprisoned not more than six years, or both."

§ 253. **Unlawful Presence of Troops at Elections.**—Section 22 of the new Code takes the place of old Section 5528, and is in the following words:

"Sec. 22. Every officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, who orders, brings, keeps, or has under his authority or control any troops or armed men at any place where a general or special election is held in any State, unless such force be necessary to repel armed enemies of the United States, shall be fined not more than five thousand dollars and imprisoned not more than five years."

§ 254. **Intimidation of Voters by Officers, Etc., of Army and Navy.**—Section 23 of the new Code displaces old Section 5529, and is in the following words:

"Sec. 23. Every officer or other person in the military or naval service of the United States who, by force, threat, intimidation, order, advice, or otherwise, prevents, or attempts to prevent, any qualified voter of any State from freely exercising the right of suffrage at any general or special election in such State shall be fined not more than five thousand dollars and imprisoned not more than five years."

§ 255. **Officers of Army or Navy Prescribing Qualifications of Voters.**—Section 24 of the new Code takes the place of old Statute 5530, and is as follows:

"Sec. 24. Every officer of the Army or Navy who prescribes or fixes, or attempts to prescribe or fix, whether by proclamation, order, or

otherwise, the qualifications of voters at any election in any State shall be punished as provided in the preceding section."

§ 256. **Officers, Etc., of Army or Navy Interfering with Officers of Election, Etc.**—Section 25 of the new Code takes the place of Section 5531, and is as follows:

"Sec. 25. Every officer or other person in the military or naval service of the United States who, by force, threat, intimidation, order, or otherwise, compels, or attempts to compel, any officer holding an election in any State to receive a vote from a person not legally qualified to vote, or who imposes, or attempts to impose, any regulations for conducting any general or special election in a State different from those prescribed by law, or who interferes in any manner with any officer of an election in the discharge of his duty, shall be punished as provided in section twenty-three."

§ 257. **Persons Disqualified from Holding Office; When Soldiers, Etc., May Vote.**—Old Section 5532 becomes Section 26 of the new Code, as follows:

"Sec. 26. Every person convicted of any offense defined in the four preceding sections shall, in addition to the punishment therein prescribed, be disqualified from holding any office of honor, profit, or trust under the United States; but nothing therein shall be construed to prevent any officer, soldier, sailor, or marine from exercising the right of suffrage in any election district to which he may belong, if otherwise qualified according to the laws of the State in which he offers to vote."

Sec. 257 a. Primary Elections.

Primary elections are not within the protection of the federal statute as framed at the time of this writing, U. S. vs. O'Toole, 236 F. 993.

Primary elections are not under the provisions of the corrupt practice act, of June 25, 1910, as amended August 19, 1911, see Gradwell vs. U. S., 243 U. S., 476, which also gives form of indictment.

In the case of Newberry vs. U. S., 41 Sup. Ct. Rep. 469, it was held that the corrupt practice act, as applied to party primaries, was not within the power conferred on congress by the constitution in Art. 1, Sec. 4, to regulate the manner of holding elections, or within the power conferred by Art. 1, Sec. 8, to make all laws necessary and proper for carrying into effect the powers granted by the constitution.

CHAPTER XII.

OFFENSES AGAINST FOREIGN AND INTERSTATE COMMERCE

In Chapter IX. of the 1910 Code, there are fourteen sections which are created offenses by reason of the power of the general Government to supervise interstate and international commerce.

§ 258. **Dynamite, Etc., Not to be Carried on Vessels or Vehicles Carrying Passengers for Hire.**—Sections 4278 and 5353 of the old Statutes are shorn of their cumber-

someness and broadened by new Section 232, in the following words:

"Sec. 232. It shall be unlawful to transport, carry, or convey, any dynamite, gunpowder, or other explosive, between a place in a foreign country and a place within or subject to the jurisdiction of the United States, or between a place in any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, and a place in any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, on any vessel or vehicle of any description operated by a common carrier, which vessel or vehicle is carrying passengers for hire: *Provided*, That it shall be lawful to transport on any such vessel or vehicle small arms ammunition in any quantity, and such fuses, torpedoes, rockets, or other signal devices, as may be essential to promote safety in operation, and properly packed and marked samples of explosives for laboratory examination, not exceeding a net weight of one-half pound each, and not exceeding twenty samples at one time in a single vessel or vehicle; but such samples shall not be carried in any part of a vessel or vehicle which is intended for the transportation of passengers for hire: *Provided further*, That nothing in this section shall be construed to prevent the transportation of military or naval forces with their accompanying munitions of war on passenger equipment vessels or vehicles."

The punishment for the violation of this section is determined in Section 235, wherein Congress provides, that, "Whoever shall knowingly violate or cause to be violated ..... any provision of this section .... shall be fined not more than two thousand dollars, or imprisoned not more than eighteen months, or both."

§ 258a. **Explosives.**—Labor leaders who conspired to transport explosives in violation of the above section were convicted and their sentences affirmed in Ryan vs. U. S., 216 Federal, 213.

Sec. 258 b. Explosives Continued.

Since the ground of the offense of the foregoing statute for the transportation of the enumerated explosives on vessels or vehicles operated by a common carrier, and carrying passengers have held, it is no excuse that a man so carrying an explosive was an officer of some foreign country, Horn vs. Mitchell, 232 F. 819.

By amendment of Mar. 4, 1921, many explosives are added to those mentioned in the original sections and

also adds the authority for regulation by the interstate commerce commission.

§ 259. **Interstate Commerce Commission to Make Regulations for Transportation of Explosives.**—Old Sections 4279 and 5355 are amplified and added to, and become Section 233 in the New Code, authorizing the Interstate Commerce Commission to formulate regulations, in the following words:

"Sec. 233. The Interstate Commerce Commission shall formulate regulations for the safe transportation of explosives, which shall be binding upon all common carriers engaged in interstate or foreign commerce which transport explosives by land. Said commission, of its own motion, or upon application made by any interested party, may make changes or modifications in such regulations, made desirable by new information or altered conditions. Such regulations shall be in accord with the best known practicable means for securing safety in transit, covering the packing, marking, loading, handling while in transit, and the precautions necessary to determine whether the material when offered is in proper condition to transport. Such regulations, as well as all changes or modifications thereof, shall take effect ninety days after their formulation and publication by said commission and shall be in effect until reversed, set aside, or modified."

§ 260. **Liquid Nitroglycerine, Etc., Not to be Carried on Certain Vessels and Vehicles.**—The Act of May 30, 1908, 35 Statute at Large, 555, becomes Section 234 of the new Code, as follows:

"Sec. 234. It shall be unlawful to transport, carry, or convey, liquid nitroglycerine, fulminate in bulk or in dry condition, or other like explosives, between a place in a foreign country and a place within or subject to the jurisdiction of the United States, or between a place in one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, and a place in any other State, Territory, or District of the United States, or place non-contiguous to but subject to the jurisdiction thereof, on any vessel or vehicle of any description operated by a common carrier in the transportation of passengers or articles of commerce by land or water."

This section seems to prohibit the transportation by any method, by any common carrier that carries passengers or articles of commerce. It will be noted, however, that this section (234) and Section 233, above quoted, and Section 235, hereinaftr set out, seem to have

been repealed by the schedule in Section 341; and these three sections do not seem to have been in the bill, as reported to Congress by the Committtee on Revision, but because of uncertainty, they are quoted.

§ 261. **Marking of Packages of Explosives; Deceptive Marking.**—Section 235 of the new Code reads as follows:

"Sec. 235. Every package containing explosives or other dangerous articles when presented to a common carrier for shipment shall have plainly marked on the outside thereof the contents thereof; and it shall be unlawful for any person to deliver, or cause to be delivered to any common carrier engaged in interstate or foreign commerce by land or water, for interstate or foreign transportation, or to carry upon any vessel or vehicle engaged in interstate or foreign transportation, any explosive, or other dangerous article, under any false or deceptive marking, description, invoice, shipping order, or other declaration, or without informing the agent of such carrier of the true character thereof, at or before the time such delivery or carriage is made. Whoever shall knowingly violate, or cause to be violated, any provision of this section, or of the three sections last preceding, or any regulation made by the Interstate Commerce Commission in pursuance thereof, shall be fined not more than two thousand dollars, or imprisoned not more than eighteen months, or both."

It will be borne in mind that this section, as well as 234 and 233, are probably repealed by Section 341 of the new Code as presented by the Committee on Revision.

§ 262. **Death or Bodily Injury Caused by Such Transportation.**—Section 5354 of the old statutes becomes, with some changes, Section 236 of the new Code, as follows:

"Sec. 236. When the death or bodily injury of any person is caused by the explosion of any article named in the four sections last preceding, while the same is being placed upon any vessel or vehicle to be transported in violation thereof, or while the same is being so transported, or while the same is being removed from such vessel or vehicle, the person knowingly placing, or aiding or permitting the placing, of such articles upon any such vessel or vehicle, to be so transported, shall be imprisoned not more than ten years."

The imprisonment in the old statute was for any period not less than two years.

§ 263. **Importation and Transportation of Lottery Tickets, Etc.**—The defects and limitations in the Act of March 2, 1895, 28 Statute at Large, 963, Second Supple-

ment, 435, are remedied by Section 237 of the new Code. which is as follows:

"Sec. 237. Whoever shall bring or cause to be brought into the United States or any place subject to the jurisdiction thereof, from any foreign country, for the purpose of disposing of the same, any paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any advertisement of, or list of the prizes drawn or awarded by means of, any such lottery, gift enterprise, or similar scheme; or shall therein knowingly deposit or cause to be deposited with any express company or other common carrier for carriage, or shall carry, from one State, Territory, or District of the United States, or place non-contiguous to but subject to the jurisdiction thereof, to any other State, Territory, or District of the United States, or place non-contiguous to but subject to the jurisdiction thereof, or from any place in or subject to the jurisdiction of the United States through a foreign country to any place in or subject to the jurisdiction thereof, or from any place in or subject to the jurisdiction of the United States to a foreign country, any paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon, the event of any such lottery, gift enterprise, or similar scheme, or any advertisement of, or list of the prizes drawn or awarded by means of, any such lottery, gift enterprise, or similar scheme, or shall knowingly take or receive, or cause to be taken or received, any such paper, certificate, instrument, advertisement, or list so brought, deposited, or transported, shall, for the first offense, be fined not more than one thousand dollars, or imprisoned not more than two years, or both; and for any subsequent offense shall be imprisoned not more than two years."

This statute meets the criticisms leveled at the former statute by Circuit Judge Jenkins, in the 95 Federal, 453, Champion vs. Ames, and by Judge McDowell, in 125 Federal, 616, United States vs. Whelpley, wherein each held that the old statute did not prevent or punish the sending of lottery tickets from a State to a Territory, etc., or from a Territory to a State; the language being "from one State to another." This new statute covers the entire ground, and protects Territories, Provisional Governments, foreign countries, States, and non-contiguous territory subject to the jurisdiction of the United States. This limitation has been held to be Constitutional, in France vs. United States, 164 U. S., 676; Champion vs. Ames,

188 U. S., 321; and Francis vs. United States, 188 U. S., 375.

In France vs. United States, 164 U. S., 676, 41 Law Ed., 595, the Supreme Court held that a paper that contains nothing but figures which relate to a drawing already completed, is not a paper certificate or instrument purporting to be, or representing, a ticket, chance, share, or interest, in a lottery, which the Act of Congress of 1895, Chapter 191, makes it unlawful to bring into the United States, or deposit in the mails, or carry from one State to another. Such statute refers only to a paper, which depends upon a lottery, the drawing of which has not yet taken place.

In Champion vs. Ames, 188 U. S., 321, 47 Law Ed., 496, the Supreme Court held that the carriage of lottery tickets from one State to another, by an express company, engaged in carrying freight and packages from State to State, is interstate commerce, which Congress, under its power to regulate, may prohibit by making it an offense against the United States to cause such tickets to be so carried.

In Francis vs. United States, 188 U. S., 375, 47 Law Ed., 510, the Supreme Court held that policy slips, written by a customer to indicate his choice of numbers, and delivered by him to an agent of the policy game, to be forwarded by him to headquarters in another State, are not within this Act. Gathering the facts from the opinion, they show, in substance, that the policy game, the lottery in question, had its headquarters in Ohio, and agencies in different States. A person wishing to take a chance went to one of these agencies (in this case, in Kentucky), selected three or more numbers, wrote them on a slip, and handed the slip to the agent (in this case, to the defendant Hoff) paying the price of the chance at the same time, and keeping a duplicate, which was the purchaser's voucher for his selection. The slip was then taken by the defendant Edgar, to be carried to the principal office, which was, it will be remembered, in Ohio; where afterwards, in the regular course, there was a drawing by the defendant Francis. Thus, the carriage

from Kentucky to Ohio, or from one State to another, relied upon as the object of the conspiracy, and as the overt act in pursuance of the conspiracy, was the carriage by Edgar of slips delivered to Hoff by the person wishing to take a chance, as above described. It will thus be noticed that the slips were at home, as between the purchaser and the lottery, when put into Hoff's hands in Kentucky. They had reached their final destination in point of law, and their later movements were internal circulation within the sphere of the lottery company's possession; and the Supreme Court said:

"Therefore, the question is suggested whether the carriage of a paper of any sort by its owner, or the owner's servant, properly so-called, with no view of a later change of possession, can be commerce, even when the carriage is in the aid of some business or traffic. The case is different from one where, the carriage being done by an independent carrier, it is commerce merely by reason of the business of carriage."

This question, however, the Supreme Court did not see fit to answer, for the case went off upon another ground, to wit, upon the ground that the papers did not represent a ticket or interest in a lottery

"We assume, for purposes of decision, that the papers kept by the purchasers were tickets, or did represent an interest in a lottery; but these papers did not leave Kentucky."

§ 264. **Interstate Shipment of Intoxicating Liquors; Delivery to be Made Only to Bona Fide Consignee.**—Brand new legislation is Section 238 of the new Code, which reads as follows:

"Sec. 238. Any officer, agent, or employee of any railroad company, express company, or other common carrier, who shall knowingly deliver or cause to be delivered to any person other than the person to whom it has been consigned, unless upon the written order in each instance of the bona fide consignee, or to any fictitious person, or to any person under a fictitious name, any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind which has been shipped from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place non-contiguous to but subject to the jurisdiction thereof, or from any foreign

country into any State, Territory, or District of the United States, or place non-contiguous to but subject to the jurisdiction thereof, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both."

This section, it will be noticed, contains three divisions: first, the liquor must be delivered to the one to whom consigned; second, the liquor must not be delivered to any fictitious person; third, the liquor must not be delivered to any person under a fictitious name. Of course, if the liquor be consigned to a bona fide consignee, such consignee may give a written order to another person to receive the liquor.

Sec. 264 a. Interstate Shipment of Intoxicating Liquor, Continued.

The Court of Appeals for the 7th circuit in Hamm vs. Chicago Railway Co. 243 F. 143, held that the Webb-Kenyon act of Mar. 1, 1913, which prohibits the transposition of intoxicating liquor from one state into another, which is intended to be received, possessed, sold, or used in violation of any law of such state, does not simply forbid the introduction of liquor into a state for a prohibited use, but takes the protection of interstate commerce away from all receipt and possession of liquor prohibited by state law.

The Reed Amendment, Mar. 3, 1917, Compiled Statutes, Sec. 8739 a provides, "whoever shall order, purchase, or cause intoxicating liquors to be transported in interstate commerce, except for scientific, sacramental, medicinal and mechanical purposes, into any state or territory the laws of which state or territory prohibit the manufacture or sale therein of intoxicating liquors for beverage purposes shall be punished, as aforesaid; Provided, that nothing herein, shall authorize the shipment of liquor into any state contrary to the laws of such state."

The punishment for the violation of the section is a fine of not more than a thousand dollars or imprisonment not more than six months or both; and for any subsequent offense shall be imprisoned not more than one year, Sec. 9915, 1919, Barnes Code.

An act was passed August 1890, providing that intoxicating liquors transported into a state shall be subject to the state laws; by Act of Mar. 1, 1913, congress declared a prohibition, without penalty, to the shipment of intoxicating liquor into a state in violation of its law; and on October 3, 1917, the transportaton of distilled spirits, with certain exceptions, was forbidden. These acts are shown at Sec. 8350, 8351 and 8353 of Barnes 1919 Fed. Code.

§ 265. **Common Carrier, Etc., Not to Collect Purchase Price of Interstate Shipment of Intoxicating Liquors.**— All railroads and express companies, common carriers, or other persons engaged in interstate commerce, cannot, in any way, aid in the transaction of the so-called C. O. D. liquor business, since the passage of Section 239 of the new Code, which is new legislation, in the following words:

"Sec. 239. Any railroad company, express company, or other common carrier, or any other person who, in connection with the transportation of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, from one State, Territory, or District of the United States, or place non-contiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place non-contiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place non-contiguous to but subject to the jurisdiction thereof, shall collect the purchase price or any part thereof, before, on, or after delivery, from the consignee, or from any other person, or shall in any manner act as the agent of the buyer or seller of any such liquor, for the purpose of buying or selling or completing the sale thereof, saving only in the actual transportation and delivery of the same, shall be fined not more than five thousand dollars."

It will be noted that no part of the purchase price shall be collected by the carrier from the consignee before delivery, at the time of delivery, or after delivery; nor can such collection be made from any other person. It will also be noted that the carrier cannot, in any manner, act as the agent of the buyer or seller of any such liquor, for the purpose of buying or selling, or completing the

sale. In other words, the carrier must engage only in the transportation and delivery of the same.

§ 265a. **Decisions.**—This statute creates a new crime and prescribes a punishment for an act and series of acts that were not theretofore inhibited by any law. Complaints were made that shipments of liquor would be made from one State to another, in which the sale of liquor was prohibited, and that the bill of lading would be attached to a draft, and forwarded through banks for collection, the consignee to secure the bill of lading upon payment of the draft. The scope of the statute and the desire to remedy the evil occasioned a diversity of opinion among the Courts. The case of Danciger vs. Stone, decided by Judge Campbell in 188 Federal, 511, held that under the foregoing state of facts the bank situated in the dry territory was not liable to prosecution under this Statute, while Judge Amidon held in U. S. vs. First National Bank of Anamoose, 190 Federal, 336, that under a state of facts which is substantially mentioned, the collecting bank would be liable to prosecution and would be guilty of a violation of the statute. Judge Amidon reviews in his opinion the anti-liquor agitation and the evil that the law was intended to remedy. After these two nisi prius decisions the Circuit Court of Appeals for the Eighth Circuit, speaking through Judge Sanborn in First National Bank of Anamoose vs. U. S., 206 Federal, 374, in reversing Judge Amidon's decision, held that a collection by a bank of a sight draft for the purchase price of liquor transported in interstate commerce and the delivery to the consignee of a bill of lading attached to the draft, the possession of which bill was necessary to enable the consignee to obtain a delivery of the liquor, does not subject the bank to find under Section 239, and thus the old criminal doctrine that a case must be a strong one indeed which would justify a Court in departing from the plain meaning of words in search of an intention which the words themselves do not suggest was again christened.

Sec. 265 b. Common Carrier, etc., Not to Collect Purchase Price, etc., Continued.

Danciger vs. Cooley, U. S. Sup. Ct. Jan. 7, 1919; the words "any other person" are also construed in the above case to mean "any one."

All laws are in effect prohibiting the introduction of liquor into the Indian Territory, viz., the Act of 1895, 1917 and 1918, U. S. vs. Luther, 260 F. 579.

§ 266. **Packages Containing Intoxicating Liquors Shipped in Interstate Commerce to be Marked as Such.**—Other new legislation upon the subject of interstate carriage of intoxicating liquors is Section 240, which reads as follows:

"Sec. 240. Whoever shall knowingly ship or cause to be shipped, from one State, Territory, or District of the United States, or place non-contiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place non-contiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place non-contiguous to but subject to the jurisdiction thereof, any package of or package containing any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, unless such package be so labeled on the outside cover as to plainly show the name of the consignee, the nature of its contents, and the quantity contained therein, shall be fined not more than five thousand dollars; and such liquor shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the seizure and forfeiture of property imported into the United States contrary to law."

While Sections 238 and 239 fix penalties for certain transgressions by the carrier, Section 240 creates a new offense for the shipper and does not relate, in any sense, to the carrier. Under other internal revenue decisions, the marking and branding of this Section will be construed to mean upon the outside of the package, so as to be plainly seen at all times. Such mark or label must show the name of the consignee, the nature of the contents of the package, and the quantity of the contents.

Sec. 266 a. Packages Continued—Intoxicating Liquors Shipped in Interstate Commerce, How Marked; Continued.

The foregoing statute does not apply to the carriage by automobile, One vs. U. S., 274 F. 99.

Section 240 does not give the state the right to provide such labelling, Chicago vs. Giles, 235 F. 804.

A shipment of a car load of liquor which is made up of a great number of individual orders would have to be broken up and delivered up to each consignee, Great Northern vs. Rainier, 255 F. 762.

The venue for prosecutions under this act is held where originated or where destined, U. S. vs. Freeman, U. S. Sup. Ct. Oct. 1915.

The marks must not be covered with advertisements, etc., U. S. vs. Company, 242 F. 536.

§ 267. **Importation of Certain Wild Animals, Birds, and Reptiles Forbidden.**—The Act of May 25, 1900, 31 Statute at Large, 188, Second Supplement, 1174, becomes Section 241 of the new Code, as follows:

"Sec. 241. The importation into the United States, or any Territory, or District thereof, of the mongoose, the so-called "flying foxes" or fruit bats, the English sparrow, the starling, and such other birds and animals, as the Secretary of Agriculture may from time to time declare to be injurious to the interests of agriculture or horticulture, is hereby prohibited; and all such birds or animals shall, upon arrival at any port of the United States, be destroyed or returned at the expense of the owner. No person shall import into the United States or into any Territory or District thereof, any foreign wild animal or bird, except under special permit from the Secretary of Agriculture: *Provided*, that nothing in this section shall restrict the importation of natural history speciments for museums or scientific collections, or of certain cage birds, such as domesticated canaries, parrots, or such other birds as the Secretary of Agriculture may designate The Secretary of the Treasury is hereby authorized to make regulations for carrying into effect the provisions of this section."

§ 267a. **Migratory Game Birds.**—Deemed under protection of the United States—closed seasons, etc.—"All wild geese, wild swans, brant, wild ducks, snipe, plover, woodcock, rail, wild pigeons, and all other migratory game and insectivorous birds which in their northern and southern migrations pass through or do not remain permanently the entire year within the borders of any state or territory, shall hereafter be deemed to be within the custody and protection of the Government of the United States, and shall not be destroyed or taken contrary to regulations hereinafter provided therefor.

"The Department of Agriculture is hereby authorized and directed to adopt suitable regulations to give effect to the previous paragraph by prescribing and fixing closed seasons, having due regard to the zones of temperature, breeding habits, and times and line of migratory flight, thereby enabling the department to select and designate suitable districts for different portions of the country, and it shall be unlawful to shoot or by any device kill or seize and capture migratory birds within the protection of this law during said closed seasons, and any person who shall violate any of the provisions or regulations of this law for the protection of migratory birds shall be guilty of a misdemeanor and shall be fined not more than $100 or imprisoned not more than 90 days, or both, in the discretion of the Court.

"The Department of Agriculture, after the preparation of said regulations, shall cause the same to be made public, and shall allow a period of three months in which said regulations may be examined and considered before final adoption, permitting, when deemed proper, public hearings thereon, and after final adoption shall cause the same to be engrossed and submitted to the President of the United States for approval; Provided, however, That nothing herein contained shall be deemed to affect or interfere with the local laws of the states and territories for the protection of non-migratory game or other birds resident and breeding within their borders, nor to prevent the States and Territories from enacting laws and regulations to promote and render efficient the regulations of the Department of Agriculture provided under this statute." This Act was passed on March 4, 1913, 37 Stats. L., 847.

Judge Trieber in United States vs. Schauver, 214 Federal, 154, held the Act to be unconstitutional. He holds that migratory birds are not, when on their usual migration, the property of the United States within subsection 2 of Section 3 of Article 4 of the Federal Constitution which empowers Congress to adopt rules respecting the territory or other property of the United States, but they are the property of the States in their sovereign ca-

pacity, as the representatives and for the benefit of all their people in common, and the Act protecting these birds cannot be sustained as an exercise by Congress of the right to adopt regulations for its property.

Sec. 267 b. Migratory Birds Continued.

The 1916 bird treaty, etc., is constitutional, U. S. vs. Selkirk, 258 F. 775; also see same report at page 479; also State vs. Holland, U. S. Sup. Ct. Apr. 1920, which case gives a remedy for a state to test the federal act.

The act of July 3, 1918, is not retroactive, U. S. vs. Fuld Store Co., 262 F. 836.

The treaty of 1916, was again held constitutional in U. S. vs. Rockefeller, 260 F. 346.

§ 268. **Transportation of Prohibited Animals.**—Taken from the same Act, will be found the substance of Section 242 of the new Code, which is in the following words:

"Sec. 242. It shall be unlawful for any person to deliver to any common carrier for transportation, or for any common carrier to transport from any State, Territory, or District of the United States to any other State, Territory, or District thereof, any foreign animals or birds, the importation of which is prohibited, or the dead bodies or parts thereof of any wild animals or birds, where such animals or birds have been killed or shipped in violation of the laws of the State, Territory, or District in which the same were killed, or from which they were shipped: *Provided*, That nothing herein shall prevent the transportation of any dead birds or animals killed during the season when the same may be lawfully captured, and the export of which is not prohibited by law in the State, Territory, or District in which the same are captured or killed: *Provided further*, That nothing herein shall prevent the importation, transportation, or sale of birds or birds' plumage manufactured from the feathers of barnyard fowls."

The section, as it now exists, meets the objections, and remedies the defects, noted in United States vs. Thompson, 147 Federal, 637, wherein District Judge Amidon discovered and held that the references to Section 1 of the original Act was a clerical error, such section having no relation to the subject matter, because Section 3 was manifestly intended. Forms for indictment under the section as it now exists will be found after noticing the criticisms of the Courts thereon, at page 637 of the 147

Federal, U. S. vs. Thompson, and page 423 of the 115 Federal, United States vs. Smith. In the last case, the Court held that it was essential, to constitute the offense under the provisions of the section, that the prohibited game should either have been shipped, or delivered to the carrier for shipment, and an indictment which charged the defendant with intent to ship it by interstate commerce, or having concealed the same in unmarked packages for the purpose of such shipment, in evasion or violation of the Act, without alleging delivery to a carrier, was insufficient.

§ 268a. **Constitutionality of Statute.**—This statute has been held constitutional by the Circuit Court of Appeals for the Eighth Circuit in Rupert vs. U. S., 181 Federal, 88, and in the same case it was determined that an indictment which averred that quail which were killed in the open season and which were delivered to a carrier for transportation from Oklahoma into another State "with intent and for the purpose of being shipped and transported out of Oklahoma" need not allege the months in which the quail were killed. The Congress of the United States has the constitutional right to prevent the shipment in interstate commerce of game when such shipments would be in violation of the laws of the state in which such game was killed. Rupert vs. U. S., 181 Federal, 87. Quail or game belong to the State or rather the people collectively thereof and are subject to the local laws as to killing, and the times therefor, and the shipment. Geer vs. Ct., 161 U. S., 519; Lawton vs. Steele, 152 U. S., 133; Rupert vs. U. S., 181 Federal, 87; U. S. vs. Shauver, 214 Federal, 154. Act of March 4, 1913, as to migratory birds held unconstitutional, U. S. vs. McCullagh, 221 Federal, 288.

§ 269. **Marking of Packages.**—Section 243 of the new Code was taken from the same Act of May 25, 1900, and is as follows:

"Sec. 243. All packages containing the dead bodies, or the plumage, or parts thereof, of game animals, or game or other wild birds, when shipped in interstate or foreign commerce, shall be plainly and clearly marked, so that the name and address of the shipper, and the nature

of the contents may be readily ascertained on an inspection of the outside of such package."

§ 270. **Penalty for Violation of Preceding Sections.**—Section 244 of the new Code reads as follows:

"Sec. 244. For each evasion or violation of any provision of the three sections last preceding, the shipper shall be fined not more than two hundred dollars; the consignee knowingly receiving such articles so shipped and transported in violation of said sections shall be fined not more than two hundred dollars; and the carrier knowingly carrying or transporting the same in violation of said sections shall be fined not more than two hundred dollars."

§ 271. **Depositing Obscene Books, Etc., with Common Carrier.**—Section 245 of the new Code is in the following words:

"Sec. 245. Whoever shall bring or cause to be brought into the United States or any place subject to the jurisdiction thereof, from any foreign country, or shall therein knowingly deposit or cause to be deposited with any express company or other common carrier, for carriage from one State, Territory, or District of the United States, or place non-contiguous to but subject to the jurisdiction thereof, to any other State, Territory, or District of the United States, or place non-contiguous to but subject to the jurisdiction thereof, or from any place in or subject to the jurisdiction of the United States through a foreign country to any place in or subject to the jurisdiction thereof, or from any place in or subject to the jurisdiction of the United States to a foreign country, any obscene, lewd, or lascivious, or any filthy book, pamphlet, picture, paper, letter, writing, print, or other matter of indecent character, or any drug, medicine, article, or thing designed, adapted, or intended for preventing conception, or producing abortion, or for any indecent or immoral use, or any written or printed card, letter, circular, book, pamphlet, advertisement, or notice of how, or of whom, or by what means, any of the hereinbefore mentioned articles, matters, or things may be obtained or made; or whoever shall knowingly take or cause to be taken from such express company or other common carrier any matter or thing the depositing of which for carriage is herein made unlawful, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both."

This section, it will be noticed, relates not to the use of the Post-office establishment in the transmission of things therein denounced, but to the use of a person or common carrier, or express company.

The meat of the statute is substantially the same as Section 211 of the new Code, which relates to obscene matter, etc., as being non-mailable, and which is denounced in Section 211 of the new Code, heretofore treated.

§ 271a. **The Statute is Constitutional.**—The power of Congress to regulate the transportation or sending of matter or things or persons from one State to another, whether by a Federal utility or otherwise, is beyond dispute. Lottery Cases 188 U. S., 321; Hoke vs. U. S., 227 U. S., 308; Reid vs. Colorado, 187 U. S., 137; The Daniel Ball, 10 Wall., 557; Coe vs. Errol, 116 U. S., 517.

A demurrer to an indictment under the foregoing section challenging the constitutionality of the statute was overruled in Clark vs. U. S., 211 Federal, 916. In the Clark case it was also determined that when the indictment did not limit the charge to particular passages or parts of a book, the defendants were entitled to have the whole book introduced in evidence and considered by the jury under proper instructions from the Court.

§ 271b. **Anti-Pass Law.**—The Act of June 29, 1906, contains the following provision:

"No common carrier, subject to the provisions of this Act, shall after January 1, 1907, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees and their families, its officers, agents, surgeons, physicians, and attorneys-at-law; to minister of religion, traveling secretaries of railroad, Young Men's Christian Association, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute and homeless persons, and to such persons when transferred by charitable societies or hospitals, and the necessary agents employed in such transfer; to inmates of the National homes or State homes for disabled volunteer soldiers, and of soldiers and sailors homes, including those about to enter and those returning home after discharge, and boards of managers of such homes; to necessary caretakers of live stock, poultry and fruit; to employees on sleeping cars, express cars, and to linemen of telegraphic and telephone companies; to railway mail service employees, post-office inspectors, customs inspectors and immigrant inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks, and physicians and nurses attending such persons; *Provided*, that this provision shall not be construed to prohibit the interchange of passes for the officers,

agents and employees of common carriers and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence or other calamitous visitation: *Provided, further*, that the term employees as used in this paragraph shall include furloughed, pensioned and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a carrier, and ex-employees traveling for the purpose of entering the service of any such common carrier; and the term families as used in this paragraph shall include the families of those persons named in this proviso, also the families of persons killed while in the service of any such common carrier. Any common carrier violating this provision shall be deemed guilty of a misdemeanor, and for such offense, on conviction, snall pay to the United States a penalty of not less than $100 nor more than $2,000, and any person other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation, shall be subject to a like penalty."

35th Statute at Large, 60 page 256, 1909, Supplement Federal Statutes, Annotated.

Manifestly, the provision applies to only such common carriers as are included in the said Act.

It is not thought that the Section would justify the prosecution of one who stole tickets or passes or other transportation from a common carrier, and used the same, for the reason that the word Such, in the latter portion of the Act, evidently refers to the free ticket, free pass, or free transportation issued or given directly or indirectly by a common carrier.

The Act does apply to one, who, having in his possession an interstate free ticket or pass issued by a railroad company, sells it to another, knowing that he is not the person named therein and is not entitled to ride thereon, with the intent that he shall use it. U. S. vs. Martin, 176 Federal, 110.

§ 271c. **Theft of Goods in Interstate Commerce.**—The Act of February 13, 1913, Chapter 50, 37th Statute at Large, 670, page 203, 1914, Federal Statutes, Annotated, provides as follows:

"That whoever shall unlawfully break the seal of any railroad car containing interstate or foreign shipments of freight or express, or shall enter in such car, with intent, in either case, to commit larceny there-

in; or whoever shall steal or unlawfully take, carry away or conceal, or by fraud or deception obtain from any railroad car, station house, platform, depot, steam boat, vessel or wharf, with intent to convert to his own use, any goods or chattels, moving as, or which are a part of, or which constitute an interstate or foreign shipment of freight or express, or shall buy or receive or have in his possession any such goods or chattels, knowing the same to have been stolen; or whoever shall steal or shall unlawfully take, carry away, or by fraud or deception obtain, with intent to convert to his own use, any baggage which shall have come into the possession of any common carrier for transportation from one State or Territory, or the District of Columbia, to another State or Territory, or the District of Columbia, or to a foreign country, or from a foreign country to any State or Territory, or the District of Columbia, or shall break into, steal, take, carry away, or conceal any of the contents of such baggage, or shall buy, receive, or have in his possession any such baggage, or any article therefrom of whatsoever nature, knowing the same to have been stolen, shall in each case be fined not more than $5,000, or imprisoned not more than ten years, or both, and prosecutions therefor may be instituted in any District wherein the crime shall have been committed. The carrying or transporting of any such freight, express, baggage, goods or chattels from one State or Territory, or the District of Columbia, into another State or Territory, or the District of Columbia, knowing the same to have been stolen, shall constitute a separate offense, and subject the offender to the penalties above described for unlawful taking, and the prosecutions therefor may be instituted in any District into which said freight, express, baggage, goods or chattels shall have been removed, or into which they shall have been brought by such offender."

The next section provides that nothing contained in the above section shall impair the jurisdiction of the Courts of the several States, and also provides that a judgment of conviction or acquittal in a State Court shall be a bar to prosecution therefor in the United States Courts. This Statute marks an outer limit of the jurisdiction of the Federal Government over interstate commerce, and the Courts, in enforcing the same, should apply all of the rigid rules of strict construction that have been formulated in criminal cases. As a matter of fact, thefts committed from interstate shipments are, as a rule, small offenses, which should be cognizable solely in the State Courts. There can, however, be no question as to the constitutionality of this section, and while it is

a useful statute, in many ways it is also a far-reach of the Federal Government.

Sec. 271 c. c. Theft of Goods in Inter-State Commerce Continued.

"Station house" means a railway house and not a transfer station house, Beckerman vs. U. S., 267 F. 185.

For forging a bill of lading see the Act of Aug. 29, 1916, Jackson vs. U. S., 266 F. 770.

Allegation of ownership immaterial, Fleck vs. U. S., 265 F. 617.

The following are cases under the foregoing statute; U. S. vs. Kambertz, 236 F. 378, holding prosecution may be had in three different manners, United States has right as bailee, U. S. vs. U. S., 262 F. 459; receiving stolen property, U. S. vs. Le Fanti, 255 F. 210. The allegation of ownership may be laid in the United States, under the railway control statute of Mar. 21, 1918, U. S. vs. Kambertz, 256 F. 247. One buys at his own peril if he knows the goods are stolen, Grandi vs. U. S., 262 F. 123.

An indictment for receiving stolen property must allege the intent "to convert to one's own use or gain," Cohn vs. U. S., 258 F. 353.

From one point in a state to another point in the same state is a violation, if the goods go out of the state enroute, U. S. vs. Maynohan, 258 F. 529.

Receiving stolen goods, U. S. vs. Sullivan, 250 F. 623.

The statute applies even to carrier's own property when in transit, Freidman vs. U. S., 233 F. 429.

As to allegation of ownership, receiving, etc., see Kasle vs. U. S., 233 F. 878. The legislation is constitutional, Morris vs. U. S., 229 F. 516; Block vs. U. S., 261 F. 321; Pounds vs. U. S., 265 F. 242.

Knowledge of theft from interstate shipment is not essential in receiving prosecution, Freedman vs. U. S., 274 F. 603; the larceny must be from the places stated in the statute, 274 F. 596.

Goods shipped between points in the same state but passing through another state are moving in interstate

Sec. 217. c. c. c. Theft of Automobile and Intercommerce, U. S. vs. Yohn, 275 F. 232.

By the Act of Oct. 29, 1919, the theft and transportation in interstate commerce of an automobile was made an offense punishable by fine not to exceed five thousand dollars and imprisonment not to exceed five years.

The statute reads "that whoever shall transport or cause to be transported in interstate or foreign commerce a motor vehicle, knowing the same to have been stolen, shall be punished as aforesaid."

"Whoever shall receive, conceal, store, barter, sell, or dispose of any motor vehicle, moving as, or which is a part of, or which constitutes interstate or foreign commerce, knowing the same to have been stolen, shall be punished by fine of not more than five thousand dollars or by imprisonment of not more than five years, or both, this violation may be punished in any district in or through which such vehicle was transported or removed by such offender.

Act Oct. 29, 1919; Sec. 9945 a, 1921 Supplement Barnes Fed. Code.

§ 271d. **Cotton Future Contracts.**—The Act of August 18, 1914, provides that it shall be known as the United States Cotton Futures Act. In the second Section thereof it defines contract of sale and the meaning of the word person, and in the third section thereof levies a tax of 2 cents per pound of the cotton involved in any contract for future delivery, made at, on, or in any exchange, board of trade, or similar institution or place of business.

Section 4 provides a form for such contracts.

Section 5 specifies contracts that are exempt from the tax.

Section 6 gives a basis for determining cotton values, and,

Section 7 provides that for the purposes of the Act the only markets which shall be considered bona fide spot markets shall be those which the Secretary of Agriculture shall, from time to time, after investigation, determine and designate to be such, and of which she shall give public notice.

Section 8 tells what markets the Secretary may consider.

Section 9 establishes certain standards of cotton.

Section 10 sets forth certain contracts that are exempt.

Section 11 fixes an excise tax of 2 cents per pound of the cotton ordered bought or sold for future delivery.

Section 12 provides for the payment of tax by the use of stamps.

Section 13 declares all contracts made in violation of the Act shall be unenforceable.

Section 14 empowers the Secretary of the Treasury to make rules and regulations to collect the taxes and carry the Act into effect, and,

Section 15 provides as follows: "That any person liable to the payment of any tax imposed by this Act who fails to pay, or evades, or attempts to evade the payment of such tax, and any person who otherwise violates any provision of this Act, or any rule or regulation made in pursuance hereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than $100, nor more than $20,000, in the discretion of the Court; and in case of natural persons, may, in addition, be punished by imprisonment for not less than 60 days nor more than 3 years, in the discretion of the Court."

Section 16 rewards informants and makes it the duty of District Attorneys to prosecute.

Section 17 provides for immunity.

§ 271e. **Opium, or Cocoa Leaves, Their Salts, Derivatives or Preparations.**—The production, importation, manufacture, compounding, sale, dispensing, or giving away of opium, or cocoa leaves, their salts, derivatives or preparations, was regulated and prohibited in the manned indicated by the following statute, which was the Act of December 17, 1914:

"That on and after the first day of March, nineteen hundred and fifteen, every person who produces, imports, manufactures, compounds, deals in, dispenses, sells, distributes, or gives away opium or cocoa leaves or any compound, manufacture, salt, derivative, or preparation thereof, shall register with the collector of internal revenue of the district his name or style, place of business, and place or places where such business is to be carried on: *Provided*, that the office, or if none, then the residence of any person shall be considered for the purpose of this Act to be his place of business. At the time of such registry and on or before the first day of July, annually thereafter, every per-

son who produces, imports, manufactures, compounds, deals in, dispenses, sells, distributes, or gives away any of the aforesaid drugs shall pay to the said collector a special tax at the rate of $1 per annum: *Provided*, that no employee of any person who produces, imports, manufactures, compounds, deals in, dispenses, sells, distributes, or gives away any of the aforesaid drugs, acting within the scope of his employment, shall be required to register or to pay the special tax provided by this section: *Provided, further*, that the person who employs him shall have registered and paid the special tax as required by this section: *Provided further*, that officers of the United States Government who are lawfully engaged in making purchases of the above-named drugs for the various departments of the Army and Navy, the Public Health Service, and for Government hospitals and prisons, and officers of the State Government, or of any county or municipality therein, who are lawfully engaged in making purchases of the above-named drugs for State, county, or municipal hospitals or prisons, and officials of any territory or insular possession of the District of Columbia or of the United States who are lawfully engaged in the making purchases of the above-named drugs for hospitals or prisons therein shall not be required to register and pay the special tax as herein required.

"It shall be unlawful for any person required to register under the terms of this Act to produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away any of the aforesaid drugs without having registered and paid the special tax provided for in this section.

"That the word 'person' as used in this Act shall be construed to mean and include a partnership, association, company, or corporation, as well as a natural person; and all provisions of existing law relating to special taxes, so far as applicable, including the provisions of section thirty-two hundred and forty of the Revised Statutes of the United States are hereby extended to the special tax herein imposed.

That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make all needful rules and regulations for carrying the provisions of this Act into effect.

"Sec. 2. That it shall be unlawful for any person to sell, barter, exchange, or give away any of the aforesaid drugs except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue. Every person who shall accept any such order, and in pursuance thereof shall sell, barter, exchange, or give away any of the aforesaid drugs, shall preserve such order for a period of two years in such a way as to be readily accessible to inspection by any officer, agent, or employee of the Treasury Department duly authorized for that purpose, and the State, Territorial, District, municipal, and insular officials named in Section 5 of this Act. Every person who shall give an order as herein provided to any

other person for any of the aforesaid drugs shall, at or before the time of giving such order, make or cause to be made a duplicate there of on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue, and in case of the acceptance of such order, shall preserve such duplicate for said period of two years in such a way as to be readily accessible to inspection by the officers, agents, employees, and officials hereinbefore mentioned. Nothing contained in this section shall apply—

"(a) To the dispensing or distribution of any of the aforesaid drugs to a patient by a physician, dentist, or veterinary surgeon registered under this Act in the course of his professional practice only:. *Provided*, that such physician, dentist, or veterinary surgeon shall keep a record of all such drugs dispensed or distributed, showing the amount dispensed or distributed, the date, and the name and address of the patient to whom such drugs are dispensed or distributed, except such as may be dispensed or distributed to a patient upon whom such physician, dentist or veterinary surgeon shall personally attend; and such record shall be kept for a period of two years from the date of dispensing or distributing such drugs, subject to inspection, as provided in this Act.

"(b) To the sale, dispensing, or distribution of any of the aforesaid drugs by a dealer to a consumer under and in pursuance of a written prescription issued by a physician, dentist, or veterinary surgeon registered under this Act: *Provided, however*, that such prescription shall be dated as of the day on which signed and shall be signed by the physician, dentist, or veterinary surgeon who shall have issued the same: And provided further, that such dealer shall preserve such prescription for a period of two years from the day on which such prescription is filled in such a way as to be readily accessible to inspection by the officers, agents, employees, and officials hereinbefore mentioned.

"(c) To the sale, exportation, shipment or delivery of any of the aforesaid drugs by any person within the United States or any Territory or the District of Columbia or any of the insular possessions of the United States to any person in any foreign country, regulating their entry in accordance with such regulations for importation thereof into such foreign country as are prescribed by said country, such regulations to be promulgated from time to time by the Secretary of State of the United States.

"(d) To the sale, barter, exchange, or giving away of any of the aforesaid drugs to any officer of the United States Government or of any State, territorial, district, county, or municipal or insular government lawfully engaged in making purchases thereof for the various departments of the Army and Navy, the Public Health Service, and for Government, State, territorial district, county, or municipal or insular hospitals or prisons.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall cause suitable forms to be prepared for the purposes above mentioned, and shall cause the same to be distributed to collectors of internal revenue for sale by them to those persons who shall have registered and paid the special tax as required by Section 1 of this Act in their districts, respectively; and no collector shall sell any of such forms to any persons other than a person who has registered and paid the special tax as required by Section 1 of this Act in his district. The price at which such forms shall be sold by said collectors shall be fixed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, but shall not exceed the sum of $1 per hundred. Every collector shall keep an account of the number of such forms sold by him, the name of the purchasers, and the number of such forms sold to each of such purchasers. Whenever any collector shall sell any of such forms, he shall cause the name of the purchaser thereof to be plainly written or stamped thereon before delivering the same; and no person other than such purchaser shall use any of said forms bearing the name of such purchaser for the purpose of procuring any of the aforesaid drugs, or furnish any of the forms bearing the name of such purchaser to any person with intent thereby to procure the shipment or delivery of any of the aforesaid drugs. It shall be unlawful for any person to obtain by means of said order forms any of the aforesaid drugs for any purpose other than the use, sale, or distribution thereof by him in the conduct of a lawful business in said drugs or in the legitimate practice of his profession.

"The provisions of this Act shall apply to the United States, the District of Columbia, the Territory of Alaska, the Territory of Hawaii, the insular possessions of the United States, and the Canal Zone. In Porto Rico and the Philippine Islands the administration of this Act, the collection of the said special tax, and the issuance of the order forms specified in Section 2 shall be performed by the appropriate internal-revenue officers of those governments, and all revenues collected hereunder in Porto Rico and the Philippine Islands shall accrue intact to the general governments thereof, respectively. The Courts of first instance in the Philippine Islands shall possess and exercise jurisdiction in all cases arising under this Act in said islands. The President is authorized and directed to issue such Executive orders as will carry into effect in the Canal Zone the intent and purpose of this Act by providing for the registration and the imposition of a special tax upon all persons in the Canal Zone who produce, import, compound, deal in, dispense, sell, distribute, or give away opium or cocoa leaves, their salts, derivatives, or preparations.

"Sec. 3. That any person who shall be registered in any internal-revenue district under the provisions of Section 1 of this Act shall, whenever required so to do by the collector of the district, render to the said collector a true and correct statement or return, verified by affidavit, setting forth the quantity of the aforesaid drugs received by

him in said internal-revenue district during such period immediately preceding the demand of the collector, not exceeding three months, as the said collector may fix and determine; the names of the persons from whom the said drugs were received; the quantity in each instance received from each of such persons, and the date when received.

"Sec. 4. That it shall be unlawful for any person who shall not have registered and paid the special tax as required by Section 1 of this Act to send, ship, carry, or deliver any of the aforesaid drugs from any State or Territory or the District of Columbia, or any insular possession of the United States, to any person in any other State or Territory or the District of Columbia or any insular possession of the United States: Provided, that nothing contained in this section shall apply to common carriers engaged in transporting the aforesaid drugs, or to any employee acting within the scope of his employment, or any person who shall have registered and paid the special tax as required by Section 1 of this Act, or to any person who shall deliver any such drug which has been prescribed or dispensed by a physician, dentist, or veterinarian required to register under the terms of this Act, who has been employed to prescribe for the particular patient receiving such drug, or to any United States, State, county, municipal, District, Territorial, or insular officer or official acting within the scope of his official duties.

"Sec. 5. That the duplicate-order forms and the prescriptions required to be preserved under the provisions of Section 2 of this Act, and the statements or returns filed in the office of the collector of the district, under the provisions of Section 3 of this Act, shall be open to inspection by officers, agents, and employees of the Treasury Department duly authorized for that purpose; and such officials of any State or Territory, or of any organized municipality therein, or of the District of Columbia, or any insular possession of the United States, as shall be charged with the enforcement of any law or municipal ordinance regulating the sale, prescribing, dispensing, dealing in, or distribution of the aforesaid drugs, Each collector of internal revenue is hereby authorized to furnish, upon written request, certified copies of any of the said statements or returns filed in his office to any of such officials of any State or Territory or organized municipality therein, or the District of Columbia, or any insular possession of the United States, as shall be entitled to inspect the said statements or returns filed in the office of the said collector, upon the payment of a fee of $1 for each one hundred words or fraction thereof in the copy or copies so requested. Any person who shall disclose the information contained in the said statements or returns or in the said duplicate-order forms, except as herein expressly provided, and except for the purpose of enforcing the provisions of this Act, or for the purpose of enforcing any law of any State or Territory or the District of Columbia, or any insular possession of the United States, or ordinance of any organized municipality therein, regulating the sale, prescribing, dispensing, dealing in, or distribution of the aforesaid drugs, shall on conviction, be

fined or imprisoned as provided by Section 9 of this Act. And collectors of internal revenue are hereby authorized to furnish upon written request, to any person, a certified copy of the names of any or all persons who may be listed in their respective collection districts as special-tax payers under the provisions of this Act, upon payment of a fee of $1 for each one hundred names or fraction thereon in the copy so requested.

"Sec. 6. That the provisions of this Act shall not be construed to apply to the sale, distribution, giving away, dispensing, or possession of preparations and remedies which do not contain more than two grains of opium, or more than one-fourth of a grain of morphine, or more than one-eighth of a grain of heroin, or more than one grain of codeine, or any salt or derivative of any of them in one fluid ounce, or, if a solid or semi-solid preparation, in one avoirdupois ounce; or to liniments, ointments, or other preparations which are prepared for external use only; except liniments, ointments, and other preparations which contain cocaine or any of its salts or alpha or beta eucaine or any of their salts or any synthetic substituted for them: Provided, that such remedies and preparations are sold, distributed, given away, dispensed, or possessed as medicines and not for the purpose of evading the intentions and provisions of this Act. The provisions of this Act shall not apply to decocainized cocoa leaves or preparations made therefrom, or to other preparations of cocoa leaves which do not contain cocaine.

"Sec. 7. That all laws relating to the assessment, collection, remission, and refund of internal-revenue taxes, including Section 3229 of the Revised Statutes of the United States, so far as applicable to and not inconsistent with the provisions of this Act, are hereby extended and made applicable to the special taxes imposed by this Act.

"Sec. 8. That it shall be unlawful for any person not registered under the provisions of this Act, and who has not paid the special tax provided for by this Act, to have in his possession or under his control any of the aforesaid drugs; and such possession or control shall be presumptive evidence of a violation of this section, and also of a violation of the provisions of Section 1 of this Act: Provided, That this section shall not apply to any employee of a registered person, or to a nurse under the supervision of a physician, dentist, or veterinary surgeon registered under this Act, having such possession or control by virtue of his employment or occupation and not on his own account; or to the possession of any of the aforesaid drugs which has or have been prescribed in good faith by a physician, dentist, or veterinary surgeon registered under this Act; or to any United States, State, county, municipal, District, Territorial, or insular officer or official who has possession of any said drugs, by reason of his official duties, or to a warehouseman holding possession for a person registered and who has paid the taxes under this Act; or to common carriers engaged in transporting such drugs: Provided, further, that it shall not be necessary to negative any of the aforesaid exemptions in any complaint.

information, indictment, or other writ or proceeding laid or brought under this Act; and the burden of proof of any such exemption shall be upon the defendant.

"Sec. 9. That any person who violates or fails to comply with any of the requirements of this Act shall, on conviction, be fined not more than $2,000 or be imprisoned not more than five years, or both, in the discretion of the Court.

"Sec. 10. That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to appoint such agents, deputy collectors, inspectors, chemists, assistant chemists, clerks, and messengers in the field and in the Bureau of Internal Revenue in the District of Columbia, as may be necessary to enforce the provisions of this Act.

"Sec. 11. That the sum of $150,000, or so much thereof as may be necessary, be, and hereby is, appropriated, out of any moneys in the Treasury not otherwise appropriated, for the purpose of carrying into effect the provisions of this Act.

"Sec. 12. That nothing contained in this Act shall be construed to impair, alter, amend, or repeal any of the provisions of the Act of Congress approved June 30, 1906, entitled 'An Act for preventing the manufacture, sale, or transportation of adulterated or misbranded, or poisonous, or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes;' and any amendment thereof, or of the Act approved February 9, 1909, entitled 'An Act to prohibit the importation and use of opium for other than medicinal purposes,' and any amendment thereof."

The severity of the punishment for the acts that appear to become crimes from a casual study of the above statute causes me to doubt that the congress ever intended to punish anyone save the dealer. In other words, one who has in his possession the prohibited sedative for his own use manifestly ought not to become a felon, and manifestly ought not to suffer the severe punishment prescribed by the statute. Judge Bourguin of the Montana district, in the case of U. S. vs. Woods, 224 Fed. 278, expresses views in line with this thought, and said, in substance, that any person convicted of the most trivial violation of the statute, though fined but one dollar thereunder, is made a felon and infamous, and for this mere legal infraction, which is not in fact a true crime, a consequence shockingly disproportionate to the offense follows, and such a construction of the statute is therefore antagonistic to sound criminal economics and is abhorrent to justice. It is a corollary of criminal law that

whenever an offense can be committed by only certain classes of persons, the indictment must expressly allege that the accused is of those classes, or it is fatally defective in substance. U. S. vs. Woods, 224 Fed. 280.

So in the case of U. S. vs. Friedman, 224 Fed. 277, which was a prosecution against a physician for prescribing the prohibited drugs in quantites more than was necessary to meet the needs of a patient, and that they were not distributed, dispensed and prescribed in good faith as a medicine, the court sustained a demurrer on the ground that the statute does not in fact limit the amount of the drugs a physician may prescribe.

In U. S. vs. Brown, 224 Fed. 135, it was held that the court will take judicial notice of the fact that opium is not grown or produced in the United States. In the same case the court held the act of December 17, 1914 providing for the registration with collectors of internal revenue of dealers in opium, and imposing a tax on dealers and making it unlawful for any person who has not registered and paid the tax, to have in his possession any opium or derivative thereof, and providing that such possession shall be presumptive evidence of a violation of the act, constitutional.

Returning again to the Act under consideration, it seems very clear that there is nothing in the Act imposing the duty of registration and the payment of taxes upon mere consumers of the drugs. They are not within Section 1, and Section 8 does not purport to extend the registration and taxation features of the act to them.

§ 271f. **Interstate Commerce. Regulation Thereof.**— The Act of February 4, 1887, 24th Statute at Large, 379, page 809, Third Volume Federal Statutes, Annotated, comprises certain regulations for the common carriers of interstate traffic.

Section 1 provides that the Act shall apply to any common carrier engaged in the transportation of passengers or property, wholly by railroad or partly by railroad and partly by water, and provides that all charges shall be reasonable and just. It also defines the word Railroad.

Section 2 provides for special rates, and prohibits rebates in any way, directly or indirectly.

Section 3 inhibits undue preferences, and guarantees equal facilities to connecting lines.

Section 4 allows certain exceptions in long and short haul charges.

Section 5 prohibits pooling agreements.

Section 6 provides that printed schedules of rates shall be posted, as shall also notice of advances and reduction be given, provides for joint rate tariffs, and punishes failure to file schedules.

Section 7 provides combinations to prevent continuous carriage of freight to destination.

Section 8 defines a liability to persons who are injured by violation of the Act.

Section 9 provides that persons damaged may complain to the commission or may personally sue.

Section 10 thereof provides as follows:

"(Punishment for violation or evasion of the Act.) That any common carrier subject to the provisions of this Act, or, whenever such carrier is a corporation, any director, or officer thereof, or any receiver or trustee, lessee, agent or person acting for or employed by such corporation, company, person, or party, shall wilfully do or cause to be done, or shall willingly suffer or permit to de done, any act, matter, or thing in this Act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this Act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this Act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this Act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any District Court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense: Provided, that if the offense for which any person shall be convicted as aforesaid shall be an unlawful discriminating in rates, fares, or charges, for the transportation of passengers or property, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the Court.

"Any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly or

willfully assist, or shall willingly suffer or permit, any person or persons to obtain transportation for property at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any Court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the Court for each offense.

"Any person and any officer or agent of any corporation or company who shall deliver property for transportation to any common carrier, subject to the provisions of this Act, or for whom as consignor or consignee any such carrier shall transport property, who shall knowingly and willfully, by false billing, false classification, false weighing, false representation of the contents of the package, or false report of weight, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent or agents, obtain transportation for such property at less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any Court of the United States of competent jurisdiction within the district in which such offense was committed, be subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the Court.

"If any such person, or any officer or agent of any such corporation or company, shall, by payment of money or other thing of value, solicitation, or otherwise, induce any common carrier subject to the provisions of this Act, or any of its officers or agents, to discriminate unjustly in his, its, or their favor as against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person, or such officer or agent of such corporation or company, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any Court of the United States of competent jurisdiction within the districts within which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the Court, for each offense; and such person, corporation, or company shall also, together with said common carrier, be liable, jointly or severally, in an action on the case to be brought by any consignor or consignee discriminated against in any Court of the United States of competent jurisdiction for all damages caused by or resulting therefrom. (25 Stat. L., 857.)"

Section 11 provides for the creation of an interstate commerce commission.

Section 12 defines the scope of the commission, provides for prosecution of proceedings, the attendance of witnesses, depositions, and self-incriminating testimony.

Section 13 provides for petitions as to violations of law, notice to carrier of charges filed, and for investigations.

Section 14 provides for written reports of investigations, and that such reports and decisions may be printed and distributed.

Section 15 provides for notice to the carrier of violations and for making of a record of compliance with the report.

Section 16 frames a procedure in case of refusal to obey the commission, provides for remedies, jury trials, appeals, and costs.

Section 17 provides for proceedings of commission, rules, quorums, appearances, records, seal, oaths and subpoenaes.

Section 19 fixes the salaries, provides for witness fees.

Section 19 fixes the office and place of business at Washington, and allows the commission to hold special sessions in any part of the United States.

Section 22 provides for free carriage and reduced rates to certain corporations and persons.

CHAPTER XIIA

INTOXICATING LIQUOR.

Sec. 1100. Historical.

The Webb-Kenyon Act of Mar. 1, 1913, Compiled Statutes 1916, Sec. 8739, was the beginning of the undoing of the right of interstate commerce to protect the introduction of intoxicating liquors into non-wishing states.

In 1917 came the Reed amendment and later in the same year the wartime legislation for the protection of the nations soldiers and their concentration points. Then the Eighteenth Amendment to the Constitution was adopted and its adoption was quickly followed by the Volstead Act, of October 28, 1919.

Sec. 1101. The Reed Act: "Whoever shall order, purchase, or cause intoxicating liquors to be transported in interstate commerce, except for scientific, sacramental, medicinal, and mechanical purposes, into any state or territory, the laws of which state or territory prohibit the manufacture, or sale therein of intoxicating liquors for beverage purposes shall be punished as aforesaid, provided, that nothing therein shall authorize the shipment of liquor into any state contrary to the laws of such state."

The punishment is by fine of not exceeding a thousand dollars or imprisonment not more than six months or both, and for any subsequent offense imprisonment not more than one year.

Sec. 1102. Decisions Under Reed Act.

Berryman vs. U. S., 259 F. 208; Laughter vs. U. S., 259 F. 94; Preyer vs. U. S., 260 F. 157; U. S. vs. Collins, 264 F. 380; Durst vs. U. S., 266 F. 65; ex parte West-

brook, 250 F. 637; U. S. vs. Collins, 254 F. 869; U. S. vs. Gudger, U. S. Sup. Ct. Rep. Apr. 1919; U. S. vs. Hill, U. S. Sup. Ct. Jan. 1919; U. S. vs. Simpson, 40. Sup. Ct. 364; U. S. vs. James, 256 F. 102.

Sec. 1103. Volstead Act and Constitutional Amendment Eighteen.

In 1918 the Eighteenth Amendment to the Constitution was adopted, such adoption being proclaimed on the 29th of January, 1919, the article is as follows:—

"Sec. 1. After one year from the ratification of this Article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Sec. 2, The congress and the several states shall have concurrent power to enforce this Article by appropriate legislation . . ."

Then Congress passed the Volstead Act, as follows:—

Title II.

Prohibition of Intoxicating Beverages.

Sec. 1. (Terms defined—authority of assistants to commissioner.) When used in Title II and Title III of this Act (1) The word "liquor" or the phrase "intoxicating liquor" shall be construed to include alcohol, brandy, whisky, rum, gin, beer, ale, porter, and wine, and in addition thereto any spirituous, vinous, malt, or fermented liquor, liquids, and compounds, whether medicated, proprietary, patented, or not, and by whatever name called, containing one-half of 1 per centum or more of alcohol by volume which are fit for use for beverage purposes: Provided, That the foregoing definition shall not extend to dealcoholized wine nor to any beverage or liquid produced by the process by which beer, ale, porter or wine is produced, if it contains less than one-half of 1 per centum of alcohol by volume, and is made as prescribed in section 37 of this title, and is otherwise denominated than as beer, ale, or porter, and is contained and sold in, or from, such sealed and labeled bottles,

casks or containers as the commissioner may by regulation prescribe.

(2) The word "person" shall mean and include natural persons, associations, copartnerships, and corporations.

(3) The word "commissioner" shall mean Commissioner of Internal Revenue.

(4) The term "application" shall mean a formal written request supported by a verified statement of facts showing that the commissioner may grant the request.

(5) The term "permit" shall mean a formal written authorization by the commissioner setting forth specifically therein the things that are authorized.

(6) The term "bond" shall mean an obligation authorized or required by or under this act or any regulation, executed in such form and for such a penal sum as may be required by a court, the commissioner or prescribed by regulation.

(7) The term "regulation" shall mean any regulation prescribed by the commissioner with the approval of the Secretary of the Treasury for carrying out the provisions of this Act, and the commissioner is authorized to make such regulations.

Any act authorized to be done by the commissioner may be performed by any assistant or agent designated by him for that purpose. Records required to be filed with the commissioner may be filed with an assistant commissioner or other person designated by the commissioner to receive such record. (41 Stat. L. 307.)

Sec. 2. (Investigation and report of violation of act—Commissioner of Internal Revenue—apprehension of offenders—prosecution—search warrants.) The Commissioner of Internal Revenue, his assistants, agents, and inspectors shall investigate and report violations of this Act to the United States attorney for the district in which committed, who is hereby charged with the duty of prosecuting the offenders, subject to the direction of the Attorney General, as in the case of other offenses against the laws of the United States; and such Commissioner of Internal Revenue, his assistants, agents, and

inspectors may swear out warrants before United States commissioners or other officers or courts authorized to issue the same for the apprehension of such offenders, and may, subject to the control of the said United States attorney, conduct the prosecution at the committing trial for the purpose of having the offenders held for the action of a grand jury. Section 1014 of the Revised Statutes of the United States is hereby made applicable in the enforcement of this Act. Officers mentioned in said section 1014 are authorized to issue search warrants under the limitations provided in Title XI of the Act approved June 15, 1917 (Fortieth Statutes at Large, page 217, et seq.) (41 Stat. L. 308.)

For R. S. sec. 1014, see 2 Fed. Stat. Ann. (2d ed.) 654; 2 Fed. Stat. Ann. (1st ed.) 321.

For Act of June 15, 1917, title XI, mentioned in the text, see 1918 Supp. Fed. Stat. Ann. 128.

Sec. 3. (Application of Act to Eighteenth Amendment of Constitution—liquor for nonbeverage purposes—wine for sacramental purposes—warehouse receipts.) No persons shall on or after the date when the eighteenth amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxicating liquor except as authorized in this Act, and all provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented.

Liquor for nonbeverage purposes and wine for sacramental purposes may be manufactured, purchased, sold, bartered, transported, imported, exported, delivered, furnished and possessed, but only as herein provided, and the commissioner may, upon application, issue permits therefor: Provided, That nothing in this Act shall prohibit the purchase and sale of warehouse receipts covering distilled spirits on deposit in Government bonded warehouses, and no special tax liability shall attach to the business of purchasing and selling such warehouse receipts. (41 Stat. L. 308.)

The Eighteenth Amendment to the Constitution is set out infra. See Index.

Sec. 4. (Enumeration of certain articles not affected by act—permit to manufacture—sale of articles—use for beverage purposes.) The articles enumerated in this section shall not, after having been manufactured and prepared for the market, be subject to the provisions of this Act if they correspond with the following descriptions and limitations, namely:

(a) Denatured alcohol or denatured rum produced and and used as provided by laws and regulations now or hereafter in force.

(b) Medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopoeia, National Formulary or the American Institute of Homeopathy that are unfit for use for beverage purposes.

(c) Patented, patent, and proprietary medicines that are unfit for use for beverage purposes.

(d) Toilet, medicinal, and antiseptic preparations and solutions that are unfit for use for beverage purposes.

(e) Flavoring extracts and sirups that are unfit for use as a beverage, or for intoxicating beverage purposes.

(f) Vinegar and preserved sweet cider.

A person who manufactures any of the articles mentioned in this section may purchase and possess liquor for that purpose, but he shall secure permits to manufacture such articles and to purchase such liquor, give the bonds, keep the records, and make the reports specified in this Act and as directed by the commissioner. No such manufacturer shall sell, use, or dispose of any liquor otherwise than as an ingredient of the articles authorized to be manufactured therefrom. No more alcohol shall be used in the manufacture of any extract, sirup or the articles named in paragraphs b. c. and d. of this section which may be used for beverage purposes than the quantity necessary for extraction or solution of the elements contained therein and for the preservation of the article.

Any person who shall knowingly sell any of the articles mentioned in paragraphs a, b, c,. and d of this section for beverage purposes, or any extract or sirup for intoxicating beverage purposes, or who shall sell any of

the same under circumstances from which the seller might reasonably deduce the intention of the purchaser to use them for such purposes, or shall sell any beverage containing one-half of 1 per centum or more of alcohol by volume in which any extract, sirup, or other article is used as an ingredient, shall be subject to the penalties provided in section 29 of this Title. If the commissioner shall find, after notice and hearing as provided for in section 5, of this Title, that any person has sold any flavoring extract, sirup, or beverage in violation of this paragraph, he shall notify such person, and any known principal for whom the sale was made, to desist from selling such article; and it shall thereupon be unlawful for a period of one year thereafter for any person so notified to sell any such extract, sirup, or beverage without making an application for, giving a bond, and obtaining a permit so to do, which permit may be issued upon such conditions as the commissioner may deem necessary to prevent such illegal sales, and in addition the commissioner shall require a record and report of sales. (41 Stat. L. 309.)

Sec. 5. (Failure of enumerated articles to conform to descriptions—analysis—revocation of permit.) Whenever the commissioner has reason to believe that any article mentioned in section 4 does not correspond with the descriptions and limitations therein provided, he shall cause an analysis of said article to be made, and if, upon such analysis, the commissioner shall find that said article does not so correspond, he shall give not less than fifteen days' notice in writing to the person who is the manufacturer thereof to show cause why said article should not be dealt with as an intoxicating liquor, such notice to be served personally or by registered mail, as the commissioner may determine and shall specify the time when, the place where, and the name of the agent or official before whom such person is required to appear.

If the manufacturer of said article fails to show to the satisfaction of the commissioner that the article corresponds to the descriptions and limitations provided in section 4 of this Title, his permit to manufacture and sell such article shall be revoked. The manufacturer may

by appropriate proceeding in a court of equity have the action of the commissioner reviewed, and the court may affirm, modify, or reverse the finding of the commissioner as the facts and the law of the case may warrant, and during the pendency of such proceedings may restrain the manufacture, sale, or other disposition of such article. (41 Stat. L. 309.)

Sec. 6. (Permits to manufacture, etc., liquor.) No one shall manufacture, sell, purchase, transport, or prescribe any liquor without first obtaining a permit from the commissioner so to do, except that a person may, without a permit, purchase and use liquor for medicinal purposes when prescribed by a physician as herein provided, and except that any prson who is in the opinion of the commissioner is conducting a bona fide hospital or sanatorium engaged in the treatment of persons suffering from alcoholism, may, under such rules, regulations, and conditions, as the commissioner shall prescribe, purchase and use, in accordance with the methods in use in such institution, liquor to be administered to the patients of such institution under the direction of a duly qualified physician employed by such institution.

All permits to manufacture, prescribe, sell or transport liquor, may be issued for one year, and shall expire on the 31st day of December next succeeding the issuance thereof: Provided, That the commissioner may without formal application or new bond extend any permit granted under this Act or laws now in force after August 31 in any year to December 31 of the succeeding year; Provided further, That permits to purchase liquor for the purpose of manufacturing or selling as provided in this Act shall not be in force to exceed ninety days from the day of issuance. A permit to purchase liquor for any other purpose shall not be in force to exceed thirty days. Permits to purchase liquor shall specify the quantity and kind to be purchased and the purpose for which it is to be used. No permit shall be issued to any person who within one year prior to the application therefor or issuance thereof shall have violated the terms of any permit issued under this Title or any law of the United

States or of any State regulating traffic in liquor. No permit shall be issued to anyone to sell liquor at retail, unless the sale is to be made through a pharmacist designated in the permit and duly licensed under the laws of his State to compound and dispense medicine prescribed by a duly licensed physician. No one shall be given a permit to prescribe liquor unless he is a physician duly licensed to practice medicine and actively engaged in the practice of such profession. Every permit shall be in writing, dated when issued, and signed by the commissioner or his authorized agent. It shall give the name and address of the person to whom it is issued and shall designate and limit the acts that are permitted and the time when and place where such acts may be performed. No permit shall be issued until a verified, written application shall have been made therefor, setting forth the qualification of the applicant and the purpose for which the liquor is to be used.

The commissioner may prescribe the form of all permits and applications and the facts to be set forth therein. Before any permit is granted the commissioner may require a bond in such form and amount as he may prescribe to insure compliance with the terms of the permit and the provisions of this title. In the event of the refusal by the commissioner of any application for a permit, the applicant may have a review of his decision before a court of equity in the manner provided in section 5 hereof.

Nothing in this title shall be held to apply to the manufacture, sale, transportation, importation, possession, or distribution of wine for sacramental purposes, or like religious rites, except section 6 (save as the same requires a permit to purchase) and section 10 hereof, and the provisions of this Act prescribing penalties for the violation of either of said sections. No person to whom a permit may be issued to manufacture, transport, import, or sell wines for sacramental purposes..... or like religious rites shall sell, barter, exchange, or furnish any such to any person not a rabbi, minister of the gospel, priest, or an officer duly authorized for the

purpose by any church or congregation, nor to any such except upon an application duly subscribed by him, which application, authenticated as regulations may prescribe, shall be filed and preserved by the seller. The head of any conference or diocese or other ecclesiastical jurisdiction may designate any rabbi, minister, or priest to supervise the manufacture of wine to be used for the purposes and rites in this section mentioned, and the person so designated may, in the discretion of the commissioner, be granted a permit to supervise such manufacture. (41 Stat. L. 310.)

Sec. 7. (Prescriptions for liquors.) No one but a physician holding a permit to prescribe liquor shall issue any prescription for liquor. And no physician shall prescribe liquor unless after careful physical examination of the person for whose use such prescription is sought, or if such examination is found impracticable, then upon the best information obtainable, he in good faith believes that the use of such liquor as a medicine by such person is necessary and will afford relief to him from some known ailment. No more than a pint of spirituous liquor to be taken internally shall be prescribed for use by the same person within any period of ten days and no prescription shall be filled more than once. Any pharmacist filling a prescription shall at the time indorse upon it over his own signature the word "canceled," together with the date when the liquor was delivered, and then make the same a part of the record that he is required to keep as herein provided.

Every physician who issues a prescription for liquor shall keep a record alphabetically arranged in a book prescribed by the commissioner, who shall show the date of issue, amount prescribed, to whom issued, the purpose or ailment for which it is to be used and directions for use, stating the amount and frequency of the dose. (41 Stat. L. 311.)

Sec. 8. (Prescription blanks.) The commissioner shall cause to be printed blanks for the prescriptions herein required, and he shall furnish the same, free of cost, to physicians holding permits to prescribe. The prescrip-

tion blanks shall be printed in book form and shall be numbered consecutively from one to one hundred, and each book shall be given a number, and the stubs in each book shall carry the same number as and be copies of the prescriptions. The books containing such stubs shall be returned to the commissioner when the prescription blanks have been used, or sooner, if directed by the commissioner. All unused, mutilated, or defaced blanks shall be returned with the book. No physician shall prescribe and no pharmacist shall fill any prescription for liquor except on blanks so provided, except in cases of emergency, in which event a record and report shall be made and kept as in other cases. (41 Stat. l. 311.)

Sec. 9. (Revocation of permits.) If at any time there shall be filed with the commissioner a complaint under oath setting forth facts showing, or if the commissioner has reason to believe, that any person who has a permit is not in good faith conforming to the provisions of this Act, or has violated the laws of any State relating to intoxicating liquor, the commissioner or his agent shall immediately issue an order citing such person to appear before him on a day named not more than thirty and not less than fifteen days from the date of service upon such permittee of a copy of the citation, which citation shall be accompanied by a copy of such complaint, or in the event that the proceedings be initiated by the commissioner with a statement of the facts constituting the violation charged, at which time a hearing shall be had unless continued for cause. Such hearing shall be held within the judicial district and within fifty miles of the place where the offense is alleged to have occurred, unless the parties agree on another place. If it be found that such person has been guilty of willfully violating any such laws, as charged, or has not in good faith conformed to the provisions of this Act, such permit shall be revoked, and no permit shall be granted to such person within one year thereafter. Should the permit be revoked by the commissioner, the permittee may have a review of his decision before a court of equity in the manner provided in section 5 hereof. During the pendency of such action

such permit shall be temporarily revoked. (41 Stat. L. 311.)

Sec. 10. (Record of liquor manufactured, etc.) No person shall manufacture, purchase for sale, sell, or transport any liquor without making at the time a permanent record thereof showing in detail the amount and kind of liquor manufactured, purchased, sold, or transported, together with the names and addresses of the persons to whom sold, in case of sale, and the consignor and consignee in case of transportation, and the time and place of such manufacture, sale, or transportation. The commissioner may prescribe the form of such record, which shall at all times be open to inspection as in this Act provided. (41 Stat. L. 312.)

Sec. 11. (Copies of permits to purchase—part of records—wholesale purchases.) All manufacturers and wholesale or retail druggists shall keep as a part of the records required of them a copy of all permits to purchase on which a sale of any liquor is made, and no manufacturer or wholesale druggist shall sell or otherwise dispose of any liquor except at wholesale and only to persons having permits to purchase in such quantities. (41 Stat. l. 312.)

Sec. 12. (Labels on liquor containers.) All persons manufacturing liquor for sale under the provisions of this title shall securely and permanently attach to every container thereof, as the same is manufactured, a label stating name of manufacturer, kind and quantity of liquor contained therein, and the date of its manufacture, together with the number of the permit authorizing the manufacture thereof; and all persons possessing such liquor in wholesale quantities shall securely keep and maintain such label thereon; and all persons selling at wholesale shall attach to every package of liquor, when sold, a label setting forth the kind and quantity of liquor contained therein, by whom manufactured, the date of sale, and the person to whom sold; which label shall likewise be kept and maintained thereon until the liquor is used for the purpose for which such sale was authorized. (41 Stat. L. 312.)

Sec. 13. (Shipments of liquor—record by carrier—delivery—verified copy of permit to purchase.) It shall be the duty of every carrier to make a record at the place of shipment of the receipt of any liquor transported, and he shall deliver liquor only to persons who present to the carrier a verified copy of a permit to purchase which shall be made a part of the carrier's permanent record at the office from which delivery is made.

The agent of the common carrier is hereby authorized to administer the oath to the consignee in verification of the copy of the permit presented, who, if not personally known to the agent, shall be identified before the delivery of the liquor to him. The name and address of the person identifying the consignee shall be included in the record. (41 Stat. L. 312.)

Sec. 14. (Shipments—duty of shipper to disclose character of package—information on outside of package.) It shall be unlawful for a person to use or induce any carrier, or any agent or employee thereof, to carry or ship any package or receptacle containing liquor without notifying the carrier of the true nature and character of the shipment. No carrier shall transport nor shall any person receive liquor from a carrier unless there appears on the outside of the package containing such liquor the following information:

Name and address of consignor or seller, name and address of the consignee, kind and quantity of liquor contained therein, and the number of the permit to purchase or ship the same, together with the name and address of the person using the permit. (41 Stat. L. 312.)

Sec. 15. (False statements on package—effect.) It shall be unlawful for any consignee to accept or receive any package containing any liquor upon which appears a statement known to him to be false, or for any carrier or other person to consign, ship, transport, or deliver any such package, knowing such statement to be false. (41 Stat. L. 313.)

Sec. 16. (Shipments—bona fide consignee.) It shall be unlawful to give to any carrier or any officer, agent, or person acting or assuming to act for such carrier an

order requiring the delivery to any person of any liquor or package containing liquor consigned to, or purporting or claimed to be consigned to a person, when the purpose of the order is to enable any person not an actual bona fide consignee to obtain such liquor. (41 Stat. L. 313.)

Sec. 17. (Liquor advertisements—price lists.) It shall be unlawful to advertise anywhere, or by any means or method, liquor, or the manufacture, sale, keeping for sale of furnishing of the same, or where, how, from whom, or at what price the same may be obtained. No one shall permit any sign or billboard containing such advertisement to remain upon one's premises. But nothing herein shall prohibit manufacturers and wholesale druggists holding permits to sell liquor from furnishing price lists, with description of liquor for sale, to persons permitted to purchase liquor, or from advertising alcohol in business publications or trade journals circulating generally among manufacturers of lawful alcoholic perfume, toilet preparations, flavoring extracts, medicinal preparations, and like articles: Provided, however, That nothing in this Act or in the Act making appropriations for the Post Office Department, approved March 3, 1917 (Thirty-ninth Statutes at Large, Part 1, page 1058, et seq.), shall apply to newspapers published in foreign countries when mailed to this country. (41 Stat. L. 313.)

For Act of March 3, 1917, mentioned in the text, see 1918 Supp. Fed. Stat. Ann. 394.

Sec. 18. (Advertisements of things pertaining to manufacture of liquor.) It shall be unlawful to advertise, manufacture, sell, or possess for sale any utensil, contrivance, machine, preparation, compound, tablet, substance, formula, direction, or receipt advertised, designed, or intended for use in the unlawful manufacture of intoxicating liquor. (41 Stat. L. 313.)

Sec. 19. (Soliciting liquor orders.) No person shall solicit or receive, nor knowingly permit his employee to solicit or receive, from any person any order for liquor or give any information of how liquor may be obtained in violation of this Act. (41 Stat. L. 313.)

Sec. 20. (Injuries resulting from intoxication—recovery of damages.) Any person who shall be injured in person, property, means of support, or otherwise by any intoxicated person, or by reason of the intoxication of any person, whether resulting in his death or not, shall have a right of action against any person who shall, by unlawfully selling to or unlawfully assisting in procuring liquor for such intoxicated person, have caused or contributed to such intoxication, and in any such action such person shall have a right to recover actual and exemplary damages. In case of the death of either party, the action or right of action given by this section shall survive to or against his or her executor or administrator, and the amount so recovered by either wife or child shall be his or her sole and separate property. Such action may be brought in any court of competent jurisdiction. In any case where parents shall be entitled to such damages, either the father or mother may sue alone therefor, but recovery by one of such parties shall be a bar to suit brought by the other. (41 Stat. L. 313.)

Sec. 21. (Property when common nuisance—lien on property.) Any room, house, building, boat, vehicle, structure, or place where intoxicating liquor is manufactured, sold, kept, or bartered, in violation of this title, and all intoxicating liquor and property kept and used in maintaining the same, is hereby declared to be a common nuisance, and any person who maintains such a common nuisance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or be imprisoned for not more than one year, or both. If a person has knowledge or reason to believe that his room, house, building, boat, vehicle, structure, or place is occupied or used for the manufacture or sale of liquor contrary to the provisions of this title, and suffers the same to be so occupied or used, such room, house, building, boat, vehicle, structure, or place shall be subject to a lien for and may be sold to pay all fines and costs assessed against the person guilty of such nuisance for such violation, and any such lien may be enforced by action in any court having jurisdiction. (41 Stat. L. 313.)

Sec. 22. (Abatement of nuisance—injunction.) An action to enjoin any nuisance defined in this title may be brought in the name of the United States by the Attorney General of the United States or by any United States attorney or any prosecuting attorney of any state or any subdivision thereof or by the commissioner or his deputies or assistants. Such action shall be brought and tried as an action in equity and may be brought in any court having jurisdiction to hear and determine equity cases. If it is made to appear by affidavits or otherwise, to the satisfaction of the court, or judge in vacation, that such nuisance exists, a temporary writ of injunction shall forthwith issue restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the trial. If a temporary injunction is prayed for, the court may issue an order restraining the defendant and all other persons from removing or in any way interfering with the liquor or fixtures, or other things used in connection with the violation of this Act constituting such nuisance. No bond shall be required in instituting such proceedings. It shall not be necessary for the court to find the property involved was being unlawfully used as aforesaid at the time of the hearing, but on finding that the material allegations of the petition are true, the court shall order that no liquor shall be manufactured, sold, bartered, or stored in such room, house, building, boat, vehicle, structure, or place, or any part thereof. And upon judgment of the court ordering such nuisance to be abated, the court may order that the room, house, building, structure, boat, vehicle, or place shall not be occupied or used for one year thereafter; but the court may, in its discretion, permit it to be occupied or used if the owner, lessee, tenant, or occupant thereof shall give bond with sufficient surety, to be approved by the court making the order, in the penal and liquidated sum of not less than $500 or more than $1,000, payable to the United States, and conditioned that intoxicating liquor will not thereafter be manufactured, sold, bartered, kept, or otherwise disposed of therein or thereon, and that he will pay all fines, costs, and damages that may be

assessed for any violation of this title upon said property. (41 Stat. L. 314.)

Sec. 23. (Person when guilty of nuisance—fees of officers enforcing act—forfeiture of leases.) That any person who shall, with intent to effect a sale of liquor, by himself, his employee, servant, or agent, for himself or any person, company or corporation, keep or carry around on his person, or in a vehicle, or other conveyance whatever, or leave in a place for another to secure, any liquor, or who shall travel to solicit, or solicit, or take, or accept orders for the sale, shipment, or delivery of liquor in violation of this title is guilty of a nuisance and may be restrained by injunction, temporary and permanent, from doing or continuing to do any of said acts or things.

In such proceedings it shall not be necessary to show any intention on the part of the accused to continue such violation if the action is brought within sixty days following any such violation of the law.

For removing and selling property in enforcing this Act the officer shall be entitled to charge and receive the same fee as the sheriff of the county would receive for levying upon and selling property under execution, and for closing the premises and keeping them closed a reasonable sum shall be allowed by the court.

Any violation of this title upon any leased premises by the lessee or occupant thereof shall, at the option of the lessor, work a forfeiture of the lease. (41 Stat. L. 314.)

Sec. 24. (Violation of injunction—punishment for contempt.) In the case of the violation of any injunction, temporary or permanent, granted pursuant to the provisions of this title, the court, or in vacation a judge thereof, may summarily try and punish the defendant. The proceedings for punishment for contempt shall be commenced by filing with the clerk of the court from which such injunction issued information under oath setting out the alleged facts constituting the violation, whereupon the court or judge shall forthwith cause a warrant to issue under which the defendant shall be arrested. The trial may be had upon affidavits, or either party may demand the production and oral examination of the witnesses.

Any person found guilty of contempt under the provisions of this section shall be punished by a fine of not less than $500 or more than $1,000, or by imprisonment of not less than thirty days nor more than twelve months, or by both fine and imprisonment. (41 Stat. L. 315.)

Sec. 25. (Possession of liquor or property designed for manufacture—search warrants.) It shall be unlawful to have or possess any liquor or property designed for the manufacture of liquor intended for use in violating this title or which has been so used, and no property rights shall exist in any such liquor or property. A search warrant may issue as provided in Title XI of public law numbered 24 of the Sixty-fifth Congress, approved June 15, 1917, and such liquor, the containers thereof, and such property so seized shall be subject to such disposition as the court may make thereof. If it is found that such liquor or property was so unlawfully held or possessed, or had been so unlawfully used, the liquor, and all property designed for the unlawful manufacture of liquor, shall be destroyed, unless the court shall otherwise order. No search warrant shall issue to search any private dwelling occupied as such unless it is being used for the unlawful sale of intoxicating liquor, or unless it is in part used for some business purpose such as a store, shop, saloon, restaurant, hotel, or boarding house. The term "private dwelling" shall be construed to include the room or rooms used and occupied not transiently but solely as a residence in an apartment house, hotel, or boarding house. The property seized on any such warrant shall not be taken from the officer seizing the same on any writ of replevin or other like process. (41 Stat. L. 315.)

For Act of June 15, 1917, Title XI, mentioned in the text, see 1918 Supp. Fed. Stat. Ann. 128.

Sec. 26. (Transportation of liquor unlawfully—seizure of vehicle or conveyance.) When the commissioner, his assistants, inspectors, or any officer of the law shall discover any person in the act of transporting in violation of the law, intoxicating liquors in any wagon, buggy, automobile, water or air craft, or other vehicle, it shall be his duty to seize any and all intoxicating liquors found

therein being transported contrary to law. Whenever intoxicating liquors transported or possessed illegally shall be seized by an officer he shall take possession of the vehicle and team or automobile, boat, air or water craft, or any other conveyance, and shall arrest any person in charge thereof. Such officer shall at once proceed against the person arrested under the provisions of this title in any court having competent jurisdiction; but the said vehicle or conveyance shall be returned to the owner upon execution by him of a good and valid bond, with sufficient sureties, in the sum double the value of the property, which said bond shall be approved by said officer and shall be conditioned to return said property to the custody of said officer on the day of trial to abide the judgment of the court. The court upon conviction of the person so arrested shall order the liquor destroyed, and unless good cause to the contrary is shown by the owner, shall order a sale by public auction of the property seized, and the officer making the sale, after deducting the expenses of keeping the property, the fee for the seizure, and the cost of the sale, shall pay all liens, according to their priorities, which are established, by intervention or otherwise at said hearing or in other proceeding brought for said purpose, as being bona fide and as having been created without the lien-or having any notice that the carrying vehicle was being used or was to be used for illegal transportation of liquor, and shall pay the balance of the proceeds into the Treasury of the United States as miscellaneous receipts. All liens against property sold under the provisions of this section shall be transferred from the property to the proceeds of the sale of the property. If, however, no one shall be found claiming the team, vehicle, water or air craft, or automobile, the taking of the same, with a description thereof, shall be advertised in some newspaper published in the city or county where taken or if there be no newspaper published in such city or county, in a newspaper having circulation in the county, once a week for two weeks and by handbills posted in three public places near the place of seizure, and if no claimant

shall appear within ten days after the last publication of the advertisement, the property shall be sold and the proceeds after deducting the expenses and costs shall be paid into the Treasury of the United States as miscellaneous receipts. (41 Stat. L. 315.)

Sec. 27. (Disposition of seized liquors.) In all cases in which intoxicating liquors may be subject to be destroyed under the provisions of this Act the court shall have jurisdiction upon the application of the United States attorney to order them delivered to any department or agency of the United States Government for medicinal, mechanical, or scientific uses, or to order the same sold at private sale for such purposes to any person having a permit to purchase liquor the proceeds to be covered into the Treasury of the United States to the credit of miscellaneous receipts, and all liquor heretofore seized in any suit or proceeding brought for violation of the law may likewise be so disposed of, if not claimed within sixty days from the date this section takes effect. (41 Stat. L. 316.)

Sec. 28. (Enforcement by Commissioner of Internal Revenue and assistants—power conferred.) The commissioner, his assistants, agents and inspectors, and all other officers of the United States, whose duty it is to enforce criminal laws, shall have all the power and protection in the enforcement of this Act or any provisions thereof which is conferred by law for the enforcement of existing laws relating to the manufacture or sale of intoxicating liquors under the law of the United States. (41 Stat. L. 316.)

Sec. 29. (Violations of act—penalties.) Any person who manufactures or sells liquor in violation of this title shall for a first offense be fined not more than $1,000 or imprisoned not exceeding six months, and for a second or subsequent offense shall be fined not less than $200 nor more than $2,000 and be imprisoned not less than one month nor more than five years.

Any person violating the provisions of any permit, or who makes any false record, report, or affidavit re-

quired by this title, or violates any of the provisions of this title, for which offense a special penalty is not prescribed, shall be fined for a first offense not more than $500; for a second offense not less than $100 nor more than $1,000 or be imprisoned not more than ninety days; for any subsequent offense he shall be fined not less than $500 and be imprisoned not less than three months nor more than two years years. It shall be the duty of the prosecuting officer to ascertain whether the defendant has been previously convicted and to plead the prior conviction in the affidavit, information, or indictment. The penalties provided in this Act against the manufacture of liquor without a permit shall not apply to a person for manufacturing nonintoxicating cider and fruit juices exclusively for use in his home, but such cider and fruit juices shall not be sold or delivered except to persons having permits to manufacture vinegar. 41 Stat. L. 316.)

Sec. 30. (Evidence—witnesses—incriminating testimony.) No person shall be excused, on the ground that it may tend to incriminate him or subject him to a penalty or forfeiture, from attending and testifying, or producing books, papers, documents, and other evidence in obedience to a subpoena of any court in any suit or proceeding based upon or growing out of any alleged violation of this Act; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing as to which, in obedience to a subpoena and under oath, he may so testify or produce evidence, but no person shall be exempt from prosecution and punishment for perjury committed in so testifying. (41 Stat. L. 317.)

Sec. 31. (Unlawful sale of liquor—venue of prosecution.)

In case of a sale of liquor where the delivery thereof was made by a common or other carrier the sale and delivery shall be deemed to be made in the county or district wherein the delivery was made by such carrier to the consignee, his agent or employee, or in the county or district wherein the sale was made, or from which the

shipment was made, and prosecution for such sale or delivery may be had in any such county or district. (41 Stat. L. 317.)

Sec. 32. (Affidavit, information or indictment—sufficiency—separate offenses—bill of particulars.)

In any affidavit, information, or indictment for the violation of this Act, separate offenses may be united in separate counts and the defendant may be tried on all at one trial and the penalty for all offenses may be imposed. It shall not be necessary in any affidavit, information, or indictment to give the name of the purchaser or to include any defensive negative averments, but it shall be sufficient to state that the act complained of was then and there prohibited and unlawful, but this provision shall not be construed to preclude the trial court from directing the furnishing the defendant a bill of particulars when it deems it proper to do so. (41 Stat. L. 317.)

Sec. 33. (Possession of liquor—presumption—arising—report—possession in private dwelling.) After February 1, 1920, the possession of liquors by any person not legally permitted under this title to possess liquor shall be prima facie evidence that such liquor is kept for the purpose of being sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this title. Every person legally permitted under this title to have liquor shall report to a commissioner within ten days after the date when the Eighteenth Amendment to the Constitution of the United States goes into effect, the kind and amount of intoxicating liquors in his possession. But it shall not be unlawful to possess liquors in one's private dwelling while the same is occupied and used by him as his dwelling only and such liquor need not be reported, provided such liquors are for use only for the personal consumption of the owner thereof and his family residing in such dwelling and of his bona fide guests when entertained by him therein; and the burden of proof shall be upon the possessor in any action concerning the same to prove that such liquor was lawfully acquired, possessed, and used. (41 Stat. L. 317.)

Sec. 34. (Records and reports—inspection—evidence—copies.) All records and reports kept or filed under the provisions of this Act shall be subject to inspection at any reasonable hour by the commissioner or any of his agents or by any public prosecutor or by any person designated by him, or by any peace officer in the State where the record is kept, and copies of such records and reports duly certified by the person with whom kept or filed may be introduced in evidence with like effect as the originals thereof, and verified copies of such records shall be furnished to the commissioners when called for. (41 Stat. L. 317.)

Sec. 35. (Effect of Act on existing legislation—liquor taxes and penalties—compromising civil causes.) All provisions of law that are inconsistent with this Act are repealed only to the extent of such inconsistency and the regulations herein provided for the manufacture or traffic in intoxicating liquor shall be construed as in addition to existing laws. This Act shall not relieve anyone from paying any taxes or other charges imposed upon the manufacture or traffic in such liquor. No liquor revenue stamps or tax receipts for any illegal manufacture or sale shall be issued in advance, but upon evidence of such illegal manufacture or sale a tax shall be assessed against and collected from the person responsible for such illegal manufacture or sale in double the amount now provided by law, with an additional penalty of $500 on retail dealers and $1,000 on manufacturers. The payment of such tax or penalty shall give no right to engage in the manufacture or sale of such liquor, or relieve anyone from criminal liability, nor shall this Act relieve any person from any liability, civi lor criminal, heretofore or hereafter incurred under existing laws.

The Commissioner, with the approval of the Secretary of the Treasury, may compromise any civil cause arising under this title before bringing action in court; and with the approval of the Attorney General he may compromise any such cause after action thereon has been commenced. (41 Stat. L. 317.)

Sec. 36. (Invalidity of part of Act—effect as to remainder.)

If any provision of this Act shall be held invalid it shall not be construed to invalidate other provisions of the Act. (41 Stat. L. 318.)

Sec. 37. (Effect of Act on liquor already manufactured—manufacture of low per cent, alcoholic beverages —tax.) Nothing herein shall prevent the storage in United States bonded warehouses of all liquor manufactured prior to the taking effect of this Act, or prevent the transportation of such liquor to such warehouse or to any wholesale druggist for sale to such druggist for purpose not prohibited when the tax is paid, and permits may be issued therefor.

A manufacturer of any beverage containing less than one-half of 1 per centum of alcohol by volume may, on making application and giving such bond as the commissioner shall prescribe, be given a permit to develop in the manufacture thereof by the usual methods of fermentation and fortification or otherwise a liquid such as beer, ale, porter, or wine, containing more than one-half of 1 per centum of alcohol by volume, but before any such liquid is withdrawn from the factory or otherwise disposed of the alcoholic contents thereof shall under such rules and regulations as the commissioner may prescribe be reduced below such one-half of 1 per centum of alcohol: Provided, That such liquid may be removed and transported, under bond and under such regulations as the commissioner may prescribe, from one bonded plant or warehouse to another for the purpose of having the alcohol extracted therefrom. And such liquids may be developed, under permit, by persons other than the manufacturers of beverages containing less than one-half of 1 per centum of alcohol by volume, and sold to such manufacturers for conversion into such beverages. The alcohol removed from such liquid, if evaporated and not condensed and saved, shall not be subject to tax; if saved, it shall be subject to the same law as other alcoholic liquors. Credit shall be allowed on the tax due on any alcohol so saved to the amount of any tax paid upon distilled spirits or brandy used in the fortification of the liquor from which the same is saved.

When fortified wines are made and used for the pro-

duction of nonbeverage alcohol, and dealcoholized wines containing less than one-half of 1 per centum of alcohol by volume, no tax shall be assessed or paid on the spirits used in such fortification, and such dealcoholized wines produced under the provisions of this Act, whether carbonated or not, shall not be subject to the tax on artificially carbonated or sparkling wines, but shall be subject to the tax on still wines only.

In any case where the manufacturer is charged with manufacturing or selling for beverage purposes any malt, vinous, or fermented liquids containing one-half of 1 per centum or more of alcohol by volume, or in any case where the manufacturer, having been permitted by the commissioner to develop a liquid such as ale, beer, porter, or wine containing more than one-half of 1 per centum of alcohol by volume in the manner and for the purpose herein provided, is charged with failure to reduce the alcoholic content of any such liquid below such one-half of 1 per centum before withdrawing the same from the factory, then in either such case the burden of proof shall be on such manufacturer, to show that such liquid so manufactured, sold, or withdrawn contains less than one-half of 1 per centum of alcohol by volume. In any suit or proceeding involving the alcoholic content of any beverage, the reasonable expense of analysis of such beverage shall be taxed as costs in the case. (41 Stat. L. 318.)

Sec. 38. (Employees to enforce provisions of Act—appointment—civil service.) The Commissioner of Internal Revenue and the Attorney General of the United States are hereby respectively authorized to appoint and employ such assistants, experts, clerks, and other employees in the District of Columbia or elsewhere, and to purchase such supplies and equipment as they may deem necessary for the enforcement of the provisions of this Act, but such assistants, experts, clerks, and other employees, except such executive officers as may be appointed by the Commissioner or the Attorney General to have immediate direction of the enforcement of the provisions of this Act, and persons authorized to issue permits, and agents and inspectors in th field service, shall be appointed under the rules and regulations prescribed

by the Civil Service Act: Provided, That the Commissioner and Attorney General in making such appointments shall give preference to those who have served in the military or naval service in the recent war, if otherwise qualified, and there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sum as may be required for the enforcement of the Act including personal services in the District of Columbia, and for the fiscal year ending June 30, 1920, there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $2,000,000 for the use of the Commissioner of Internal Revenue and $100,000 for the use of the Department of Justice for the enforcement of the provisions of this Act, including personal services in the District of Columbia and necessary printing and binding. (41 Stat. L. 319.)

Sec. 39. (Property of nonviolator of Act proceeded against—summons.) In all cases wherein the property of any citizen is proceeded against or wherein a judgment effecting it might be rendered, and the citizen is not the one who in person violated the provisions of the law, summons must be issued in due form and served personally, if said person is to be found within the jurisdiction of the court. (41 Stat. L. 319.)

Title III.

Industrial Alcohol.

Sec. 1. (Terms defined—"alcohol"—"container.") When used in this title—

The term "alcohol" means that substance known as ethyl alcohol, hydrated oxide of ethyl, of spirit of wine, from whatever source of whatever processes produced.

The term "container" includes any receptacle, vessel, or form of package, tank, or conduit used or capable of use or holding, storing, transferring, or shipment of alcohol. (41 Stat. L. 319.)

Industrial Alcohol Plants and Warehouses.

Sec. 2. (Alcohol plants—bonding.) Any person now producing alcohol shall, within thirty days after the passage of this Act, make application to the commissioner for

registration of his industrial alcohol plant, and as soon thereafter as practicable the premises shall be bonded and permit may issue for the operation of such plant, and any person hereafter establishing a plant for the production of alcohol shall likewise before operation make application, file bond, and receive permit. (41 Stat. L. 319.)

Sec. 3. (Warehouses—bonding—entry, storage and withdrawal of alcohol—regulations.) Warehouses for the storage and distribution of alcohol to be used exclusively for other than beverage purposes may be established upon filing of application and bond, and issuance of permit at such places, either in connection with the manufacturing plant or elsewhere, as the commissioner may determine; and the entry and storage of alcohol therein, and the withdrawals of alcohol therefrom shall be made in such containers and by such means as the commissioner by regulation may prescribe. (41 Stat. L. 319.)

Sec. 4. (Transfer of alcohol from one plant or warehouse to another.) Alcohol produced at any registered industrial alcohol plant or stored in any bonded warehouse may be transferred under regulations to any other registered industrial alcohol plant or bonded warehouse for any lawful purpose. (41 Stat. L. 320.)

Sec. 5. (Taxes on alcohol—lien.) Any tax imposed by law upon alcohol shall attach to such alcohol as soon as it is in existence as such, and all proprietors of industrial alcohol plants and bonded warehouses shall be jointly and severally liable for any and all taxes on any and all alcohol produced thereat or stored therein. Such taxes shall be a first lien on such alcohol and the premises and plant in which such alcohol is produced or stored, together with all improvements and appurtenances thereunto belonging or in any wise appertaining. (41 Stat. L. 320.)

Sec. 6. (Effect of constitutional amendment on distilled spirits in bonded warehouses—disposition.) Any distilled spirits produced and fit for beverage purposes remaining in any bonded warehouse on or before the date when the Eighteenth Amendment of the Constitution of

the United States goes into effect, may, under regulations, be withdrawn therefrom, either for denaturation at any bonded denaturing plant or for deposit in a bonded warehouse established under this Act; and when so withdrawn, if not suitable as to proof, purity, or quality for other than beverage purposes, such distilled spirits shall be redistilled, purified, and changed in proof so as to render such spirits suitable for other purposes, and having been so treated may thereafter be denatured or sold in accordance with the provisions of this Act. (41 Stat. L. 320.)

Sec. 7. (Distilleries or bonded warehouses heretofore legally established—disposition.) Any distillery or bonded warehouse heretofore legally established may, upon filing application and bond and the granting of permit, be operated as an industrial alcohol plant or bonded warehouse under the provisions of this title and regulations made thereunder. (41 Stat. L. 320.)

Sec. 8. (Alcohol how made—use and disposition.) Alcohol may be produced at any industrial alcohol plant established under the provisions of this title, from any raw materials or by any process suitable for the production of alcohol, and, under regulations, may be used at any industrial alcohol plant or bonded warehouse or sold or disposed of for any lawful purpose, as in this Act provided. (41 Stat. L. 320.)

Sec. 9. (Exemption of plants and warehouses from certain statutory provisions.) Industrial alcohol plants and bonded warehouses established under the provisions of this title shall be exempt from the provisions of sections 3154, 3244, 3258, 3259, 3260, 3263, 3264, 3266, 3267, 3268, 3269, 3271, 3273, 3274, 3275, 3279, 3280, 3283, 3284, 3285, 3286, 3287, 3288, 3289, 3290, 3291, 3292, 3293, 3294, 3295, 3302, 3303, 3307, 3308, 3309, 3310, 3311, 3312, 3313, 3314, and 3327, of the Revised Statutes; sections 48 to 60, inclusive, and sections 62 and 67 of the Act of August 27, 1894 (Twenty-eight Statutes, pages 563 to 568), and from such other provisions of existing laws relating to distilleries and bonded warehouses as may, by regulations, be declared inapplicable to industrial alcohol plants and bonded warehouses established under this Act.

Regulations may be made embodying any provisions of the sections above-enumerated. (41 Stat. L. 320.)

See the title Internal Revenue in 3 Fed. Stat. Ann. (2d ed.) 954, 3 Fed. Stat. Ann. (1st ed.) 540, for the statutes mentioned in the text.

Tax-Free Alcohol.

Sec. 10. (Denaturing plants—establishment—sale of denatured alcohol tax-free—distilled vinegar.) Upon the filing of an application and bond and issuance of permit denaturing plants may be established upon the premises of any industrial alcohol plant, or elsewhere, and shall be used exclusively for the denaturation of alcohol by the admixture of such denaturing materials as shall render the alcohol, or any compound in which it is authorized to be used, unfit for use as an intoxicating beverage.

Alcohol lawfully denatured may, under regulations, be sold free of tax either for domestic use or for export.

Nothing in this Act shall be construed to require manufacturers of distilled vinegar to raise the proof of any alcohol used in such manufacture or to denature the same. (41 Stat. L. 320.)

Sec. 11. (Withdrawals of alcohol tax free.) Alcohol produced at any industrial alcohol plant or stored in any bonded warehouse may, under regulations, be withdrawn tax free as provided by existing law from such plant or warehouse for transfer to any denaturing plant for denaturation, or may, under regulations, before or after denaturation, be removed from any such plant or warehouse for any lawful tax-free purpose.

Spirits of less proof than one hundred and sixty degrees may, under regulations, be deemed to be alcohol for the purpose of denaturation, under the provisions of this title.

Alcohol may be withdrawn, under regulations, from any industrial plant or bonded warehouse tax free by the United States or any governmental agency thereof, or by the several States and Territories or any municipal subdivision thereof or by the District of Columbia, or for the use of any scientific university or college of learning, any laboratory for use exclusively in scienitfic research, or for use in any hospital or sanatorium.

But any person permitted to obtain alcohol tax free, except the United States and the several States and Territories and subdivisions thereof, and the District of Columbia, shall first apply for and secure a permit to purchase the same and give the bonds prescribed under title II of this Act, but alcohol withdrawn for nonbeverage purposes for the use of the United States and the several States, Territories and subdivisions thereof, and the District of Columbia may be purchased and withdrawn subject only to such regulations as may be prescribed. (41 Stat. L. 321.)

General Provisions.

Sec. 12. (Additional penalties.) The penalties provided in this title shall be in addition to any penalties provided in title 2, of this Act, unless expressly otherwise therein provided. (41 Stat. L. 321.)

Sec. 13. (Regulations by Commissioner of Internal Revenue.) The commissioner shall from time to time issue regulations respecting the establishment, bonding, and operation of industrial alcohol plants, denaturing plants, and bonded warehouses authorized herein, and the distribution, sale, export, and use of alcohol which may be necessary, advisable, or proper, to secure the revenue, to prevent diversion of the alcohol to illegal uses, and to place the nonbeverage alcohol industry and other industries using such alcohol as a chemical raw material or for other lawful purposes upon the highest possible plane of scientific and commercial efficiency consistent with the interest of the Government, and which shall insure an ample supply of such alcohol and promote its use in scientific research and the development of fuels, dyes, and other lawful products. (41 Stat. L. 321.)

Sec. 14. (Loss of alcohol by evaporation, etc.—refund of tax.) Whenever any alcohol is lost by evaporation or other shrinkage, leakage, casualty, or unavoidable cause during distillation, redistillation, denaturation, withdrawal, piping, shipment, warehousing, storage, packing, transfer, or recovery, of any such alcohol the commissioner may remit or refund any tax incurred under existing law upon such alcohol, provided he is satisfied that

the alcohol has not been diverted, to any illegal use: Provided, also, That such allowance shall not be granted if the person claiming same is indemnified against such loss by a valid claim of insurance. (41 Stat. L. 321.)

ec. 15. (Operators of industrial alcohol or denaturing plants—violation of laws and regulations—penalty.) whoever operates an industrial alcohol plant or a denaturing plant without complying with the provisions of this title and lawful regulations made thereunder, or whoever withdraws or attempts to withdraw or secure tax free any alcohol subject to tax, or whoever otherwise violates any of the provisions of this title or of regulations lawfully made thereunder shall be liable, for the first offense, to a penalty of not exceeding $1,000, or imprisonment not exceeding thirty days, or both, and for a second, or, cognate offense to a penalty of not less than $100 nor more than $10,000, and to imprisonment of not less than thirty days nor more than one year. It shall be lawful for the commissioner in all cases of second or cognate offense to refuse to issue for a period of one year a permit for the manufacture or use of alcohol upon the premises of any person responsible in any degree for the violation. (41 Stat. L. 321.)

Sec. 16. (Collection of taxes—assessment or stamp.) Any tax payable upon alcohol under existing law may be collected either by assessment or by stamp as regulations shall provide; and if by stamp, regulations shall issue prescribing the kind of stamp to be used and the manner of affixing and canceling the same. (41 Stat. L. 322.)

Sec. 17. (Release of seized property.) When any property is seized for violation of this title it may be released to the claimant or to any intervening party, in the discretion of the commissioner, on a bond given and approved. (41 Stat. L. 322.)

Sec. 18. (Application of administrative laws to this title.) All administrative provisions of internal-revenue law, including those relating to assessment, collection, abatement, and refund of taxes and penalties, and the seizure and forfeiture of property, are made applicable to this title in so far as they are not inconsistent with the provisions thereof. (41 Stat. L. 322.)

Sec. 19. (Prior statutes relating to alcohol—repeal.) All prior statutes relating to alcohol as defined in this title are hereby repealed in so far as they are inconsistent with the provisions of this title. (41 Stat. L. 322.)

Sec. 20. (Canal Zone—prohibition extended to—offenses.) That it shall be unlawful to import or introduce into the Canal Zone, or to manufacture, sell, give away, dispose of, transport, or have in one's possession or under one's control within the Canal Zone, any alcoholic, fermented, brewed, distilled, vinous, malt, or spirituous liquors, except for sacramental, scientific, pharmaceutical, industrial, medicinal purposes, under regulations to be made by the President, and any such liquors within the Canal Zone in violation hereof shall be forfeited to the United States and seized: Provided, That this section shall not apply to liquor in transit through the Panama Canal or on the Panama Railroad.

That each and every violation of any of the provisions of this section shall be punished by a fine of not more than $1,000 or imprisonment not exceeding six months for a first offense, and by a fine not less than $200 nor more than $2,000 and imprisonment not less than one month nor more than five years for a second or subsequent offense.

That all offenses heretofore committed within the Canal Zone may be prosecuted and all penalties therefor enforced in the same manner and to the same extent as if this Act had not been passed. (14 Stat. L. 322.)

Sec. 21. (Act when in effect.) Titles I and III and sections 1, 27, 37, and 38 of title II of this Act shall take effect and be in force from and after the passage and approval of the Act. The other sections of titleII shall take effect and be in force from and after the date when the eighteenth amendment of the Constitution of the Uuited States goes into effect. (41 Stat. 322.)''

Sec. 1104. Decisions Under Different Provisions of the Volstead Act.

There is some difference in the holding of the courts with reference to the forfeiture features of the Act; the following holding that the vehicle is forfeited even though the owner of the vehicle did not know it was to be used

in the illegal transportation of liquor, under Sec. 3450 of the Revised Statutes, Compiled Statutes, Sec. 6352. Logan vs. U. S., 260 F. 746; U. S. vs. Mincey, 254 F. 287; U. S. vs. Fenton, 268 F. 221; U. S. vs. One, 272 F. 188; Shawnee vs. U. S., 249 F. 583; U. S. vs. Brockley, 266 F. 1001; U. S. vs. Burns, 270 F. 681; U. S. vs. Masters, 264 F. 250; see also U. S. vs. One, 259 F. 645; U. S. vs. One, 259 F. 641; U. S. vs. One, 257 F. 251; U. S. vs. Auto, 279 F. 891; Ford vs. U. S., 260 F. 657; 272 F. 491; U. S. vs. One, 262 F. 375; 273 F. 253; 273 F. 275; U. S. vs. One Machine, 267 F. 501; U. S. vs. Hydes, 267 F. 470; vehicle will be condemned when, U. S. vs. Burns, 270 F. 681.

The Act does not authorize the forfeiture of a steamship, The Saxon, 269 F. 639.

The Act provides that the libeled carriage or property may be released on bond, U. S. vs. Chevrolet, 267 F. 1021.

Auto used by chauffeur for unlawful transportation without owner's knowledge may be forfeited. Lewis vs. McCarthy, 274 F. 496; see also U. S. vs. One, 274 F. 473; U. S. vs. One, 274 F. 470.

A suit cannot be maintained under section 3450, for the forfeiture of a vehicle, since the enactment of the National Prohibition Act, U. S. vs. One, 274 F. 926.

Sec. 1105. Volstead Act Repeals Some of Revenue Laws. Upon the question of the repeal of existing internal revenue statutes by the Volstead Act there has been some difference in the holding of the courts.

In U. S. vs. Sacein, 269 F. 33, it was held that the distillery law was not repealed by the Volstead Act; in U. S. vs. Turner, 266 F. 248, it was held that the Volstead Act did not repeal the statute which punishes for the removal of untaxed liquors; in U. S. vs. Yuginni, 266 F. 746, it was held that the illicit distilling act was repealed by the pro act, also in Sanford vs. U. S., 274 F. 369; in Violette vs. Walsh, 272 F. 1014, it was held that the act does not repeal the tax statutes as there was no presumption that one was manufacturing for a forbidden purpose; in Ketchum vs. U. S., 270 F. 416, it was held that the pro act repeals many of the revenue acts; in ex parte Lawrence, 273 F. 876, it was held that the pro act does not repeal the revenue acts; in U. S. vs. Windham, 264 F. 376,

and Farley vs. U. S., 269 F. 721, it is held that the act repeals certain of the revenue measures while the contrary is held in 269 F. 820; in U. S. vs. Stafoff, 268 F. 417 and U. S. vs. Puhac, 268 F. 392, it was held that the act repeals the still and mash statutes. But see Duvall vs. Dyche, 275 F. 440.

In Tisch vs. U. S., 274 F. 208, it was held that the act does not effect prior offenses.

Sec. 1106. Decisions Continued.

Inducing, etc., De Moss vs. U. S., 250 F. 87; Voves vs. U. S., 249 F. 191.

The Volstead Act does not authorize the seizure of liquor owned before the act and intended for personal use, U. S. Supreme Court, November 8, 1920; 41 Sup. Ct. Rep. 30.

The state may prohibit even for personal use since the passage of the Webb-Kenyon Act, was held in Clark vs. Express Company, U. S. Sup. Ct. Jan. 1917, but it is questioned whether this applies to the Volstead Act. In U. S. vs. Peterson, 268 F. 864, it was held that a conviction by a state court prevents a prosecution by the United States for the same act.

For a definition of peace officers under the act see U. S. vs. Viess, 273 F. 279.

A prohibition agent may hold an iron safe for a reasonable time, when U. S. vs. Metzger, 270 F. 291.

Prosecutions may be had under this law by information, Young vs. U. S., 272, F. 967.

The state may go more rigidly than does the federal statutes, 270 F. 315.

Evidence secured by illegal search will not be allowed at the trial, 267 F. 866, also see illegal search and seizure, herein, under Art. 4 of the Constitution.

A penalty under the prohibition act must be collected by suit and not by distress warrant, Kelly vs. Lewelling, 274 F. 112.

The eighteenth amendment was lawfully adopted, State vs. Palmer, U. S. Sup. Ct. June, 1920; 40 Sup. Ct. Rep. 486; method of ratifying the amendment, Hawke vs. Smith, 40 Sup. Ct. Rep. 495; the eighteenth amendment does not abrogate the due process provision of the con-

stitution and there is no right to seize in the home, etc., U. S. vs. Crossen, 264 F. 459. National pro. act is constitutional, 274 F. 245.

A search warrant will not be issued on belief, etc., U. S. vs. Rydowski, 267 F. 866.

For right to search the person and also for possession see U. S. vs. Murphy, 264 F. 842, and Hunter vs. U. S., 264 F. 831.

For allegations necessary in an application for an injunction under the act see U. S. vs. Cohn, 268 F. 423.

Search warrant must be properly issued and cannot be issued against John Doe, U. S. vs. Borkowski, 268 F. 408.

Preserved sweet cider, when U. S. vs. Dodsen, 268 F. 397.

Cider which exceeds the per cent is sold at the defendant's peril since intent is not an element of the act, U. S. vs. Mathie, 274 F. 225.

Illegal searches and seizures must not be used in evidence, U. S. vs. Slusser, 270 F. 818.

The Alaska Act was not repealed by the Volstead Act, Abbate vs. U. S., 270 F. 735.

Imprisonment may be imposed for the first offense, Dusold vs. U. S., 270 F. 574.

For a discussion of the state power and effect on the United States proceedings and vice versa see U. S. vs. Holt, 270 F. 639 and ex parte Finegan, 270 F. 665.

Sec. 1107. Opium, or Cocoa Leaves, and Salts, Derivatives or Preparations, Continued.

The Act of February 24, 1919, C. 18, Sec. 1008, provides for the forfeiture and confiscation of opium and cocoa leaves and all of their salts and derivatives and compounds when found in the possession of any person or persons charged with any violation of the Act of October 1, 1890, as amended by the Acts of March 3, 1917, February 9, 1919, and January 17, 1914, and December 17, 1914, provided such person or persons be convicted.

The act also provides for the confiscation and forfeiture of any of such drugs which may come into the possession of the United States from unknown owners in the enforcement of said acts; the act provides that such drugs

shall not be destroyed unless they are of no value for medical or scientific purposes.

Sec. 1108. Narcotic Decisions.

Some confusion exists as to whether the exceptions contained in the Act of December 17, 1914, Sec. 271 E, shall be negatived in the indictment. In U. S. vs. Lowenthal, 257 F. 444, holds that the exceptions need not be negatived while U. S. vs. Carney, 228 F. 163, holds that they must be negatived; see also Thurston vs. U. S., 241 F. 335; U. S. vs. Darcy, 243 F. 739; U. S. vs. Hammers, 241 F. 542; U. S. vs. Jin, 225 F. 1003; Fyke vs. U. S., 254 F. 227; Oakes vs. U. S., 260 F. 830; the statute with the exception, of section 8 thereof, is constitutional, U. S. vs. Jin, 253 F. 213; Fyke vs. U. S., 254 F. 227; Baldwin vs. U. S., 238 F. 794; U. S. vs. Jin, 241 U. S., 394; U. S. vs. Doremus, U. S. Sup. Ct. March 3, 1919; that parts of the act are unconstitutional, U. S. vs. Denker, 255 F. 339; Blunt vs. U. S., 255 F. 332.

This act, the act of 1914, does not interfere with the older statutes relating to opium, Gwee Woe vs. U. S., 250 F. 428.

The act of Jan. 17, 1914, advised penalties for importation and for sending to China opium, pages 2011-13, Barnes 1919 Code.

The state can also regulate the opium traffic or dealings in narcotics, State vs. Mortinson, 41 Sup. Ct. Rep. 425.

It is not necessary to allege the defrauding of the government in an indictment, Hoyt vs. U. S., 273 F. 792; Barbot vs. U. S., 273 F. 919.

It was not intended that the act should punish for possession for one's personal use, U. S. vs. Woods, 224 F. 278; Pierriero vs. U. S., 271 F. 912; U. S. vs. Jin Fuey Moy, Sup. Ct. U. S. Oct. Term, 1915; 241 U. S., 394; U. S. vs. Ah Hung, 243 F. 762; U. S. vs. Wilson, 225 F. 82.

For cases treating of a conspiracy to violate this section and to import see Proffitt vs. U. S., 264 F. 299; Wallace vs. U. S., 243 F. 300; Shepard vs. U. S., 236 F. 73.

The act relates to and covers "every person," Wilson vs. U. S., 229 F. 344.

The court will take judicial notice that opium is not grown in the United States, U. S. vs. Brown, 224 F. 135, but see Contra 241 U. S. 399.

The writing of prescriptions is not a violation, Foreman vs. U. S., 255 F. 621; U. S. vs. Doremus, 246 F. 958; Hughes vs. U. S., 253 F. 543; U. S. vs. Reynolds, 244 F. 991.

But such prescription must be in good faith and must not in fact be a method for selling, if so such course would constitute a violation, Jin Foey Moy vs. U. S., 41 Sup. Ct. Rep. 98; U. S. vs. Charter, 227 F. 331; Tucker vs. Williamson, 229 F. 201; U. S. vs. Curtis, 229 F. 288; U. S. vs. Hoyt, 255 F. 927; Webb vs. U. S., U. S. Sup. Ct. March 1919; Melanson vs. U. S., 256 F. 783; Doremus vs. U. S., 262 F. 849; Trader vs. U. S., 260 F. 923.

For a failure to keep duplicate orders see 237 F. 730; a physician who keeps for his "own use" not in violation, U. S. vs. Parsons, 261 F. 223; an offense may be based on a single sale, Hosier vs. U. S., 260 F. 155.

An indictment which charges sales and quantities to persons unknown held sufficient in Gregory vs. U. S., 272 F. 119; for an indictment decision see Stetson vs. U. S., 257 F. 689; also U. S. vs. Friedman, 224 F. 276; also a druggist is not always protected by a prescription. It must be shown to be in good faith, Friedman vs. U. S., 260 F. 388.

For form of indictment for sale in "original" package see Dean vs. U. S., 266 F. 694.

CHAPTER XIII.

SLAVE TRADE AND PEONAGE.

§ 272. Closely akin to the offenses against the elective franchise and civil rights of citizens heretofore treated in Chapter X., are some of the offenses to be treated in this chapter; both of which arise by reason of legislation under the authority of the Thirteenth and Fourteenth Amendments to the Constitution.

§ 273. **Confining or Detaining Slaves on Board Vessel.**—Section 5375 of the 1878 Statutes, is practically re-enacted in the new Code, as Section 246, with the excep-

tion that the word "person" is substituted for the words "negro or mulatto;" and such new section is as follows:

"See. 246. Whoever, being of the crew or ship's company of any foreign vessel engaged in the slave trade, or being of the crew or ship's company of any vessel owned wholly or in part, or navigated for or in behalf of any citizen of the United States, forcibly confines or detains on board such vessel any person as a slave, or, on board such vessel, offers or attempts to sell as a slave any such person, or on the high seas, or anywhere on tide water, transfers or delivers to any other vessel any such person with intent to make such person a slave, or lands or delivers on shore from on board such vessel any person with intent to make sale of, or having previously sold such person as a slave, is a pirate, and shall be imprisoned for life."

In prosecutions under this section, it must be alleged and shown that the defendant was one of the ship's company, and that he received or detained on board one or more persons with intent to make slaves of them, or aided and abetted others in doing so; and, of course, that he was a citizen of the United States. United States vs. Darnaud, 3 Wallace, Jr., 143. In United States vs. Westerveldt, 5 Blatchf., 30, the Court said that there are four descriptions of the offense to be found in this section: first, a seizing the negroes, now "persons;" second, forcibly bringing and carrying them on board; third, decoying them; fourth, receiving them on board of the vessel.

It is the intent to make a slave that constitutes the essentials of the offense. Neither the seizing, nor forcibly bringing or carrying, or receiving, a person on board, is any offense without such intent. United States vs. Battiste, Second Summ., 240; United States vs. Libby, 1 W. & M., 221; United States vs. Corrie, Brun. Col. Cases, 686, 25 Federal Case No. 14869. In the Westervelt case, cited supra, the landing and seizing of negroes, and the forcibly bringing and carrying them on board comprehended the use of force, and, therefore, the decoying of them and the receiving them on board, do not constitute force.

It is entirely immaterial, under the Westervelt case, under U. S. vs. Brown, 24 Federal Case No. 14656, as to

the ownership of the vessel, if the defendant is an American citizen.

§ 274. **Seizing Slaves on Foreign Shore.**—Old Section 5376 becomes Section 247 of the new Code, in the following words:

"Sec. 247. Whoever, being of the crew or ship's company of any foreign vessel engaged in the slave trade, or being of the crew or ship's company of any vessel owned in whole or in part, or navigated for, or o nbehalf of, any citizen of the United States, lands from such vessel, and on any foreign shore, seizes any person with intent to make such person a slave, or decoys, or forcibly brings, or carries, or receives such person on board such vessel, with like intent, is a pirate, and shall be imprisoned for life."

The substitution of the word "person" for the words "negro or mulatto" is made in the new law. In the case of the United States vs. Corrie, 25 Federal Cases, 658, the Court held that even though a person was on board the vessel who owned the negroes or mulattoes, he could not be convicted or punished under this statute, unless he was of the crew or ship's company.

§ 275. **Bringing Slaves Into the United States.**—Old Section 5377 becomes Section 248 of the new Code, without substantial change, except that the words "negro mulatto, or person of color" become simply the word "person:"

"Sec. 248. Whoever brings within the jurisdiction of the United States, in any manner whatsoever, any person from any foreign kingdom or country, or from sea, or holds, sells, or otherwise disposes of, any person so brought in, as a slave, or to be held to service or labor, shall be fined not more than ten thousand dollars, one half to the use of the United States and the other half to the use of the party who prosecutes the indictment to effect; and, moreover, shall be imprisoned not more than seven years."

§ 276. **Equipping Vessels for Slave Trade.**—Section 5378 of the old statutes becomes Section 249 of the new Code, with the change of the words "negro, mulatto, or person of color" to the word "person:"

"Sec. 249. Whoever builds, fits out, equips, loads, or otherwise prepares, or sends away, either as master, factor, or owner, any vessel, in any port or place within the jurisdiction of the United States, or

causes such vessel to sail from any port or place whatsoever, within such jurisdiction, for the purpose of procuring any person from any foreign kingdom or country to be transported to any port or place whatsoever, to be held, sold, or otherwise disposed of as a slave, or held to service or labor, shall be fined not more than five thousand dollars, one-half to the use of the United States and the other half to the use of the person prosecuting the indictment to effect; and shall, moreover, be imprisoned not more than seven years."

§ 277. **Transporting Persons to Be Held as Slaves.**—Section 5379 of the old Code becomes Section 250 of the new Code in the following words:

"Sec. 250. Whoever, within the jurisdiction of the United States, takes on board, receives, or transports from any foreign kingdom or country, or from sea, any person in any vessel, for the purpose of holding, selling, or otherwise disposing of such person as a slave, or to be held to service or labor, shall be punished as prescribed in the section last preceding."

The change in this section is made by the substitution of the word "person" for the words "negro, mulatto, or person of color."

§ 278. **Hovering on Coast With Slaves on Board.**—Section 5380 of the old statutes becomes Section 251 of the new Code in the following words:

"Sec. 251. Whoever, being the captain, master, or commander of any vessel found in any river, port, bay, harbor, or on the high seas, within the jurisdiction of the United States, or hovering on the coast thereof, having on board any person, for the purpose of selling such person as a slave, or with intent to land such person for any such purpose, shall be fined not more than ten thousand dollars and imprisoned not more than four years."

The change from the old to the new is the substitution of the word "person" for the words "negro, mulatto, or person of color."

§ 279. **Serving in Vessels Engaged in Slave Trade.**—Sections 5381 and 5382 of the old Code relate to slave trade, and their salient points are comprehended in new Section 252 in the following words:

"Sec. 252. Whoever, being a citizen of the United States, or other person residing therein, voluntarily serves on board of any vessel employed or made use of in the transportation of slaves from any foreign

country or place to another, shall be fined not more than two thousand dollars and imprisoned not more than two years."

§ 280. **Receiving or Carrying Away Any Person to Be Sold or Held as a Slave.**—Section 5524 of the old statutes becomes Section 253 of the new Code, in the following words:

"Sec. 253. Whoever, being the master or owner or person having charge of any vessel, receives on board any other person, with the knowledge or intent that such person is to be carried from any place subject to the jurisdiction of the United States to any other place, to be held or sold as a slave, or carries away from any place subject to the jurisdiction of the United States any such person, with the intent that he may be so held or sold as a slave, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both."

§ 281. **Equipping, Etc. Vessels for Slave Trade.**—Section 5551 of the old statutes becomes Section 245 of the new Code, as follows:

"Sec. 254. No person shall, for himself or for another, as master, factor, or owner, build, fit, equip, load, or otherwise prepare any vessel in any port or place within the jurisdiction of the United States, or cause any vessel to sail from any port or place within the jurisdiction of the United States for the purpose of procuring any person from any foreign kingdom, place, or country to be transported to any port or place whatsoever, to be held, sold, or otherwise disposed of, as a slave, or to be held to service or labor; and every vessel so built, fitted out, equipped, laden, or otherwise prepared, with her tackle, apparel, furniture, and lading, shall be forfeited; one moiety to the use of the United States and the other to the use of the person who sues for the forfeiture and prosecutes the same to effect."

A consideration of this section will be found in charge to the grand jury, 30 Federal Case No. 18268, and 30 Federal Case 18269a.

In the case of in re Sah Quah, 31 Federal, 327, Judge Dawson held that this legislation was founded upon the Thirteenth Amendment to the Constitution, and that a custom which prevailed among the uncivilized tribes of Indians in Alaska, whereby slaves were bought and sold and held in servitude against their will, even though such Indians were not citizens of the United States, they were dependent subjects, and that such custom and servitude was contrary to this legislation, and contrary to the Thir-

tenth Amendment to the Constitution, and that a person so held in slavery would be released by the Court upon writ of habeas corpus.

§ 282. **Penalty on Persons Building, Equipping, Etc.** —Section 5552 of the old Revised Statutes becomes Section 255 in the new Code, as follows:

"Sec. 255. Whoever so builds, fits out, equips, loads or otherwise prepares or sends away any vessel, knowing or intending that the same shall be employed in such trade or business, contrary to the provisions of the section last preceding, or in any way aids or abets therein, shall, besides the forfeiture of the vessel, pay the sum of two thousand dollars; one moiety thereof to the use of the United States and the other moiety thereof to the use of the person who sues for and prosecutes the same to effect."

§ 283. **Forfeiture of Vessel Transporting Slaves.**— Section 5553 of the old statutes becomes Section 256 of the new Code, as follows:

"Sec. 256. Every vessel employed in carrying on the slave trade or on which is received or transported any person from any foreign kingdom or country, or from sea, for the purpose of holding, selling or otherwise disposing of such person as a slave, or holding such person to service or labor, shall, together with her tackle, apparel, furniture, and goods and effects which may be found on board, or which may have been imported thereon in the same voyage, be forfeited; one moiety to the use of the United States and the other to the use of the person who sues for and prosecutes the forfeiture to effect."

In United States vs. Schooner, 2 Paine, 25 Federal Cases, No. 14755; the "Mary Ann," 16 Federal Cases No. 9194; and the Charge of to the Grand Jury, 30 Federal Cases, No. 18268, will be found a consideration of this section. The 5 Opinion of the Attorneys General, page 724, also contains an opinion upon seizure for engaging in the slave trade.

The change in this section consists in the substitution of the word "person" for the words "negro, mulatto, or person of color."

§ 284. **Receiving Persons on Board to be Sold as Slaves.**—Old Section 554 becomes new Section 257 in these words:

"Sec. 257. Whoever, being a citizen of the United States, takes on board, receives, or transports any person for the purpose of selling

such person as a slave shall, in addition to the forfeiture of the vessel, pay for each person so received on board or transported the sum of two hundred dollars, to be recovered in any court of the United States; the one moiety thereof to the use of the United States and the other moiety to the use of the person who sues for and prosecutes the same to effect."

The change in this section consists in the substitution of the word "person" for the words "negro, mulatto, or person of color."

§ 285. **Vessel Found Hovering on Coast.**—Old Section 5555 becomes new Section 258, as follows:

Sec. 258. Every vessel which is found in any river, port, bay, or harbor, or on the high seas, within the jurisdiction of the United States, or hovering on the coasts thereof and having on board any person, with intent to sell such person as a slave, or with intent to land the same for that purpose, either in the United States, or elsewhere, shall, together with her tackle, apparel, furniture, and the goods or effects on board of her, be forfeited to the United States."

The change in this section consists in the substitution of the word "person" for the words "negro, mulatto, or person of color."

§ 286. **Forfeiture of Interest in Vessels Transporting Slaves.**—Section 259 of the new Code takes the place of Section 5556 of the old statutes, and is as follows:

"Sec. 259. It shall be unlawful for any citizen of the United States, or other person residing therein, or under the jurisdiction thereof, directly or indirectly to hold or have any right or property in any vessel employed or made use of in the transportation or carrying of slaves from one foreign country or place to another, and any such right or property shall be forfeited, and may be libeled and condemned for the use of the person suing for the same. Whoever shall violate the prohibition of this section shall also forfeit and pay a sum of money equal to double the value of his right or property in such vessel; and shall also forfeit a sum of money equal to double the value of the interest he had in the slaves which at any time may be transported or carried in such vessels."

§ 287. **Seizure of Vessels Engaged in the Slave Trade.**—Section 5557 of the old statutes becomes Section 260 of the new Code, as follows:

"Sec. 260. The President is authorized, when he deems it expedient, to man and employ any of the armed vessels of the United States to cruise wherever he may judge attempts are making to carry on the

slave trade, by citizens or residents of the United States, in contravention of laws prohibitory of the same; and, in such case, he shall instruct the commanders of such armed vessels to seize, take, and bring into any port of the United States, to be proceeded against according to law, all American vessels, wheresoever found, which may have on board, or which may be intended for the purpose of taking on board, or of transporting, or may have transported any person, in violation of the provisions of any Act of Congress prohibiting the traffic in slaves."

§ 288. **Proceeds of Condemned Vessels; How Distributed.**—Section 5558 of the old statutes is so modified in Section 261 of the new Code, in conformity with the abolition of prize money by Congress, as to require the proceeds of all forfeitures to be paid into the Treasury of the United States, and is in the following words:

"Sec. 261. The proceeds of all vessels, their tackle, apparel, and furniture, and the goods and effects on board of them, which are so seized, prosecuted, and condemned, shall be paid into the Treasury of the United States."

§ 289. **Disposal of Persons Found on Board Seized Vessel.**—Section 5559 of the old Code, becomes Section 262 of the new Code, by the mere change of the words "negro, mullatto, or person of color," to the word "person," and is in the following words:

"Sec. 262. The officers of the vessel making such seizure shall safely keep every person found on board of any vessel so seized, taken, or brought into port for condemnation, and shall deliver every such person to the marshal of the district into which he may be brought, if into a port of the United States, or if elsewhere, to such person as may be lawfully appointed by the President, in the manner directed by law, transmitting to the President, as soon as may be after such delivery, a descriptive list of such persons, in order that he may give directions for the disposal of them."

§ 290. **Apprehension of Officers and Crew.**—Section 5560 of the old Code becomes Section 263 of the new Code in the following words:

"Sec. 263. The commanders of such commissioned vessels shall cause to be apprehended and taken into custody every person found on board of such offending vessel so seized and taken, being of the officers or crew thereof, and him convey, as soon as conveniently may

be, to the civil authority of the United States, to be proceeded against in due course of law."

§ 291. **Removal of Persons Delivered from Seized Vessels.**—Section 5571 of the 1878 Statutes, by substituting the word "persons" for the words "negroes, mulattoes, or persons of color," becomes Section 264 of the new Code, as follows:

"Sec. 264. The President is authorized to make such regulations and arrangements as he may deem expedient for the safe keeping, support, and removal beyond the limits of the United States of all such persons as may be so delivered and brought within its jurisdiction."

§ 292. **To What Port Captured Vessels Sent.**—Section 5563 of the old Code, by the addition of the words "or District," becomes Section 265 of the new Code, as follows:

"Sec. 265. It shall be the duty of the commander of any armed vessel of the United States, whenever he makes any capture under the preceding provisions, to bring the vessel and her cargo, for adjudication, into some port of the State, Territory, or District to which such vessel so captured may belong, if he can ascertain the same; if not, then into any convenient port of the United States."

§ 293. **When Owners of Foreign Vessels Shall Give Bond.**—By substituting the words "clearing from any port within the jurisdiction of the United States," for the words "clearing out for any of the coasts or kingdoms of Africa," Section 5564 of the old statutes becomes Section 266 of the new Code, as follows:

"Sec. 266. Every owner, master, or factor of any foreign vessel clearing from any port within the jurisdiction of the United States, and suspected to be intended for the slave trade and the suspicion being declared to the officer of the customs by any citizen, on oath, and such information being to the satisfaction of the officer, shall first give bond, with sufficient sureties, to the Treasurer of the United States that none of the natives of any foreign country or place shall be taken on board such vessel to be transported or sold as slaves in any other foreign port or place whatever, within nine months thereafter."

§ 294. **Instructions to Commanders of Armed Vessels.**—By changing the words "negroes, mulattoes, and per-

sons of color'' to the word ''persons,'' and the words ''coast of Africa'' for the words ''country from which they were taken,'' Section 5567 of the old statutes becomes Section 267 of the new Code, as follows:

"Sec. 267. The President is authorized to issue instructions to the commanders of armed vessels of the United States, directing them, whenever it is practicable, and under such rules and regulations as he may prescribe, to proceed directly to the country from which they were taken, and there hand over to the agent of the United States all such persons, delivered from on board vessels seized in the prosecution of the slave trade; and they shall afterward bring the captured vessels and persons engaged in the prosecuting such trade to the United States for trial and adjudication."

§ 295. **Kidnapping.**—Section 5525 of the old Code becomes Section 268 of the new Code, in the following words:

"Sec. 268. Whoever kidnaps or carries away any other person, with the intent that such other person be sold into involuntary servitude, or held as a slave; or who entices, persuades, or induces any other person to go on board any vessel or to any other place with the intent that he may be made or held as a slave, or sent out of the country to be so made or held; or who in any way knowingly aids in causing any other person to be held, sold, or carried away to be held or sold as a slave, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both."

§ 296. **Holding or Returning to Peonage.**—The most interesting and practicable section in this Chapter is Section 269 of the new Code, which takes the place of old Section 5526, and is in the following words:

"Sec. 269. Whoever holds, arrests, returns, or causes to be held, arrested, or returned, or in any manner aids in the arrest or return of any person to a condition of peonage, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both."

Judge Newman, in United States vs. Eberhart, 127 Federal, 252, held that this statute had no application to any State or Territory except the Territory of New Mexico. By implication, this was overruled by United States vs. McClellan, in 127 Federal, 971, by Judge Speer, and was directly overruled by the Supreme Court of the United

States in Clyatt vs. United States, 197 U. S., 207, 49 Law Ed., 726; the Supreme Court saying, in substance, that the prohibition against peonage in any State or Territory of the United States, contained in Sections 1990 and 5526 of the old Code, was authorized by the provisions of the United States Constitution, the Thirteenth Amendment forbidding slavery or involuntary servitude within the United States, or any place subject to their jurisdiction, and granting to Congress the power to enforce the prohibition by appropriate legislation.

The statute, it will be noted, comprehends several different forms of peonage, to wit, holding, arresting, returning, or causing to be held, arrested or returned. In the Clyatt case, the Supreme Court reversed the judgment of conviction, because there was no evidence that the peons had been previously held in peonage, and the indictment charged that there was a return to peonage. Of course, if the indictment had charged holding in peonage, without returning to peonage, evidence would doubtless have been sufficient, and the case would have been affirmed. The Supreme Court in the Clyatt case, says:

"That which is contemplated by the statute is compulsory service, to secure the payment of a debt. Is this legislation within the power of Congress? It may be conceded, as a general proposition, that the ordinary relations of individual to individual are subject to the control of the States, and are not entrusted to the general Government, but the Thirteenth Amendment, adopted as an outcome of the Civil War, reads.

"'Sec. 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or in any place subject to their jurisdiction.

"'Sec. 2. Congress shall have the power to enforce this Article by appropriate legislation.'

This Amendment denounces a status or condition, irrespective of the manner or authority by which it is created. The prohibitions of the Fourteenth and Fifteenth Amendments are largely upon the acts of the States; but the Thirteenth Amendment names no party or authority, but simply forbids slavery and involuntary servitude, grants to Congress the power to enforce this prohibition by appropriate legislation."

In the peonage cases, 123 Federal, 671, District Judge Jones defined "the condition of peonage" to be to hold or

return a person to enforced servitude, wherein the servitor is restrained of his liberty, and compelled to labor in liquidation of some debt or obligation, either real or pretended, against his will.

In the peonage cases just cited, and in the peonage cases by Judge Trieber, 136 Federal, 707; it was held, in substance, that it was entirely immaterial that the contract of employment was voluntarily made by the laborer; and it was entirely immaterial whether it was made for the present or pre-existing consideration. In other words, when the person desires to abandon the service, from that moment on the holding of such a person is the holding of him within the meaning of the statute, to a condition of peonage. So, likewise, District Judge Jones held that to falsely pretend another that he was accused of crime, and to pretend to prevent his conviction if he will pay a sum of money, etc. all come within the statute.

In in re peonage charge, 138 Federal, 636, Section, and United States vs. Cole, 153 Federal, 801, peonage was defined to be the status or condition of compulsory service, in the payment of an alleged indebtedness by the peon to his master. The same definition is practically adopted in United States vs. McClellan, 127 Federal, 971.

§ 296a. **Involuntary Servitude, Etc., Meaning.**—The words "involuntary servitude" have a larger meaning than slavery and the Thirteenth Amendment prohibited all control by coercion of the personal service of one man for the benefit of another. A state statute which was passed ostensibly to punish fraud will not be maintained as constitutional if its natural and inevitable purpose is to punish for crime for failing to perform contracts of labor, thus compelling such performance. A constitutional prohibition cannot be transgressed indirectly by creating a statutory presumption any more than by direct enactment, and a state cannot compel involuntary servitude in carrying out contracts of personal service by creating a presumption that the person committing the breach is guilty of intent to defraud merely because he fails to perform the contract. Bailey vs. State of Alabama, 219 U. S. 219.

Peonage exists when convicted person are compelled

to labor out fines resulting from civil contracts. U. S. vs. Reynolds, U. S. Supreme Court, October Term, 1914. One cannot compel a laborer against his will to return to him and worked out a debt owing by such laborer. Harlan vs. U. S., 184 Federal, 702, Same case, 214 U. S., 519; same case Harlan vs. McGourin, 218 U. S., 442.

Judge Toulmin in U. S. vs. Broughton, 213 Federal, 345, held that an indictment which charged in substance that the defendant had become surety for a convict against whom a fine and costs had been assessed and took said convict to labor for him at $6 per month, and that the defendant threatened the convict that if he refused to work out the debt, he would have him arrested and put in jail, and that the convict did not continue to work for the defendant under his own free will, did not state an offense.

Sec. 296 b. Additional Decisions Under Peonage Statute.

By a divided court in Taylor vs. U. S., 244 F. 321, the Court of Appeals for the fourth circuit held that the act of a master and magistrate in conspiring to put the master's servant in a condition of involuntary servitude through a prosecution for breach of his contract of employment, in order to require him to perform his contract to work one year for the master, was insufficient to warrant a conviction.

Circuit Judge Woods' dissenting opinion to such holding is a very strong presentation of the soul of the statute and really may be the law.

In Bernal vs. U. S., 241 F. 339, it was held that a holding may be by threats and fear.

§ 297. **Obstructing Execution of Above.**—Section 5527 of the old Code becomes Section 270 of the new Code, as follows:

"Sec. 270. Whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of the section last preceding, shall be liable to the penalties therein prescribed."

§ 298. **Bringing Kidnapped Persons Into the United States.**—By broadening the Act of June 23, 1874, 17 Statute at Large, 251, 1 Supplement, 46, to extend so as

to apply to any place subject to the jurisdiction of the United States such Act becomes Section 271 of the new Code, as follows:

"Sec. 271. Whoever shall knowingly and wilfully bring into the United States or any place subject to the jurisdiction thereof, any person inveigled or forcibly kidnapped in any other country, with intent to hold such person so inveigled or kidnapped in confinement or to any involuntary servitude; or whoever shall knowingly and wilfully sell, or cause to be sold, into any condition of involuntary servitude, any other person for any term whatever; or whoever shall knowingly and wilfully hold to involuntary servitude any person so brought or sold, shall be fined not more than five thousand dollars and imprisoned not more than five years."

CHAPTER XIV.

OFFENSES WITHIN THE ADMIRALTY MARITIME AND TERRITORIAL JURISDICTION OF THE UNITED STATES.

Note.—The first numbers indicate the old Sections; then follows a dash, and after the dash the numbers indicate the Sections in the new Code.

§ 299. The new Code, in Section 272, sets forth certain specific national territory, within and upon which the commission of the acts mentioned in this chapter become exclusive Federal offenses. The offenses upon which Congress has legislated under the head of admiralty, maritime, and territorial jurisdiction of the Federal Government are murder, manslaughter, intent to murder, rape, robbery, certain carnal knowledge of the female, loss of life by misconduct of the officers of a vessel,

maiming, arson, larceny, receiving stolen goods, and a general statute, which creates a Federal offense of every State offense not herein mentioned, when the same is committed within the limits spoken of.

§ 300. **The Places Defined.**—Section 272 of the new Code, which makes unnecessary a repetition of the place in defining each separate offense, reads as follows:

"Sec. 272. The crimes and offenses defined in this chapter shall be punished as herein prescribed:

"First. When committed upon the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, or when committed within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State on board any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory, or District thereof.

"Second. When committed upon any vessel registered, licensed, or enrolled under the laws of the United States, and being on a voyage upon the waters of any of the Great Lakes, namely: Lake Superior, Lake Michigan, Lake Huron, Lake Saint Clair, Lake Erie, Lake Ontario, or any of the waters connecting any of said lakes, or upon the River Saint Lawrence where the same constitutes the International boundary line.

"Third. When committed within or on any lands reserved or acquired for the exclusive use of the United States, and under the exclusive jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dock-yard, or other needful building.

"Fourth. On any island, rock, or key, containing deposits of guano, which may, at the discretion of the President, be considered as appertaining to the United States."

While this section is new, some of its parts are to be found in old Statute 5339, old Statute 5570, and Article I., Section 8, of the Constitution. The first division of the section, it will be noted, gives the jurisdiction to offenses upon certain waters. The second division gives jurisdiction to offenses upon vessels when on certain waters. The third division gives jurisdiction over offenses that are committed upon lands over which the Government has acquired exclusive jurisdiction, by purchase or otherwise; but it must be understood that this

division does not mean that there is any jurisdiction in the Federal Government, unless there be cession thereof under the Federal and State laws. Thus, the renting of a building in which the Federal Post-office is conducted would give no jurisdiction to the Federal Government for an assault committed within that building by one private citizen upon another private citizen. The jurisdiction of the Government to punish one who assaulted the postmaster in the performance of his official duties, rests upon an entirely different statute, and is not grounded upon the section now being noticed. District Judge Whitson, in United States vs. Tully, 140 Federal, 899, held in substance, that the jurisdiction of a Federal Court to try a person for a criminal offense on the ground that it was committed within a fort or military reservation, such fort or reservation must have been established by law, as contemplated by Article I., Section 8, of the Constitution, either by purchase, with the consent of the Legislature of the State, or by reservation of public lands therefor by compact with the State at the time of its admission, and exclusive jurisdiction over the same must have been reserved to the United States, either by express words or necessary implication. Judge Maxey, in 111 Federal, 630, United States vs. Lewis, held in substance, that whether a homicide committed within the boundaries of a State constitutes an offense against the laws of the United States, of which a Federal Court has jurisdiction, depends on two questions: first, whether there has been such a cession by the State to the United States of the territory upon which the act alleged to constitute the crime was committed, as to render such territory a place or district or country under the exclusive jurisdiction of the United States, which is a question of law for the Court; and, second, if such cession was made, whether the act was committed within the territory so ceded, which is a question of fact to be submitted to the jury. In United States vs. Carter, 84 Federal, 622, the Court held that a defendant was properly indicted in the Federal jurisdiction for a murder committed on board the United States battle-ship "Indiana," then moored at Cob Dock, being within territory which had not been

purchased by the United States, but over which exclusive jurisdiction had been ceded to the United States by the New York Legislature. In United States vs. Hewecker, 79 Federal, page 59, the Court held that where a seaman on an American schooner was indicted for having shot, in the harbor of Havana, one Miller, who died therefrom in the hospital three days afterwards, at Havana, on January 21, 1892, and the indictment was not found until March 10, 1896; the defendant, in the meantime, having been imprisoned in Havana, upon conviction for an assault, and on the expiration of his sentence delivered to the United States authorities, that the defendant was not a fugitive from justice, under Section 1045, so as to be excepted from the exemption of indictment after three years, and that the death, having taken place on land within a foreign jurisdiction, the case was not one of wilful murder at Common Law, under the Federal authorities; and that the United States statute, Section 5339, though making the offense punishable with death, neither declares it to be murder, nor does it limit that offense to all cases within a year and a day, which at Common Law was an essential element of the offense of murder; and, therefore, that the case was not one of wilful murder, and the indictment was barred by the three-year limitation.

A cession by a State to the United States of "exclusive jurisdiction" over certain land, providing that the State shall retain concurrent jurisdiction with the United States, so far that the process, civil or criminal, issued under the authority of the State may be executed by the State officers upon any person amenable to the same, within the limits of the land so ceded, confers on the United States exclusive jurisdiction within the meaning of Revised Statutes 5339, United States vs. Meagher, 37 Federal, 875. Of course, the burden is on the Government to show that the crime was committed on land which was under the exclusive jurisdiction of the United States.

In Cook vs. United States, 138 U. S., page 185, 34 Law Edition, 906, it was held that a public land strip lying between Texas and New Mexico and Colorado and Kan-

sas, over which jurisdiction had been vested in the United States after the commission of the offense of murder thereon, was properly within the control of the Federal Courts, and the offense punishable therein.

The fourth division relates to offenses upon certain islands, rocks, or keys, which contain deposits of guano, the beginning of which recognition was old Statutes 5570, and is the extending of sovereignty by the political power of the Government. In other words, by the law of nations, dominion of new territory may be acquired by discovery and occupation, as well as by cession or conquest.

In the case of United States vs. Rogers, 150 U. S., 249, 37 Law Ed., page 1071, the Supreme Court held that the term "high seas," as used in old Section 5346, is applicable to the open unenclosed waters of the Great Lakes, between which the Detroit River is a connecting stream; and that Court, in the same case, also held that a vessel is deemed part of the territory of the country to which she belongs, and that the Courts of the United States have jurisdiction, under United States Revised Statutes 5346, to try a person for assault with a dangerous weapon, committed on a vessel belonging to a citizen of the United States, when such vessel is in the Detroit River, out of the jurisdiction of any particular State, and within the territorial limits of the Dominion of Canada. This decision seems to overrule the case of United States vs. Rogers, in the 46 Federal, page 1, and the case of ex parte Byers, 32 Federal, 404, where the Court denied a like jurisdiction.

It is determined, in United States vs. Peterson, 64 Federal, 145, that the District Court of the Eastern District of Wisconsin has no jurisdiction of an indictment for an assault committed on a vessel on Lake Huron, within the boundary of the jurisdiction of the Eastern District of Michigan. In other words, the indictment should have been prosecuted in Michigan, instead of Wisconsin, and Judge Seaman reviews the Byers case and the Rogers case, cited supra.

In Jones vs. United States, 137 U. S., 202, 34 Law Ed., 691, the Supreme Court maintains the constitutionality of

jurisdiction by discovery, and incidentally Section 5570 of the old Code, and, therefore, the fourth division of the present section. The Court held in that case, that,

"All courts of justice are bound to take judicial notice of territoral extent of the jurisdiction exercised by the Government whose laws they administer, or of its recognition or denial of the sovereignty of a foreign power, as appearing from the public acts of the legislature and executive, although those acts are not formally put in evidence, nor in accord with the pleadings."

And for this purpose of judicially knowing, the judges may refresh their memory and inform their conscience from such sources as they may deem most trustworthy.

Under the authority of the United States vs. Battle, 154 Federal, 540, which was an indictment for murder, alleged to have been committed on a plot of ground in the city of Macon, Georgia, which had been conveyed to the United States for the erection of a post-office and Federal Court building, over which territory the State had surrendered jurisdiction, reserving the right to serve process and apprehend offenders there, that it is not necessary in the indictment to plead the act of the General Assembly or Legislature, because that is the general law, which it is presumed not only the Court, but the defendant, knew; nor is it necessary to plead the title of the Government in the indictment. The allegation that the crime was maliciously, unlawfully, and feloniously done, with the other ingredients of the offense, is sufficient. This case was affirmed in Battle vs. United States, 209 U. S., page 36, 52 Law Ed., page 671.

§ 301. **Murder.**—The old Statute 5339 gave no definition of the crime of murder, and thus the Courts were driven to the Common Law for such definition. New Section 273, however, defines murder, and somewhat enlarges the Common Law definition, and appropriates many of the terms of the statutes of a large majority of the various states, and such section reads as follows:

"Sec. 273. Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of wilful, deliberate, malicious, and premeditated killing; or committed in the perpetartion of, or attempt to

perpetrate, any arson, rape, burglary, or robbery; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree. Any other murder is murder in the second degree."

The Common Law definition of murder was,

"Murder is where a person of sound memory and discretion, unlawfully and feloniously kills any human being in the peace of the sovereign, with malice propense, or aforethought, express or implied."

Mr. Bishop, in Volume II., of his New Criminal Law, treats of this and other definitions of murder, setting forth the definitions used by Lord Coke, as follows:

"Murder is when a man of sound memory and of the age of discretion, unlawfully killeth, within any county of the realm, any reasonable creature in *rerum natura* under the King's peace, with malice aforethought, either expressed by the party, or implied by law, so as the party wounded or hurt, etc., die of the wound or hurt, etc., within a year and a day after the same,"

and Lord Mansfield, namely:

"Murder is where a man of sound sense, unlawfully killeth another of malice aforethought, either express or implied."

and continues by saying that a complete definition is impossible, but that it must include an understanding of the term "malice aforethought," which term means an intent to take life without excuse.

Judge Maxey, in United States vs. Lewis, 111 Federal, 630, said:

"Malice, when attempted to be defined, has been necessarily given a more comprehensive meaning than enmity or illwill or revenge, and has been extended so as to include all those states of mind under which the killing of a person takes place without any cause which will in law justify or excuse or extenuate the homicide. McCoy vs. State, 25 Texas, 39. Malice, as applied to the offense of murder, need not denote spite or malevolence, hatred or illwill, to the person killed, nor that the slayer killed his victim in cold blood, as with settled design and premeditation. Such a killing would, it is true, be murder; but malice, as essential to the crime of murder, has a more extended meaning. A killing flowing from an evil design in general may be of malice, and constitute murder; as, a killing resulting

from the dictates of a wicked, depraved, and malignant spirit—a heart regardless of social duty and fatally bent upon mischief—may be of malice, necessarily implied by law from fact of the killing, without lawful excuse, and sufficient to constitute the crime of murder, although the person killing may have had no spite or illwill against the deceased. Malice, as thus described, is either express or implied. Express malice is where one with a sedate and deliberate mind, and formed design, doth kill another, which formed design is evidenced by external circumstances, discovering that inward intention; as, lying in wait, antecedent menances, former grudges, and concerted schemes to do bodily harm. It rarely, if ever, occurs that express malice is proved upon the trial of a case. The existence or non-existence of malice is a matter to be determined by the jury, from a consideration of all the facts in evidence. The proof of homicide, as necessarily involving malice, must show the facts under which the killing was effected, and from the whole facts and circumstances surrounding the killing, the jury infers malice or its absence. Malice, in connection with the crime of killing, is but another name for a certain condition of a man's heart or mind; and as no one can look into the heart or mind of another, the only way to decide upon its condition at the time of the killing, is to infer it from the surrounding facts, and that inference is one of fact for the jury. 'Jordan vs. State, 10 Texas, 492; 3 Russell on Crime, sixth edition, pages 1 and 2; Stevenson vs. United States, 162 U. S., 320, 40 Law Ed., 983; Wallace vs. United States, 162 U. S., 476, 40 Law Ed., 1043.' The malice which distinguishes the crime of murder must be aforethought. It implies premeditation—a prior intent to do the act. It may have existed but for a moment—an inappreciably brief period of time, or longer. No limit has been, or can be, fixed as to its duration. If it in fact exist for any period, however brief, the killing would be murder; but in malice so wanting, the homicide could not be of a higher grade than manslaughter."

In Battle vs. United States, 209 U. S., 36, 52 Law Ed., 670, the Supreme Court affirmed the refusal of the trial Court to give requested instructions upon the law of justifiable homicide and involuntary homicide, when, according to the testimony of the accused, the death was due to an accident, and according to all the other evidence, the death was intentional and unjustified.

In considering the cases that are hereafter cited, it will be borne in mind that the original Federal Statute, under which the case arose, contained no provision for murder in the second degee; in other words, the two degrees of homicide were murder and manslaughter.

By the Common Law, both time and place were required to be alleged. It is necessary that it should appear that the death transpired within a year and a day after the stroke, and the place of the death equally with that of the stroke, had to be stated to show jurisdiction in the Court. The controlling element which distinguishes the guilt of the assailant from a common assault was the death, within a year and a day, and also within the same jurisdiction. Ball vs. United States, 140 U. S., 136, 35 Law Ed., 384. So far as the present statute is concerned, there are no differences upon this point between it and the old statute, upon which the Ball decision was rendered and the Common Law rules with reference to these matters must, therefore, be observed under the new statute, in both pleading and proving the offense. In the case of United States vs. Guiteau, reported in 1 Mackey, 498, the Supreme Court of the District of Columbia affirmed a conviction, even though the shot was fired in the District of Columbia and President Garfield died in Maryland, such affirmance being based upon the absorption of the latest English statute by Maryland, in 1801, which, to correct the original technicality of the Common Law, permitted prosecution in either the realm of the stroke or the realm of the death. Section 731 of the Federal statutes, which allows the prosecution of an offense against the United States in either the county in which it was begun or in the county in which it was completed, was held by the Supreme Court in the Ball case, even if applicable to the crime of murder, not to apply if the stroke were given in one district and the death ensued in some other country than the United States. In St. Clair vs. United States, 154 U. S., 134, 38 Law Ed., 936, the Court sustained a description in an indictment with reference to the locality of the offense, when it showed that it was committed on board of an American vessel on the high seas, within the jurisdiction of the Court and the admiralty and maritime jurisdiction of the United States, and not within the jurisdiction of any particular State.

Sec. 301 a. Murder—Homicide—Defenses.

One attempting robbery cannot claim self defense. Turner vs. U. S., 272 F. 112.

For self defense and provocation see Huber vs. U. S., 259 F. 766.

For a case bearing upon homicide by the careless driving of an automobile see Sinclair vs. U. S., 265 F. 991.

§ 302. **Verdict.**—Under the Federal practice, the Court may sentence the defendant to a manslaughter punishment and enter a judgment for manslaughter, upon a verdict of guilty of murder, because the conviction of the higher offense includes the lower. United States vs. Linnier, 125 Federal, 83.

The 29 Statute at Large, 487, Act of January 25, 1897, provides that in all cases where the accused is found guilty of murder or of rape, the jury may qualify their verdict by adding thereto, "without capital punishment;" and whenever the jury shall return a verdict qualified as aforesaid, the person convicted shall be sentenced to imprisonment at hard labor for life. This Act was reviewed and applied as being permissible in the case of Winston vs. United States, 172 Federal, 304, 43 Law Ed., 456; and this though the statute provides a punishment of death, Section 275 of the new Code.

§ 303. **Manslaughter.**—The old manslaughter statute, Section 5341, is so changed by new Section 274 as to include the practical elements of the Common Law definition of manslaughter and the statutes of many of the States, and reads as follows:

"Sec. 274. Manslaughter is the unlawful killing of a human being without malice. It is of two kinds:

"First. Voluntary—upon a sudden quarrel or heat of passion.

"Second. Involuntary—in the commission of an unlawful act not amounting to a felony, or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection."

At Common Law, voluntary manslaughter was the unlawful and intentional killing of another without malice on sudden quarrel or in heat of passion. Bishop, in his New Criminal Law, second volume, page 425, cites several definitions, and notes Hawkins' definition, which was this: homicide against the life of another, amounting to felony, is either with or without malice. That

which is without malice is called manslaughter, or sometimes chance-medley; by which we understand such killing as happens either on a sudden quarrel or in the commission of an unlawful act, without any deliberate intention of committing any mischief at all. Mr. Bishop proposes a new definition, as follows:

"Manslaughter is any such dangerous act or omission, feloniously done or suffered contrary to one's legal duty, as results in the death of a human being, within a year and a day."

But whatever may have been the original Common Law definition, the statute now under discussion fixes and defines just what shall be manslaughter in the Federal jurisdiction. An interesting expression of the Supreme Court, in Anderson vs. United States, 170 U. S., 510, 42 Law Ed., 1126, will be of value here:

"The law, in recognition of the frailty of human nature, regards a homicide committed under the influence of sudden passion or in hot blood, produced by adequate cause, and before a reasonable time has elasped for the blood to cool, as an offense of a less heinous character than murder; but if there be sufficient time for the passion to subside, and shaken reason to resume her sway, no such distinction can be entertained; and if the circumstances showed a killing with deliberate mind and formed design, with comprehension of the act and determination to perform it, the elements of self-defense being wanting, the act is murder. Nor is the presumption of malice negatived by previous provocation, having no casual connection with the murderous act, or separated from it by such an interval of time as gives reasonable opportunity for the excess of fury to moderate."

In other words, in manslaughter, malice is presumed to be absent or wanting, and the act is imputed to the infirmity or human nature, and the punishment is, therefore, proportionately lenient.

The Circuit Court of Appeals for the Fifth Circuit, in the case of Roberts vs. United States, 126 Federal, 897, speaking through Chief Justice Pardee, affirmed a manslaughter charge by District Judge Meek, and his definition thereof, which was as follows:

"In the definition of manslaughter contained in the statute the killing must be done unlawfully and wilfully. The term 'unlawfully,' as here used, means without legal excuse. The term 'wilfully' here

means done wrongfully, with evil intent. It means any act which a person of reasonable knowledge and ability must know to be contrary to duty."

The statute, it will be noted, rehabilitates voluntary and involuntary manslaughter, being the same divisions originally recognized by the Common Law.

§ 304. **Punishment for Murder and Manslaughter.**—Section 275 of the new Code, which displaces old Sections 5339 and 5343, is as follows:

"Sec. 275. Every person guilty of murder in the first degree shall suffer death. Every person guilty of murder in the second degree shall be imprisoned not less than ten years and may be imprisoned for life. Every person guilty of voluntary manslaughter shall be imprisoned not more than ten years. Every person guilty of involuntary manslaughter shall be imprisoned not more than three years, or fined not exceeding one thousand dollars, or both."

§ 305. **Assault with Intent to Commit Murder, Rape, Robbery, Etc.**—A part of the provisions of old Statute 5346 are included in new Section 276, which is very broad, and which is in the following words:

"Sec. 276. Whoever shall assault another with intent to commit murder, or rape, shall be imprisoned not more than twenty years. Whoever, shall assault another with intent to commit any felony, except murer, or rape, shall be fined not more than three thousand dollars, or imprisoned not more than ten years, or both. Whoever, with intent to do bodily harm, and without just cause or excuse, shall assault another with a dangerous weapon, instrument, or other thing, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both. Whoever shall unlawfully strike, beat, or wound another, shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both. Whoever shall unlawfully assault another, shall be fined not more than three hundred dollars, or imprisoned not more than three months, or both."

In United States vs. Barnaby, 51 Federal, 20, the defendant was charged in the indictment with an assault with intent to commit murder, and the Court held that the indictment was insufficient, where it merely charged that the defendant made an assault with a knife upon a person named, with intent him to kill, wilfully and feloniously, and of his malice aforethought, without dis-

closing the character of the knife, or averring that he struck him with it, or inflicted any wound having a tendeny to produce death.

§ 306. **Attempt to Commit Murder or Manslaughter.**—Section 5342 of the old statutes is replaced by Section 277 of the new Code, in the following words:

"Sec. 277. Whoever shall attempt to commit murder, or manslaughter, except as provided in the preceding section, shall be finded not more than one thousand dollars and imprisoned not more than three years."

§ 307. **Rape.**—Section 5343 of the old statutes becomes Section 278 of the new Code, in the following words:

"Sec. 278. Whoever shall commit the crime of rape shall suffer death."

Under the Common Law, rape is the having of carnal knowledge, by a man of a woman, forcibly and against her will. A corrected definition, given by Mr. Bishop, is,

"Rape is the having of unlawful carnal knowledge, by a man of a woman, forcibly, where she does not consent."

The difference between the use of the words, "where she does not consent" and the words "against her will," is treated by Lord Campbell in the following manner:

"The question is, What is the real definition of rape—whether it is the ravishing of a woman against her will, or withohut her consent? If the former is the correct definition, the crime is not, in this case, proved; if the latter, it is proved. Camplin's case seems to me really to settle what the proper definition is, and the decision in that case rests upon the authority of an Act of Parliament. The statute of Westminster 2, C. 34, defines the crime to be where a man do ravish a woman, married, maid, or other, where she did not consent, neither before nor after. We are bound by that definition, and it was adopted in Camplin's case, acted upon in Ryan's case, and subsequently in a case before my Brother Willes. It would be monstrous to say that if a drunken woman, returning from market, lay down and fall asleep by the readside, and a man, by force, had connection with her whilst she was in a state of insensibility, and incapable of giving consent, he would not be guilty of rape."

The concluding illustration of the great Chief Justice was held not to be rape, in P. vs. Quin, 50 Barb., 128, but was held to be rape in C. vs. Burk, 105 Mass., 376.

§ 308. **Having Carnal Knowledge of Female Under Sixteen.**—Section 279 of the new Code reads as follows:

"Sec. 279. Whoever shall carnally and unlawfully know any female under the age of sixteen years, or shall be accessory to such carnal and unlawful knowledge before the fact, shall, for a first offense, be imprisoned not more than fifteen years, and for a subsequent offense be imprisoned not more than thirty years."

Sec. 308 a. Statement by Assaulted Female.

It was held in Callahan vs. U. S., 240 F. 683, that a statement made by the girl to an acquaintance after the fact was not admissible.

§ 309. **Seduction of Female Passenger on Vessel.**—The substance of Section 5349 becomes new Section 280, which reads as follows:

"Sec. 280. Every master, officer, seaman, or other person employed on board of any American vessel who, during the voyage, under promise of marriage, or by threats, or the exercise of authority, or solicitation, or the making of gifts or presents, seduces and has illicit connection with any female passenger, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both; but subsequent intermarriage of the parties may be pleaded in bar of conviction."

§ 310. **Payment of Fine to Female Seduced; Evidence Required; Limitation on Indictment.**—Old Sections 5350 and 5351 become new Section 281 of the new Code, as follows:

"Sec. 281. When a person is convicted of a violation of the section last preceding, the court may, in its discretion, direct that the amount of the fine, when paid, be paid for the use of the female seduced, or her child, if she have any; but no conviction shall be had on the testimony of the female seduced without other evidence, nor unless the indictment is found within one year after the arrival of the vessel on which the offense was committed at the port of its destination."

§ 311. **Punishment for Loss of Life by Misconduct of Officers, Owners, Charterers, Etc., of Vessels.**—Old Sec-

tion 5344 is greatly broadened by new Section 282, which is as follows:

"Sec. 282. Every captain, engineer, pilot, or other person employed on any steamboat or vessel, by whose misconduct, negligence, or inattention to his duties on such vessel the life of any person is destroyed, and every owner, charterer, inspector, or other public officer, through whose fraud, neglect, connivance, misconduct, or violation of law the life of any person is destroyed, shall be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both. *Provided*, That when the owner or charterer of any steamboat or vessel shall be a corporation, any executive officer of such corporation, for the time being actually charged with the control and management of the operation, equipment, or navigation of such steamboat or vessel, who has knowingly and wilfully caused or allowed such fraud, neglect, connivance, misconduct, or violation of law, by which the life of any person is destroyed, shall be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both."

The term "vessel" was construed to include every description of water-craft, or other artificial contrivance used or capable of being used as a means of transportation on water, in the case of United States vs. Holmes, 104 Federal, 884. In that same case, it was also held that the offense named in the statute was complete when the misconduct, negligence, or inattention in the navigation of a vessel by one of the persons named resulted in the loss of human life, and that the indictment thereunder need not charge a criminal intent.

In United States vs. Van Schaick, 134 Federal, 592, which was affirmed in Van Schaick vs. United States, 159 Federal, 847, it was held that even though the statute could not reach a corporation owner of a vessel, yet such fact did not affect the right of the Government to prosecute individuals under said section, who aid and abet the corporation in the commission of the crime; and the owner of a steamship who fails to comply with the statute requiring it to be equipped with life preservers and proper fire appliances, either by supplying none, or by supplying those that are unsuitable, inefficient, and useless, is guilty of a violation of this section, provided such violation results in the death of a person.

§ 312. **Maiming.**—Old Statutes 5348 becomes the substances of Section 283 of the new Code, as follows:

"Sec. 283. Whoever, with intent to maim or disfigure, shall cut, bite, or slit, the nose, ear, or lip, or cut out or disable the tongue, or put out or destroy an eye, or cut off or disable a limb or any member of another person; or whoever, with like intent, shall throw or pour upon another person, any scalding hot water, vitriol, or other corrosive acid, or caustic substance whatever, shall be fined not more than one thousand dollars, or imprisoned not more than seven years, or both."

§ 313. **Robbery.**—Section 5370 of the old statutes becomes Section 284 in the new Code, in the following words:

"Sec. 284. Whoever, by force and violence, or by putting in fear, shall feloniously take from the person or presence of another anything of value, shall be imprisoned not more than fifteen years."

§ 314. **Arson of Dwelling House.**—Section 285 of the new Code adds the new element of destruction by explosives, and reduces the maximum penalty, and is substituted for Section 5385 of the old statutes, and is in the following words:

"Sec. 285. Whoever shall wilfully and maliciously set fire to, burn, or attempt to burn, or by means of a dangerous explosive destroy or attempt to destroy, any dwelling house, or any store, barn, stable, or other building, parcel of a dwellng house, shall be imprisoned not more than twenty years."

§ 315. **Arson of Arsenal, Etc.; Other Buildings, Etc.** —Section 286 of the new Code includes many things not enumerated in old Statute 5386, and is in the following words:

"Sec. 286. Whoever shall maliciously set fire to, burn, or attempt to burn, or by any means destroy or injure, or attempt to destroy or injure, any arsenal, armory, magazine, rope-walk, ship-house, warehouse, blockhouse, or barrack, or any store-house, barn, or stable, not parcel of a dwelling house, or any other building not mentioned in the section last preceding, or any vessel built, building, or undergoing repair, or any light-house, or beacon, or any machinery, timber, cables, rigging, or other materials or appliances for building, repairing, or fitting out vessels, or any pile of wood, boards, or other lumber, or any military, naval, or victualing stores, arms, or other munitions of war, shall be fined not more than five thousand dollars and imprisoned not more than twenty years."

The technical quashing of an indictment in United States vs. Cardish, 14 Federal, 640, growing out of the necessity of the Common Law definition of the word "arson" controlling in the Federal prosecution, would not be possible under this new section, for the reason that the destruction by fire, as enumerated in the new section, is not limited to the technical meaning of the word "arson" at Common Law.

§ 316. **Larceny.**—Section 287 of the new Code, which takes the place of old Section 5356, is patterned after the legislation of the various States which recognize two different punishments, to be graded by the value of the articles stolen.

"Sec. 287. Whoever shall take and carry away, with intent to steal or purloin, any personal property of another, shall be punished as follows: If the property taken is of a value exceeding fifty dollars, or is taken from the person of another, by a fine of not more than ten thousand dollars, or imprisonment for not more than ten years, or both; in all other cases, by a fine of not more than one thousand dollars, or by imprisonment not more than one year, or both. If the property stolen consists of any evidence of debt, or other written instrument, the amount of money due thereon, or secured to be paid thereby, and remaining unsatisfied, or which in any contingency might be collected thereon, or the value of the property the title to which is shown thereby, or the sum which might be recovered in the absence thereof, shall be deemed to be the value of the property stolen."

Sec. 316 a. Larceny—Decisions.

The indictment must charge the actual owner of the property, Thompson vs. U. S., 256 F. 616.

For a definition of larceny, etc., see Nichamin vs. U. S., 263 F. 880.

§ 317. **Receiving, Etc., Stolen Goods.**—Section 5357 of the old Code is broadened by new Section 288, so as to include the receiving of money which has been embezzled, and by authorizing the trial of the receiver of such money before the trial of the principal offender; the section reading as follows:

"Sec. 288. Whoever shall buy, receive, or conceal, any money, goods, bank notes, or other thing which may be the subject of larceny, which has been feloniously taken, stolen, or embezzled, from any other

person, knowing the same to have been so taken, stolen, or embezzled, shall be fined not more than one thousand dollars and imprisoned not more than three years; and such person may be tried before or after the conviction of the principal offender."

In Bise vs. United States, 144 Federal, 374, the Court held that in a prosecution under old section, it was not essential to allege in the indictment that the property was received without the consent of the owner, or with intent to deprive him of its use and benefit; the criminal intent and evil purpose of the receiver being sufficiently alleged where his act is characterized as unlawful and felonious.

§ 318. **Laws of State Adopted for Punishing Wrongful Acts, Etc.**—Re-written, broadened, and amplified, old Section 5391 becomes new Section 289, in the following words:

"Sec. 289. Whoever, within the territorial limits of any State, organized Territory, or District, but within or upon any of the places now existing, or hereafter reserved or acquired, described in section two hundred and seventy-two of this act, shall do or omit the doing of any act or thing which is not made penal by any law of Congress, but which if committed or omitted within the jurisdiction of the State, Territory, or District in which such place is situated, by the laws thereof now in force would be penal, shall be deemed guilty of a like offense and be subject to a like punishment; and every such State, Territorial, or District law shall, for the purpose of this section, continue in force, notwithstanding any subsequent repeal or amendment thereof by any such State, Territory, or District."

This is one of the most useful Federal sections. Under it, petty misdemeanors and other offenses not enumerated in the Federal Code, U. S. vs. Barnaby, 51 Federal, page 20, the punishment of which, however, is essential, are made in this comprehensive manner federal offenses. In Franklin vs. United States, decided by the Supreme Court on March 14, 1910, that Court-reaffirmed the case of United States vs. Paul, 6 Peters, 141, over the objection made to the constitutionality of the section under discussion, resting such objection upon the contention that the statute would authorize State governments to change penalties for Federal offenses, and said:

"In United States vs. Paul, 6 Peters, 141, coming here on certificate of division, it was held by this Court, speaking by Chief Justice

Marshall, that the effect of this Section (5391) was limited to the laws of the several States in force at the time of its enactment, and it followed by this Act, Congress adopted for the government of the designated places under the exclusive jurisdiction and control of the United States, the criminal laws then existing in the several States, within which such places were not displaced by specific laws enacted by Congress. Section 2 of the Act of July seventh, 1898, was to the same effect, and, moreover, by express language, Congress adopted such punishment as 'the laws of the State in which such place is situated *now* provide for the like offense.' There is plainly no delegation to the State of authority in any way to change the criminal laws applicable to the places over which the United States has jurisdiction."

In in re Kelly, 71 Federal, 545, the Court held that a cession to the general Government of certain lands for a soldiers' home, in the Act giving the consent of the State to purchase such land, does not confer exclusive jurisdiction, and that upon such lands so ceded for the purpose of a home for disabled soldiers, the criminal laws of the United States, which apply only to places within their exclusive jurisdiction, are not operative. See also United States vs. Barnaby, 51 Federal, 20.

§ 318a. **Libel not Federal Offense.**—The Supreme Court of the United States in U. S. vs. Press Publishing Company, 219 U. S., 1, held that a prosecution for libel under the foregoing section could not be had in the United States Courts when the laws of the state of New York under which the libel was circulated contained a unity act providing that it was a criminal act to publish and circulate a libel and since the laws of the state of New York afforded adequate means for punishing such circulation on a United States reservation in said State, successful prosecution could not be had in the Federal Courts for such circulation on such reservation and as a distinct and separate offense from the publication. See also Franklin vs. U. S., 216 U. S., 559.

CHAPTER XV.

PIRACY AND OTHER OFFENSES UPON THE HIGH SEAS.

§ 319. Piracy is an offense against the international law, and as such, the authorities define it to be any forcible depredation on the high seas, perpetrated in general hostility to mankind, for the gain or other private ends of the doers. First Kent's Commentary, page 183, defines it as follows:

"Piracy is robbery or a forcible depredation on the high seas, without lawful authority, and done *animo furandi* and in the spirit and intention of universal hostility. It is the same offense at sea with

robbery on land; and all the writers on the law of nations and on the maritime law of Europe agree in this definition of piracy."

Lord Coke said that a pirate is a rover and a robber upon the sea.

The statutes of the United States make piracy a Federal offense. The original punishment was by death. The Act of January fifteenth, 1897, 29 Statute at Large, 487, substituted life imprisonment.

§ 320. **Piracy.**—Section 290 of the new Code takes the place of Section 5368 of the old Code, which had been amended as before mentioned, and section 290 reads as follows:

"Sec. 290. Whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for Life."

Some cases of the Common Law doctrine, applied either in the construction of the statutes or otherwise, are the "Marinna Flora," 11 Wheat., 1; U. S. vs. Gilbert, 2 Sumn., 19; U. S. vs. Tully, 1 Gallis, 247; the "Antelope," 10 Wheat., 66; U. S. vs. Jones, 3 Wash., C. C., 209; United States vs. Pirates, 5 Wheat., 184; U. S. vs. Palmer, 3 Wheat., 610; U. S. vs. Smith, 5 Wheat., 153; U. S. vs. Klintock, 5 Wheat., 144.

In the case of Ambrose Light, 25 Federal, 408, Judge Brown said:

"Accordingly, the definitions of piracy, aside from statutory piracy, fall naturally into two classes, according as the offense is viewed more especially as it affects the rights of nations, or is amenable to criminal punishment under the municipal law. The Common Law jurists and our standard authorities on Criminal Law, define piracy as robbery on the high seas; or such acts of violence or felonious taking on the high seas as upon land would constitute the crime of robbery.....The majority of authorities on international law, however, define it substantially as Wheaton defines it, namely: as, 'the offenses of depredating on the high seas without being authorized by any sovereign State, or with commissions from different sovereigns at war with each other."

The reading of our statute sends us for a definition of the offense to this last authority, and it may be accepted as the correct definition.

§ 321. **Maltreatment of Crew by Officers of Vessel.**—Old Section 5347, by eliminating the word "American" before the word "'vessel," and adding the words "of the United States" after the word "vessel," becomes new Section 291, as follows:

"Sec. 291. Whoever, being the master or officer of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, beats, wounds, or without justifiable cause, imprisons any of the crew of such vessel, or withholds from them suitable food and nourishment, or inflicts upon them any cruel and unusual punishment, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both. Nothing herein contained shall be construed to repeal or modify section forty-six hundred and eleven of the Revised Statutes."

Originally, this Act included the words "malice, hatred, or revenge"; and while these words were in the statute, many decisions were rendered upon a state of facts showing, or failing to show, such condition of mind, but which decisions would not be at all helpful under the statute in its present shape.

Under the authority of the United States vs. Trice, 30 Federal, 490, anyone who, by authority, exercises the function of control over the actions of the crew, or any part of it, by giving direction to their work, is an officer within the meaning of the Revised Statutes of the United States, and is liable to the penalty, if he beat or wound one of the crew. Thus, upon a state of facts which showed that one of the roust-abouts belonging to the crew of a boat was set over the rest as captain of the watch, which power to direct their work and demand obedience to his orders, and while so acting, beat and wounded one of the crew so under his command, he was an officer within the meaning of the statute, and amenable to its penalty.

Since the abolition of corporal punishment by the old Section 4611 in the 1878 Statutes, a punishment by flogging is without "justifiable cause." United States vs. Cutler, 1 Curt., 501, 25 Federal Case No. 14910. In line with the Trice case, cited supra, is United States vs. Taylor, 2 Sumn., 584, 28 Federal Case No. 16442. It is needless to say in this connection that this statute pro-

tects the crew of a United States vessel, it does not matter upon what waters she be sailing, and where the offense denounced by the statute is committed on board such a vessel, it is an offense against the United States, though the vessel be in a harbor or river or a foreign country. United States vs. Bennett, 3 Hughes, 466, 24 Federal Cases, 14574; Roberts vs. Skoelfield, 20 Federal Cases No. 11917. Under the authority of United States vs. Reed, 86 Federal, 308, the captain of a vessel is bound to exercise the same care to discover that his vessel is properly provisioned when he undertakes a new voyage, after having had difficulty or trouble at sea, that he is bound to observe in the original provisioning of his vessel at the outset of the voyage. Sections 4568 and 4612 of the old statutes provide what constitutes short allowance of food, etc., as meant by the statute under discussion. This section comprises four different offenses: beating or wounding; imprisoning; deprivation of suitable food and nourishment; the infliction of any cruel and unusual punishment.

§ 322. **Extradition for This Offense.**—It was decided by the Supreme Court, in United States vs. Rauschur, that one who had committed an offense against this statute, and who was apprehended in a foreign country and extradited upon the charge of murder, could not be tried in this country under an indictment found under this section, even though the identical acts relied upon to prove the charge of the indictment were the same acts as those charged to have been relied upon for the charge of murder. The Treaty, the Acts of Congress, and the proceedings by which he was extradited, clothe him with the right to exemption from trial for any other offense until he has had opportunity to return to the country from which he was taken, for the purpose of trial for the offense specified in the demand for his surrender.

§ 322a. **Extradition.**—For extradition generally, see Section 42k; also Drew vs. Thaw, U. S. Supreme Court, 235 U. S. 432; McNamara vs. Henkel, U. S. Supreme Court, 226 U. S. 520; Gluckman vs. Henkel, 221 U. S.; 508; ex parte Charlton, 185 Federal, 880; ex parte Graham, 216 Federal, 813; ex parte Zentner, 188 Federal,

344 ex parte Urzna, 188 Federal, 541; Sheriff vs. Daily, 221 U. S., 280.

§ 322b. **Extradition, Continued.**—See section 5278 R. S. U. S. See also Innes vs. Tobin, U. S. Sup. Ct. February 1916.

§ 323. **Inciting Revolt or Mutiny on Ship Board.**—Section 5359 of the old statutes becomes Section 292 of the new Code, without substantial change, except that the words "of the United States" have been added after the word "vessel"; the section now reading as follows:

"Sec. 292. Whoever, being of the crew of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, endeavors to make a revolt or mutiny on board such vessel, or combines, conspires, or confederates with any other person on board to make such revolt or mutiny, or solicts, incites, or stirs up any other of the crew to disobey or resist the lawful orders of the master or other officer of such vessel, or to refuse or neglect their proper duty on board thereof, or to betray their proper trust, or assembles with others in a tumultuous and mutinous manner, or makes a riot on board thereof, or unlawfully confines the master or other commanding officer thereof, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both."

The jurisdictional question suggested in the statute is that only the acts therein mentioned become acts punishable in United States Courts when the vessel is a United States vessel; and when that is the case, the acts are punishable in the United States, whether the vessel be on the high seas, in foreign port, or harbor, or upon waters within the admiralty and maritime judisdiction of this government. The word "crew" in the statute must necessarily include the mate and all other inferior officers, as well as the crew proper. In fact, it includes the entire force of the vessel, with the exception of the master. This was the holding in the United States vs. Huff, 13 Federal, page 630. That case also makes the distinction between mere passive disobedience and active resistance. In other words, the statute would not include a case of simple passive disobedience of the master's orders on the part of one of the crew, not participated in by others. So, also, that case includes within the meaning of the statute an unlawful confinement of the master, even though such con-

finement was not physical, but merely a confinement by intimidation, or threats of bodily injury from the free use of every part of the vessel in the preformance of his functions as master.

In the case of United States vs. Crawford, 25 Federal Cases No. 14890, it was held that the vessel must be provided to be an American vessel, but that such proof can be made by parol. So, also, it was ruled in United States vs. Seagrist, 27 Federal Case 16245, and 27 Federal Case No. 16037. A vessel engaged in the whaling business, which has not taken out an American license or enrollment, is not protected by this statute, and an indictment will not hold under this section against her crew for revolt. United States vs. Rogers, 27 Federal Case No. 16189. See also United States vs. Jenkins, 26 Federal Case No. 15437a. For other cases illustrating the statute, see United States vs. Sharp, 27 Federal Case 16246; United States vs. Doughty, 25 Federal Case 14987; United States vs. Kelley, 11 Wheat., 417; United States vs. Smith, 27 Federal Case No. 16344; United States vs. Forbes, 25 Federal Case No. 15129; U. S. vs. Lynch, 26 Federal Case No. 15648; United States vs. Thompson, 28 Federal Case No. 16492. As defense to an indictment under this section, the Courts have permitted the crew to show that the vessel was unseaworthy, and that, therefore, they resisted its sailing, United States vs. Ashton, 24 Federal Case No. 14470; also, where they have refused to perform their duty on account of a proposed deviation in the original line of voyage, United States vs. Matthews, 26 Federal Case No. 15742.

§ 323a. **Elements of Mutiny.**—In order to warrant a conviction under either Section 292 or 293 it must appear that the offense was committed on the high seas, on a vessel of the United States, that defendants were members of the crew, and that the person so deprived of command was the master of the vessel, or officer in command on board thereof, and while so in command defendants or some of them feloniously confined him and deprived him of the free and lawful exercise of his authority, and also that the defendants were apprehended when first brought into the district where the prosecution was instituted. U. S. vs. Reid et al. 210

Federal, 486. Insults, profanity, inconsiderate treatment, and occasional violence not of an unusual character will not warrant mutiny. U. S. vs. Reid, 210 Federal, 486.

§ 324. **Revolt and Mutiny on Ship Board.**—By adding the words "of the United States" after the word "vessel," old Section 5360 becomes new Section 293 in the following words:

"Sec. 293. Whoever, being of the crew of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, unlawfully and with force, or by fraud, or intimidation, usurps the command of such vessel from the master or other lawful officer in command thereof, or deprives him of authority and command on moard, or resists or prevents him in the free and lawful exercise thereof, or transfers such authority and command to another not lawfully entitled thereto, is guilty of a revolt and mutiny, and shall be fined not more than two thousand dollars and imprisoned not more than ten years."

Under the authority of United States vs. Haines, 26 Federal Case No. 15275, and United States vs. Forbes, 25 Federal Case No. 15129, as cited in Volume 6 Federal Statutes, page 929, a revolt is an open rebellion or mutiny of the crew against the authority of the Master in the command, navigation, or control of the ship. If the crew, in a mutiny, were to displace him from the actual command of the ship, and appoint another in his stead, that would clearly be a revolt. It would be an actual usurpation of his authority on board of the ship and an ouster of him from the possession and control of it. As determined in United States vs. Almeida, 24 Federal Case No. 14433, the unlawful acts which now fall within the definition of a maritime revolt are distributed by the language of the Section into four categories or classes: first, simple resistance to the exercise of the captain's authority; second, the deposition of the captain from his command; third, the transfer of the captain's power to a third person; and, fourth, the usurpation of the captain's power by the accused party. See also United States vs. Haines and United States vs. Forbes, cited supra. Other cases are United States vs. Borden, 24 Federal Case, 1202; United States vs. Givings, 25 Federal Case, 1331; United States vs. Haskell,

26 Federal Case, 207; United States vs. Peterson, 227 Federal Case, 515.

See also Sections 323 and 323a. Also U. S. vs. Reid et al., 210 Federal, 486

§ 325. **Seaman Laying Violent Hands on His Commander.**—By changing the penalty in old Section 5369 from death to imprisonment for life, that section becomes Section 294 of the new Code, as follows:

"Sec. 294. Whoever, being a seaman, lays violent hands upon his commander, thereby to hinder and prevent his fighting in defense of his vessel or the goods intrusted to him, is a pirate, and shall be imprisoned for life."

§ 326. **Abandonment of Mariners in Foreign Ports.**—Section 5363 of the old statutes, taking into consideration Section 310 of the new Code, which defines what the words "vessel of the United States" means, is practically the same as Section 295 of the new Code, in the following words:

"Sec. 295. Whoever, being master or commander of a vessel of the United States, while abroad, maliciously and without justifiable cause forces any officer or mariner of such vessel on shore, in order to leave behind him in any foreign port or place, or refuses to bring home again all such officers and mariners of such vessel whom he carried out with him, as are in a condition to return and willing to return, when he is ready to proceed on his homeward voyage, shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both."

See United States vs. Ruggles, 5 Mass., 192; United States vs. Coffin, 1 Sumn., 394; United States vs. Netcher, 1 Storey, 307; United States vs. Riddle, 4 Wash., 644; Nieto vs. Clark, 18 Federal Case, 236.

In Chinese Laborers Case, 13 Federal Reporter, 291, the Court held that the immigration laws of the United States, which prohibited the importation of Chinese laborers, did not apply to bringing a Chinese laborer already on board the vessel when touching at a foreign port or place. In other words, while on board an American vessel, a Chinese laborer is within the jurisdiction of the United States, and does not lose, by his employment, the right of residence here previously acquired under the treaty with China. His status as an American citi-

zen is not changed by the fact of his employment on an American vessel, and that he is permitted by the captain to land for a few hours in a foreign port.

§ 327. **Conspiracy to Cast Away Vessel.**—Old Section 5364 becomes, without any material change, Section 296 of the new Code, in the following words:

"Sec. 296. Whoever, on the high seas, or within the United States, wilfully and corruptly conspires, combines, and confederates with any other person, such other person being either within or without the United States, to cast away or otherwise destroy any vessel, with intent to injure any person that may have underwritten or may thereafter underwrite any policy of insurance thereon or on goods on board thereof, or with intent to injure any person that has lent or advanced, or may lend or advance, any money on such vessel on bottomry or respondentia; or whoever, within the United States, builds, or fits out, or aids in building or fitting out, any vessel with intent that the same be cast away or destroyed, with the intent hereinbefore mentioned, shall be fined not more than ten thousand dollars and imprisoned not more than ten years."

The constitutionality of this section has been determined in United States vs. Cole, 5 McLean, 513; 25 Federal Cases No. 14832; and in that same case it was also determined that the section related to the internal, as well as the foreign commerce of the United States. In that same case, it was also held that an actual injury was not necessary; as, for instance, any combination or conspiracy to bring about the destruction of the vessel or any portion of its cargo, ripened the offense of the statute.

In United States vs. Hand, 6 McLean, 274; 26 Federal Cases No. 15296, the Court speaks of the specific intent necessary under the statute, which must be both alleged and proven.

§ 328. **Plundering Vessel, Etc., in Distress.**—By increasing the punishment from ten years to life imprisonment, old Section 5358 becomes new Section 297, in the following words:

"Sec. 297. Whoever plunders, steals or destroys any money, goods, merchandise, or other effects, from or belonging to any vessel in distress, or wrecked, lost, stranded, or cast away, upon the sea, or upon any reef, shoal, bank, or rocks of the sea, or in any other place within the admiralty and maritime jurisdiction of the United States,

shall be fined not more than five thousand dollars and imprisoned not more than ten years; and whoever wilfully obstructs the escape of any person endeavoring to save his life from such vessel, or the wreck thereof; or whoever holds out or shows any false light, or extinguishes any true light, with intent to bring any vessel sailing upon the sea into danger, or distress, or ship-wreck, shall be imprisoned not less than ten years and may be imprisoned for life."

Under United States vs. Coombs, 12 Peters, 72, it is entirely immaterial whether the goods be upon the vessel or not, or whether the goods be above high water mark. It is entirely sufficient if it be property belonging to any ship or vessel. This same case determined the constitutionality of this section, and held that it was within the power of Congress, under the commerce clause of the Constitution.

In United States vs. Stone, 8 Federal, 232, Judge Hammond overruled a motion for a new trial which was requested by certain men who were convicted for plundering the wreck of the City of Vicksburg, out of which fifty-one indictments were found; and in that opinion, he held that Section 5358 was comprehensive, and offorded an extraordinary protection to property within the admiralty and maritime jurisdiction of the United States, by creating and punishing a substantive and distinct offense for all acts of spoliation upon the property belonging to a vessel wrecked or in distress; that it was not alone the crime of larceny that the statute punishes, but any act of depredation whether it be of the character that would be piracy if committed on the high seas, robbery or other forcible taking, theft, trespass, malicious mischief, or any fraudulent and criminal breach of trust, if committed on land, of property solely under the protection of Common or statutory law of the State; and that no specific intent was necessary under the statute to constitute the offense. In other words, any intent, except that of restoring the goods to the vessel of the owner, was the unlawful intent comprehended under the statute; and whether conceived at the time of the taking, or subsequently thereto, if carried out, made the offense complete.

United States vs Sanche was the upholding of a conspiracy indictment under Section 5440, for a violation of

5358. Other cases bearing upon different features of this section are United States vs. Kessler, 26 Federal Cases, 766; United States vs. Pitman, 27 Federal Case, 540; United States vs. Smiley, 27 Federal Cases, 1132.

§ 329. **Attacking Vessel with Intent to Plunder.**—Because of Section 272 of the new Code, heretofore noted, Section 298 of the new Code, which is a re-enactment of Section 5361 of the old statutes does not enumerate the waters upon which the offense may be committed, and Section 298 is in the following words:

"Sec. 298. Whoever, upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, by surprise or by open force, maliciously attacks or sets upon any vessel belonging to another, with an intent unlawfully to plunder the same, or to despoil any owner thereof of any moneys, goods, or merchandise laden on board thereof, shall be fined not more than five thousand dollars and imprisoned not more than ten years."

United States vs. Stone, 8 Federal, 232, cited supra.

§ 330. **Breaking and Entering Vessel, Etc.**—By changing old Section 5362 so as to limit it to offenses that are committed out of the jurisdiction of any particular State, such section becomes Section 299 of the new Code, in the following words:

"Sec. 299. Whoever, upon the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular State, breaks or enters any vessel, with intent to commit any felony, or maliciously cuts, spoils, or destroys any cordage, cable, buoys, buoy rope, head fast, or other fast, fixed to the anchor or moorings belonging to any vessel, shall be fined not more than one thousand dollars and imprisoned not more than five years."

§ 331. **Owner Destroying Vessel at Sea.**—Old Section 5365 denounced the acts only when committed upon the high seas. New Section 300 so broadens the offense as to include all the waters within the admiralty and maritime jurisdiction of the United States, and reads as follows:

"Sec. 300. Whoever, upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, wilfully and corruptly casts away or otherwise destroys any vessel,

of which he is owner, in whole or in part, with intent to prejudice any person that may underwrite any policy of insurance thereon, of any merchant that may have goods thereon, or any other owner of such vessel, shall be imprisoned for life or for any term of years."

§ 332. **Other Persons Destroying or Attempting to Destroy Vessel at Sea.**—Section 301 of the new Code takes the place of old Sections 5366 and 5367, by incorporating both the act and the attempt to perform the act of destruction, and is in the following words:

"Sec. 301. Whoever, not being an owner, upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, wilfully and corruptly casts away or otherwise destroys any vessel of the United States to which he belongs, or, wilfully, with intent to destroy the same, sets fire to any such vessel, or otherwise attempts the destruction thereof, shall be imprisoned not more than ten years."

The Act, it will be noted, covers the offense not only upon the high seas, as did the original statutes, but upon any other waters within the admiralty and maritime jurisdiction of the United States. In United States vs. Vanranst, 28 Federal Case, No. 16608, the Court held that the offense was complete under this section if the mate destroyed the vessel, even though he had no interest therein, and even though the plan for its destruction was laid before the sailing by the owner himself. See also United States vs. Jacobson, 26 Federal Cases, No. 16461. See also United States vs. Wilson, 28 Federal Case, 718; U. S. vs. McAvoy, 26 Federal Case, 1044.

§ 333. **Robbery on Shore by Crew of Piratical Vessel.**—Section 5371 becomes Section 302 of the new Code as follows:

"Sec. 302. Whoever, being engaged in any piratical cruise, or enterprise, or being of the crew of any piratical vessel, lands from such vessel, and on shore commits robbery, is a pirate, and shall be imprisoned for life."

In the construction of the general terms "piratical cruise," of his section, the pleader will look to the definition of piracy, as heretofore given.

§ 334. **Arming Vessel to Cruise Against the Citizens**

of the United States.—Section 303 of the new Code takes the place of old Section 5284, and is as follows:

"Sec. 303. Whoever, being a citizen of the United States, without the limits thereof, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly aids or is concerned in furnishing, fitting out, or arming, any private vessel of war, or privateer, with intent that such vessel shall be employed to cruise or commit hostilities upon the citizens of the United States, or their property, or whoever takes the command of or enters on board of any such vessel, for such intent, or who purchases any interest in any vessel with a view to share in the profits thereof, shall be fined not more than ten thousand dollars and imprisoned not more than ten years. The trial for such offense, if committed without the limits of the United States, shall be in the district in which the offender shall be apprehended or first brought."

See United States vs. Howard, 3 Wash., 430; 26 Federal Case, 390.

§ 335. **Piracy Under Color of a Foreign Commission.**—Section 5373 of the old Statute becomes Section 304 of the new Code, as follows:

"Sec. 304. Whoever, being a citizen of the United States, commits any murder or robbery, or any act of hostility against the United States, or against any citizen thereof, on the high seas, under color of any commission from any foreign prince, or state, or on pretense of authority from any person, is, notwithstanding the pretense of such authority, a pirate, and shall be imprisoned for life."

See United States vs. Palmer, 3 Wheat., 610; United States vs. Baker, 5 Blatchf., 6; 24 Federal Cases, 962; United States vs. Hutchings, 26 Federal Case, 440; United States vs. Terrel, 1 Federal Case, 999.

§ 336. **Piracy by Subjects or Citizens of a Foreign State.**—Section 305 of the new Code displaces Section 5374 of the old statutes, and is as follows:

"Sec. 305. Whoever, being a citizen or subject of any foreign state, is found and taken on the sea making war upon the United States, or cruising against the vessels and property thereof, or of the citizens of the same, contrary to the provisions of any treaty existing between the United States and the state of which the offender is a citizen or subject, when by such treaty such acts are declared to be piracy, is guilty of piracy, and shall be imprisoned for life."

§ 337. **Running Away with or Yielding up Vessel or Cargo.**—Old Section 5383 becomes new Section 306 in the following words:

"Sec. 306. Whoever, being a captain or other officer or mariner of a vessel upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, piratically or feloniously runs away with such vessel, or with any goods or merchandise thereof, to the value of fifty dollars, or who yields up such vessel voluntarily to any pirate, shall be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both."

In United States vs. Tully, 28 Federal Case, 16545, the intent must be alleged and proven, as in other criminal cases requiring such proof and allegation; but the paratical and felonious running away with a vessel does not mean that personal force and violence must have been used. See also United States vs. Howard, 26 Federal Case, 15404; United States vs. Kessler, 26 Federal Case, 15528.

§ 338. **Confederating, Etc., with Pirates.**—New Section 307 takes the place of old Section 5384, and is in the following words:

"Sec. 307. Whoever attempts or endeavors to corrupt any commander, master, officer, or mariner to yield up or to run away with any vessel, or with any goods, wares, or merchandise, or to turn pirate, or to go over to or confederate with pirates, or in any wise to trade with any pirate, knowing him to be such, or furnishes such pirate with any ammunition, stores, or provisions of any kind, or fits out any vessel knowingly and, with a design to trade with, supply, or correspond with any pirate or robber upon the seas; or whoever consults, combines, confederates, or corresponds with any pirate or robber upon the seas, knowing him to be guilty of any piracy or robbery; or whoever, being a seaman, confines the master of any vessel, shall be fined not more than one thousand dollars and imprisoned not more than three years."

See U. S. vs. Howard, 26 Federal Cases, 390.

§ 339. **Sale of Arms and Intoxicants Forbidden in Pacific Islands.**—The Act of February 14, 1902, 32 Statute at Large, 33, becomes Section 308 of the new Code, in the following words:

"Sec. 308. Whoever, being subject the authority of the United States, shall give, sell, or otherwise supply any arms, ammunition,

explosive substance, intoxicating liquor, or opium to any aboriginal native of any of the Pacific Islands lying within the twentieth parallel of north latitude and the fortieth parallel of south latitude, and the one hundred and twentieth meridian of longitude west and the one hundred and twentieth meridian of longitude east of Greenwich, not being in the possession or under the protection of any civilized power, shall be fined not more than fifty dollars or imprisoned not more than three months, or both. In addition to such punishment, all articles of a similar nature to those in respect to which an offense has been committed, found in the possession of the offender, may be declared forfeited. If it shall appear to the court that such opium, wine, or spirits have been given bona fide for medical purposes, it shall be lawful for the court to dismiss the charge."

§ 340. **Offenses Under Preceding Section Deemed on High Seas.**—Another part of the Act of February 14, 1902, becomes Section 309 of the new Code, as follows:

"Sec. 309. All offenses against the provisions of the section last preceding, committed on any of said islands, or on the waters, rocks, or keys adjacent thereto, shall be deemed committed on the high seas on board a merchant ship or vessel belonging to the United States, and the courts of the United States shall jurisdiction accordingly."

Sec. 340a. High Seas and Decisions.

For discussion of high seas and jurisdiction of United States courts see Miller vs. U. S., 242 F. 907.

A high sea crime is triable in any district where the defendant is found or into which he is first brought. Pedersen vs. U. S., 271 F. 187, but this does not mean temporary stopping of a ship as at quarantine station.

§ 341. **Vessels of the United States Defined.**—Section 310 of the new Code reads as follows:

"Sec. 310. The words 'vessel of the United States,' wherever they occur in this chapter, shall be construed to mean a vessel belonging in whole or in part to the United States, or any citizen thereof, or any corporation created by or under the laws of the United States, or of any State, Territory, or District thereof."

CHAPTER XVI.

CERTAIN OFFENSES IN THE TERRITORIES.

§ 324. **Territory Code and U. S. Code.**—The Code provides certain specific offenses for the territories of the United States and if there be in any territory a statute relating to a like matter, such statute ceases to be controlling. In other words, the law of the parent government is paramount. The legislation of Congress will supersede the legislation of a state or territory, without specific provisions to that effect, in those cases wherein the same matter is the subject of legislature by both. There the action of Congress may well be considered as covering the entire ground. David vs. Beason, 133 U. S., 33. Chancellor Kent in 1st Com., page 387, says on this subject, "Two distinct laws cannot at the same time be exercised in relation to the same subject, effectually, and at the same time be compatible with each other. If they correspond in every respect then the latter is idle and inoperative. If they differ they must, in the nature of things, oppose each other so far as they do differ." The Supreme Court of the United States in Passenger Cases, 7 How., 394, said, "A concurrent power excludes the idea of a dependent power. The general government, and a state, exercise concurrent powers in taxing the people of the State. The object of taxation may be the same, but the motives and policy of the tax are different and

the powers are distinct and independent. A concurrent power in two distinct sovereignties to regulate the same thing is as inconsistent in principle as it is impracticable in action. It involves a moral and physical impossibility. A joint action is not supposed and two independent wills cannot do the same thing. The action of one, unless there be an arrangement, must necessarily precede the action of the other; and that which is first, being competent, must establish the rule. If the powers be equal, as must be the case, both being sovereign, one may undo what the other does, and this must be the result of their action." In Kie vs. U. S., 27 Federal, 351, the Court said, "No law of Oregon is to have effect in Alaska if it is in conflict with a law of the United States. There is such a conflict, within the meaning of the statute, not only when these laws contain different provisions on the same subject, but when they contain similar or identical ones. In the latter case, it is the law of Congress that applies and not that of the State. See also U. S. vs. Clark, 46 Federal, 633. In re Nelson 69 Federal, 712. The national government is supreme and territorial governments are subordinate thereto.

There will be no confusion in the application of this doctrine as between a territory of the United States and the United States and a state and the United States. It will be remembered that a state is a sovereignty just as surely as the Federal Government is a sovereignty and each has the legal right to protect its own people against the same act by a statute denouncing the act as an offense and both statutes would be the law. In other words, as stated in Moore vs. Illinois by the Supreme Court of the United States, every citizen of the United States is also a citizen of a State or Territory. He may be said to owe allegiance to two sovereigns and may be liable to punishment for an infraction of the laws of either. The same act may be an offense or transgression of the laws of both. That either or both may punish such an offender cannot be doubted, yet it cannot be truly averred that defendant has been twice punished for the same offense, but only that by one act he has committed two offenses, for each of which he is justly punishable. He could not plead the

punishment by one in bar to a conviction by the other. A state may punish the offense of uttering or passing false coin as a cheat or fraud practiced on its citizens. Fox vs. State, 5 How., 432. In the case of the United States vs. Marigold, 9 How., 560, it is held that Congress, in the proper exercise of its authority, may punish the same act as an offense against the United States. In Snow vs. U. S. 18 Wall., 317, it was said that "Strictly speaking, there is no sovereignty in a territory of the United States, but that of the United States itself."

The case of Moore vs. Illinois, cited above, may be considered most liberal in a dictum definition of state sovereignty. The trend of the decisions of the Supreme Court of the United States since then is that when the Federal Government enters a field even of civil legislation, it becomes exclusive and its statutes are the paramount law. In other words the United States is the superior sovereignty, as has been announced most recently in the Hours of Service cases, wherein the Supreme Court held that since the Federal Government had by statute fixed a limit to the hours of service, a state statute fixing a different limit was void. Of course it will be remembered that there are some jurisdictions into which the Federal Government cannot enter. They belong exclusively to the State.

The offenses herein treated of are not confined to the Territories, but are punishable if committed within or upon any place within the exclusive jurisdiction of the United States, such as forts or arsenals, Government reservations, public building, sites, etc., as is shown by Section 311, which reads as follows:

"Sec. 311. Except as otherwise expressly provided, the offenses defined in this chapter shall be punished as hereinafter provided, when committed within any Territory or District, or within or upon any place within the exclusive jurisdiction of the United States."

§ 343. **Circulation of Obscene Literature; Promoting Abortion; How Punished.**—Section 312 of the new Code includes practically all of the elements of the statute relating to the abuse of the United States mails in the transmission of obscene, etc., matter, and of the Interstate

Commerce Statute, which relates to the shipping or carrying of obscene matter, etc. Section 312 of the new Code is in the following language, which displaces all provisions of old Section 5389:

"Sec. 312. Whoever shall sell, lend, give away, or in any manner exhibit, or offer to sell, lend, give away, or in any manner exhibit, or shall otherwise publish or offer to publish in any manner, or shall have in his possession for any such purpose, any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article of an immoral nature or any drug or medicine, or any article whatever, for the prevention of conception, or for causing unlawful abortion, or shall advertise the same for sale, or shall write or print, or cause to be written or printed, any card, circular, book, pamphlet, advertisement, or notice, of any kind, stating when, where, how, or of whom, or by what means, any of the articles above mentioned can be purchased or obtained, or shall manufacture, draw, or print, or in any wise make any of such articles, shall be fined not more than two thousand dollars, or imprisoned not more than five years, or both."

§ 344. **Polygamy.**—Section 313 of the new Code displaces old Statute 5352, and the Act of March 22, 1882, shown in First Supplement, 331, and is in the following language:

"Sec. 313. Every person who has a husband or wife living, who marries another, whether married or single, and any man who simultaneously, or on the same day, marries more than one woman, is guilty of polygamy, and shall be fined not more than five hundred dollars and imprisoned not more than five years. But this section shall not extend to any person by reason of any former marriage whose husband or wife by such marriage shall have been absent for five successive years, and is not known to such person to be living, and is believed by such person to be dead, nor to any person by reason of any former marriage which shall have been dissolved by a valid decree of a competent court, nor to any person by reason of any former marriage which shall have been pronounced void by a valid decree of a competent court, on the ground of nullity of the marriage contract."

§ 345. **Unlawful Cohabitation.**—Section 314 of the new Code reads as follows:

"Sec. 314. If any male person cohabits with more than one woman he shall be fined not more than three hundred dollars, or imprisoned not more than six months, or both."

§ 346. **Joinder of Counts.**—Section 315, which permits joinder in the same indictment of charges under the two above mentioned sections, is as follows:

"Sec. 315. Counts for any or all of the offenses named in the two sections last preceding may be joined in the same information or indictment."

§ 347. **Decisions.**—The offense of polygamy, as distinguished from open and notorious cohabitation, was not an offense under the Common Law, and, therefore, is statutory in this country. The Supreme Court of the United States, in the Miles Case, 103 U. S., 311, announced the doctrine that the proof of marriage will not be limited to only such witnesses as were eyewitnesses. Cohabitation and reputation of being husband and wife are usually considered together in questions concerning the proof of marriage. This was followed in United States vs. Higgerson, Volume 46, Federal Reporter, 750. It is always pertinent, under the offense of bigamy and adultery and kindred offenses, to prove the marriage relation. In the leading case of Cannon vs. United States, 116 U. S., page 55; 29 Law Ed., 561, the Supreme Court held that a man "cohabits" with more that one woman when holding out to the world two or more women as his wives, by his language or conduct, or both, and when he lives in the same house with them, and eats at the table of each a portion of the time, although he may not occupy the same bed, sleep in the same room, or actually have sexual intercourse with either of them.

In ex parte Snow, 120 U. S., 274, 30 Law Ed., 658, the Supreme Court held that cohabiting was a continuous offense, and can be committed but once for the purpose of indictment or prosecution, prior to the time the prosecution is instituted; and a grand jury cannot divide the offense into separate offenses, and find separate indictments; as, where a man unlawfully cohabited with seven women for twenty-five months, there could be but one indictment.

§ 348. **Adultery.**—Section 316 of the new Code takes the place of the Act of March 3, 1887, shown at First Supplement, 568, and is in the following words:

"Sec. 316. Whoever shall commit adultery shall be imprisoned not more than three years; and when the act is committed between a married woman and a man who is unmarried, both parties to such act shall be deemed guilty of adultery; and when such act is committed between a married man and a woman who is unmarried, the man shall be deemed guilty of adultery."

Sec. 348a. **Adultery-Decisions.**

The above section does not apply to an Indian on an Indian reservation, U. S. vs. Dennis Quiver, U. S. Sup. Ct. Oct. Term, 1915.

§ 349. **Incest.**—Section 317 of the new Code displaces the Act of March 3, 1887, shown at First Supplement, 4568, and is in the following words:

"Sec. 317. Whoever, being related to another person within and not including the fourth degree of consanguinity computed according to the rules of the civil law, shall marry or cohabit with, or have sexual intercourse with such other so related person, knowing her or him to be within said degree of relationship, shall be deemed guilty of incest, and shall be imprisoned not more than fifteen years."

Incest was not an offense at Common Law, though it was punished in the churches. The language of the statute demands knowing intercourse between parties related within the fourth degree of consanguinity, such relationship to be computed according to the rules of the Civil Law. It will be borne in mind that the method of computing relationship differs in the Canon Law, as adopted into the Common Law, and the Civil Law. In other words, under the Canon Law, or the Common Law, the computing begins at the common ancestor, and reckons downward, and in whatever degree the two persons, or the most remote, is distant from the common ancestor, that is the degree in which they are related. The method in the Civil Law is to count upward from either of the persons related, to the common ancestor, and then downward to the other, reckoning a degree for each person, both ascending and descending. In other words, the Canonists took the number of degrees in the longest line; the Civilians, the sum of the degrees in both lines. Anderson's Dictionary of Law, 229; 2 Blackstone's Commentary, 206-207; 4 Kent, 412; 2 Litt. Coke, 158. Under

this statute, it is also necessary that the indictment allege, and the proof show, the fact of knowledge of such degree of relationship.

§ 350. **Fornication.**—Section 318 of the new Code, which is also a part of the Act of March 3, 1887, First Supplement, 568, reads as follows:

"Sec. 318. If any unmarried man or woman commits fornication, each shall be fined not more than one hundred dollars, or imprisoned not more than six months."

§ 351. **Cerificates of Marriage; Penalty for Failure to Record.**—From the Act of March 3, 1887, First Supplement, 568, comes Section 319 of the new Code, as follows:

"Sec. 319. Every ceremony of marriage, or in the nature of a marriage ceremony of any kind, whether either or both or more of the parties to such ceremony be lawfully competent to be the subject of such marriage or ceremony or not, shall be certified by a certificate stating the fact and nature of such ceremony, the full name of each of the parties concerned and the full name of every officer, priest, and person, by whatever style or designation called or known, in any way taking part in the performance of such ceremony, which certificate shall be drawn up and signed by the parties to such ceremony and by every officer, priest, and person taking part in the performance of such ceremony, and shall be by the officer, priest, or other person solemnizing such marriage or ceremony filed in the office of the probate court, or, if there be none, in the office of the court having probate powers in the county or district in which such ceremony shall take place, for record, and shall be immediately recorded, and be at all times subject to inspection as other public records. Such certificate, or the record thereof, or a duly certified copy of such record, shall be prima facie evidence of the facts required by this section to be stated therein in any proceeding, civil or criminal, in which the matter shall be drawn in question. But nothing in this section shall be held to prevent the proof of mariages, whether lawful or unlawful, by any evidence othewise legally admissible for that purpose. Whoever shall wilfully violate any provision of this section shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both. The provisions of this section shall apply only within the Territories of the United States."

It will be noted that this section applies only in the Territories, and, therefore, it would seem that the general provisions of Section 311 of this chapter are excepted by this special provision in Section 319.

§ 352. **Prize Fights, Bull Fights, Etc.**—From the Act of February 7, 1896, Second Supplement, 446, is taken in substance Section 320 of the new Code, in the following language:

"Sec. 320. Whoever shall voluntarily engage in a pugilistic encounter between man and man or a fight between a man and a bull or any other animal, for money or for other thing of value, or for any championship, or upon the result of which any money or anything of value is bet or wagered, or to see which any admission fee is directly or indirectly charged, shall be imprisoned not more than five years. The provisions of this section shall apply only within the Territories of the United States and the District of Columbia."

§ 353. **Pugilistic Encounter Defined.**—From the same last above mentioned Act also comes the definition of "pugilistic encounters," as shown in Section 321 of the new Code, as follows:

"Sec. 321. By the term "pugilistic encounter," as used in the section last preceding, is meant any voluntary fight by blows by means of fists or otherwise, whether with or without gloves, between two or more men, for money or for a prize of any character, or for any other thing of value, or for any championship, or upon the result of which any money or anything of value is bet or wagered, or to see which any admission fee is directly or indirectly charged."

§ 354. **Train Robberies in Territories, Etc.**—Section 322 of the new Code contains all of the elements of the Act of July 1, 1902, and is in the following words:

"Sec. 322. Whoever shall wilfully and maliciously trespass upon or enter upon any railroad train, railroad car, or railroad locomotive, with the intent to commit murder, or robbery, shall be fined not more than five thousand dollars, or imprisoned not more than twenty years, or both. Whoever shall wilfully and maliciously trespass upon or enter upon any railroad train, railroad car, or railroad locomotive, with intent to commit any unlawful violence upon or against any passenger on said train, or car, or upon or against any engineer, conductor, fireman, brakeman, or any officer or employee connected with said locomotive, train, or car, or upon or against any express messenger, or mail agent on said train or any car thereof, or to commit any crime or offense against any person or property thereon, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both. Whoever shall counsel, aid, abet, or assist in the perpetration of any of the offenses set forth in this section shall be deemed to be a principal therein. Upon the trial of any

person charged with any offense set forth in this section, it shall not be necessary to set forth or prove the particular person against whom it was intended to commit such offense, or that it was intended to commit such offense against any particular person."

The wilful and malicious intent cannot be inferred from any uncertain statement in the indictment. It must be specifically alleged.

CHAPTER XVII.

INTERNAL REVENUE.

§ 355. The question was early determined by the supreme Court, in the license tax cases, 5 Wallace, 462, that the power of the United States Government to require licenses to be paid before a given business could be carried on within a State was not contrary to the Constitution, nor against public policy. The apparent inconsistency of such a position with the principle that the State shall have exclusive control over internal commerce, or its own domestic trade, is only apparent, and gives way

to the more paramount principle that each Government, State and National, has such inherent powers as belong to sovereign governments. The compliance with a Federal International Revenue tax Statute quarantees no rights against the State tax statutes. If there be a tax both by the Federal Government and by the State Government upon the same occupation, each tax must be paid, and the paying of one does not authorize the carrying on of the business with immunity form prosecutions by the other power. So, likewise, the punishment of one who fails to comply with the provisions of both Government does not preclude his punishment by the other Government upon the doctrine that he would be twice punished for the same offense. One convicted under the State law for selling whiskey and punished, could also be convicted and punished under the Federal law for the same offense. In Cross vs. North Carolina, 132 U. S., 131, 33 Law Ed., 287, the Supreme Court affirmed doctrine that one who forged note and passed it into books of National Bank to deceive examiner was liable to prosecution in both State and Federal Court.

§ 355a. **Offer of Compromise.**—Agreement of deputy not to prosecute in consideration therefor. Section 3229 of the Revised Statutes authorizes the Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury, and the Attorney General, to compromise any civil or criminal case arising under the internal revenue laws. Such compromise may be made even after a suit or prosecution has been commenced. In the case of Willingham vs. U. S., 208 Federal, 137, the Court of Appeals for the Fifth Circuit held that where a deputy internal revenue collector promised the defendant that if he would pay the tax due and the penalty thereon, that no prosecution would be commenced, which offer was accepted by the defendant, and thereafter the Government instituted prosecution, that the trial judge should have submitted to the jury a special charge setting forth such offer to compromise as a binding agreeement with the Government and a failure to give such special charge was error.

The decision, instead of being based upon the defendant having purchased immunity, is predicated upon the statute authorizing the Government's chief revenue officer to effect compromises and that the defendant had a right to rely thereon, even though he did not follow the technical rules prescribed for the making of such offers in compromise.

This case also inferentially speaks of the severity of a punishment which was a hundred dollars fine and two years' imprisonment.

Sec. 355b. Compromise, Continued.

The acceptance of the tax and penalty and the statement that there would be no prosecution is a settled rule under the above statute, Rau vs. U. S., 260 F. 131.

The compromise of a criminal case likewise prevents the forfeiture of goods seized under libel, U. S. vs. One, etc., 263 F. 241.

§ 356. **Internal Revenue Offenses.**—This chapter will not attempt to deal with all of the Federal Internal Revenue offenses, but only such statutes as are most frequently violated, and some of which are difficult to find.

Trade or Business Not to be Carried On Until Tax Paid.—Section 3232 of the Revised Statutes reads as follows:

"Sec. 3232. No person shall be engaged in or carry on any trade or business hereinafter mentioned until he has paid a special tax therefor in the manner hereinafter provided."

The case of United States vs. Clair, 2 Federal, page 55, which construes Section 3232, has never been questioned as the proper construction; that is, that the provisions of the Statute leave no room for doubt that the tax must be paid in advance. The business is prohibited, except when thus licensed; and until the tax is paid, it cannot be lawfully pursued. The case of United States vs. Pressy, 1 Lowell, 319, which arose during the Reconstruction Period, and which contained some dicta with reference to carrying on the business after an application for assessment, will not be confused into an authority contradicting the Clair case. The wording of the statute, and the entire spirit thereof, as well as the policy of the Government that it shall take no chan-

ces, supports the construction noted in the Clair case. The license must be first secured.

This construction is further supported by the case of the United States vs. Angell, 11 Federal, page 34, wherein the Court held that a receipt for a license tax is not retroactive, and cannot be admitted in evidence on the charge for selling spiritous liquors by retail during a period of time prior to its date. To hold otherwise, would be to permit the violator to pay his tax after he had become a dealer, and thus, in effect, secure a pardon. Judge Clark says, in the Angell case:

"Again, the penalty had been incurred before the payment of the tax, and the receipt given would not operate as a pardon. The law makes no provision for such an effect; nor could the collector of taxes confer it. The collector could not pardon the offense; the President alone could do that."

See also United States vs. Van Horn, 20 Internal R. E. C., 145; U. S. vs. Devilin, 6 Blatchf., 71; and Section 53 of the Act of October 1, 1890, page 869, First Volume, Supplement, which contains the statement that the tax is due "on commencing any trade or business."

§ 357. **Partnerships.**—By Section 3234, it is provided that any number of persons doing business in copartnerships at one place shall be required to pay but one special tax; and so under the authorities of United States vs. Blab, 99 U. S., 228; and United States vs. Davis, 37 Federal, 468, the dissolution of such partnership, whereby one of two partners who has paid drops out, and the remaining member of the firm conducts the business, a new license is not necessary. If, however, a new partner buys into the business, a new tax must be paid.

§ 358. **Must Exhibit Stamp.**—Section 3239 of the Revised Statutes reads as follows:

"Sec. 3239. Every person engaged in any business, avocation, or employment, who is thereby made liable to a special tax, except tobacco peddlers, shall place and keep conspicuously in his establishment and place of business all stamps denoting the payment of said special tax; and any person who shall, through negligence, fail to so place and keep said (*stamp*) (stamps), shall be liable to a penalty equal to the special tax for which his business rendered him liable, and

the costs of prosecution; but in no case shall said penalty be less than ten dollars. And where the failure to comply with the foregoing provision of law shall be through wilful neglect or refusal, then the penalty shall be double the amount above prescribed: *Provided*, That nothing in this section shall in any way affect the liability of any person for exercising or carrying on any trade, business, or profession, or doing any act for the exercising, carrying on, or doing of which a special tax is imposed by law, without the payment thereof."

§ 359. **Rectifiers, Liquor Dealers, Etc., Carrying on Business Without Paying Special Tax, Etc.**—Old Section 3242 of the Revised Statutes becomes by the Act of March 3, 1883, page 60, First Volume Supplement, Section 16, which provides punishments for those who carry on the business of a rectifier, wholesale liquor dealer, retail liquor dealer, wholesale liquor dealer in malt liquors, retail dealer in malt liquors, or, manufacturer of stills, in the following language:

"Sec. 16. That any person who shall carry on the business of a rectifier, wholesale liquor dealer, retail liquor dealer, wholesale dealer in malt liquors, retail dealer in malt liquors, or manufacturer of stills, without having paid the special tax as required by law, or who shall carry on the business of a distiller without having given bond as required by law, or who shall engage in or carry on the business of a distiller with intent to defraud the United States of the tax on the spirits distilled by him, or any part thereof, shall, for every such offense, be fined not less than one hundred dollars nor more than five thousand dollars and imprisoned not less than thirty days nor more than two years."

The use of the word "business" in the statute, of course, requires its use in the indictment and proof in the testimony. It is not the making of a sale that the statute denounces, because one may carry on the business without ever making a sale. So, also, one may make a sale without carrying on the business. The safe criterion is the Ledbetter decision, 170 U. S., 608; 42 Law Ed., 1162, which approves the opinion of United States vs. Jackson, 1 Hughes, 531, and United States vs. Rennecke, 38 Federal, 847, to the effect that,

"While it has been sometimes held that proof of sale to one person was at least *prima facie* evidence of criminality, the real offense consists in carrying on such business; and if only a single sale were

proved, it might be a good defense to show that such sale was exceptional, accidental, or made under such circumstances as to indicate that it was not the business of the offender."

An indictment under this section should allege the carrying on of the business, the day on which it was carried on, the town, country, and district in which it was carried on. A form of indictment will be found herein.

§ 359a. Indictment.—Under the authority of Hodge vs. U. S., 191 Federal, 165, the Circuit Court of Appeals for the Eighth Circuit, an indictment which charged directly and succinctly that on a given day at a special place, within the jurisdiction of the trial Court, the defendant did wilfully, unlawfully and feloniously carry on the business of a retail liquor dealer without having paid the special tax therefor as required by law, was unquestionably good.

Sec. 359b. Liquor Dealers, etc., Continued.

See section 1100.

The internal revenue statutes were not repealed by the National Prohibition Act unless unconstitutional or unless punishments differ, etc., U. S. vs. Sohm, 265 F. 910; Pinasco vs. U. S., 262 F. 400.

Decisions to the contrary are U. S. vs. Fortman, 268 F. 873; Farley vs. U. S., 269 F. 721.

For other decisions concerning this statute see, Bullard vs. U. S., 245 F. 837; U. S. vs. Lazzaro, 255 F. 237; Day vs. U. S., 229 F. 534; Bailey vs. U. S., 259 F. 88.

§ 360. **C. O. D. Decisions.**—The case in the 23 Federal, page 134, and the case in the 26 Federal, 515, each of which holds that in shipments of liquor, C. O. D., the shipper is a dealer at the place of destination, are not the law. By the ranking and best line of authorities, the sale takes place at the point where the specific quantity is segregated from the mass; and as this takes place at the point from which the liquor is shipped, the authorities are that the sale takes place there, and that is, therefore, the place where the license should be paid.

In United States vs. Chevallier, 107 Federal, 434, the Circuit Court of Appeals for the Ninth Circuit in a case where the defendant was a wholesale liquor dealer in

San Francisco, who maintained a branch house in Portland, bearing his sign, and where, presumably, samples of his trade were kept, and where the public were invited to purchase, the manager of which place was a salesman, required to sell judiciously, the right to cancel his contracts being reserved to his principal, who filled all orders, and without prepaying the freight, delivered the goods to a carrier at San Francisco, consigned to purchasers in various parts of the agent's territory; held, that the sales were made wholly at San Francisco, notwithstanding the agent may have been authorized to make binding contracts and collect the purchase money, and that the defendant was not subject to the internal revenue tax as an Oregon dealer, even though his method of transacting business may have been devised purposely to evade such tax.

In United States vs. Adams Express Company, 119 Federal, 240, an express company was charged with being a retail liquor dealer on a state of facts which showed that it, as a common carrier, received liquors from liquor companies, and carried them to the consignee, receiving the money, which it transported to the liquor company. The Court held that the title to the liquors passed to the consignee on delivery to the express company, and that the company acted as the vendee in carrying the liquor and as agent of the vendor in collecting the money, and was not therefore a dealer. In this case, Judge McPherson reviews the authorities known as the C. O. D. decisions, and holds as first indicated. U. S. Sup. Court, May 13, 1907, in Adams Express Company vs. Ky., holds State law making C. O. D. sale at delivery point, unconstitutional.

In Burk vs. Platt, 172 Federal, 777, the Court held express companies can make reasonable regulations refusing C. O. D. shipments. See also Jones vs. United States, 170 Federal, page 1; U. S. vs. Lackey, 120 Federal, 57; American Express Company vs. Iowa, 196 U. S., 133; O'Neil vs. Vermont, 144 U. S.; and U. S. vs. Parker, 121 U. S., 596.

§ 360a. **Delivery to Customer.**—One who has paid a special tax entitling him to retail liquor at his regular

place of business does not violate Section 3242, which is new Section 16, by delivering liquor to a customer at the latter's residence, although the sale be completed there. The Court held in substance that it might be true that the title to the liquor did not actually pass to the purchaser until the delivery and payment were made at the boarding house, but this legal incident of the transaction did not change the place for carrying on the business from the drug store, where the supply was kept and where orders were received, to the boarding house, or place of delivery. Section 16, old Section 3242, when read in connection with 3239 which requires a liquor dealer to place and keep conspicuously in his establishment or place of business all stamps denoting the payment of the special tax required of him, contemplates that the retail liquor dealer may carry on business under one license, or by virtue of paying one special tax, only at one place at one time. Benbrook vs. U. S., 186 Federal, 153.

Sec. 360b. C. O. D. Decisions Continued.

A tax on C. O. D. shipments by a state, if on interstate shipments, is unconstitutional, Rosenberg vs. Pacific Express Company, U. S. Sup. Ct. October Term, Apr. 1915.

§ 361. **Fact Cases.**—In United States vs. Allen, 38 Federal, 736, the facts showed that the defendant was engaged in procuring and furnishing to anyone who would patronize him, liquors in quantities less than five gallons. He testified that he received orders, requiring the person ordering to pay ten cents down for a bottle of beer, and when the beer was delivered, an extra fifteen cents as remuneration for going to neighboring State to procure it; but the evidence failed to show that the defendant bought specific quantities of liquor to correspond with special orders, but showed that he bought beer by the case, and paid for it, and sold it to anyone desiring it. Held, that the defendant was a dealer under this section. (Syllabus.)

In United States vs. Woods, 28 Federal Cases No. 16759, it was held that a club formed for the purpose of social amusement, owning spiritous liquors, keeping them for

use by the members of the club, who were entitled to such use upon payment to the janitor, which money went into the treasury of the Club, the janitor was held to be a retail dealer. So, also, in United States vs. Alexis Club, 98 Federal, 725, it was held that a culb organized for social purposes was liable to the payment of special tax as retail dealer, when it sold drinks to its members. See also United States vs. Rolinger, 27 Federal Case No. 16190a. Neither can a physician supply spiritous liquors to his patients. United States vs. Smith, 45 Federal, 115. To the contrary would be the case of United States vs. Calhoun, 39 Federal Reporter, 604, which decided that an apothecary who uses spiritous liquors in a bona fide way, exclusively in the preparation of making up medicines, would not be subject to the tax. A druggist, however, under the authority of United States vs. White, 42 Federal, 138, is to be weighed by the scales of good faith, to ascertain whether he is using intoxicants solely for the compounding of medicines. A clerk or hired servant, not acting for himself, but as an employee of another, will not be convicted. United States vs. White, 42 Federal, 138; United States vs. Logan, 26 Federal Cases No. 15624. In Quinn vs. Diamond, 72 Federal, 993, commission merchants who made a commission upon sales of liquors were held to be dealers. In United States vs. Morfew, 136 Federal, 491, the Court held that a druggist who sold a medicinal preparation which contained more alcohol than was necessary to preserve the medicinal properties of the drugs therein contained, became liable to the payment of the tax as a retail liquor dealer.

In United States vs. Lewis, decided June 21, 1904, the Court determined that it was not necessary to make one a liquor dealer, that the beverage should be intoxicating. Hop ale is also included in the term of the statute specifying malt-liquor dealers. For decisions with reference to proprietary medicines, such as Digg's Appetizer, Lemon Ginger, and tonics, see United States vs. Bray, 113 Federal, 1009; United States vs. Starnes, 37 Federal, 665; United States vs. Stubblefield, 40 Federal, 454; United vs. Cota, 17 Federal, 734. In South Carolina vs. United States, decided by the Supreme Court on December 5,

1905, it was held that even a State must pay this Federal tax.

§ 362. **Proof of License.**—Under the authority of Morris vs. United States, 161 Federal, 672, the prosecution makes out its case by proving that the defendant carried on the business at a certain time and place; the payment of tax being a matter of defense, which, if relied upon, must be proved by the defendant.

Sec. 362a. Proof of License Continued.

The proof concerning the possession of a federal license need not be made by the government, since it is a matter particularly within the knowledge of the defendant, Faraone vs. U. S. 259 F. 507.

§ 363. **Distiller Defrauding or Attempting to Defraud the United States of Tax on Spirits.**—Section 3257 of the Revised Statutes is in the following words:

"Sec. 3257. Whenever any person engaged in carrying on the business of a distiller defrauds or attempts to defraud the United States of the tax on the spirits distilled by him, or of any part thereof, he shall forfeit the distillery and distilling apparatus used by him, and all distilled spirits and all raw materials for the production of distilled spirits found in the distillery and on the distillery premises, and shall be fined not less than five hundred dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than three years."

The Court held, in United States vs. Ridnour, 119 Federal, 401, that the Act establishing bonded warehouses, dated March 3, 1877, 19 Statute at Large, 393, did not repeal this section. This same case also held that apple brandy was included in the general terms "distilled spirits."

The intent to defraud must exist before there can be an offense under this section. United States vs. 100 Barrels of Spirits, 2 Abbott, 305. See other cases, Dobbin's Distillery vs. United States, 96 U. S. 395; United States vs. Three Copper Stills, 47 Federal, 495. On the authority of Coffee vs. United States, 116 U. S., 445, 29 Law Ed., 684, a judgment of acquittal in a criminal prosecution for violation of this section is conclusive in favor of the defendant as claimant of the property involved in a subsequent suit in rem under the latter part

of the statute. See also 109 Barrels of Whiskey vs. United States, 94 U. S., 86; United States vs. Cushman, 1 Low., 414.

Sec. 363 a. Distilleries, etc., Continued.

Illicit distillery acts were repealed by the prohibition act, U. S. vs. Yuggini, 266 F. 746. See also 274 F.—

See section 3258 R. S. U. S. as to penalty and punishment, U. S. vs. Buckingham, 261 F. 418.

§ 364. **Breaking Locks; Gaining Access to Cistern, Etc., Penalty.**—Section 3268 of the Revised Statutes reads as follows:

"Sec. 3268. Every person who destroys, breaks, injuries, or tampers with any lock or seal which may be placed on any cistern-room or building by the duly authorized officers of the revenue, or opens said lock or seal, or the door to said cistern-room or building, or in any manner gains access to the contents therein, in the absence of the proper officer, shall be fined not less than five hundred dollars nor more than five thousand dollars, and be imprisoned not less than one year nor more than three years."

In Pilcher vs. United States, 113 Federal, 248, the Circuit Court of Appeals for the Fifth Circuit held that an acquittal of a defendant for a violation of Section 3296 of the Revised Statutes did not preclude prosecution under this statute.

§ 365. **Signs to be Put Up by Distillers and Dealers, and Other Regulations.**—Section 3279 of the old Statutes requires that distillers and wholesale dealers shall keep on the outside of the place of such business a sign carrying the name of the firm and other information.

Section 3280 provides that the distiller shall not carry on business until the law is complied with.

Section 3281 provides for the giving of bond and a criminal punishment if this is not done.

In Terry vs. United States, 120 Federal, 483, the Circuit Court of Appeals for the Fourth Circuit held that an indictment for unlawfully and knowingly carrying and delivering raw material to a distillery was insufficient if it failed to state that such distillery was not for the production of spirits, and was also insufficient if it did not set forth the kind of raw material which was furnished.

Section 3296 denounces the removal, concealment, etc., of spirits contrary to law, and fixes a penalty. The case of Pilcher vs. United States, 113 Federal, 248, was a case decided under that section

§ 365a. **Concealment, Etc**—An indictment under Section 3296 is sufficient if it charges each element of the crime enumerated in the statute, and substantially in the same language and it need not aver that the removal of the spirits was with intent to defraud the United States. Rosenfeld vs. U. S., 202 Federal, 469.

§ 366. **Books to be Kept by Rectifiers and Wholesale Dealers; Penalty.**—Section 3318 of the Revised Statutes provides as follows:

"Sec. 3318. Every rectifier and wholesale liquor dealer shall provide a book, to be prepared and kept in such form as may be prescribed by the Commissioner of Internal Revenue, and shall, on the same day on which he receives any foreign or domestic spirits, and before he draws off any part thereof, or adds water or anything thereto, or in any respect alters the same, enter in such book and in the proper columns respectively prepared for the purpose, the date when, the name of the person or firm from whom, and the place whence the spirits were received, by whom distilled, rectified, or compounded, and when and by whom inspected, and, if in the original package, the serial number of each package, the number of wine-gallons and proof-gallons, the kind of spirit and the number and kind of adhesive stamps thereon. And every such rectifier and wholesale dealer shall, at the time of sending out of his stock or possession any spirits, and before the same are removed from his premises, enter in like manner in the said book the day when and the name and place of business of the person or firm to whom such spirits are to be sent, the quantity and kind or quantity of such spirits, the number of gallons and fractions of a gallon at proof; and, if in the original packages in which they were received, the name of the distiller and the serial number of the package. Every such book shall be at all times kept in some public or open place on the premises of such rectifier or wholesale dealer for inspection, and any revenue officer may examine it and take an abstract therefrom; and when it has been filled up as aforesaid, it shall be preserved by such rectifier or wholesale liquor dealer for a period not less than two years; and during such time it shall be produced by him to every revenue officer demanding it. And whenever any rectifier or wholesale liquor dealer refuses or neglects to provide such book, or to make entries therein as aforesaid, or cancels, alters, obliterates, or destroys any part of such book, or any entry [*therein*] [therein], or makes such false entry therein, or hinders or obstructs such revenue officer from examining such book, or making

any entry therein, or taking any abstract therefrom; or whenever such book is not preserved or is not produced by any rectifier or wholesale liquor dealer as hereinbefore directed, he shall pay a penalty of one hundred dollars, and shall [on conviction] be fined not less than one hundred dollars nor more than five thousand dollars, and imprisoned not less than three months nor more than three years."

In the case of Williams vs. United States, 158 Federal, 30, the Circuit Court of Appeals for the Eighth Circuit held that an indictment under this section need not set out the quantity of spirits which were sent out without being recorded in the book provided for in the statute, because the quantity sent out was not the essential element, and, therefore, an indictment charging that the defendant, a wholesale liquor dealer, sent out of his stock two casks of distilled spirits, without making any required entries, was not fatally defective in failing to specify the quantity shipped. Neither need the indictment specify the name of the consignee or the place where the casks were sent.

In the cases of United States vs. Amann, 24 Federal Case No. 14438, a quantity of distilled spirits, 3 Ben., 552, it was determined in substance, that if it was a mere accidental omission to enter in the record, the defendant should not be convicted, but that the defendants were responsible for the action of their clerks and bookkeepers, and that they were bound to see that their duties with reference to these entries was fully and properly performed; and if, through the neglect or carelessness of the employee, it was not performed, the employer was responsible. See also United States vs. 1412 Gallons of Spirits, 10 Blatchf., 428.

§ 367. **Stamps and Brands to be Effaced from Empty Casks.**—Section 3324 of the Revised Statutes provides as follows:

"Sec. 3324. Every person who empties or draws off, or causes to be emptied or drawn off, any distilled spirits from a cask or package bearing any mark, brand, or stamp required by law, shall at the time of emptying such cask or package, efface and obliterate said mark, stamp, or brand. Every such cask or package from which said mark, brand, or stamp is not effaced and obliterated, as herein required, shall be forfeited to the United States, and may be seized

by any officer of internal revenue wherever found. And every railroad company or other transportation company, or person who receives or transports, or has in possession with intent to transport, or with intent to cause or procure to be transported, any such empty cask or package, or any part thereof, having thereon any brand, mark, or stamp, required by law to be placed on any cask or package, or any part thereof, so received or transported, or had in possession with the intent aforesaid; and every boat, railroad car, cart, dray, wagon, or other vehicle, and all horses or other animals used in carrying or transporting the same, shall be forfeited to the United States. Every person who fails to efface and obliterate said mark, stamp, or brand, at the time of emptying such cask or package, or who receives any such cask or package, or any part thereof, with the intent aforesaid, or who transports the same, or knowingly aids or assists therein, or who removes any stamp provided by law from any cask or package containing, or which had contained, distilled spirits, without defacing and destroying the same at the time of such removal, or who aids or assists therein, or who has in his possession any such stamp so removed as aforesaid, or has in his possession any cancelled stamp, or any stamp which has been used, or which purports to have been used, upon any package of distilled spirits, shall be deemed guilty of a felony, and shall be fined not less than five hundred dollars nor more than ten thousand dollars, and imprisoned not less than one year nor more than five years."

There are no words expressing intention with reference to this offense in this section, and under the authority of United States vs. Gallant, 177 Federal, 281, an inadvertent and negligent omission to do the things demanded by the section is an offense.

§ 368. **Re-use of Bottles, Etc., Without Removing and Destroying Stamps.**—The Act of March 3, 1897, 29 Statute at Large, 627, Section 6, provides as follows:

"Sec. 6. That any person who shall re-use any stamp provided under this Act after the same shall have been once affixed to a bottle as provided herein, or who shall re-use a bottle for the purpose of containing distilled spirits which has once been filled and stamped under the provisions of this Act without removing and destroying the stamp so previously affixed to such bottle, or who shall, contrary to the provisions of this Act or the regulations issued thereunder remove or cause to be removed from any bonded warehouse any distilled spirits inspected or bottled under the provisions of this Act, or who shall bottle or case any spirits in violation of this Act, or of any regulation issued thereunder, or who shall, during the transportation and before the exportation of any such spirits, open or cause to be opened, any case or bottle containing such spirits, or who shall wilfully remove, change or deface any stamp, brand, label, or seal affixed

to any such case or to any bottle contained therein, shall for each such offense be fined not less than one hundred nor more than one thousand dollars, and be imprisoned not more than two years, in the discretion of the court, and such spirits shall be forfeited to the United States."

In United States vs. Guthrie, 171 Federal 528, the following points with reference to the above statute were determined:

First. The offense is complete if the bottle is re-used without destroying the stamps, and does not depend on its being done knowingly and wilfully.

Second. The employer is guilty if the act is performed by his bartender or agent acting within the scope of his employment.

§ 368 a. **Must Be Evidence of Refilling.**—A conviction cannot be had under Section 6 without some evidence of refilling or of procuring such refilling. Duff vs. U. S., 185 Federal, 101.

§ 369. **Removing any Liquors or Wines Under any Other than Trade Names; Penalty.**—Section 3449 of the Revised Statutes reads as follows:

"Sec. 3449. Whenever any person ships, transports, or removes any spirituous or fermented liquors or wines, under any other than the proper name or brand known to the trade as designating the kind and quality of the contents of the casks or packages containing the same, or causes such act to be done, he shall forfeit said liquors or wines, and casks or packages, and be subject to pay a fine of five hundred dollars."

In United States vs. Twenty Casks, etc., 133 Federal, 910, the Court held that this section did not apply to a cask shipped without a label, nor does it apply when the cask was labeled, "Glass: with care," etc. In United States vs. Liquor Dealers' Supply Company, 156 Federal, 219, the Court held that spirituous liquors under this section contained in bottles and packed in barrels and shipped, the barrels being marked "————" is a violation of this section, and also that prosecutions under this section contained no questions of fraud or fraudulent intent. This case was a case of the indictment of a corporation for a violation of this section.

See also United States vs. Sandefuhr, 145 Federal, page 849.

This statute has been held not to apply to private persons, but only to distillers and dealers.

Sec. 369 a. Removal, etc., of Liquor Continued.

Section 3296, R. S. U. S. concerned with the removal of liquors was repealed by the Volstead Act, Reed vs. Thurmond, 269 F. 252.

§ 370. **Oleomargarine.**—The Act of August 2, 1886, 24 Statute at Large, 209, is what is known as the Oleomargarine Act, and contains a definition of butter and oleomargarine.

Section 3 of the Act provides a schedule of special taxes upon manufacturers of six hundred dollars, wholesale dealers of four hundred eighty dollars, and retail dealers of forty-eight dollars. The manufacturer is any person who manufactures oleomargarine for sale, and also any person who mixes with oleomargarine any artificial coloration. A wholesale dealer is any person who sells or offers for sale oleomargarine in the original manufacturer's packages; and the retailer is any person who sells oleomargarine in quantities of less than ten pounds at one time.

Section 4 of the Act provides the penalties for the carrying on of the business without the payment of the tax; that is if the manufacturer carries on his business without the payment of his special tax, he shall be fined not less than one thousand and not more than five thousand dollars; the person who carries on the business of a wholesale dealer without paying the special tax, besides being liable to the payment of the tax, shall be fined not less than five hundred, nor more than two thousand dollars; and every person who carries on the business of a retail dealer without paying the special tax, shall, besides being liable for the tax, be fined not less than fifty, nor more than five hundred dollars.

Section 6 regulates packing and marking oleomargarine, and provides the penalty, and reads as follows:

"Sec. 6. That all oleomargarine shall be packed by the manufacturer thereof in firkins, tubs, or other wooden packages not before used for that purpose, each containing not less than ten pounds, and mark-

ed, stamped, and branded as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and all sales made by manufacturers of oleomargarine, and wholesale dealers in oleomargarine shall be in original stamped packages. Retail dealers in oleomargarine must sell only from original stamped packages, in quantities not exceeding ten pounds, and shall pack the oleomargarine sold by them in suitable wooden or paper packages, which shall be marked and branded as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe. Every person who knowingly sells or offers for sale, or delivers or offers to deliver, any oleomargarine in any other form than in new wooden or paper packages as above described, or who packs in any package any oleomargarine in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law, shall be fined for each offense not more than one thousand dollars, and be imprisoned not more than two years."

Section 6, above quoted, has been declared to be Constitutional in in re Kollock, 165 U. S., 536; 41 Law Ed., 813, and Dougherty vs. United States, 108 Federal, 56, which affirmed U. S. vs. Dougherty, 101 Federal, 439, upon the reasoning that the Act does not continue a delegation of power to the Commissioner of Internal Revenue and the Secretary of the Treasury to determine what act shall be criminal, but the Act itself sufficiently defines the offense, by requiring the packages to be marked and branded, and the punishment therefor, leaving the mere discretion of the particular marks, stamps, and brands to be determined by the officers aforesaid. The Supreme Court, in the Kollock case, said that the primary object of oleomargarine legislation was to secure revenue by internal taxation, and to prevent fraud in the collection of such revenue.

In the case of Ripper vs. United States, 178 Federal, page 24, the Circuit Court of Appeals held that evidence secured by the unlawful issuance of a search warrant, which was itself relevant was not inadmissible because obtained by such illegal search and seizure; and that same case held that in order to constitute the offense of neglect or refusal to destroy the stamp from the emptied oleomargarine package, it need only appear that the package had a stamp on it denoting the payment

of the tax; that it was emptied of its contents; that it was in defendant's possession in its emptied condition; and that he wilfully neglected or refused to destroy the stamp while the empty package was in his possession.

That same case also reasoned that the Act authorized three classes of persons to conduct the business of manufacturing and selling oleomargarine; namely, the manufacturer, the wholesale dealer, and the retail dealer; and that Section 6 declares that retail dealers must sell only from original stamped packages, in quantities not exceeding ten pounds, and that the restriction on retail dealers violates no Constitutional right, and that persons selling oleomargarine at retail in original packages in quantities greater than ten pounds at any one time are violators of the law, and do not form a class outside of its provisions.

In this case, the Court also held that the penalty provided in Section 6 does not apply to that part of the section prohibiting retail dealers from selling in quantities exceeding ten pounds, such offense being subject to punishment by a fine of a thousand dollars, without imprisonment, as prescribed by Section 18 of the Act, which reads as follows:

"Sec. 18. That if any manufacturer of oleomargarine, any dealer therein, or any importer or exporter thereof shall knowingly and wilfully omit, neglect, or refuse to do, or cause to be done, any of the things required by law in the carrying on or conducting of his business, or shall do anything by this act prohibited, if there be no specific penalty or punishment imposed by any other section of this act for the neglecting, omitting, or refusing to do, or for the doing or causing to be done, the thing required or prohibited, he shall pay a penalty of one thousand dollars; and if the person so offending be the manufacturer or a wholesale, dealer in oleomargarine, all the oleomargarine owned by him, or in which he has any interest as owner, shall be forfeited to the United States."

In Dougherty vs. United States, 108 Federal, 56, the Court of Appeals for the Third Circuit, in passing upon the case originating under Section 6 of the Act, said that the section first requires manufacturers to pack oleomargarine in new wooden or paper packages, marked, stamped, and branded as prescribed; and sales by

manufacturers and wholesale dealers are also required to be "in original stamped packages." Thereafter, it provides that they shall pack it "in suitable wooden or paper packages, marked and branded as prescribed." The penal clause thereof provides that every person who knowingly sells oleomargarine otherwise than in new wooden or paper packages as above described, shall be fined, and held that such clause applied to retail dealers as well as others.

The Court also passed upon the form of an indictment.

A new indictment, in conformity with the ruling of the Court in United States vs. Lockwood, 164 Federal, 772, was found, and a conviction resulted, which conviction was affirmed in Lockwood vs. United States, 178 Federal, 437, wherein the Court re-affirmed the Constitutionlity of the Act. In the Lockwood case, 164 Federal, 772, it was held that when the indictment was for selling in packages that were not as prescribed by the Commissioner of Internal Revenue, the particular in which such packages did not conform therewith should be set out in the indictment. The regulations of the Commissioners provide that retail packages must have the name and address of the dealer printed or branded thereon; likewise, the words "pound" and "oleomargarine" in letters not less than one quarter of an inch square, so as to be plainly visible to the purchaser at the time of delivery to him, and the color of the ink must be in the strongest contrast to the color of the packages.

In Wesoky vs. United States, 175 Federal, 333, the Circuit Court of Appeals for the Third Circuit passed upon certain evidence that was admitted, and holds the rulings of the trial judge not erroneous, in an oleomargarine prosecution. In this case it was held, following Graves vs. United States, 105 U. S., 121, 37 Law Ed., 1021, that the wife of a defendant indicted in a Federal Court, is not a competent witness.

In United States vs. Lamson, 173 Federal, 673, the Court held that the Oleomargarine Act, which provides that wholesale dealers shall keep such books and render such returns as the Internal Revenue Commissioner may

require, did not limit the power of the commissioner to the sole making of regulations requiring the returns; but he was authorized thereunder to adopt regulations requiring such dealers to make monthly returns, showing the packages and pounds received, quantity disposed of, and the names and addresses of the consignees, and that such regulation was reasonable, and when such names were fictitious and erroneous, there was a violation of the regulation.

In United States vs. Union Supply Company, the Supreme Court of the United States, in an opinion rendered November 8, 1909, held that a corporation was a person, within the meaning of Section 6 of the Act of May 9, 1902, 32 Stat. L., 193, which required wholesale dealers in oleomargarine to keep certain books and make certain returns, and this although Section 5 of the same Act applies in express terms to corporations. In Vermont vs. United States, 174 Federal, 729, the Circuit Court of Appeals for the Eighth Circuit held that the term "any person" in the Act of 1886, as amended by the Act of May 9, 1902, is not limited to licensed wholesale or retail dealers, but is comprehensive enough to embrace all persons, whether licensed dealers or not. This case also affirms the doctrine heretofore mentioned with reference to elements of that portion of the Act relating to the destruction of stamps.

In United States vs. Joyce, 138 Federal, 455, the Court held that that portion of the Act of 1886 relating to the payment of tax by wholesale dealers, might be prosecuted by either information or indictment. A form of indictment is also approved in that case for wholesale dealers who do not pay the tax.

In United States vs. Ford, 50 Federal, 467, the Court held that an indictment under Section 6 for neglect to properly mark the package of oleomargarine should set out the regulation of the commissioner covering the marks and brands in substance.

In apparent contradiction of Vermont vs. United States, 174 Federal, cited supra, seems to be the case of Morris vs. United States, 168 Federal, 682. In the Morris case, the Circuit Court of Appeals for the Eighth

Circuit, in passing upon Section 6 of the Act of 1886, and referring to the words "every person" should be construed to refer solely to manufacturers and dealers previously therein mentioned, so that an indictment for violating such section which fails to charge that the accused was either a manufacturer or dealer in oleomargarine would state no offense. The safe rule, therefore, is to allege that the defendant is either a manufacturer or a wholesale or retail dealer, and that the facts of each prosecution will substantiate the allegation; otherwise, there should be no prosecution.

Prosecution for sale and delivery, though different offenses, if same transaction, may be under different counts in same indictment, Goll vs. U. S., 166 F., 419.

In U. S. vs. Eaton, 144 U. S., 688, 36 Law Ed., 591, Section 18 of Act requiring certain reports and books by wholesale dealers was held inoperative.

§ 370 a. **Oleomargarine—Indictment.**—Enders vs. U. S., 1887 Federal, 754; May vs. U. S., 199 Federal, 42; Hart vs. U. S., 183 Federal, 368.

Sec. 370 b. Artificial Coloring of Butter.

For decisions with reference to this violation see Tillingast vs. Richards, 233 F. 710; U. S. vs. Orr. 233 F. 717.

CHAPTER XVIII.

NATIONAL BANKS.

§ 371. Any number of persons not less than five may form an association for the purpose of conducting a national bank. The Articles of Association and organization certificate should state the name assumed, the place where operations are to be carried on, the amount of capital stock, and the number of shares thereof, the names and residences of the share-holders, and the number of shares held by each. When these dockets are filed with the Comptroller of the Currency, the association becomes a body corporate, empowered to use a corporate seal, have a life for twenty years, the right to make contracts, to sue and to be sued, elect directors, and appoint other officers; to have by-laws which are not inconsistent with the law for the conduct of the general business, and the exercise of its national banking privileges. No other bank, of course, is authorized to use

the word "national" as a portion of its title. An association may exist with or without power to use circulation. To obtain circulation notes, an association must deposit with the Comptroller of the United States bonds as security for the redemption of such notes as it may issue, whereby, within limits, notes of various denominations may be furnished by the Comptroller. The States can exercise only such control over national banks as Congress permits, Farmers' National Bank vs. Deering, 91 U. S., 33.

The sections in the Revised Statutes relating to the organization and powers, etc., of national banks are from 5133 to 5156, inclusive. The sections in the Revised Statutes relating to the obtaining and issuing of circulating notes are from 5757 to 5189, inclusive. The sections relating to the regulation of the banking business are from 5190 to 5219, inclusive. The sections relating to dissolution and receivership are from 5220 to 5243, inclusive.

§ 371 a. **Federal Reserve Bank.**—By the Act of December 23, 1913, page 260, 1914 Supp. Fed. Stats. Ann. Federal reserve banks were established in as many districts as the Federal reserve board might consider necessary, in accordance with which the Board established eleven such banks. This legislation contained no provisions which modify the scope or vitality of Section 5209 which has stood so long as the legal watchdog over the integrity of the national bank system. Later, or to wit, on August 15, 1914, the Act was amended as shown at Section 9801 Federal Stats. Compiled. Such amendment dealt largely with the matter of percentums of deposit to remain in the vaults of the national banks and the authorization of the Federal reserve privilege to the State bank. Section 22 of the parent Act created a new misdemeanor by declaring that no bank nor any officer, director or employee thereof shall make any loan or grant any gratuity to any bank examiner, the penalty for so doing being imprisonment not to exceed oe year or a fine of not more than $5000 or both, and may be fined a further sum equal to the amount of money so loaned or gratuity so given. The section also provides for the

punishment of the bank examiner who accepts any such favor, by the same penalty.

The same section also declares that any officer, director or employee of a member bank shall not receive any compensation or gratuity whatsoever in any way in addition to his regular salary and that no examiner shall disclose the names of borrowers or the collateral for loans to other than the proper officers without first obtaining written permission from the Comptroller of the Treasury, unless ordered to do so by competent civil jurisdiction, all of which acts are punished by a fine not exceeding $5000 or by imprisonment not exceeding one year, or both. See also Sec. 375aa for new 5209.

§ 371 b. **Aiding and Abetting.**—The last paragraph of Section 5209 provides for the punishment of such persons as aid or abet any officer or clerk or agent in the commission of any of the violations of that section, provided such aiding or abetting is with the same intent that the principal must have before he can be guilty thereunder, to wit, the intent to injure or defraud the persons or bodies therein enumerated, or to deceive the persons therein enumerated. See Section 375.

For indictments and illustrations of prosecutions under this paragraph of the section, see Hillegass vs. U. S., 183 Federal, 200; Prettyman vs. U. S., 180 Federal, 30; Keliher vs. U. S., 193 Federal, 8, in which it was decided that aiding and abetting may be done by an officer of the bank as well as by an outsider. To the same effect is the case of Kettenbach vs. U. S., 202 Federal, 377.

§ 372. **Falsely Certifying Checks.**—Section 5208 of the Revised Statutes of 1878, which reads as follows:

"Sec. 5208. It shall be unlawful for any officer, clerk, or agent of any national banking association to certify any check drawn upon the association unless the person or company drawing the check has on deposit with the association, at the time such check is certified, an amount of money equal to the amount specified in such check. Any check so certified by duly authorized officers shall be a good and valid obligation against the association; but the act of any officer, clerk, or agent of any association, in violation of this section, shall subject such bank to the liabilities and proceedings on the part of the comptroller as provided for in Section fifty-two hundred and thirty-four."

relates to the penalty for falsely certifying checks. The penalties of the section, it will be noted, are both against the individual and against the association. The comptroller has the authority to place the association whose officer is guilty of a violation of this section, in the hands of a receiver, as provided in Section 5234.

This section includes four criminal offenses: first, the wilful certification of checks drawn upon the association by any person or company, unless such person or company has, at the time such check is certified, on deposit with the association, an amount of money equal to the amount specified in such check; second, the resorting to any devise, in order to evade the provisions of the of the section; third, the receipt of any fictitious obligation, directly or collaterally, in order to evade the provisions of the section; and fourth, the certifying of checks before the amount shall have been regularly entered to the credit of the dealer upon the books of the association.

Anderson's Dictionary of Law, under the head of the words "Certified Check," says it "implies that there are funds in the bank with which to pay it; that the same are set apart for its satisfaction; and that they will be so applied when the check is presented for payment."

The act of certifying is equivalent to an acceptance of the check. The object is to enable the holder to use the check as money. The bank charges the check to the account of the drawer; credits it in a certified check account; and when paid, debits that account with the amount. The bank thus becomes the debtor of the holder, Merchants' Bank vs. The State Bank, 11 Wallace, 647; Espy vs Bank of Cincinnati, 18 Wallace, 619; Bank vs. Whitman, 94 U. S., 343; same case, 100 U. S., 689; Bank of British North America, 91 N. Y., 110. It will be borne in mind that the statute relates alone to "check." Draft, or letter, or telegram, or any other certificate that is not included in the technical and legal term "check," is not included within the statute.

In Potter vs. United States, 155 U. S., 444; 39 Law Ed., 216, the Supreme Court held that the word "certified," as commonly understood, implies that the check upon

which the words of certification have been written has passed from the custody of the bank into the hands of some other party; and when the charge is, that the defendant "did unlawfully, knowingly, and wilfully certify a certain check," the import of that accusation is not simply that he wrote certain words upon the face of the check, but that he did it in such a manner as to create an obligation of the bank, in such a way as to make an instrument which can properly be called a certified check.

Sec. 372 a. Falsely Certified Checks, Continued.

Section 5208 has been amended to read as follows:—

(R. S. *5208, as amended, Act Sept. 26, 1918, c.—, *7.) Falsely certifying checks; penalty; punishment.

It shall be unlawful for any officer, director, agent, or employee of any Federal reserve bank, or of any member bank as defined in the Act of December twenty-third, nineteen hundred and thirteen, known as the Federal reserve Act, to certify any check drawn upon such Federal reserve bank or member bank unless the person, firm, or corporation drawing the check has on deposit with such Federal reserve bank or member bank, at the times such check is certified, an amount of money not less than the amount specified in such check. Any check so certified by a duly authorized officer, director, agent, or employee shall be a good and valid obligation against such Federal reserve bank or member bank; but the act of any officer, director, agent, or employee of any such Federal reserve bank or member bank in violation of this section shall, in the discretion of the Federal Reserve Board, subject such Federal reserve bank to the penalties imposed by section eleven, subsection (h), of the Federal reserve Act, and shall subject such member bank if a national bank to the liabilities and proceedings on the part of the Comptroller of the Currency provided for in section fifty-two hundred and thirty-four, Revised Statutes, and shall, in the discretion of the Federal Reserve Board, subject any other member bank to the penalties imposed by section nine of said Federal reserve Act for the violation of any of the provisions of said Act. Any officer, director, agent, or employee of any Federal reserve

bank or member bank who shall wilfully violate the provisions of this section, or who shall resort to any devise, or receive any fictitious obligation, directly or collaterally, in order to evade the provisions thereof, or who shall certify a check before the amount thereof shall have been regularly entered to the credit of the drawer upon the books of the bank, shall be deemed guilty of a misdemeanor and shall, on conviction thereof in any district court of the United States, be fined not more than $5,000, or shall be imprisoned for not more than five years, or both, in the discretion of the court.

§ 373. **Wilfully.**—The use of the word "wilfully" in the statute implies on the part of the officer who commits the offense, knowledge and purpose to do wrong. Something more is required than the act of certification made in excess of the actual deposit but in ignorance of that fact, but without a purpose to evade or disobey the mandates of the law. In Potter vs. United States, cited supre, this language is used:

"The significance of the word "wilfully" in criminal statutes has been considered by this Court. In Felton vs. United States, 96 U. S., 699, 24 Law Ed., 875, it was said: 'Doing or omitting to do a thing knowingly and wilfully implies not only knowledge of the thing; but a determination, with a bad intent, to do it. The word 'wilful,' says Chief Justice Shaw, in the ordinary sense in which it is used in statutes, means not merely voluntary, but with a bad purpose, Com. vs. Kneeland, 20 Pick, 220. It is frequently understood, says Bishop, as signifying an evil intent without justifiable excuse, I. Bishop, as signifying an evil intent and later, in the case of Evans vs. United States, 153 U. S., 584, 38 Law Ed., 830, there was this reference to the words 'wilfully misapplied': 'In fact the gravamen of the offense consists in the evil design with which the misapplication is made, and a count which should omit the words "wilfully, etc., and with intent to defraud," would be clearly bad.'.....As wilful wrong is of the essence of the accusation, testimony bearing directly on the question of wilfulness is of vital importance, and error in rejecting it cannot be regarded otherwise than as material and manifestly prejudicial."

The original Potter case, which was treated in the writ of error above, will be found in 56 Federal, page 93. The Supreme Court, in Spurr vs. United States, 174 U. S., 728, held that the trial judge, in answering a question

of the jury in a prosecution, under this section, when they came in after consulation, and asked for the law ing of "wilful violation," when he was requested so to as to certification when on money appeared to the credit of the drawer, which answer failed to explain the meando by the defendant's counsel, was reversible error.

United States vs. Heinze, 161 Federal, 425, holds that Section 5208 creates no criminal offense until read in connection with Section 13 of the Act of July 12, 1882, 22 St. L., 166, Section 13 of said Act fixing the punishment. Judge Hough, in the Heinze case, said that Courts were bound to take judicial notice of the meaning of the word "certified" as applied to bank checks, and that such meaning was that certain words have been written or printed on a check, and that the check has passed from the custody of the bank into the hands of some other party, and that thereby the person certifying created an obligation of the bank. That case also held that an indictment was not fatally defective for failure to set out totidem verbis the written certifications under the rule that in an indictment in Federal Courts it is not necessary to allege the tenor of an instrument, unless it touches the gist of the crime, such rule limiting, in the Federal Courts, the setting out in full of the instrument mainly, if not wholly, to the cases of forgery, counterfeiting, and sending threatening letters.

Sec. 373 a. Wilfully, Continued.

For further definitions of the word wilfully and knowingly see 252 F. 213 and Bentall vs. U. S., 262 F. 744.

§ 374. **Acting by Others.**—In the Heinze case, the facts as alleged in the indictment were that the defendant did not certify in the sense of personally signing the certification stamped on the checks in question; and a motion to quash was made upon the ground that, therefore, he personally could not be indicted under this section. The Court answered this objection by stating that, "The whole indictment taken together shows that the first fifteen counts must fail unless the prosecution can prove that the individuals who actually executed the certification endorsed were but physical instruments of the defendant in doing what was done; and that an

indictment will lie for causing or procuring a coerced subordinate to do the forbidden act, is distinctly held by Judge Putnam in the Potter case."

§ 374 a. **Acting by Another Continued.**—The making of false entries in the book of a national bank is equally an offense whether it is done by the bank officer charged, or whether he procures it to be done through the medium of other, and where an indictment charged an officer with making false entries, in that he caused and procured them to be made, proof of either of such charges was sufficient after verdict to sustain a conviction, even though the other was not proved. Richardson vs. U. S., 181 Federal, 1.

§ 374 b. **Heinze Case.**—In Sections 373 and 374, the Heinze case in 161 Federal, 425, is mentioned. Indictment was held sufficient by the Supreme Court of the United States, and 161 Federal, 425, reversed in U. S. vs. Heinze, 218 U. S. 532, and the Court held that a charge in the indictment that a note for an amount was received for discount which was wholly unsecured, and which sum was lost to the bank, amounts to a direct allegation that the loss was caused by the discount,

§ 375. **Embezzlement, Abstraction, Misapplication, False Entries, Etc., Penalty.**—By long odds, the most important Federal statute for the preservation of the people's property and the integrity of the national banking system, is Section 5209, which reads as follows:

"Sec. 5209. Every president, director, cashier, teller, clerk, or agent of any association, who embezzles, abstracts, or wilfully misapplies, any of the moneys, funds, or credits of the association; or who, without authority from the directors, issues or puts in circulation any of the notes of the association; or who, without such authority, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment, or decree; or who makes any false entry in any book, report, or statement of the association, with intent, in either case, to injure or defraud the association or any other company, body politic or corporate, or any individual person, or to deceive any officer of the association, or any agent appointed to examine the affairs of such association; and every person who with like intent aids or abets any officer, clerk, or agent in any violation of this section, shall be deemed guilty of a misdemeanor, and shall be imprisoned not less than five years nor more than ten."

The statute, it will be noted, punishes every president director, cashier, teller, clerk, or agent, who (1) embezzles, (2) abstracts, (3) wilfully misapplies, any of the (1) moneys, (2) funds, or (3) credits, of the association In other words, as stated by Terrell, in his book on national banking at page 13, the statute covers embezzlement by the persons named, of any of the money, funds, or credits of the association, provided such embezzlement be with the intent to injure or defraud (1) the association, (2) any other company, body politic or corporiate, or (3) any individual person. The word "embezzle," as used in this statute, says Terrell, has well defined technical meaning. It is the unlawful conversion, by an officer of a bank, to his own use, of the moneys, funds, or credits of the association entrusted to him, with the intent to injure or defraud the bank, United States vs. Youtzey, 91 Federal, 867. It involves a breach of trust or duty in respect of the moneys, goods, or properties entrusted to the party's possession, belonging to another, and also the wrongful appropriation thereof to the party's own use. Though kin to theft or larceny embezzlement is a separate and distinct offense In order to constitute this crime, it is necessary that the property, money or personal effects embezzled should have previously come lawfully into the hands, possession, or custody, of the party charged with such offense and that while so entrusted to his possession and custody, and held for the use and benefit of the real owner, he wrongfully converts the same to his own use, United States vs. Harper, 33 Federal, 474. The Supreme Court, in Moore vs. United States, 160 U. S., 269, defines embezzlement to be "The fraudulent appropriation of property, by a person to whom such property has been entrusted, or into whose hands it has lawfully come. Such custody need not be actual, manual possession. United States vs. Harper, 33 Federal, 475.

In United States vs. Northway, 120 U. S., 336; 30 Law Ed., 664, the Court held in substance that the wilful and criminal misapplication of the funds of a national bank, as defined by this section, may be made by an officer or agent, without having previously received them

into his manual possession. There is a distinction between said offense and embezzlement. In the former it is unnecessary to charge possession in the indictment, while in the latter a charge of possession is required in describing the offense.

§ 375a. **Misapplication and Other Cases.**—Pearce vs. U. S., 192 Federal, 561. In this case the discounting of notes was the basis of the offense. Prettyman vs. U. S., 180 Federal, 30.

Sec. 375. a. a. Embezzlement, etc., Continued.

Sec. 5209 was amended by the Act of September 26, 1918, to read as follows:—

"Any officer, director, agent, or employee of any Federal reserve bank, or of any member bank as defined in the Act of December twenty-third, nineteen hundred and thirteen, known as the Federal reserve Act, who embezzles, abstracts, or wilfully misapplies any of the moneys, funds, or credits of such Federal reserve bank or member bank, or who, without authority from the directors of such Federal reserve bank or member bank, issues or puts in circulation any of the notes of such Federal reserve bank or member bank, or who, without such authority, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment, or decree, or who makes any false entry in any book, report, or statement of such Federal reserve bank or member bank, with intent in any case to injure or defraud such Federal reserve bank or member bank, or any other company, body politic or corporate, or any individual person, or to deceive any officer of such Federal reserve bank or member bank, or the Comptroller of the Currency, or any agent or examiner appointed to examine the affairs of such Federal reserve bank or member bank, or the Federal Reserve Board; and every receiver of a national banking association who, with like intent to defraud or injure, embezzles, abstracts, purloins, or wilfully misapplies any of the moneys, funds, or assets of his trust, and every person who, with like intent, aids or abets any officer, director, agent, employee, or receiver in any violation of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof in any district court of the United States shall be fined not more than $5,000 or shall be imprisoned for not more than five years, or both, in the discretion of the court.

Any Federal reserve agent, or any agent or employee of such Federal reserve agent, or of the Federal Reserve Board, who embezzles, abstracts, or wilfully misapplies any moneys, funds, or securities intrusted to his care, or without complying with or in violation of the provisions of the Federal reserve Act, issues or puts in circulation any Federal reserve notes shall be guilty of a misde-

meanor and upon conviction in any district court of the United States shall be fined not more than $5,000 or imprisoned for not more than five years, or both, in the discretion of the court."

§ 375b. **False Entries Mistakenly Made.**—An entry made by mistake which is false is not an offense. Graves vs. U. S., 165 U. S.,———; 41 L. ed., 732.

Sec. 375 b. b. Decisions and Suggestions With Refference to Foregoing Act.

Liberty bonds are "funds" and the intention to return funds is no defense to the charge of embezzlement, U. S. vs. Jenks, 264 F. 697.

A cashier's check is a bill of exchange, Hoos vs. U. S., 232 F. 328.

The intent to defraud is essential in all prosecutions under this statute, U. S. vs. Jenks, 258 F. 763.

Jurisdiction over bank offenses is exclusive to the United States, Easton vs. U. S. 188 U. S. 220, 47 Law Ed. 452.

Under the new statute this is now a felony, U. S. vs. Hoos, 232 F. 328.

The payment of a note out of the funds of a bank is a violation, when, Showalter vs. U. S., 260 F. 719.

A receiver of a National Bank is not an "agent", U. S. vs. Weitzel, U. S. Sup. Ct. April, 1918.

Loans on wheat bills of lading, etc., may support a charge of misapplication, Stout vs. U. S., 227 F. 799

The offense is to be determined by the facts at the time and subsequent payment is not a defense, Matters vs. U. S., 261 F. 826.

For a case wherein the evidence was held insufficient to sustain a conviction for abstraction see McCallum vs. U. S., 247 F. 27.

For conspiracy to abstract see Oppenheim vs. U. S., 241 F. 625.

Intent in prosecutions under this statute cannot be ignored nor charged against by the court. Cummins vs. U. S., 232 F. 844.

The appropriation of a special deposit is an offense, Sheridan vs. U. S., 236 F. 305.

A misapplication evidence furnished by a reporter which failed to show an overdraft is admissible, Garanflo vs. U. S., 246 F. 910.

As to different defendants and different offenses and questions of duplicity see U. S. vs.———; Boone vs. U. S., 257 F. 963; Simpson vs. U. S., 229 F. 940.

For a case on false entries an intent see Galbreath vs. U. S., 257 F. 648.

As to the liability of a bank for bonds deposited with the cashier see First vs. Mercantile, 273 F. 119.

§ 376. **Abstraction.**—The president, director, cashier, teller, clerk, or agent of any national banking association who abstracts any of the (1) moneys, (2) funds, or (3) credits, of the association, with the intent to injure or defraud (1) the association, (2) any other company, body politic or corporate, or (3) any individual person, is guilty of abstraction. Abstraction from definitions taken from United States vs. Eno, 56 Federal, 220, and United States vs. McKnight, 115 Federal, 972, means to take or withdraw from; so that, to abstract the funds of a bank, or a portion of them, is to take and withdraw from the possession and control of the bank the moneys and funds alleged to be so abstracted. Such abstraction must be, of course, without its knowledge and consent, and with the intent to injure or defraud it or some other person or company. The Supreme Court, in speaking of the word "abstraction" in the Northway case, 120 U. S., says:

"We do not admit the proposition that the offense of abstracting the funds of the bank under this section is necessarily equivalent to the offense of larceny. The offense of larceny is not complete without the *animus furandi*, the intent to deprive the owner of his property; but under Section 5209, an officer of the bank may be guilty of abstracting the funds and money and credits of the bank without that particular intent. The statute may be satisfied with an intent to injure or defraud some other company or body politic or corporate, or individual person, than the banking association, whose property is abstracted, but merely to deceive some other officer of the association or an agent appointed to examine its affairs. This intent may exist in a case of abstracting, without that intent which is necessary to constitute the offense of stealing. Previous possession is not necessary in order to the commission of this offense. United States vs. Harper, 33 Federal, 480. In United States vs. Breese, 131 Federal, 921, abstraction is defined as the act of one who, being an officer of a national banking association, wrongfully takes or withdraws from it any of its moneys, funds, or credits, with intent to injure or de-

fraud it, or some other person or company, and without its knowledge and consent. It may be done by one act, or by a succession of acts. It may be done under color of loans, discounts, checks, or the like. The means does not change the nature of the act."

§ 377. **Misapplication.**—Wilful misapplication is the misapplying by any president, director, cashier, teller, clerk, or agent, etc., of (1) moneys, (2) funds, or (3) credits of the association, with the intent to injure or defraud (1) the association, (2) any other company, body politic or corporate, or (3) any individual person, or with the intent to deceive (1) any officer of the association, or (2) any agent appointed to examine the affairs of the association. Misapplication, as defined by the Supreme Court in the Northway case, 120 U. S., may be comprehended by the following language:

"In order to misapply the funds of the bank, it is not necessary that the officer charged should be in actual possession of them by virtue of a trust committed to him. He may abstract them from the other funds of the bank unlawfully, and afterwards criminally misapply them; or, by virtue of his official relation to the bank, he may have such control, direction, and power of management as to direct an application of the funds in such a manner and under such circumstances as to constitute the offense of wilful misapplication. And when it is charged, as in the counts of this indictment, that he did wilfully misapply certain funds belonging to the association, by causing them to be paid out to his own use and benefit in unauthorized and unlawful purchases, without the knowledge and consent of the association, and with the intent to injure, it, it necessarily implies that the acts charged were done by him in his official capacity, and by virtue of the power, control, and management which he was enabled to exert by virtue of his official relation. This, we think, completes the offense intended by the statute, of a wilful misapplication of the moneys and funds of a national banking association."

§ 377a. **Cases of Misapplication and Indictment.**—U. S. vs. Heinze, 183 Federal, 907; U. S. vs. Heinze, 218 U. S., 542; U. S. vs. Norton, 188 Federal, 256. The renewal of a note is not misapplication. Adler vs. U. S., 182 Federal, 464.

§ 377b. **Indictment Duplicitous, When.**—Indictment Duplicitous which says "injure and defraud," etc. Since the statute uses the disjunctive "or" instead of the conjunctive "and" between the words injure, defraud, deceive, it was held in the case of Norton vs.

U. S., 188 Federal, 256, that an indictment which charged that the defendant did the acts therein complained of with the intent to injure or defraud and deceive was duplicitous and upon the question being properly raised the indictment was quashed. The defendant was reindicted in deference to such judgment and the conviction was affirmed in Norton vs. U. S., 205 Federal, 593.

In the case of U. S. vs. Corbett, 215 U. S., 233, the opinion shows that the conjunctive was used in that indictment and while the Supreme Court holds the indictment good, the question now being discussed was not before the Court and was not in any way whatsoever mentioned. It, therefore, remains without further authority than the Norton case, and Billingly vs. U. S., 178 Federal, 653. It does seem, however, that the decisions in the Norton and Billingsly cases are correct, because manifestly one could do the acts enumerated in the statute with intention to either injure or the intention to defraud or with the intention to deceive and the three words are not in any sense synonymous and it therefore seems that the doing of the acts denounced by the statute, with the three separate intents, become as many separate felonies, no more than one of which, of course, can be laid in the same count of the indictment.

§ 378. **False Entries.**—Every president, director, cashier, teller, clerk, or agent of any national banking association who makes any false entry in (1) any book, (2) any report, or (3) any statement, of the association, with the intent, (1) to injure, (2) or defraud, (1) the association, (2) or any company, body politic, or corporate, or (3) any individual person, or (4) with the intent to deceive (1) any officer of the association, or (2) any agent appointed to examine the affairs of such association, is guilty of the offense of making false entries, within the meaning of the statute.

It will be borne in mind that Section 5211 of the Revised Statutes provides for the making of five reports to to Comptroller of the Currency of the condition of the affairs of the association, at such time and upon such dates as the Comptroller may demand, and it is of these reports that the statute, in speaking of false entries in reports, relates.

All of the offenses denounced in the statute rest for their complete fulfillment upon the "intent" to either injure or defraud the association, or any other company, body politic or corporate, or any individual person, or to deceive any officer of the association, or any agent appointed to examine the affairs of such association. This intent is an essential ingredient of the indictment and the offense, U. S. vs. Britton, 170 U. S., 655; United States vs. Voorhes, 9 Federal, 143; McKnight vs. U. S., 111 Federal, 735. The cases of Agnew vs. United States, 165 U. S., 36; United States vs. Youtsey, 91 Federal, 864; United States vs. Allis, 73 Federal, 165; Peters vs. United States, 94 Federal, 127; United States vs. Kenney, 90 Federal, 257; and Evans vs. United States, 153 U. S., 584, announce no new doctrine in the criminal law when they hold, in substance, that such intent does not necessarily involve malice or ill-will toward the bank, for the law presumes that a person intends the necessary and natural consequences of his acts, and it is sufficient that the wrongful or fraudulent act will necessarily or naturally injure or defraud the bank as set forth in the statute.

In Flickenger vs. United States, 150 Federal, page 1, the Circuit Court of Appeals for the Sixth Circuit adopted this view, and said:

"There could be no proper presumption that the directors, in the ordinary course of business, would consent to the discount, by the president, of worthless and fictitious paper, with intent to injure and defraud the bank, and, therefore, no necessity to insert in the indictment an averment to negative such authority."

Any entry which is intentionally made to represent what is not true, or does not exist, is a false entry, Agnew vs. United States, 165 U. S., 36. An entry of a note as paid, when it has only been endorsed by the bank and re-discounted, is a false entry, Dorsey vs. United States, 101 Federal, 746. An entry as money deposited of a sum of money left with the bank in a sack as a special deposit, is a false entry, United States vs. Peters, 87 Federal, 985. The entry on a bank book of a transaction just as it occurred, although such transaction be a fraud

on the bank, is not a false entry, Dow vs. United States, 82 Federal, 904; U. S. vs. Young, 128 Federal, 111. And the crime of making false entries may be committed personally or by direction, and an officer directing the making of false entries is liable therefor, Agnew vs. United States, 165 U. S., 36; United States vs. Youtsey, 91 Federal, 864; Scott vs. United States, 130 Federal, 429; United States vs. Allis, 73 Federal, 165; United States vs. Harper, 33 Federal, 480; United States vs. Fisk, 24 Federal, 585; 5 Federal Statutes Annotated, 150. Entries in the book of a national bank, which correctly record actual transactions of the bank, although such transactions may have been unauthoried, or even fraudulent, are not false entries, and will not sustain an indictment, Twining vs. United States, 141 Federal, 41. That the including of an account of an accommodation note, given to cover overdrafts, in a report made to the Comptroller was not a false entry within the meaning of the statute, was decided by the Circuit Court of Appeals for the Eighth Circuit in Hayes vs. United States, 169 Federal, 101. Any false entry made in a report to the Comptroller is within the meaning of this statute Cochran vs. United States, 157 U. S., 293; United States vs. Bartow, 10 Federal, 874; United States vs. Means, 42 Federal, 599; United States vs. Hughitt, 45 Federal, 47; United States vs. Allen, 47 Federal, 696; United States vs. French, 57 Federal, 382.

In Harper vs. United States, 170 Federal, 385, the Circuit Court of Appeals for the Eighth Circuit held that the section makes it a criminal offense for any officer or agent of a national bank to make any false entry in a report of the association, with the intent to deceive any officer of the association, etc., whether the report was voluntarily made, or was one required by law, if the false entry was made with the request unlawful intent. This case also passes upon the sufficiency of an indictment and its requisite averments in the matter of setting out the report and holds that if the indictment shows the date upon which the report was made and that it was a report made to the comptroller showing resources

and liabilities on a certain date, it is sufficient to authorize the presumption that it was a report made by the association under Section 5211.

District Judge Sanborn, in United States vs. Corbett, 162 Federal, 687, held that an indictment which charged as officer of a bank with making a false entry in a report made by him, "with intent to deceive an agent appointed to examine the affairs of the association, to wit, the Comptroller of the Currency of the United States," did not charge as offense; holding that the Comptroller was not charged with the duty to examine national banks. Without accepting this doctrine as the law, it is suggested that in the drafting of indictments under this portion of the statute, the allegation should be made that the intent was to deceive an agent appointed to examine the affairs of the association, to wit, a national bank examiner.

In United States vs. Morse, 161 Federal, 429, the Court held that the word "entry" in the statute means "any item in an account." In United States vs. Wilson, 176 Federal, 806, District Judge Sheppard held that the intent to deceive may be inferred from the making of the entry, and such false entry may be made either personally, or by direction. In Morse vs. United States, 174 Federal, 539, the Circuit Court of Appeals for the Second Circuit affirmed the doctrine that false entries may be made by direction. In other words the defendant, in that case did not make the entries with his own pen. All of them were made by the employees of the company, as a part of their routine work. The Court held that it was wholly immaterial whether such officer acts through a pen or a check controlled by him.

§ 378a. **False Entries and False Reports Continued.** —One is guilty under this section for causing or procuring the making of false entries. Richardson vs. U. S., 181 Federal, 1. The concealment of facts necessary to enable the bookkeeper to make entries would not be a false entry by the officer so concealing. U. S. vs. McClarty, 191 Federal, 532.

False reports made by a clerk under the direction of

one of the persons mentioned in the statute is the same as though such person himself made the false report. Kettenbach vs. U. S., 202 Federal, 377.

§ 378b. **Admission of Books.**—The books of the national bank in which the offense is charged to have occurred are always admissable without proof that they were correctly kept. In other words, they are admitted in evidence after proof that they are such books. When, however, books of a bank not involved in the prosecution are sought to be introduced there must first be the proof that they were correctly kept, etc. Phillips vs. U. S., 201 Federal, 260.

§ 379. **Other Cases.**—In United States vs. Morse, 161 Federal, 429, the Court held that the subsequent return of the money was no defense to a prosecution for misapplication, such fact being only evidence to negative the officer's intent to defraud at the time of the alleged offense, and thus testimony could be introduced for jury purposes. In United States vs. Hillegass, 176 Federal, 444, will be found a copy of indictment for aiding and abetting under this statute. See also Brown vs. United States, a prosecution for aiding and abetting, 142 Federal, page 2. In Walsh vs. United States, 174 Federal, 621, the defendant was convicted, and his conviction was affirmed while he was on bond. After the affirmance, the United States filed a motion to have him appear and show cause why his bail should not be set aside. The Court refused the petition, on the ground that no unusual reason was shown why he was not likely to remain within the jurisdiction pending a motion for re-hearing which he had made. In Walsh vs. United States, 174 Federal, 615, the Court held that it was misapplication for an officer of a national bank, who is also a promoter of various enterprises, to obtain the funds of the bank on the security of unmarketable bonds of his own enterprises at the risk of the interests of the bank. In that case, it was also determined on the same writ of error that a juror on a criminal case cannot afterwards impeach a verdict in which he joined.

In Woods vs. United States, 174 Federal, 651, the Cir-

cuit Court of Appeals for the Fifth Circuit affirmed the well-established doctrine in a bank case applicable in all Federal criminal cases, that a general verdict and judgment on an indictment containing several counts, cannot be reversed on error, if one of the counts is good and warrants the judgment.

It has been held, of course, that a conspiracy to violate this section is indictable under Section 5440 of the old Code, Scott vs. United States, 130 Federal, 429.

For a definition of "moneys, funds, and credits," see United States vs. Smith, 152 Federal, 542 which holds, in substance that the word "moneys" refers to the currency or circulating medium of the country; the word "funds" refers to Government, State, county, municipal, or other bonds, and to other forms of obligations and securities in which investments may be made; and the word "credits" refers to notes and bills payable to the bank, and other forms of direct promises to pay money to it.

In Thompson vs. United States, 159 Federal, 801, the Circuit Court of Appeals for the First Circuit approves an indictment against a cashier, which charged that that officer unlawfully "converted" certain moneys, funds, and credits to the use of another. The Court said:

"The word 'convert' has such force at Common Law that when used in an indictment with a statement as to whose use the conversion was made, it needs no amplification, any more than the word 'embezzle' or the words 'take, steal, and carry away' (citing the Jewett case, 100 Federal, 832). It is true that the word 'convert' is also awkward in the place where we find it here, but no objection was attempted on that ground, and its use, as used here, has been accepted by the Supreme Court in a like connection for the same purpose. Coffin vs. United States, 156 U. S., 432, 39 Law Ed., 481; same case, 162 U. S., 666, 40 Law Ed., 1109. The word 'convert' under the circumstances, must be accepted as intending exactly the same thing as when spoken in connection with the use of the person who was guilty of the conversion."

In the case of United States vs. Steinman, 172 Federal, 913, the Circuit Court of Appeals for the Third Circuit held that wilful misapplication of the funds of a national bank, in order to constitute an offense under this section,

must be a wilful misapplication, for the use or benefit of the accused, or of some person or company other than the banking association, with intent to injure and entirely different from facts constituting unofficial maladministration, subjecting the bank to a forfeiture of its charter, and an unintentional overdraft by a depositor in good standing and possessing ample means to pay, or an overdraft to be paid pursuant to a prior agreement, resting on abundant credit, does not constitute misapplication.

In that case also, there was a count for aiding and abetting, and the Court held that in a prosecution for aiding and abetting the officers of a national bank to wilfully abstract the funds of the bank, by means of certain overdrafts, evidence that prior to the making of such overdrafts, it was agreed that the bank should furnish funds for the operations of certain corporations, in which the accused and the bank's president and cashier were officers, and that from time to time notes should be given by such corporations to take up the overdrafts, and that at the time of the advances the value of the corporation's property was more than three hundred thousand dollars, while the overdrafts aggregated only thirty thousand dollars, was admissible to show absence of criminal intent.

Sec. 379 a. Federal Reserve Banks Statute Continued.

The elaboration and enlargement of sections 5208 and 5209 loses entirely the words National Banking Association and substitutes the words "member bank" and Federal reserve bank, etc.,

A member bank is any National Bank because every national bank under the Federal reserve Act must become a member bank or lose its charter. Any state bank may become a member bank see Arts. 9284-9308, 1919 Barnes Federal Code.

Indictments should carefully include a sufficient distinction to show the federal jurisdiction.

Sec. 379 b. Limit of Liability to be Incurred by an Individual.

Since section 5200 of the old statute is often valuable for both the defense and prosecution in a criminal case under 5208 and 5209 as amended, the new 5200, as amended in 1906, and 1918, is given as follows:—

"The total liabilities to any association, of any person, or of any company, corporation, or firm for money borrowed, including in the liabilities of a company or firm the liabilities of the several members thereof, shall at no time exceed 10 per centum of the amount of the capital stock of such association, actually paid in and unimpaired, and 10 per centum of its unimpaired surplus fund: Provided, however, That (1) the discount of bills of exchange drawn in good faith against actually existing values, (2) the discount of commercial or business paper actually owned by the person, company, corporation, or firm, negotiating the same, and (3) the purchase or discount of any note or notes secured by not less than a like face amount of bonds of the United States issued since April 24, 1917, or certificates of indebtedness of the United States, shall not be considered as money borrowed within the meaning of this section; but the total liabilities to any association, of any person or of any company, corporation, or firm, upon any note or notes purchased or discounted by such association and secured by such bonds or certificates of indebtedness, shall not exceed (except to the extent permitted by rules and regulations prescribed by the Comptroller of the Currency, with the approval of the Secretary of the Treasury) 10 per centum of such capital stock and surplus fund of such association."

CHAPTER XIX.

BANKRUPTCY.

§ 380. The National Bankrupt Act, passed in 1898, in answer to a universal demand, and under the authority of the Constitution, has been amended twice by Congress in matters that do not relate to its criminal sections. Original Section 29 of the Bankrupt Act, which is the law today with reference to offenses against that Act, reads as follows:

"Sec. 29a. A person shall be punished, by imprisonment for a period not to exceed five years, upon conviction of the offense of having knowingly and fraudulently appropriated to his own use, embezzled, spent, or unlawfully transferred any property or secreted or destroyed any document belonging to a bankrupt estate which came into his charge as trustee.

"*b*. A person shall be punished, by imprisonment for a period not to exceed two years, upon conviction of the offense of having knowingly and fraudulently (1) concealed while a bankrupt, or after his discharge, from his trustee any of the property belonging to his estate in bankruptcy; or (2) made a false oath or account in, or in relation to, any proceeding in bankruptcy; (3) presented under oath any false claim for proof against the estate of a bankrupt, or used any such claim in composition personally or by agent, proxy, or attorney, or an agent, proxy, or attorney; or (4) received any material amount of property from a bankrupt after the filing of the petition, with intent to defeat this act; or (5) extorted or attempted to extort any money or property from any person as a consideration for acting or forbearing to act in bankruptcy proceedings.

"*c*. A person shall be punished by fine, not to exceed five hundred dollars, and forfeit his office, and the same shall thereupon become vacant, upon conviction of the offense of having knowingly (1) acted as a referee in a case in which he is directly or indirectly interested; or (2) purchased, while a referee, directly or indirectly, any property of the estate in bankruptcy of which he is referee; or (3) refused, while a referee or trustee, to permit a reasonable opportunity for the inspection of the accounts relating to the affairs of, and the

papers and records of, estates in his charge by parties in interest when directed by the court so to do.

"*d.* A person shall not be prosecuted for any offense arising under this act unless the indictment is found or the information is filed in court within one year after the commission of the offense."

Section a of the Act relates alone and exclusively to punishment of the trustee for having knowingly and fraudulently appropriated to his own use, embezzled, or spent, or transferred, or secreted, or destroyed any of the property, or any document belonging to an estate which he administers as such officer of the Court.

A satisfactory indictment under this secttion must necessarily allege an adjudication, the time and date of the appointment of the trustee, and his qualification, and then set out specifically the property he is charged to have converted, destroyed, or transferred, as fully and specifically as if the offense was for larceny, with the exception that consent of the bankrupt is unnecessary, for the reason that the title vests in the trustee under the statute. The section includes not only an appropriation to the trustee's own use, but an unlawful transfer of the property for the use of another. It is true the word "unlawfully' as used with reference to the transfer would perhaps include some sort of a gain or motive beneficial, or supposedly beneficial, to the trustees. If, however, the proof showed a reckless disregard of his obligations and duties as trustee, in the way of wilful destruction or secretion of the property or documents of the estate, manifestly for the purpose of defeating a proper administration of the trust, a case would be made out under this section.

§ 381. **Other Offenses of the Section.**—Paragraphs 1, 2, and 5, of sub-division b of Section 29, relate to offenses committed by the bankrupt. Paraghaph 2, 3, 4, and 5 of subdivision b of Section 29, create offenses that may be committed by persons who are not bankrupts. Section c of subdivision b of Section 29 relates to offenses by the referee in bankruptcy, and sub-division d of the section creates a particular statute of limitation for all the bankrupt offenses described in the entire section, to

wit, that the indictment must be found, or the information filed, within one year.

§ 382. **Decisions.**—An indictment in the terms of the section, which charges the knowing and fraudulent concealment, while a bankrupt, or after his discharge, from his trustee, of any of the property belonging to his estate in bankruptcy, sets forth the elements of the offense, and is sufficient. United States vs. Comstock, 161 Federal, 644. It is not necessary to allege in the indictment that the bankrupt, at the time of the concealing of his property, knew either the fact that a trustee had been appointed for his estate, or the name of such trustee, United States vs. Comstock, 161 Federal, 644.

The word "conceal" as used in the section, is of plain import, and when coupled in an indictment with the words "unlawful, knowingly, and fraudulently," clearly excludes unintentional acts, United States vs. Comstock, 161 Federal, 644. The offense of concealing property, by a bankrupt, form his trustee, consists of a continuous concealment of the property from the trustee during the whole course of the bankruptcy proceedings, or beyond, and is, therefore, not necessarily consummated by an omission of the property from the schedules, Johnson vs. United States, 163 Federal, 30.

In an indictment against a bankrupt and others for a conspiracy to conceal assets of the estate from his trustee in bankruptcy, an averment that the trustee was "duly" appointed trustee is sufficient; the matter of appointment being an incidental matter only, and not a vital element of the crime.

In United States vs. Lake, 129 Federal, 499, Judge Treber held, on demurrer, that an indictment against the president of a bankrupt corporation, for making a false oath to its schedules, which showed that the defendant, as its president, in compliance with the bankrupt law, did file in the bankruptcy proceedings, with the referee, the schedules required by law, subscribed and sworn to him, as president; that the defendant stated on his oath that such schedules contained a true and complete statement of all the corporation's property;

and that the statement that the bankrupt corporation had then on hand only the sum of a hundred dollars, which was all the money the corporation then and there had—was false, such an indictment followed the strict language of the Act, and sufficiently showed the materiality of the false statement, without the express averment thereof.

An indictment for conspiracy to fraudulently conceal, etc., property from a trustee, is not insufficient because it charges that the property was removed and concealed prior to the bankruptcy, where it also avers that the concealment was continued after the bankruptcy, and after the appointment of the trustee, and that the property was not scheduled by the bankrupt.

A charge of conspiracy to conceal, etc., may be supported by evidence that the property was sold under a chattel mortgage, given by the bankrupt prior to the bankruptcy, where it is shown that such mortgage and sale were merely colorable and that the property in fact remained that of the bankrupt. In United States vs. Grodson, 164 Federal, 157, the Cohen case is affirmed, but Judge Sanborn holds that an indictment charging a conspiracy to sell, etc., where it shows that the conspiracy was formed and the property removed and concealed, prior to the bankruptcy, but does not aver that it was in contemplation of bankruptcy, or that any overt act was committed after the bankruptcy, although it charges a further conspiracy thereafter to continue the concealment, is insufficient. The officer of a bankrupt corporation, who is not, and has not been, a bankrupt, is not liable under this section for having frauduently and knowingly concealed the property of the estate of the corporation in bankruptcy from its trustee. The present or past bankruptcy of the accused is an indispensable element of the offense denounced by the statute. A penal statute which creates and denounces a new offense, must be strictly construed. Where it is plain and unambiguous, the courts may not lawfully extend it by interpretation, to a class of persons who are excluded from its effect by its terms, for the reason that

their acts may be as mischievous as those of the class whose deed it denounces, Circuit Court of Appeals for the Eighth Circuit in Field vs. United States, 137 Federal, page 6.

To the same effect is United States vs. Lake, 129 Federal, 499, where it was held that paragraph b of the Act, providing that a person shall be punished on conviction for having knowingly and fraudulently concealed, while a bankrupt, or after his discharge, from his trustees, any of the property belonging to his estate in bankruptcy, must be strictly construed, and does not include officers of a corporation declared a bankrupt. A bankrupt corporation may commit the criminal offense of knowingly and fraudulently concealing its property from its trustee, defined and made punishable by the Act, and individuals who conspire to cause a corporation to commit such offense are indictable under old Section 5440, and it is immaterial that the corporation is not, or cannot be, indicted as one of the conspirators, Circuit Court of Appeals for the Second Circuit, in Cohen vs. United States, 157 Federal, 651.

From the above decisions, will be drawn this line of law to wit:

First, that an officer of a bankrupt corporation cannot be indicted for concealing the property of the bankrupt from the trustees, because he, the officer, is not the bankrupt.

Second, The bankrupt corporation may be indicted for concealing its property from the trustee.

Third, Individuals who conspire to conceal the property of a bankrupt corporation may be indicted for an offense under the general conspiracy statute, which was old Section 5440, as amended.

The case of Johnson vs. United States, 170 Federal, 581, by the Circuit Court of Appeals for the First Circuit, permits the trustee in bankruptcy to testify that he had never learned from the bankrupt that there was property belonging to the bankrupt stored in the places where the goods covered by the indictment were found, and that the trustee himself found the goods in question, apparently without the assistance of the bankrupt, even

though such testimony was objected to on the ground that it was an attempt to disclose the bankrupt's testimony before the referee. The decision distinguishes the cases of Jacobs vs. United States, 161 Federal, 694, and Johnson vs. United States, 163 Federal, page 30, which two cases those respective Courts held to be indirect methods of introducing the bankrupt's schedule of assets and liabilities against him in criminal cases; the Johnson and Jacobs cases holding that this cannot be done, of course, directly or indirectly.

The Circuit Court of Appeals for the First Circuit, in Kerrch vs. United States, 171 Federal, 366, held that on the trial of an involuntary bankrupt for conspiracy to conceal property from its trustees, it was not error to admit in evidence, over the defendant's objection and claim of privilege his books of account, which had been taken possession of by a receiver appointed by the bankruptcy court.

In Wechsler vs. United States, 158 Federal, 579, the Circuit Court of Appeals for the Second Circuit held that Section 7 of the Bankrupt Act, which requires the bankrupt to submit to an examination under oath as to various matters specified, with the proviso that "no testimony given by him shall be offered in evidence against him in any criminal proceeding," does not give immunity from prosecution for giving false testimony upon any such examination. That case further holds that if there be false testimony upon such examination, it may be prosecuted under the old perjury statute, which was old Section 5392, or under the bankrupt statute, now being considered, for making a false oath. See also United States vs. Bartlett, for perjury in schedules, 106 Federal, page 884; and for other cases bearing upon this section United States vs. Owen, 32 Federal, 534; United States vs. Bozer, 4 Dillion, 407; also cases in 5 Federal, 681, and 7 Federal, 715; United States vs. Jackson, 2 Federal, 502; United States vs. Bayer, 4 Dillon, 407, Federal Case No. 14547; United States vs. Houghton, 14 Federal, 544. In Johnson vs. United States, 158 Federal, page 69, the Circuit Court of Appeals for the Fifth Circuit reversed a judgment of conviction and dismissed the in-

dictment and discharged the defendant under an indictment which charged a conspiracy under old Section 5440, to conceal property from the trustee, where the indictment alleged that the conspirators were the trustee, the bankrupt, and a third party; the bankrupt and the third party having been convicted. The Court of Appeals dismissed the indictment, and discharged the trustee, holding that the trustee could not conspire to conceal from himself. A consideration of this opinion is advised, together with the reasoning in Cohen vs. United States, 157 Federal, 651, where the Court of Appeals for the Second Circuit held that in a conspiracy prosecution, it was immaterial that the corporation is not, or cannot be, indicted as one of the conspirators; also with the case of 3 Howell's State Trials, 402, where a husband was convicted for conspiring to rape his own wife, even though he himself could not commit such rape.

§ 382a. **Decisions Continued.**—Perjury may be assigned for swearing falsely on the examination provided for by the statute. Daniels vs. U. S., 196 U. S., 459. Indictment for concealing must be brought within one year from the date of actual concealment. U. S. vs. Philips, 196 Federal, 574; also upon the question of limitation see Warren vs. United States., 199 Federal, 753. Bankrupt is entitled to the presumption of innocence upon charge of concealment. Chadkowski vs. U. S., 194 Federal, 858. Indictment will lie for concealing an interest in property. Leders vs. U. S., 210 Federal, 419. For making false oath and proof thereof, see Kavoloff vs. U. S., 202 Federal, 475; Kahn vs. U. S., 214 Federal, 54. It is not necessary to allege the appointment of a trustee in an indictment charging a conspiracy to conceal. Steigman vs. U. S., 220 Federal, 63. For cases charging conspiracy to conceal assets from trustee see Radin vs. U. S., 189 Federal, 568. Roukous vs. U. S., 195 Federal, 353. A corporation may be one of the conspirators, Roukous vs. U. S., 195 Federal, 353. One who is not a bankrupt may conspire to conceal, provided there is included in the conspiracy the bankrupt. Kaufman vs. U. S., 212 Federal, 613. Perjury cannot be assigned on an examination of the bankrupt where such

examination was ex parte and when there was no issue. U. S. vs. Rhodes, 212 Federal, 518. The constitutional provision that no man shall be compelled to be a witness against himself is applicable to bankrupt and entitles him to refuse not only to give oral testimony, but to produce books and papers which will tend to incriminate him. U. S. vs. Rhodes, 212 Federal, 518, which case will have to be circumspectly read in order to give very much weight to it in view of the decision of the Supreme Court in re Harris, 221 U. S., 274, where it was held that the right under the Fifth Amendment not to be compelled to be a witness against one's self is not a right to appropriate property that may tell one's story and that a bankrupt is not deprived of his constitutional right not to testify against himself by an order requiring him to surrender his books to the duly authorized receiver. The decision distinguishes the case of Counselman vs. Hitchcock, 142 U. S., 547, which seemed to announce a somewhat broader doctrine in favor of the constitutional guaranty than does the Harris case. A conspiracy to conceal assets must include the bankrupt in the conspiracy in order to be against the law. Nemcof vs. U. S., 202 Federal, 911; U. S. vs. Rhodes, 212 Federal, 513.

Sec. 382 b. Decisions Continued.

A partner may be convicted for concealing though only the "partnership" was adjudicated, Cannetto vs. U. S., 275 F. 42, Malvin vs. U. S., 252 F. 449.

For a definition of concealment and the necessity to prosecute where the concealment actually took place, see Gretsch vs. U. S., 231 F. 57.

Whether it was a voluntary on an involuntary adjudication is immaterial—different kind of property and different modes of concealment do not render the indictment duplicitous, Tugendhaft vs. U. S., 263 F. 562.

For extortion by attorney see U. S. vs. Dunkley, 235 F. 1000.

For conspiracy charges and indictment see Frankfurt vs. U. S., 231 F. 903; Friedman vs. U. S., 236 F. 816; Knoell vs. U. S., 239 F. 16; 238 U. S. 78.

The officers of a corporation may be convicted for concealing under this statute, Wolf vs. U. S., 238 F. 903.

Proof of the appointment of a trustee may be made by parol and a failure to give bond is no defense to the criminal, Sharfsin vs. U. S., 265 F. 916.

Evidence given by a bankrupt may not be used against him in a criminal case but objection must be made to its use, Bain vs. U. S., 262 F. 664.

§ 383. **Failure to Pay over Money.**—From the power of a court of equity, administering the Bankrupt Statute, to require the bankrupt to pay over money or other property shown clearly to be in his possession, or go to jail for contempt, has arisen what may be termed another criminal feature of the law. One of the earliest cases under this power of the statute is in re Purvine, 96 Federal, 192 wherein a commitment to the Dallas County Jail, by District Judge Meek, of the bankrupt for failure to pay over certain funds shown to be in the possession of the bankrupt, was affirmed by the Circuit Court of Appeals for the Fifth Circuit. In that opinion, the Court says:

"If the court of bankruptcy is powerless in this respect, persons, by becoming bankrupts, obtain an immunity not allowable in any other court of equal dignity, either Federal or State, in this country."

A similar jurisdiction was invoked under the Act of 1867.

In in re Mize et al, 172 Federal, 945, District Judge Grubb maintains the same power, and cities a number of similar decisions, and holds:

"The courts have been very careful not to permit contempt proceedings to be converted into a means of coercing payment of debts from funds other than assets wrongfully withheld by the bankrupt, and for this reason, have required the clearest evidence that the bankrupt had the assets in his possession, and the present ability to turn them over to the trustee, as directed by the order."

See also Clay vs. Waters, 178 Federal, 385, and in re Marks, 176 Federal, 1018, where it was held that a bankrupt should not be committed for contempt for a failure to comply with an order requiring him to turn over money to his trustee, alleged to have withheld, where the Court is convinced that the bankrupt is without physical ability to comply; citing also 171 Federal 281.

CHAPTER XX.

FOOD AND DRUGS.

§ 384. The Act of June 30, 1906, 34 Stat. L., 768, is what is known as the Pure Food Act. This statute contains thirteen sections, the first two of which create criminal offenses. The third provides for rules and regulations by the Secretary of the Treasury, the Secretary of Agriculture, and the Secretary of Commerce and Labor. The fourth provides for certain chemical examinations, hearings, etc. The fifth provides for legal proceedings by the District Attorney. The sixth defines drugs and food. The seventh defines adulterations, etc. The eighth defines misbranding, etc. The ninth relates to a guaranty by the manufacturer. The tenth fixes a method for seizure of original packages. The eleventh provides for an examination of imported foods and drugs. And the twelfth includes the insular possessions, and defines "person."

§ 385. **Criminal Sections.**—The first two sections are, therefore, of interest to us here. The first section provides that it shall be unlawful for any person to manufacture, within any Territory, or the District of Columbia, any article of food, or drugs, which is adulterated or misbranded, within the meaning of the Act, and fixes a penalty of a fine not to exceed five hundred dollars, or one year's imprisonment, or both such fine and imprisonment. the second section is more comprehensive, because it applies to all interstate commerce, and reads as follows:

"Sec. 2. That the introduction into any State or Territory or the District of Columbia from any other State or Territory, or the District of Columbia, or from any foreign country, or shipment to any foreign country of any article of food or drugs which is adulterated or misbranded, within the meaning of this Act, is hereby prohibited; and any person who shall ship or deliver for shipment from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, or to a foreign country; or who shall receive in any State or Territory or the District of Columbia from any other State or Territory or the District of Columbia, or foreign country, and having so received, shall deliver, in original unbroken packages, for pay or otherwise, or offer to deliver to any other person, any such article so adultered or misbranded within the meaning of this Act, or any person who shall sell or offer for sale in the District of Columbia or the Territories of the United States any such adulterated or misbranded foods or drugs, or export or offer to export the same to any foreign country, shall be guilty of a misdemeanor, and for such offense be fined not exceeding two hundred dollars for the first offense, and upon conviction for each subsequent offense not exceeding three hundred dollars or be imprisoned not exceeding one year, or both, in the discretion of the court. Provided, That no article shall be deemed misbranded or adulterated within the provisions of this Act when intended for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser when no substance is used in the preparation or packing thereof in conflict with the laws of the foreign country to which said article is intended to be shipped; but if said article shall be in fact sold or offered for sale for domestic use or consumption, then this proviso shall not exempt article from the operation of any of the other provisions of this Act."

§ 385a. **Amendment Allowing Variations.**—The Act of March 3, 1913, allows for variations in weight, measure and amount in small packages.

The breaking of Government seals on interstate shipments under this statute relates to all persons. U. S. vs. Lewis, U. S. Supreme Court, Oct. Term, 1914.

§ 385b. **Criminal Practice Under.**—It is not a condition precedent to prosecution that a hearing be had by the Department of Agriculture, U. S. vs. Morgan, 222 U. S., 274. The Secretary of Agriculture, after an investigation of an alleged violation, should certify to the District Attorney in whose district prosecution for the offense should be had. U. S. vs. Hopkins, 199 Federal, 649.

While the statute provides that proceedings for the seizure of goods under the same shall be by libel and con-

form as near as may be to proceedings in admiralty, such proceeding does not include appellate proceedings, since the action of the District Court on a libel can only be reviewed as at common law by writ of error and not by appeal. Four Hundred, etc., vs. U. S., 226 U. S., 173, reversing U. S. vs. Four Hundred, etc., 193 Federal, 589. A writ of error may not be prosecuted when the only question involved is the costs of the original proceeding. Charles vs. U. S., 183 Federal, 566. The prosecution may be by information for the first offense. U. S. vs. Wells, 186 Federal, 248.

Since the crime denounced by statute is the shipping or delivering for shipment rather than the introduction, though of course the shipment must be interstate, the venue for the prosecution is at the point of shipment or offering for shipment rather than at the point of introduction. U. S. vs. Hopkins, 199 Federal, 649, and a corporation cannot compel the Government to bring its action in the district in which the corporation is a resident. U. S. vs. Hopkins, 199 Federal, 649. The preliminary examination provided for in the law is not necessary before criminal prosecution, nor is it necessary to allege in the indictment that there was a preliminary examination. U. S. vs. Morgan, 222 U. S., page 274; Schraubstadter vs. U. S., 199 Federal, 568.

§ 386. **Decisions.**—In in re Wilson, 168 Federal, 566, District Judge Brown held that syrup, 10 per cent of which is made from maple sugar and 90 per cent from white sugar, put up in bottles having thereon labels containing the name "Gold Leaf Syrup," with a trade-mark consisting of a gold leaf in the form of maple leaf, and stalks of sugar cane, and the words "composed of maple and white sugar" in plain and distinct letters, with the name of the maker, cannot be said to be misbranded, so that its shipment in interstate commerce constitutes a misdemeanor under this Act.

There seems to have been some trend toward including within the spirit of the statute such articles of food and drugs as may claim more, in an advertising way, than can actually be done; but the purpose of the statute was to rid the streams of commerce of deleterious and poisonous

food and drugs. That is the spirit of the statute, the evil that prompted its passage; and a construction of the statute that would run from the market food and drugs that may be advertised in a high-sounding way, but which are not in any sense injurious to the health of the people, would be unjustified. There is a distinction between the enforcement of law and the abuse of law.

Under the authority of the United States vs. Maufield, 177 Federal, 765, the officers of a corporation which manufactured a food product, shipped by its manager in interstate commerce, and which was adulterated or misbranded, are subject to prosecution under the Act, where they employed the manager and authorized him to operate the plant and sell the product without restriction, and the previous course of business had been to ship on orders to other states.

That case also determined that the provision of the Act, Section 9, that no dealer shall be prosecuted thereunder for shipping in interstate commerce any adulterated or misbranded article of food or drugs, when he can establish a guaranty signed by the manufacturer, that such article is not adulterated or misbranded, is not available to a dealer only when such guaranty relates to the indentical article shipped by him, and affords no defense to him where it relates only to a constituent used by him in manufacturing the articles shipped.

In United States vs. 779 Cases of Molasses, the Circuit Court of Appeals for the Eighth Circuit, in 174 Federal 325, held that an article of food put up and sold in cases bearing labels describing the contents as a particular brand of molasses, but plainly stating, in three separate places, that the product is a compound of molasses and corn syrup, and also containing all the other information required by the Act and the regulations thereunder, and which article is in fact a compound of molasses and commercial glucose, is not adulterated or misbranded, within the meaning of the Act, it being shown that it contains nothing deleterious to health.

To the same effect is United States vs. Boeckmann, 176 Federal, 382, where it was held that a food product, labeled "Compound; pure comb and strained honey and

corn syrup," is not misbranded, within the meaning of this Act, merely because the percentage of corn syrup in the compound largely exceeds that of honey. So, also, in the case of United States vs. 68 Cases of Syrup, 172 Federal, 781, it was held that all of the label will be construed together, and that construing all the words of the bottle labels together, the same meaning was intended as in the labels on the cases, namely, that the bottles and the boxes contained blended maple syrup. That case continues to hold that the Act provides that an article which does not contain any added poisonous or deleterious ingredients, shall not be adulterated or misbranded, if labeled so as to plainly indicate that it is a compound imitation or blend, and the word "blend" is plainly stated on the package, which term shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients, used for coloring purposes only.

The term "offal," under the authority of United States vs. 650 Cases of Tomato Catsup, 166 Federal, 773, does not have an exact legal signification to make it equivalent to "filthy, decomposed, or putrid vegetable substance," as used in the Act, and, therefore, that a libel containing that term was insufficient, it being essential that the label shall set forth branding and facts inconsistent with the Act. The Court held, in United States vs. 50 Barrels of Whiskey, that it was no defense to proceedings under this Act that the brand was placed upon the packages containing such liquor by the United States gauger, upon information received from the distiller, in accordance with the usual practice, or that the same kind of liquor had, for a number of years, been so branded and sold under such brand, to the knowledge of the agents and officers of the United States.

This, of course, is a statement of the well established rule that sovereignty cannot be bound by the omission or commission of its agents.

The same case held that a preliminary examination by the Department of Agriculture, as provided for in Section 4, is not at all a necessary condition precedent to the filing of a libel for the condemnation of the product.

Judge Cochran, in Savage vs. Scovell, 171 Federal, 566, in passing upon the objection to the Kentucky Pure Food Law, that the Federal Pure Food Law had done away with the Kentucky Statute, said:

"It is questionable whether Congress can affect a State inspection law, simply by legislation covering the same subject—whether, in order to do so, it must not enact legislation under Clause, 2, Section 10, Article I., of the Federal Constitution, expressly revising and controlling same; but, this apart, the two laws do not cover the same territory. The Federal law merely covers the subject of adulteration and misbranding. The State law has nothing to do with either. It has to do with the subject of disclosing the ingredients of the articles covered by it. Its policy is to compel a statement of ingredients, so that purchasers thereof, in Kentucky, may know exactly what they are buying, There may be no adulteration or misbranding—no violation of the Federal law, and yet there may be a violation of the State law in not disclosing the ingredients."

§ 386a. **Decisions Continued.**—In the original text of Section 386 is the statement that it is not thought that the law was intended to punish for the sale of such articles as were neither deleterious nor poisonous. Since the text was written the Courts have passed upon this question and have clearly established the correctness of that position. In the case of U. S. vs. Johnson, 177 Federal, 313, Judge Phillips held that a medical preparation cannot be said to be misbranded and its sale or shipment in interstate commerce a criminal offense under this act merely because of a misrepresentation on the label as to its curative effect. This case was carried to the Supreme Court by the United States under the Act of March 2, 1907, 34 Stats. 1246, and that Court, in U. S. vs. Johnson, 221 U. S., 488, affirmed Judge Phillips' decision and held that a statement on the labels of bottles of medicine that the contents are effective as a cure for cancer, even if misleading, is not covered by the statute. To the same effect is the decision in the case of Lexington Mill & Elevator Co. vs. U. S., 202 Federal, 615, where it was held that bleached flour must be injurious to health before its shipment in interstate commerce is violative of this statute. Under the authority of U. S. vs. Hipolite Egg Co., 220 U. S., 45, the Act is construed to prevent the shipment of inhibited articles,

even though they are not transported for sale and that Section 10 applies not only to the article itself, but to all ingredients thereof.

Decomposed canned eggs which are not denatured and therefore can be used either for food or tanning purposes cannot be shipped in interstate commerce from one warehouse of the owner to another without violating this law, even though it be contended that the owner intended that they should be used only for tanning purposes. U. S. vs. 13 Crates, 208 Federal, 950.

Oysters, although shipped unopened and as taken from the water, may come within the prohibitions where, by reason of the condition of the waters in which they are grown, they contain harmful bacteria which renders them filthy, decomposed or putrid, and therefore adulterated within the meaning of subdivision 6 of Section 7 of the Act. U. S. vs. Sprague, 208 Federal, 419.

A sale and shipment from Ohio to Washington of a bottle of medicine containing cocaine, without a label indicting its presence, the seller knowing when he solicited the order that the transaction, if completed, would necessitate interstate transportation, was interstate commerce, whether the sale was made before or after shipment, and is within the law. U. S. vs. Tucker, 188 Federal, 741.

For a fact case on lemon extract, see U. S. vs. Frank, 189 Federal, 195.

Sec. 386 a. a. Decisions Continued.

For cases on civil libel, pepper, U. S. vs. Six Barrels, 253 F. 199; insecticide, Parke Davis vs. U. S., 255 F. 933; Coco cola case, U. S. vs. Forty Barrels, U. S. Sup. Ct. May, 1916; candy, U. S. vs. Watson, 251 F. 310; U. S. vs. Direct Sales Company, 252 F. 882.

The branding must be both false and fraudulent, U. S. vs. Tuberclecide Company, 252 F. 938; Hall vs. U. S., 267 F. 795; Bradley vs. U. S., 264 F. 79; Weeks vs. U. S., February 1918, U. S. Sup. Ct.

At the trial other offenses may be proven, when Mitchell vs. U. S., 229 F. 357.

An article which shows by the label to be unfit is not in violation of the statute, U. S. vs. W. W. Fishing Company, 224 F. 274.

The United States attorney must verify his libels and a notary public is not known to the United States statutes, U. S. vs. Schallinger, 230, F. 290.

The food and drugs act is constitutional, Seven Cases vs. U. S., U. S. Sup. Ct. October Term, 1915.

For rules as to determination of medical opinion, testimonials and misbranding see McLean vs. U. S., 253 F. 694.

For a definition of when an article is misbranded see U. S. vs. Schider, U. S. Sup. Ct. April, 1918, and for an indictment for misbranding see Simpson vs. U. S., 241 F. 841.

For decisions treating of the curative powers of remedies and the difference between remedies and cure see U. S. vs. Natura Company, 250 F. 925; Eleven vs. U. S., 233 F. 71.

For treatment of motions to release misbranded articles and the holding that such release is discretionary see U. S. vs. Two Cans, 268 F. 866.

False representations in circulars enclosed within the package cannot be considered as violations of the Food and Drugs act of June 30, 1906, relating to misbranding, U. S. vs. Newton, 275 F. 394.

§ 386b. **Misbranded Under New Amendment.**—By the Act of August 23, 1912, Section 8 of the original Act was so amended as to read as follows:

"Sec. 8. That the term misbranded as used herein, shall apply to all drugs or articles of food or articles which enter into the composition of food, the package or label of which shall bear any statement, design or device regarding such article, or the ingredients or substances contained therein, which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the State, territory, or country in which it is manufactured or produced.

"That for the purpose of this Act an article shall also be deemed to be misbranded. In case of drugs: First. If it be an imitation of or offered for sale under the name of another article. Second. If the contents of the package as originally put up shall have removed, in whole or in part, and other contnets shall have been placed in such package, or if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide or any derivative or proportion of any such sub-

stance contained therein. Third. If its package or label shall bear or contain any statement, design or device regarding the curatice or therapeutic effect of such article or any of the ingredients or substances contained therein, which is false and fraudulent." (37 Stats. L. 416, page 146, 1914 Fed. Stats. Ann.).

In the case of U. S. vs. American Laboratories, 222 Federal, 104, it was held that Congress had the power to enact this Amendment.

In that same case it was held that one may not be convicted merely because he advocates a theory of medicine which at the time has not received the sanction of the medical profession, but one guilty of fraud may not escape conviction merely because someone may honestly believe in the theory which he fraudulently sets forth. A difference of this sort is one of fact for the jury, as is also the charge of misbranding.

On March 3, 1913, the Congress added another Amendment to the Act of 1906 by changing the original third section thereof to read as follows:

"Sec. 3. If in package form the quantity of the contents, be not plainly and conspiciously marked on the outside of the package in terms of weight, measure or numerical count; provided, however, that reasonable variations shall be permitted and tolerances and also exemptions as to small packages shall be established by rules and regulations made, in accordance with the provisions of Section 3 of this Act." [37 Stats. L. 732, page 146, 1914 Fed. Stats. Ann.].

§ 387. **Importation of Opium.**—The Act of February 9, 1909, Chapter 100, 35 Stat. L., 614, reads as follows:

"Sec. 1. That after the first day of April, ninteen hundred and nine, it shall be unlawful to import into the United States opium in any form or any preparation or derivative thereof; *Provided*, That opium and preparations and derivatives thereof, other than smoking opium or opium prepared for smoking, may be imported for medicinal purposes only, under regulations which the Secretary of the Treasury is hereby authorized to prescribe, and when so imported shall be subject to the duties which are now or may hereafter be imposed by law.

"Sec. 2. That if any person shall fraudulently or knowingly import or bring into the United States or assist in so doing, any opium or any preparation or derivative thereof contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such opium or preparation or derivative thereof

after importation, knowing the same to have been imported contrary to law, such opium or preparation or derivative thereof shall be forfeited, and shall be destroyed, and the offender shall be fined in any sum not exceeding five thousand dollars nor less than fifty dollars, or by imprisonment for any time not exceeding two years, or both. Whenever, on trial for a violation of this section, the defendant is shown to have, or to have had, possession of such opium or preparation or derivative thereof, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain the possession to the satisfaction of the jury."

§ 387a. **Additional Opium Statutes.**—The Act of January 17, 1914, provided that "On or after July 1, 1913, smoking opium or opium prepared for smoking, found within the United States shall be presumed to have been imported after the 1st day of April, 1909, and the burden of proof shall be on the claimant or the accused to rebut such presumption." Sections 8800-8801f, U. S. Compiled Statutes.

Section 1 of the Act of January 17, 1914, provides, "That an internal revenue tax of $300 per pound shall be levied and collected upon all opium manufactured in the United States for smoking purposes; and no person shall engage in such manufacture who is not a citizen of the United States and who has not given the bond required by the Commissioner of Internal Revenue. Every person who prepares opium suitable for smoking purposes from crude gum opium, or from any preparation thereof, or from the residue of smoked or partially smoked opium commonly known as yen shee, or from any mixture of the above, or any of them, shall be regarded as a manufacturer of smoking opium within the meaning of this Act."

Section 2 provides certain regulations for the conduct of the business, including a bond in the sum of $1000.

Section 3 provides for certain stamps that shall be placed on the manufactured product, as does also Section 4.

Section 5 provides as follows: "That a penalty of not less than ten thousand dollars or imprisonment for not less than five years or both, in the discretion of the Court, shall be imposed for each and every violation of

the preceding sections of this Act, relating to opium by any person or persons; and all opium prepared for smoking wherever found within the United States without the stamps required by this Act, shall be forfeited and destroyed.

The Circuit Court of Appeals in Shelly vs. U. S., 198 Federal, 88, had held that the mere mixing of smoking opium with the residue of opium that has been smoked, and heating the same, was not a manufacture of opium for smoking purposes, within the meaning of the internal revenue Act of 1890 which imposed a tax on smoking opium and regulated the business of its manufacture. It would appear that Congress answered this decision by providing the Act just above quoted wherein it is said that the preparation of opium suitable for smoking purposes from crude gum opium or from any preparation thereof, or from the residue of smoked or partially smoked opium, etc., shall be regarded as a manufacture within the meaning of the Act.

In Marks vs. U. S., 196 Federal, 476, it was held under the old statute that any process by which crude opium is converted into a product fit for smoking constitutes a manufacture of smoking opium, but the limiting of the Marks decision by the Shelly decision made the new opium Act most understandable and any mixture whatsoever of opium which may be smoked will now be considered a manufacture thereof.

Under the old law the offense of illegal importation was committed whenever the smoking opium was fraudulently and knowingly brought within the territorial limits of the United States, although the opium may not have been landed from the ship or carried across the custom lines, U. S. vs. Caminata, 194 Federal, 903.

§ 387b. **These Statutes Constitutional.**—The Act of 1909, and the Act of January 17, 1914, which declare certain presumptions against the defendant, are held to be constitutional in the case of U. S. vs. Yee Fing, 222 Federal, 154, and that they do not deny due process of law, provided in the case there is a rational connection between the facts proved and the facts therefrom

inferred, and provided the party affected is free to oppose them.

Sec. 387 b. b. Opium Decisions.

For rule of construction of the statutes see U. S. vs. Sischo, 262 F. 1001.

For an invalid indictment against Chinamen and offenses individual see Lee vs. U. S., 240 F. 408.

For many questions relating to prosecutions under these statutes see Lee Lin vs. U. S., 250 F. 694.

For consumers rights see U. S. vs. Woods, 224 F. 278.

Possession constitutes the offense unless the possessor rebuts the presumption, U. S. vs. Johnson, 228 F. 251.

Under these statutes the government must show that the commissioner had required a bond, the existence of a stamp, etc., Chin Sing vs. U. S., 227 F. 397.

The court will take judicial notice that opium is not grown in the United States, U. S. vs. Brown, 224 F. 135.

CHAPTER XXI.

PANDERING AND PROHIBITING IMMORAL USE OF WOMEN AND GIRLS.

§ 388. The Act of February 20, 1907, 34 Stat. L., 898, contains forty-four sections, relating to immigration. It prohibits the importing of women for prostitution, the importing of contract labor, the advertising for labor abroad, the soliciting by vessel owners, and the illegal landing of aliens. Sections 3 and 4 of the Act are the ones most frequently made use of to cleanse, as far as possible, the stream of immigration. Section 3 reads as follows:

"Sec. 3. That the importation into the United States of any alien woman or girl for the purpose of prostitution, or for any other immoral purpose, is hereby forbidden; and whoever shall, directly or indirectly, import, or attempt to import, into the United States, any alien woman or girl for the purpose of prostitution, or for any other immoral purpose, or whoever shall hold or attempt to hold any such woman or girl for any such purpose in pursuance of such illegal importation, or whoever shall keep, maintain, control, support, or harbor in any house or other place, for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl, within three years after she shall have entered the United States, shall, in every such case, be deemed guilty of a felony, and on conviction thereof be imprisoned not more than five years and pay a fine of not more than five thousand dollars; and any alien woman or girl who shall be found an inmate of a house of prostitution or practicing prostitution, at any time within three years after she shall have entered the United States, shall be deemed to be unlawfully within the United States, and shall be deported as provided by sections twenty and twenty-one of this Act."

§ 389. **Decisions.**—Judge Hough, in United States vs. Bitty, 155 Federal, 938, held that the words "any other immoral purpose," as used in the above section must be construed with reference to the preceding word "prostitution," and to relate only to a like immoral purpose, and, so construed, cannot be held to include concubinage; and he, therefore, sustained a demurrer to the indictment. The Government went, by writ of error, direct to the Supreme Court of the United States, by virtue of the Act of March 2, 1907, 34 Stat. L., 1246, authorizing writs of error by the United States, and the Supreme Court held, in United States vs. Bitty, 208 U. S., 393, 52 Law Ed., 544, that the importation of an alien woman into the United States in order that she may live with the person importing her, as his concubine, is for an immoral purpose, within the meaning of the above section, making it a crime against the United States to import alien women for the purpose of prostitution, or for any other immoral purpose.

In Keller vs. United States, 213 U. S., 138, the Supreme Court held that that portion of the above section which makes it a felony to harbor alien prostitutes was unconstitutional, as to one harboring such a prostitute without knowledge of her alienage, or in connection with her coming into the United States, as a regulation of a matter within the police power reserved to the state, and not without any power delegated to Congress by the Constitution. The portion, therefore, of the section held to be unconstitutional on this state of facts, begins at the words "whoever shall keep," and ends with the words "not more than five thousand dollars."

In line with this decision was the case of ex parte Lair, 177 Federal, 789, which held that in so far as the section provides for the criminal punishment of the mere keeping maintaining, supporting, or harboring an alien woman within three years after entry for the purposes of prostitution, it is unconstitutional, such offense being within the police power of the State, and not subject to Congressional regulation. That case also held that the Act of March 3, 1903, 32 Stat. L., 1214, in so far as it places no limitation on the length of the hold-

ing of a female alien for prostitution, for which the holder might be prosecuted, was repealed by the Act under discussion. That case also held that the venue for the importing of a female for immoral purposes was within the district of the seaport where the alien first landed and entered the United States. In the case of United States vs. Sibray, 178 Federal, 144, the Court held, upon a writ of habeas corpus, that a warrant by an immigration inspector under the Act, which authorizes the inspectors to proceed without going before any other United States Courts or United States Commissioner, while not required to have the formality and particularity of an indictment, it must, in charging that the relator was an alien who was a member of the excluded class, in that he imported a woman for immoral purposes, and that he had been convicted of, or had admitted, having committed a felony or other crime or misdemeanor involving moral turpitude, prior to his entry into the United States, was fatally defective for failure to specify the specific act or acts which it was claimed brought the relator within the excluded classes. In other words, the decision throughout demands that such warrants must state facts, and not mere conclusions. The Court also held that proof that an alien, prior to his emigration, committed a single act of adultery or fornication in the country from which he came, was insufficient to justify his deportation as an alien having been convicted of, or having admitted, committing a felony or other crime or misdemeanor involving moral turpitude; also that an alien living in adultery within the United States is not ground for deportation; such conduct being solely within the police power of the statute. See also United States vs. Sibray, 178 Federal, 150, where it was held that a warrant for a woman stating generally that she entered the United States for an immoral purpose, was not sufficiently specific.

§ 389a. **Additional Decisions Under Act of February 20, 1907.**—All that portion of Section 3 of the Act of February 20, 1907, reading as follows: "Whoever shall keep, maintain, control, support, or harbor in any house or other place for the purpose of prostitution or for any

other immoral purpose, any alien woman or girl, within three years after she shall have entered the United States, shall in every such case be deemed guilty of a felony, and on conviction thereof be imprisoned not more than five years and pay a fine of not more than $5,000,'' is declared to be unconstitutional by the Supreme Court of the United States, in Jeller vs. U. S., 213 U. S. 138. for the reason that while Congress has power to exclude aliens from and to prescribe the terms and conditions on which aliens may come into the United States, that power does not extend to controlling dealings with aliens after their arrival, merely on account of their alienage. That portion of the Act of February 20th, quoted above, is unconstitutional because it is the attempt to regulate a matter within the police power reserved to the State, and not within any power delegated to Congress by the Constitution.

The Act of March 26, 1910, 36th Statute 264, reads as follows: ''Any alien who shall be found an inmate of or connected with the management of a house of prostitution, or practicing prostitution, after such alien shall have entered the United States.....shall be deemed to be unlawfully within the United States, and shall be deported in the manner provided by Sections 20 and 21 of this Act,'' thereby doing away with the three year limitation of time provided for in the last paragraph of the original Section 3. In other words, when an alien is found engaged in the inhibited practices, irrespective of the length of time in the United States, deportation may be had. U. S. vs. Prentis, 182 Federal, 894; U. S. vs. Weis, 181 Federal, 860.

Under the authority of United States vs. Lavoie, 182 Federal, 943, which was a prosecution under the first part of Section 3 for importing for the purpose of prostitution an alien woman, a space of time elapsing after importation of as much as two years, and then the resumption of illegal relations, such illegal relations will not be held to be pursuant to the illegal importation. Prosecution for illegal importation under this section should be had in the district of the port where the

ailen was landed. U. S. vs. Krsteff, 185 Federal, 201; U. S. vs. Lavoie, 182 Federal, 943.

Sec. 389 b. Additional Decisions.

Crossing the line of a state and returning to the first state with the girl is no offense under the authority of Fisher vs. U. S., 266 F. 667 and U. S. vs. Wilson, 266 F. 712.

The indictment may fix the venue by the place from which transportation was made, Yeates vs. U. S., 254 F. 60.

An indictment which charges the offense in the language of of the statute is held good in Huffman vs. U. S., 259 F. 35; also in the case of U. S. vs. Brand, 229 F. 847. In the case of Elrod vs. U. S., 266 F. 55, it was held that an excursion with a girl from one state to another where they engaged in immoralities was sufficient to go to the jury notwithstanding there were no commercial relations between the parties.

Venue and intent are regulated by the inception of the journey, Biggerstaff vs. U. S., 260 F. 926. Appropriate instructions should be given as to the purpose of the transportation, Griffith vs. U. S., 261 F. 159; as to questions of evidence, etc., see Blackstone vs. U. S., 261 F. 150.

An indictment saying "purpose" and not "intent" was held good in Carey vs. U. S., 265 F. 515.

An auto driver who serves men and women carrying them across the state line is guilty of a violation of this statute, Freed vs. U. S. 266 F. 1012; auto transportation is a violation, Growling vs. U. S., 269 F. 215; U. S. vs. Burch, 226 F. 974. The instruction of the court should not limit the government's duty in the matter of showing inducement and if it does do so it will be reversable error, England vs. U. S., 272 F. 102.

The woman in the case is an accomplice and it is the duty of the court to charge thereon, was held in Freed vs. U. S., 266 F. 1012; but there was a different holding in Hays vs. U. S., 231 F. 106.

The intent and purposes must be specifically alleged and proven, Gillette vs. U. S., 236 F. 215.

A trip for immoral purposes alone, which is in interstate commerce, is a violation, Caminetti vs. U. S., U. S. Sup. Ct. Nov. 1916.

Though the defendant accompanied the woman when she went to be confined it would not necessarily make him guilty, Van Pelt vs. U. S., 240 F. 347.

For taking a negro girl see Young vs. U. S., 242 F. 788.

In a prosecution under these statutes it may be shown that the defendant had others engage in prostitution Kinser vs. U. S., 231 F. 856.

The ignorance of the girl as to the purpose is no defense, Prdjun vs. U. S., 237 F. 799.

For a case where co-conspirators testified for the state see Heitler vs. U. S., 244 F. 140.

Inducing one to go from one state to another state to open a house of prostitution is a violation, Simpson vs. U. S., 245 F. 278.

Under the White Slave Act the offense of transporting a woman in interstate commerce for the purpose of prostitution is complete when the transportation has been accomplished without regard to whether later the purpose is accomplished; one cannot be convicted for aiding and abetting an offense of which he had no knowledge until after it was complete, Rizzo vs. U. S., 275 F. 51.

Hiring girls in the United States to go to Mexico to work in a dance hall where liquors are sold and prostitutes are waiters is a violation, Beyer vs. U. S., 251 F. 40.

§ 390. **Importing Contract Labor.**—Section 4 of the Act reads as follows:

"That it shall be a misdemeanor for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation or in any way to assist or encourage the importation or migration of any contract laborer or contract laborers into the United States, unless such contract laborer or contract laborers are exempted under the terms of the last two provisions contained in section two of this Act." [34 Stat. L., 900.].

See United States vs. Tsokas, 163 Federal, 129.

§ 391. **Pandering.**—The Act of June 25, 1910, to define and punish pandering, reads as follows:

"That any person who, by threats by himself, or through another, induces, or by any device or scheme inveigles, any female into a house of prostitution, or of assignation, in the District of Columbia, against her will, or by any threat or duress detains her against her will, for the purpose of prostitution or sexual intercourse, or takes or detains a female against her will with intent to compel her by force, threats, menace, or duress to marry him, or to marry any other person, or if any parent, guardian, or other person having legal custody of the person of a female consents to her taking or detention by any person for the purpose of prostitution or sexual intercourse, is guilty of pandering, and shall be punished by imprisonment for a term of not less than one nor more than five years and fined not more than one thousand dollars.

"Sec. 2. That any person who, against her will, shall place any female in the charge or custody of any other person or persons or in a house of prostitution with the intent that she shall live a life of prostitution, or any person who shall compel any female, against her will, to reside with him or with any other person for the purpose of prostitution, or compel her against her will to live a life of prostitution, is guilty of pandering and shall be punished by a fine of not less than one thousand dollars and imprisonment for not less than one nor more than five years.

"Sec. 3. That any person who shall receive any money or other valuable thing for or on account of procuring for or placing in a house of prostitution or elsewhere any female for the purpose of causing her illegally to cohabit with any male person or persons shall be guilty of a felony, and upon convision thereof shall be imprisoned for not less than one nor more than five years.

"Sec. 4. That any person who by force, fraud, intimidation, or threats places or leaves, or procures any other person or persons to place or leave, his wife in a house or prostitution, or to lead a life of prostitution, shall be guilty of a felony, and upon conviction thereof shall be imprisoned not less than one nor more than ten years.

"Sec. 5. That any person or persons who attempt to detain any girl or woman in a disorderly house or house of prostitution because of any debt or debts she has contracted, or is said to have contracted, while living in said house of prostitution or disorderly house shall be guilty of a felony, and on conviction thereof be imprisoned for a term not less than one nor more than five years."

Pandering is defined by the Century Dictionary to mean to cater for the lusts of others; to administer to others' passions or prejudices for selfish ends; to pimp for; one who administers to the gratification of any of the baser passions of others. It is sometimes written pandar, formerly pandor, and was doubtless taken from

the name of a man, Pandare, who procured for Troilus the love and good grace of Cressida.

§ 292. **White Slave Act.**—The Act of June 25, 1910, entitled an Act to further regulate interstate and foreign commerce by prohibiting the transportation therein for immoral purposes of women and girls, and for other purposes, was directed at what is called the "White Slave" evil, and as far as it relates to the criminal features, is as follows:

"That the term 'interstate commerce,' as used in this Act, shall include transportation from any State or Territory or the District of Columbia to any other State or Territory or District of Columbia, and the term 'foreign commerce,' as used in this Act, shall include transportation from any State or Territory or the District of Columbia to any foreign country and from any foreign country to any State or Territory or the District of Columbia.

"Sec. 2. That any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any Territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or who shall knowingly procure or obtain, or cause to be procured or obtained, or aid or assist in procuring or obtaining, any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in any Territory or the District of Columbia, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in any Territory or the District of Columbia, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment of not more than five years, or by both such fine and imprisonment in the discretion of the court.

"Sec. 3. That any person who shall knowingly persuade, induce, entice, or coerce, or cause to be persuaded, induced, enticed, or coerced, or aid or assist in persuading, inducing, enticing, or coercing any woman or girl to go from one place to another in interstate or foreign commerce, or in any Territory or the District of Columbia, for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that

such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her consent, and who shall thereby knowingly cause or aid or assist in causing such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or any Territory or the District of Columbia, shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine of not more than five, thousand dollars, or by imprisonment for a term not exceeding five years, or by both such fine and imprisonment in the discretion of the court.

"Sec. 4. That any person who shall knowingly persuade, induce, entice, or coerce any woman or girl under the age of eighteen years from any State or Territory or the District of Columbia, with the purpose and intent to induce or coerce her, or that she shall be induced or coerced to engage in prostitution or debauchery, or any other immoral practice, and shall in furtherance of such purpose knowingly induce or cause her to go and to be carried or transported as a passenger in interstate commerce upon the line or route of any common carrier or carriers, shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine of not more than ten thousand dollars, or by imprisonment for a term not exceeding ten years, or by both such fine and imprisonment, in the discretion of the court.

"Sec. 5. That any violation of any of the above sections two, three, and four shall be prosecuted in any court having jurisdiction of crimes within the district in which said violation was committed, or from, through, or into which any such woman, or girl may have been carried or transported as a passenger in iterstate or foreign commerce, or in any Territory or the District of Columbia, contrary to the provisions of any of said sections."

§ 392a. **Decisions Under White Slave and Pandering Act.**—The legislation is constitutional. U. S. vs. Hoke, 187 Federal, 992; Hoke vs. U. S., 227 U. S., 308; Kalen vs. U. S., 196 Federal, 888; Paulsen vs. U. S., 199 Federal, 423; Bennett vs. U. S., 194 Federal, 630; affirmed in Bennett vs. U. S., 227 U. S., 333. The right to be transported in interstate commerce is not a right to employ interstate transportation as a facility to do wrong, and the Congress may prohibit such transportation to the extent of the White Slave Traffic Act. Hoke vs. U. S., 227 U. S., 308. One may violate the Act through a third party acting for him. Hoke vs. U. S., 227, 309. The transportation inhibited by the Act is not confined to transportation by common carrier, nor need such a limitation be employed in order to sustain the constitutionality of the Act.

Wilson vs. U. S., 232 U. S., 563. The debauchery used in the statute means sexual intercourse, or that the Act does not extend to any vice or immorality other than that applicable to sexual actions. Athanasaw vs. U. S., 227 U. S., 326. The woman is an accomplice, Diggs vs. U. S., 220 Federal, 546. The woman who is the victim may be indicted for a conspiracy to act as such victim. U. S. vs. Holte, 236 U. S., 140. This holding opens a new method for rendering prosecutions futile, because if the woman may be indicted she may claim her constitutional privilege not to testify, and thereby the prosecution will be deprived of the one who is most often its most valuable witness. The old rule that the spouse cannot testify against the husband unless it relate to injuries to herself, is recognized by the Courts in cases under this statute, and it is held that where a husband persuades his wife to go from one State to another for the immoral purpose of the Act she may testify against him, because such a transaction is a personal injury to her person. U. S. vs. Rispoli, 189 Federal, 271; U. S. vs. Gwynne, 209 Federal, 993. The exception, therefore, which permits a wife to testify against her husband as to injuries received to her own person only, allows such testimony when the offense was committed at the time that she was in fact his wife. In other words, the wife would not be permitted to testify against her husband to facts or injuries to her person that occurred before she became his wife. One who transported a woman in interstate commerce in violation of the section under discussion, and after such violation married her, would thereby protect himself against her testimony, because the offense against her person occurred when she was not his wife, and having become his wife, she is prevented from disclosing anything to his deteriment, except such as would detail an injury to her when she was his wife. U. S. vs. Gwynne, 209 Federal, 994. The exception deals with the parties in the marriage relation and not as to acts ommitted before the marriage. Public policy is the basis of the rule and the relaxation of the rule grows out of the necessity of protecting the wife from personal or other injury at the hands of the husband

during the marital relation. Against this reasoning, however, is the case of Johnson vs. U. S., 221 Federal, 250, which is a ranking case since it is by the C. C. A. 8th Circuit and holds to the old common-law rule that wife cannot testify against her husband. Reverses 215 Federal, 679.

A trip made from one State to another for the purpose of illicit cohabitation is in violation of this Act. U. S. vs. Flashpoller, 205 Federal, 1006. Diggs vs. U. S., 220 Federal, 545. Witnesses testifying are liable to all of the usual tests for veracity, such as lack of virtue, etc. Filasto vs. U. S., 211 Federal, 329. One may be sentenced after conviction under this statute in a penitentiary for a longer or shorter period than one year. U. S. vs. Thompson, 202 Federal, 346. For other fact cases, see Weddel vs. U. S., 213 Federal, 208; Johnson vs. U. S., 215 Federal, 679; Harris vs. U. S., 194 Federal, 634; affirmed in 227 U. S. 340; Bennett vs. U. S., 194 Federal, 630; affirmed in 227 U. S., 333. Suslak vs. U. S., 213 Federal, 913; Welsch vs. U. S., 220 Federal, 764.

Sec. 392 a. a. Decisions Permitting Wife to Testify, Continued.

Under section 392 a. there is a discussion of the rule with respect to a wife testifying against her husband during a prosecution under these statutes when she is the woman in the case. In that discussion the Johnson case, 221 F. 250, is cited. That case is criticised in Pappas vs. U. S., 241 F. 665, by the Circuit Court of Appeals for the ninth circuit and the doctrine is laid down that the wife may testify against her husband on the ground that such a transaction is a personal injury to her and cites their former decision in Cohen vs. U. S., 214 F. 23, to the same effect, from which a certiorari was denied by the Supreme Court, 235 U. S., 696, 35 Sup. Ct. Rep. 199.

To the same effect is Denning vs. U. S., 247 F. 463; U. S. vs. Bozeman, 236 F. 432, and 235 U. S. 696.

So the rule seems to stand as announced by the writer in 1910, in Sec. 392 a, that the wife may testify to what occurred while she was the wife but cannot testify to what occurred before she was the wife.

§ 392b. **Harboring Prostitutes and Making Reports Thereof.**—The statement required by the Act of June 25, 1910, to be made to the Commissioner General of Immigration, giving certain facts with reference to alien females held for immoral purposes, requires the making of such statements only when such females are from the countries who are parties to the arrangement to file such statement, and an indictment which failed to show that a female so harbored is from one of such countries is fatally defective. U. S. vs. Davin, 189 Federal, 244. If one violates the provisions of this Act he is guilty thereunder, even though he is not also guilty of procuring the entry of such female into the United States. U. S. vs. Davin, 189 Federal, 244. See also same case for form of indictment. The doctrine that one must file this statement even though such person did not import the alien female, directly or indirectly, is affirmed in the case of U. S. vs. Portale, U. S., Supreme Court, Oct. Term, 1914, page 1.

Sec. 392 b. b. Harboring Prostitutes and Making Reports Thereof, Continued.

The section with reference to the making of reports is unconstitutional and is in violation of section 6, of article 5, U. S. vs. Lombardo, 228 F. 980. The venue for prosecution under the foreign provision is at Washington, D. C. the place where the "filing" is required, U. S. vs. Lombardo, 228 F. 980; affirmed in U. S. vs. Lombardo, 241 U. S. 73.

CHAPTER XXII.

SOME GENERAL PROVISIONS.

§ 393. **Punishment of Death by Hanging.**—Section 323 of the new Code, is in the exact word of old Statute 5325, to wit:

"Sec. 323. The manner of inflicting the punishment of death shall be by hanging."

Sec. 393 a. Punishment, etc.

Punishment for "unreasonable charge" is not permitted, U. S. vs. Cohen Grocery Company, 41 Sup. Ct. 300, April, 1921.

§ 394. **No Conviction to Work Corruption of Blood or Forfeiture of Estate.**—Section 324 of the new Code is in the identical words of the old Statute 5326, as follows:

"Sec. 324. No conviction or judgment shall work corruption of blood or any forfeiture of estate."

In England, felony comprises every species of crime which at Common-Law worked a forfeiture of goods and lands.

§ 395. **Whipping and the Pillory Abolished,**—Section 325 of the new Code uses the words of old Statute 5327, as follows:

"Sec. 325. The punishment of whipping and of standing in the pillory shall not be inflicted."

§ 396. **Jurisdiction of State Courts.**—Section 326 of the new Code uses the words of the old Statute 5328, as follows:

"Sec. 326. Nothing in this Title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof."

The word "Title" used in the above section must necessarily mean all of the sections in the new Code; that is, from Section 1 to Section 325, inclusive. It could not be limited to the few sections in Chapter XIV. of the new Code, which treats alone of general and special provisions.

Decisions.—The effort of the Courts to maintain the sovereignty of the Federal and State Governments without impingement from either side have been both commendable and successful. It is true that at times the line has been difficult to trace, and conflict seemed imminent, but careful reasoning and a thorough determination to preserve the autonomy and virgin jurisdiction of each Government have usually triumphed. Even the Supreme Court of the United States has not hesitated to distinguish its own decisions so as to keep the line as distinct as possible. In the case of New York vs. Eno, 155 U. S., page 89, hereinafter noticed, it became necessary for the preservation of the State lines to distinguish in re Loney, 134 U. S., 372, and the Court did so by announcing that the Loney decision was one of urgency, which involved the authority and operation of the general Government.

It may be announced as the general rule, gathered from the decisions, that where there is an apparent conflict of

authority, and the State Court secures jurisdiction of the person, that person must exhaust all State remedies before appealing to the Federal Courts for relief. If, however, as in the Loney case, immediate action is urgent, not to the interests of the person, but to the interests of the general Government, then and in that event the Courts of the general Government will interfere before all State remedies have been exhausted. So, too, if Congress has taken exclusive jurisdiction of an offense interference by similar prosecutions in the State Courts are not permitted.

Sec. 396 a. Jurisdiction of State Courts in Conflict With Federal Courts.

For a discussion of the two sovereignties see Easton vs. The State, 188 U. S., 220; 47 Law Ed. 452.

As to "comity" between the two sovereignties see U. S. vs. Marrin, 227 F. 314.

A defendant under sentence in a state court and at large on bail may be tried and convicted in the federal court, U. S. vs. Vane, 254 F. 28.

The power of the United States Supreme Court to review state court decisions is limited to federal questions, Cincinnati vs. Kentucky, U. S. Sup. Ct. April 1920.

An acquittal in a state court is no defense nor evidence in the federal Court, Martin vs. U. S., 271 F. 685.

The removal of internal revenue cases to the federal courts under the authority of section 643 R. S. U. S. does not authorize the removal of a case against a party who had the approval of the United States Internal Revenue Commissioner to sue, Shumpka, 268 F. 686.

Violations of the Volstead Act may be prosecuted in both state and federal courts but, U. S. vs. Reagan, 273 F. 727.

It was held in ex parte Crookshank, 269 F. 980, that the state may legislate more drastically, but not more liberally than Congress on the same subject, the subject being the Volstead Act; see also 270 F. 639 and 270 F. 665.

§ 397. **Illustrations.**—In the case of Cross vs. North Carolina, 132 U. S., 140, 33 Law Ed., 287, the Supreme Court held that where an officer of a national bank forged a promissory note and entered it upon the books of the

bank for the purpose of sustaining false entries in the books and in order to deceive the United States Bank Examiner, he could be tried and convicted of forgery of the note in the State Court although the offense of making such false entries is one against the United States, of which its Courts have exclusive cognizance. In other words, the crime of forgery against the State could not be excused or obliterated by committing another and distinct crime against the United States; and the act, or series of acts, constituting an offense equally against the United States and the State, subjects the guilty party to punishment under the laws of each Government. In Thomas vs. Loney, 134 U. S., 377, 33 Law Ed., 949, the Supreme Court of the United States discharged, upon habeas corpus, applicant Loney from imprisonment under a warrant of arrest from a justice of the peace of Virginia, upon a complaint charging him with perjury in giving his deposition as a witness before a notary public of the city of Richmond, in the case of a contested election of a member of the House of Representatives of the United States, and held, in substance, that the notary public designated by Congress to take depositions in case of a contested election of a member of the House of Representatives of the United States, performs this function under the authority of Congress, and not under that of the State, and testimony taken in such a case stands on the same ground as if taken before a judge or officer of the United States, and a witness giving his testimony in such a case is accountable for the truth of his testimony to the United States only, and the power to punish such witness belongs exclusively to the Government in whose tribunals that proceeding is had.

This case affirms the same case in 38 Federal, 101. In the same report, on page 380, 33 Law Ed., 951, in the case of Fitzgerald vs. Green, the Supreme Court reversed the decision of the Circuit Court of the United States, discharging upon habeas corpus Green from imprisonment under a judgment of the Court of Virginia, imposed upon him for unlawfully voting for presidential electors, and held, in substance, that the State has the power to punish for illegal and fraudulent voting for presi-

dential electors, because Congress has never undertaken to interfere with the manner of appointing electors, or the mode of appointment prescribed by the law of the State to regulate the conduct of such election, or to punish any fraud in voting for electors, but has left these matters to the control of the States.

In McPherson vs. Blacker, 146 U. S., page 1; 36 Law Ed., page 869, the Supreme Court of the United States maintained its right, under Section 709 of the Revised Statutes of the United States, to inquire into the method, upon proper petition, pursued by a State in the selection of its presidential electors; and after so maintaining its jurisdiction, determined that the Constitution did not provide that the appointment of electors shall be by popular vote, nor that the electors shall be voted for upon a general ticket, nor that the majority of those who exercise the elective franchise can alone choose the electors, and that the appointment and mode of appointment of the electors was exclusively left to the States under the Constitution of the United States, and upheld the Michigan Act, even though the same was questioned as being repugnant to the Constitution of the United States.

In Pettibone vs. United States, 148 U. S., 197, 37 Law Ed., 419, the Supreme Court held that persons cannot be convicted of obstructing the administration of justice in a Federal Court under United States Revised Statute 5399, because of a criminal intent on their part to commit a crime against the State, in the deciding of which the Court affirmed the doctrine that United States Courts have no jurisdiction over offenses not made punishable by the Constitution, laws, or treaties of the United States.

In the case of Ohio vs. Brooks, 173 U. S., page 299, 43 Law Ed., page 699, the Supreme Court discharged, upon habeas corpus, Thomas, who was the Superintendent of the United States Soldiers' Home, and who had been convicted in the State Court for serving oleogarmarine in violation of the State law, to disabled soldiers under his charge at the said home, and held that the Governor of a Soldiers' Home, which is under the sole jurisdiction of Congress, even though jurisdiction has not been ceded

to the land upon which the home is situated by the State Legislature, is not subject to the State Law concerning the use of oleomargarine when he furnishes that article to the inmates of the home, as a part of the rations furnished for them under appropriations made by Congress therefor.

United States vs. Eno, 155 U. S., page 89, 39 Law Ed., page 80, arose upon a writ or habeas corpus sued out by Eno, who alleged that he was in the city prison of New York City, by reason of certain bench warrants issued upon indictment against him in a State Court of New York for certain offenses over which the State Courts had no jurisdiction; such offenses being the making of false entries in the books of a national bank. He was discharged by the Circuit Court of the United States, and the State of New York appealed to the Supreme Court, which Court reversed the judgment of the Circuit Court of the United States, and held, in substance, that the Circuit Court of the United States should not, except in cases of urgency, discharge upon habeas corpus from custody under warrants issued by a State Court, one charged with the offense committed while president of a national bank, of forgery by making false entries in the books of the bank, with intent to defraud, where he is not indicted in any Court of the United States for such offense. The claim of the accused to immunity from prosecution under the State Court should be first passed upon by the highest Court of the State; and if any Federal right is denied him, he may then take the case to the Supreme Court of the United States for redress.

In referring to the Loney case, 134 U. S., cited supra, the Court said:

"It may be well to refer to the case of Thomas vs. Loney, 134 U. S. It will be observed that this Court, in *ex parte* Royall, recognized certain cases as constituting exceptions to the general rule—among which are cases of urgency, involving the authority and operations of the general government. Loney's case was of that class. It appeared from the record that he was duly summoned to give his deposition in a contested election case, pending in the House of Representatives of the Congress of the United States—a summons he was obliged to obey, unless prevented by sickness or unavoidable accident, under the penalty

of forfeiting a named sum to the party at whose instance he was summoned, and of becoming subject to fine and imprisonment, that he appeared before a notary public in obedience to such summons, and proceeded to give his deposition; and that while in the office of an attorney, for the purpose of completing his testimony, he was arrested under a warrrant issued by a justice of the peace based upon the affidavit of one of the parties in the contested election case, charging him with wilful perjury, committed in his deposition.....It is clear from this statement that that case was one of urgency, involving, in a substantial sense, the authority and operations of the general Government."

Exclusive Jurisdiction of the United States.—It will be well, in considering this line of decisions, and ofttimes in viewing just where the jurisdiction of the State Court ends and the jurisdiction of the Federal Court begins, and just where the Federal Court will exercise exclusive jurisdiction, to bear in mind Section 711 of the Revised Statutes of the United States; wherein the Courts of the United States are given exclusive jurisdiction over such matters as are therein named, to wit; all crimes and offenses cognizable under the authority of the laws of the United States; all suits for penalties and forfeitures incurred under the laws of the United States; all civil cases of admiralty and maritime jurisdiction; all seizures under the laws of the United States on land or on sea; all cases arising under the patent-right or copy-right laws of the United States; all matters and proceedings in bankruptcy; all controversies of a civil nature, where a State is a party, except between a State and its citizens, or between a State and citizens of other States or aliens; and all suits or proceedings against ambassadors or other public ministers or their servants, or against consuls or vice consuls. See Hopkins Judicial Code, 1911.

§ 398. **Other Decisions.**—In United States vs. Lackey, 99 Federal, 952, which was a case arising upon prosecution for alleged violations of Section 5507 and 5508, growing out of indictments for alleged interference with the rights secured by the Fifteenth Amendment, the Court held that neither the Fifteenth Amendment, nor the statutes enacted for its enforcement, were intended in any primary sense, to protect any right or interest of the United States, and the fact that the national Govern-

ment had no direct interest in an election does not affect the applicability of such statutes, or constitute a defense to an indictment for their violation in connection with such election. In other words, this decision holds, and it seems to be the law, that one may be prosecuted in the Federal Courts for a violation of the acts of Congress which are made to give life to the Fifteenth Amendment, even though the rights interfered with under the Fifteenth Amendment were civil rights under the State.

In in re Welch, 57 Federal, 576, Circuit Judge Lacombe held that the question as to whether the State Court has jurisdiction over a pilot indicted for manslaughter, in causing the death of another person on another boat, by causing the boat in his charge to collide therewith, cannot be raised by an application for a writ of habeas corpus, when the prisoner may raise it by appeal or otherwise in the State Courts, and may carry it thence, should the decision be advised, to the United States Supreme Court by writ of error.

In in re Waite, 81 Federal, 359, District Judge Shiras held that an officer or agent of the United States engaged in the performance of a duty arising under the laws and authority of the United States, is not liable to a criminal prosecution in the Courts of a State for acts done by him in his official capacity, and such agent or officer need not wait to carry the case to the highest Court, and then, by writ of error, to the United States Supreme Court, but may have his release at once upon habeas corpus, if necessary, since the operations of the Federal Government would in the meantime be obstructed by the confinement of its officer. This decision was affirmed in Campbell vs. Waite, by the Circuit Court of Appeals for the Eighth Circuit, in 88 Federal, page 102.

In in re Miller, 42 Federal, 307, the Court held that where a United States Marshal is arrested under State authority, on a charge of forgery, the fact that at the time of his arrest he was on his way to serve process issued by a United States Commissioner, did not oust the State authorities from jurisdiction, where it does not appear that he was arrested for any act done in pursuance of

Federal authority, or with the intent to interfere with the service of the process in his hands.

The case of ex parte Geisler, 50 Federal, 411, recites the clause in the counterfeiting statute which authorizes prosecution for that offense in the State Courts, and holds, of course, that the State Courts have power to punish counterfeiting under the State statutes.

§ 399. **Pardoning Power**—Section 327 of the new Code is in the exact words of old Section 5330, and reads as follows:

"Sec. 327. Whenever, by the judgment of any court or judicial officer of the United States, in any criminal proceeding, any person is sentenced to two kinds of punishment, the one pecuniary and the other corporeal, the President shall have full discretionary power to pardon or remit, in whole or in part, either one of the two kinds without, in any manner, impairing the legal validity of the other kind, or of any portion of either kind, not pardoned or remitted."

This section does not mean that a pardon releases the offender from all of the disabilities imposed by the offense, to the extent of undoing any rights which have vested in others directly, as property rights, Knote vs. United States, 94 U. S., 157, 24 Law Ed., 442.

Under the rules of the Department of Justice, those who seek pardons should make their applications direct to the President, who, in turn, refers the papers to the Attorney General, who thereafter refers them to the District Attorney in the proper District, with instructions to report thereon, and obtain, if possible, the views of the trial Judge. Both trial Judges and District Attorneys are requested by the Department of Justice not to make recommendations or give letters for commutation until requested so to do by the Department of Justice.

§ 399a. **Pardon—Acceptance of—and President's Power.**—In order that a pardon be effective it must be accepted. Burdick vs. U. S., 236 U. S., 79. Overruling U. S. vs. Burdick, 211 Federal, 493. The President's power with reference to pardons is constitutional and cannot be abridged by Congress. Thompson vs. Duehay, 217 Federal, 484. The Parole Act of June 25, 1910, 36th Statute at Large, 819, will not be so construed as to interfere in any way whatsoever with the constitu-

tional right of the President to pardon as to him may seem proper. Thompson vs. Duehay, 217 Federal, 484.

Sec. 399 b. Pardon, etc., Continued.

In Pablo vs. U. S., 242 F. 905, it was held that a telegram to the United States attorney from Washington advising that a witness which he presented had been pardoned was sufficient to authorize the court to rule that he could testify.

§ 400. **Qualified Verdicts in Certain Cases.**—Section 330 of the new Code, re-enacts the Act of the fifteen of January, 1897, 29 Stat. L., 487, Second Supplement, 538, and is in the following words:

"Sec. 330. In all cases where the accused is found guilty of the crime of murder in the first degree, or rape, the jury may qualify their verdict by adding thereto 'without capital punishment,; and whenever the jury shall return a verdict qualified as aforesaid, the person convicted shall be sentenced to imprisonment for life."

§ 401. **Body of Executed Offender May be Delivered to Surgeon for Dissection.**—Section 5340 of the old statutes becomes, in substance, Section 331 of the new Code, as follows:

"Sec. 331. The court before which any person is convicted of murder in the first degree, or rape, may, in its discretion, add to the judgment of death, that the body of the offender be delivered to a surgeon for discretion; and the marshal who executes such judgment shall deliver the body, after execution, to such surgeon as the court may direct; and such surgeon, or some person appointed by him, shall receive and take away the body at the time of execution."

§ 402. **Who Are Principals.**—Section 5323 and 5427 becomes 332 of the new Code, in the following words:

"Sec. 332. Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal."

§ 402a. **Aiding and Abetting, Continued.**—Under the above section where the accused was charged in different counts of an indictment, first with aiding and abetting another to feloniously introduce intoxicating liquors being a principal in the commission of the same crime, into the Indian Territory, and in another count with

and it appeared that accused ordered and directed his co-defendant to procure and bring in the liquor, acquittal of the latter was no objection to a conviction of accused. Rooney vs. U. S., 203 Federal, 928. In the absence of a statute abolishing the distinction between principal and accessory in felonies, all who are present aiding and abetting when a felony is committed are principals in the first or second degree, and if in the second degree may be arrainged and tried before the principal in the first degree, and may be convicted, though the party charged as the principal in the first degree is acquitted. Rooney vs. U. S., 203 Federal, 928. It is not necessary where the defendant was charged with knowingly and fraudulently aiding and abetting a bankrupt corporation, of which he was president and general manager, to conceal its assets from its trustee, that the corporation should be first convicted before the conviction of accused. Kaufman vs. U. S., 202 Federal, 614.

Sec. 402 b. Who are Principals, Continued.

In Vane vs. U. S., 254 F. 32, it was held that one who aids or abets may be directly charged as a principal and such charge will be supported by evidence that he aided and abetted.

§ 403. **Punishment of Accessories.**—Section 333 of the new Code comprises the substantial elements of 5533, 5534, and 5535 of the old statutes, and is in the following words:

"Sec. 333 Whoever, except as otherwise expressly provided by law, being an accessory after the fact to the commissions of any offense defined in any law of the United States, shall be imprisoned not exceeding one-half the longest term of imprisonment, or fined not exceeding one-half the largest fine prescribed for the punishment of the pirncipal, or both, if the principal is punishable by both fine and imprisonment; or if the principal is punishable by death, then an accessory shall be imprisoned not more than ten years."

§ 404. **Felonies and Misdemeanors.**—Section 335 of the new Code is one of the most important and most practical of the entire Act, because it settles for all time that much mooted question often raised upon challenges

and elsewhere as to when a given offense is a misdemeanor or a felony. The Section is in the following words:

"§ Sec. 335. All offenses which may be punished by death, or imprisonment for a term exceeding one year, shall be deemed felonies. All other offenses shall be deemed misdemeanors."

Sec. 404 a. Felonies and Misdemeanors Continued.

Though a statute denounces an offense as a misdemeanor, if it contains a felonious punishment the offense is a felony and not a misdemeanor, Hoss vs. U. S., 232 F. 328.

§ 405. **Omission of Words "Hard Labor" Not to Deprive Court of Power to Impose.**—Section 338 of the new Code reads as follows:

"Sec. 338. The omission of the words "hard labor" from the provisions prescribing the punishment in the various sections of this Act, shall not be construed, as depriving the court of the power to impose labor as a part of the punishment, in any case where such power now exists."

§ 405a. **Imprisonment, and Where.**—Where the sentence is for one year only the Court is without authority to prescribe hard labor as a term of the sentence or to order his confinement in a Government penitentiary. Mitchell vs. U. S., 196 Federal, 874. Sections 5541 and 5542 of the Revised Statutes authorize confinement in a penitentiary when the sentence is for a period longer than one year, or to imprisonment and confinement at hard labor. Baird vs. U. S., 196 Federal, 778; Thompson vs. Duehay, 217 Federal, 484.

Sec. 405 b. "Hard Labor" and Imprisonment, etc., Continued.

In Robertson vs. U. S., 262 F. 984, it was held that section 338 did not apply to a statute subsequently enacted.

The punishment must be over one year in order to authorize a penalty of confinement or to hard labor, Hickson vs. U. S., 258 F. 867.

A statute saying "not less than five years" supports a sentence for five, Lee Lin vs. U. S., 250 F. 694.

Time spent in jail awaiting a habeas corpus writ is to be credited on the penitentiary sentence, Price vs.

McGuinness, 269 F. 977. This rule would not be operative unless the prisoner, at the time of his application, has already been committed on his prison warrant.

As to cumulative sentence, etc., see Brinkman vs. Morgan, 253 F. 553.

§ 406. Repealing provisions, Chapter XV. of the new Code which includes Sections 341 to 345, repeal such sections of the old Code as are necessary to make effective the new Code; providing that accrued rights shall not be affected, and announcing that prosecutions and acts of limitations are not affected.

§ 407. **Parole of United States Prisoners.**—The Act of Congress dated June 25, 1910, provides that the Superintendent of Prisons of the Department of Justice and the warden and physician of each United States Penitentiary, shall constitute a board of parole of such prison, and provides, in general terms, for the release on parole of convicts so recommended by the Board. The Act is in ten sections.

§ 407a. **For Construction of Parole Act.**—For complete construction of the Parole Act, see ex parte Marcie, 207 Federal, 809.

§ 408. **Witnesses for Poor Accused.**—Section 878 of the old statutes provides that when any person is indicted in any Court of the United States who is unable to pay for witnesses in his behalf, he shall make an affidavit setting forth facts in accordance with the terms of the section, in which event the Court orders the process at the expense of the United States.

The Act of June 25, 1910, authorizes suits, writs of error, etc., by poor persons upon making of certain certificates and oaths therein provided for.

§ 409. **Publicity of Contributions.**—An Act approved June 25, 1910, provides for the publicity of the contributions made to all political parties, which shall in two or more States influence the result, or attempt to influence the result, of an election at which representatives in Congress are to be elected. The Act is in ten sections, and provides in Section 6 that the public statements shall give the name and address of each contributor, the total sum contributed, the total sum of all promises and loans

and advances, the total sum disbursed, advanced, or promised, and provides a penalty in Section 10, as follows:

"That every person wilfully violating any of the provisions of this Act shall, upon conviction, be fined not more than one thousand dollars or imprisoned not more than one year, or both."

CHAPTER XXIII.

SMUGGLING.

§ 410. **Collection of Duties.**—To make the collection of duties more certain Congress has provided a few criminal statutes among which are the following:

"Sec. 2802. Whenever any article subject to duty is found in the baggage of any person arriving within the United States, which was not at the time of making entry for such baggage, mentioned to the collector before whom such entry was made, by the person making entry, such article shall be forfeited, and the person in whose baggage it is found shall be liable to a penalty of treble the value of such article."

Section 2799, Revised Statutes United States, which must be read in connection with the foregoing section, provides two independent systems of formalities for the importation of personal effects and merchandise not personal effects, each complete in itself, such section reading as follows:

"Sec. 2799. In order to ascertain what articles ought to be exempted as wearing apparel, and other personal baggage, and the tools or implements of a mechanical trade only, of persons who arrive in the United States, due entry thereof, as of other merchandise, but separate and distinct from that of any other merchandise, imported from a foreign port, shall be made with the collector of the district in which the articles are intended to be landed by the owner thereof, or his agent, expressing the persons by whom or for whom such entry is made, and particularizing the several packages, and their contents, with their marks and numbers; and the person who shall make the entry shall take and subscribe an oath before the collector, declaring that the entry subscribed by him and to which the oath is annexed contains, to the best of his knowledge and belief, a just and true account of the contents of the several packages mentioned in the entry, specifying the name of the vessel, of her master, and of the port from which she has arrived; and that such packages contain no merchan-

dise whatever other than wearing apparel, personal baggage, or, as the case may be, tools of trade, specifying it; that they are the property of a person named who has arrived, or is shortly expected to arrive in the United States, and are not directly or indirectly imported for any other or intended for sale."

§ 411. **Passengers.**—It cannot have been intended that both the statutes provided for in Section 2799 should be applicable to merchandise which was imported by a passenger arriving in the United States but which was not attempted to be concealed by addressing it as baggage. United States vs. One Trunk, 175 Federal, 1012.

Inasmuch as the articles for sale, which accompany a passenger arriving in the United States, are not required to be declared at the same time as the passenger's personal baggage, an intentional mistatement of the value of such articles does not make the articles forfeitable, because the importer was under no obligation to enter them, or declare their value at that time under Section 2799, relating to baggage. United States vs. One Trunk, 175 Federal, 1012.

Jewelry worn upon the person openly is held to be subject to declaration as baggage rather than under the regulations for the importation of merchandise. One Pearl Chain vs. United States, 123 Federal, 371.

Merchandise for sale is not baggage within the meaning of this section. United States vs. One Trunk, 175 Federal, 1012.

When one purchases wearing apparel and jewelry for personal use and made a declaration, on board the vessel, "Wearing apparel, value not known," and proceeded to that portion of the vessel roped off for convenient examination of passengers' effects, to give necessary information to complete the entry, he is not liable to have the article seized under Section 2802. United States vs. One Pearl Chain, 139 Federal, 513.

A declaration by an importer that she had one trunk for "public store," such being the place where upon landing articles are examined and appraised, and later, the filing of a written entry at the Custom House, complies with the section under discussion. United States vs. One Trunk, 184 Federal, 317.

The list made out by the passenger should contain sufficient information for the officers to require as to the dutiable character of the contents of baggage. Harts vs. United States, 140 Federal, 843.

Entry made subsequent to the accrual of the right of forfeiture does not waive such right. United States vs. One Purple Cloth Costume, 158 Federal, 899.

Mentioning of one trunk under the heading of dutiable articles is sufficient within this section. United States vs. One Trunk, 171 Federal, 772. Fraudulent intent is not necessary to forfeiture. United States vs. Harts, 131 Federal, 866; 140 Federal, 843.

Precious stones found in the pockets of a passenger are forfeitable. Emeralds vs. United States, 154 Federal, 839.

§ 412. **Offenses.**—When this section is knowingly or fraudulently violated a misdemeanor is committed as defined in Section 3082, which reads as follows:

Sec. 3082. If any person shall fraudulently or knowingly import or bring into the United States, or assist in so doing, any merchandise, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported contrary to law, such merchandise shall be forfeited and the offender shall be fined in any sum not exceeding five thousand dollars nor less than fifty dollars, or be imprisoned for any time not exceeding two years, or both. Whenever, on trial for a violation of this section, the defendant is shown to have or to have had possession of such goods, such possession shall be deemed evidence to authorize conviction, unless the defendant shall explain the possession to the satisfaction of the jury.

Sec. 412 a. Illustrative Cases.

Rope being brought in for another vessel by sailors is a violation of section 2872, Goldman vs. U. S., 263 F. 340.

For a forfeiture of feathers see 267 F. 964; for a cattle violation see Estes vs. U. S., 227 F. 818; for a case involving a violation, 3082 and 2865 sections R. S. U. S. see Sierra vs. U. S., 233 F. 37.

For a case based upon a conspiracy to defraud the United States of duties see Smith vs. U. S., 231 F. 25.

In a prosecution under section 3082 the possession of intoxicating liquor and the admission of tax ownership

is insufficient to show the liquor was wrongfully imported, the same being Mexican liquor, Sherman vs. U. S., 268 F. 516.

§ 413. **Offenses, Continued.**—Section 2865 of the Old Revised Statutes was repealed by the Forty-third Congress, shown on Page 32, First Vol. of Supplement, and among the provisions of the new Act are the following:

Sec. 4. That whenever any officer of the customs or other person shall detect and seize goods, wares, or merchandise, in the act of being smuggled, or which have been smuggled, he shall be entitled to such compensation therefor as the Secretary of the Treasury shall award not exceeding in amount one-half of the net proceeds, if any, resulting from such seizure, after deducting all duties, costs and charges connected therewith:

Provided, That for the purposes of this act smuggling shall be construed to mean the act, with intent to defraud, of bringing into the United States, or, with like intent, attempting to bring into the United States, dutiable articles without passing the same, or the package containing the same, through the custom house, or submitting them to the officers of the revenue for examination.

And whenever any person not an officer of the United States shall furnish to a district attorney, or to any chief officer of the customs, original information concerning any fraud upon the customs-revenue, perpetrated or contemplated, which shall lead to recovery of any duties withheld, or of any fine, penalty, or forfeiture incurred, whether by importers or their agents, or by any officer or person employed in the custom-service, such compensation may, on such recovery be paid to such person so furnishing information as shall be just and reasonable, not exceeding in any case the sum of five thousand dollars; which compensation shall be paid, under the direction of the Secretary of the Treasury, out of any money appropriated for that purpose.

Sec. 5. That in all suits and proceedings other than criminal arising under any of the revenue-laws of the United States, the attorney representing the Government whenever, in his belief, any business-book, invoice, or paper, belonging to or under the control of the defendant or claimant, will tend to prove any allegation made by the United States, may make a written motion, particularly describing such book, invoice, or paper, and setting forth the allegation which he expects to prove; and thereupon the court in which the suit or proceeding is pending may, at its discretion, issue a notice to the defendant or claimant to produce such book, invoice, or paper in court, at a day and hour to be specified in said notice, which together with a copy of said motion, shall be served formally on the defendant or claimant by the United States marshal by delivering to him a certified copy thereof, or otherwise serving the same as original notices of suit in the same court are served;

And if the defendant or claimant shall fail or refuse to produce such book, invoice, or paper in obedience to such notice, the allegations stated in the said motion shall be taken as confessed unless his failure or refusal to produce the same shall be explained to the satisfaction of the court.

And if produced, the said attorney shall be permitted, under the direction of the court, to make examination (at which examination the defendant or claimant, or his agent, may be present) of such entries in said book, invoice, or paper as relate to or tend to prove the allegation aforesaid, and may offer the same evidence on behalf of the United States.

But the owner of said books and papers, his agent or attorney, shall have, subject to the order of the court, the custody of them, except pending their examination in court as aforesaid.

Sec. 6. That no payment shall be made to any person furnishing information in any case wherein judicial proceedings shall have been instituted, unless his claim to compensation shall have been established to the satisfaction of the court or judge having cognizance of such proceedings, and the value of his services duly certified by said court or judge for the information of the Secretary of the Treasury, but no certificate of the value of such services shall be conclusive of the amount thereof.

And when any fine, penalty, or forfeiture shall be collected without judicial proceedings, the Secretary of the Treasury shall, before directing payment to any person claiming such compensation, require satisfactory proof that such person is justly entitled thereto.

Sec. 7. That except in cases of smuggling as aforesaid, it shall not be lawful for any officer of the United States, under any pretense whatever, directly or indirectly, to receive, accept, or contract for any portion of the money which may, under any of the provisions of this or any other act, accrue to any such person furnishing information; and any such officer who shall so receive, accept, or contract for any portion of the money that may accrue as aforesaid shall be guilty of a misdemeanor, and, on conviction thereof, shall be liable to a fine not exceeding five thousand dollars, or imprisonment for not more than one year, or both, in the discretion of the court, and shall not be thereafter eligible to any office of honor, trust, or emolument.

And any such person so furnishing information as aforesaid, who shall pay to any officer of the United States, or to any person for his use, directly or indirectly, any portion of said money, or any other valuable thing, on account of or because of such money, shall have a right of action against such officer or other person, and his legal representatives, to recover back the same, or the value thereof.

Sec. 8. That no officer, or other person entitled to or claiming compensation under any provision of this act, shall be thereby disqualified from becoming a witness in any action, suit, or proceeding for the recovery, mitigation, or remission thereof, but shall be subject to examination and cross-examination in like manner with other

witnesses, without being thereby deprived of any right, title, share, or interest in any fine, penalty, or forfeiture to which such examination may relate; and in every such case the defendant or defendants may appear and testify and be examined and cross-examined in like manner.

[Sections 9, 10, 11, 12, 14 and 16 expressly repealed by 1890, June 10, ch. 407 No. 29, p. 755.]

Sec. 13. That any merchandise entered by any person or persons violating any of the provisions of the preceding section (1) but not subject to forfeiture under the same section, may while owned by him or them, or while in his or their possession, to double the amount claimed, be taken by the collector and held as security for the payment of any fine or fines incurred as aforesaid, or may be levied upon and sold on execution to satisfy any judgment recovered for such fine or fines.

But nothing herein contained shall prevent any owner or claimant from obtaining a release of such merchandise on giving a bond, with sureties satisfactiory to the collector, or, in case of judicial proceedings satisfactory to the court, or the judge thereof, for the payment of any fine or fines so incurred: *Provided, however*, That such merchandise shall in no case be released until all accrued duties thereon shall have been paid or secured.

Sec. 14. [Expressly appealed by 1890, June 10, Chapter 407 No. 29. post p. 755.]

Sec. 15. That it shall be the duty of any officer or person employed in the customs-revenue service of the United States, upon detection of any violation of the custom-laws, forthwith to make complaint thereof to the collector of the district, whose duty it shall be promptly to report the same to the district attorney of the district in which such fraud shall be committed.

Immediately upon the receipt of such complaint, if, in his judgment, it can be sustained, it shall be the duty of such district attorney to cause investigation into the facts to be made before a United States Commissioner having jurisdiction thereof, and to initate proper proceedings to recover the fines and penalties in the premises, and to prosecute the same with the utmost diligence to final judgment.

Sec. 16. [Repealed by 1890, June 10, ch. 407 No. 29, post p. 755.]

Sec. 17. That whenever, for an alleged violation of the customs-revenue laws, any person who shall be charged with having incurred any fine, penalty, forfeiture, or disability, other than imprisonment, or shall be interested in any vessel or merchandise seized or subject to seizure, when the appraised value of such vessel or merchandise is not less than one thousand dollars, shall present his petition to the judge of the district in which the alleged violation occurred, or in which the property is situated, setting forth, truly and particularly, the facts and circumstances of the case, and praying for relief, such judge shall, if the case, in his judgment, requires, proceed to inquire, in a summary manner into the circumstances of the case,

at such reasonable time as may be fixed by him for that purpose, of which the district attorney and the collector shall be notified by the petitioner, in order that they may attend and show cause why the petition should be refused.

Sec. 18. That the summary investigation hereby provided for, may be held before the judge to whom the petition is presented, or if he shall so direct, before any United States Commissioner for such district, and the facts appearing thereon shall be stated and annexed to the petition, and, together with a certified copy of the evidence, transmitted to the Secretary of the Treasury, who shall thereupon have power to mitigate or remit such fine, penalty, or forfeiture, or remove such disability, or any part thereof, if, in his opinion, the same shall have been incurred without wilful negligence or any intention of fraud in the person or persons incurring the same, and to direct the prosecution, if any shall have been instituted for the recovery thereof, to cease and be discontinued upon such terms or conditions as he may deem reasonable and just.

Sec. 19. That it shall not be lawful for any officer or officers of the United States to compromise or abate any claim of the United States arising under the custom laws, for any fine, penalty, or forfeiture incurred by a violation thereof; and any officer or person who shall so compromise or abate any such claim, or attempt to make such compromise or abatement, or in any manner relieve or attempt to relieve from such fine, penalty, or forfeiture, shall be deemed guilty of a felony, and, on conviction thereof, shall suffer imprisonment not exceeding ten years, and be fined not exceeding ten thousand dollars: *Provided, however,* That the Secretary of the Treasury shall have power to remit any fines, penalties, or forfeitures, or to compromise the same, in accordance with existing law.

Sec. 20. That whenever any application shall be made to the Secretary of the Treasury for the mitigation or remission of any fine, penalty, or forfeiture, or the refund of any duties, in case the amount involved is not less than one thousand dollars, the applicant shall notify the district attorney and the collector of customs of the district in which the duties, fine, penalty, or forfeiture accrued; and it shall be the duty of such collector and district attorney to furnish to the Secretary of the Treasury all practicable information necessary to enable him to protect the interests of the United States.

Sec. 21. That whenever, any goods, wares, and merchandise shall have been entered and passed free of duty, and whenever duties upon any imported goods, wares, and merchandise shall have been liquidated and paid, and such goods, wares and merchandise shall have been delivered to the owner, importer, agent, or consignee, such entry and passage free duty and such settlement of duties shall, after the expiration of one year from time of entry, in the absence of fraud and in the absence of protest by the owner, importer, agent or consignee, be final and conclusive upon all parties.

Sec. 22. That no suit or action to recover any pecuniary penalty or forfeiture of property accruing under the customs revenue laws of the United States shall be instituted unless such suit or action shall be commenced within three years after the time when such penalty or forfeiture shall have accrued.

Provided, That the time of the absence from the United States of the person subject to such penalty or forfeiture, or of any concealment or absence of the property, shall not be reckoned within this period of limitation.

§ 414. **Securing entry by False Samples.**—Section 69 of the new Code Act, 1909, reads as follows:

"Whoever by any means whatever shall knowingly effect or aid in effecting any entry of goods, wares, or merchandise at less than the true weight or measure thereof, or upon a false classification thereof as to quality or value, or by the payment of less than the amount of duty legally due thereon, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both."

This was old Section 5445: see United States vs. Lawrence, 13 Batch 211, United States vs. Betteline First Woods, 654.

Section 68 of the new Code makes it an offense for any revenue officer to admit merchandise for less than the legal duty, and provides the same punishment as Section 69: this was old Section 5444.

Sec. 414 a. Customs Continued.

For a case showing a conspiracy to defraud the government by illegal importation, etc., see Stager vs. U. S., 233 F. 510.

§ 415. **Concealing or Destruction of Invoices, Etc.**—Old Section 5443 becomes new Section 64, and is in the following wording:

Whoever shall wilfully conceal or destroy any invoice, book, or paper relating to any merchandise liable to duty, which has been or may be imported into the United States from any foreign port or country, after an inspection thereof has been demanded by the collector of any collection district, or shall at any time conceal or destroy any such invoice, book, or paper for the purpose of surpressing any evidence of fraud therein contained, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both.

Sec. 415 a. Custom Decisions.

For indictment for unlawful transportation under subsection 9, section 28, Act of August 5, 1909, see 230 F. 311.

There must be no unreasonable searches in the attempt to enforce the custom laws, 230 F. 313; U. S. vs. Abrams, 230 F. 313.

Section 3061 R. S. U. S. for forfeiture of merchandise which could be entered at a custom house which was not does not apply to liquor and a vehicle carrying it must be forfeited under prohibition act only, Goodhope, 268 F. 694.

Bullion which has been imported will be forfeited for failure to make entry and pay tax, Shaar vs. U. S., 269 F. 26.

Master of vessel is not required to show on his manifest contraband such as opium, under R. S. U. S. 2809, U. S. v. Reed, 274 F. 724.

CHAPTER XXIIIA.

OTHER OFFENSES.

Sec. 415 b. Tax on Sale of Grain for Future Delivery, etc., On August 24, 1921, the Congress passed the following act.

(1). This Act shall be known by the short title of "The Future Trading Act."

(2). For the purposes of this Act "contract of sale" shall be held to include sales, agreements of sale, and

agreements to sell. That the word "person" shall be construed to import the plural or singular and shall include individuals, associations, partnerships, corporations, and trusts. That the word "grain shall be construed to mean wheat, corn, oats, barley, rye, flax and sorghum. The term "future delivery," as used herein, shall not include any sale of cash grain or deferred shipment or delivery. The words "board of trade" shall be held to include and mean any exchange or association, whether incorporated or unincorporated, of persons who shall be engaged in the business of buying or selling grain or receiving the same for sale on consignment. The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official agent, or other person.

§ 3. **Tax on privileges or options for contracts for purchases or sales of grain for future delivery; amount.**

In addition to the taxes now imposed by law there is hereby levied a tax amounting to 20 cents per bushel on each bushel involved therein, whether the actual commodity is intended to be delivered or only nominally referred to, upon each and every privilege or option for a contract either of purchase or sale of grain, intending hereby to tax only the transactions known to the trade as "privileges," "bids," "offers," "puts and calls," "indemnities," or "ups and downs."

§ 4. **Bushel tax on grain purchased or sold for future delivery; amount; exceptions.**

In addition to the taxes now imposed by law there is hereby levied a tax of 20 cents a bushel on every bushel involved therein, upon each contract of sale of grain for future delivery except—

(a) Where the seller is at the time of the making of such contract the owner of the actual physical property covered thereby, or is the grower thereof, or in case either party to the contract is the owner or renter of land on which the same is to be grown, or is an association of

such owners, or growers of grain, or of such owners of renters of land; or

(b) Where such contracts are made by or through a member of a board of trade which has been designated by the Secretary of Agriculture as a "contract market," as hereinafter provided, and if such contract is evidenced by a memorandum in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery, and provided that each board member shall keep such memorandum for a period of three years from the date thereof, or for a longer perior if the Secretary of Agriculture shall so direct which record shall at all times be open to the inspection of any representative of the United States Department of Agriculture or the United States Department of Justice.

(5). The Secretary of Agriculture is hereby authorized and directed to designate boards of trade as "contract markets" when, and only when, such boards of trade comply with the following conditions and requirements:

(a). When located at a terminal market upon which cash grain is sold in sufficient volumes and under such conditions as fairly to reflect the general value of the grain and the difference in value between the various grades of grain, and having recognized official weighing and inspection service.

(b). When the governing board thereof provides for the making and filing, by the board or any member thereof, as the Secretary of Agriculture may direct, of reports in accordance with the rules and regulations, and in such manner and form and at such times as may be prescribed by the Secretary of Agriculture, showing the details and terms of all transactions entered into by the board, or the members thereof, either in cash transactions consummated at, on, or in a board of trade, or transactions for future delivery, and when such governing board provides, in accordance with such rules and regulations, for the keeping of a record by the board or the members of the board of trade, as the Secretary of Agriculture may direct, showing the details and terms

of all cash and future transactions entered into by them, consummated at, on, or in a board of trade, such record to be in permanent form, showing the parties to all such transactions, any assignments or transfers thereof, with the parties thereto, and the manner in which said transactions are fulfilled, discharged, or terminated. Such record shall be required to be kept for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, and shall at all times be open to the inspection of any representative of the United States Department of Agriculture or United States Department of Justice.

(c). When the governing board thereof prevents the dissemination, by the board of any member thereof, of false, misleading, or inaccurate report, concerning crop or market information or conditions that affect or tend to affect the price of commodities.

(d). When the governing board thereof provides for the prevention of manipulation of prices, or the cornering of any grain, by the dealers or operators upon such board.

(e). When the governing board thereof admits to membership thereof and all privileges thereon on such boards of trade any duly authorized representative of any lawfully formed and conducted cooperative associations of producers having adequate financial responsibility: Provided, That no rule of a contract market against rebating commissions shall apply to the distribution of earnings among the bona fide members of any such cooperative association.

(f). When the governing board shall provide for making effective the final orders or decisions entered pursuant to the provisions of paragraph (b) section 6 of this Act.

6. Refusal, suspension or revocation or designation as contract market; appeal to circuit court of appeals; refusal of trading privileges with contract markets; appeal.

Any board of trade desiring to be designated a "contract market" shall make application to the Secretary of Agriculture for such designation and accompany the

same with a showing that it complies with the above conditions, and with a sufficient assurance that it will continue to comply with the above requirements.

(a). A commission composed of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General is authorized to suspend for a period not to exceed six months or to revoke the designation of any board of trade as a "contract market" upon a showing that such board of trade has failed or is failing to comply with the above requirements or is not enforcing its rules of government made a condition of its designation as set forth in section 5. Such suspension or revocation shall only be after a notice to the officers of the board of trade affected and upon a hearing: Provided, That such suspension or revocation shall be final and conclusive unless within fifteen days after such suspension or revocation by the said commission such board of trade appeals to the circuit court of appeals for the circuit in which it has its principal place of business by filing with the clerk of such court a written petition praying that the order of the said commission be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such board of trade will pay the costs of the proceedings of the court so directs. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Secretary of Agriculture, chairman of said commission or any member thereof, and the said commission shall forthwith prepare, certify, and file in the court a full and accurate transcript of the record in such proceedings, including the notice to the board of trade, a copy of the charges, the evidence, and the report and order. The testimony and evidence taken or submitted before the said commission duly certified and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the circuit court of appeals shall be made a perferred cause and shall be expedited in every way. Such a court may affirm or set aside the order of the said commission or may direct it to modify its order. No such order of

the said commission shall be modified or set aside by the circuit court of appeals unless it is shown by the board of trade that the order is unsupported by the weight of the evidence or was issued without due notice and a reasonable opportunity having been afforded to such board of trade for a hearing, or infringes the Constitution of the United States, or is beyond the jurisdiction of said commission: Provided further, That if the Secretary of Agriculture shall refuse to designate as a contract market any board of trade that has made application therefor, then such board of trade may appeal from such refusal to the commission described therein, consisting of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General of the United States, with the right to appeal as provided for in other cases in this section, the decision on such appeal to be final and binding on all parties interested.

(b). If the Secretary of Agriculture has reason to believe that any person is violating any of the provisions of this Act, or is attempting to manipulate the market price of any grain in violation of the provisions of section 5 hereof, or of the rules or regulations made pursuant to its requirements, he may serve upon such person a complaint stating his charge in that respect, to which complaint shall be attached or contained therein a notice of hearing, specifying a day and place not less than three days after the service thereof, requiring such person to show cause why an order should not be made directing that all contract markets until further notice of the said commission refuse all trading privileges thereon to such person. Said hearing may be held in Washington, District of Columbia, or elsewhere, before the said commission, or before a referee designated by the Secretary of Agriculture who shall cause all evidence to be reduced to writing and forthwith transmit the same to the Secretary of Agriculture as chairman of the said commission. That for the purpose of securing effective enforcement of the provisions of this Act the provisions including penalties, of section 12 of the Interstate Commerce Act, as amended, relating to the attendance and testimony of witnesses, the production

of documentary evidence, and the immunity of witnesses, are made applicable to the power, jurisdiction, and authority of the Secretary of Agriculture, the said commission, or said referee in proceedings under this Act, and to persons subject to its provisions. Upon evidence received the said commission may require all contract markets to refuse such person all trading privileges thereon for such period as may be specified in said order. Notice of such order shall be sent forthwith by registered mail or delivered to the offending person and to the governing boards of said contract markets. After the issuance of the order by the commission, as aforesaid, the person against whom it is issued may obtain a review of such order or such other equitable relief as to the court may seem just by filing in the United States circuit court of appeals of the circuit in which the petitioner is doing business a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission by delivering such copy to its chairman, or to any member thereof, and thereupon the commission shall forthwith certify and file in the court a transcript of the record theretofore made, including evidence received. Upon the filing of the transcript the court shall have jurisdiction to affirm, to set aside, or modify the order of the commission, and the findings of the commission as to the facts, if supported by the weight of evidence, shall in like manner be conclusive. In proceedings under paragraphs (a) and (b) the judgment..... and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 240 of the Judicial Code.

§ 7. **Payment and collection of tax.**

The tax provided for herein shall be paid by the seller, and such tax shall be collected either by the affixing of stamps or by such other method as may have been prescribed by the Secretary of the Treasury by regulations, and such regulations shall be published at such times and in such manner as shall be determined by the Secretary of the Treasury.

§ 8. **Vacation of designation as contract market on application of board of trade.**

Any board of trade that has been designated a contract market, in the manner herein provided, may have such designation vacated and set aside giving notice in writing to the Secretary of Agriculture requesting that its designation as a contract market be vacated, which notice shall be served at least ninety days prior to the date named therein, as the date when the vacation of designation shall take effect. Upon receipt of such notice the Secretary of Agriculture shall forthwith order the vacation of the designation of such board of trade as a contract market, effective upon the day named in the notice, and shall forthwith send a copy of the notice and his order to all other contract markets. From and after the date upon which the vacation became effective, the said board of trade can thereafter be designated again a contract market by making application to the Secretary of Agriculture in the manner herein provided for an original application.

§ 9. **Investigations by Secretary of Agriculture.**

The Secretary of Agriculture may make such investigations as he may deem necessary to ascertain the facts regarding the operations of boards of trade and may publish from time to time, in his discretion, the result of such investigation, and such statistical information gathered therefrom, as he may deem of interest to the public, except data and information which would separately disclose the business transactions of any person, and trade secrets or names of customers: Provided, That nothing in this section shall be construed to prohibit the Secretary of Agriculture from making or issuing such reports as he may deem necessary, relative to the conduct of any board of trade, or of the transactions of any person found guilty of violating the provisions of this Act under the proceedings prescribed in section 6 of this Act: Provided further, That the Secretary of Agriculture in any report may include the facts as to any actual transaction. The Secretary of Agriculture, upon his own initiative or in cooperation with existing governmental agencies, shall investigate marketing con-

ditions of grain and grain products and by-products including supply and demand for these commodities, cost to the consumer and handling and transportation charges. He shall likewise compile and furnish to producers, consumers, and distributors, by means of regular or special reports, or by such methods as he may deem most effective, information respecting the grain markets, together with information on supply, demand, prices, and other conditions, in this and other countries that affect the markets.

§ 10. **Violations of act; penalty.**

Any person who shall fail to evidence any such contract by a memorandum in writing, or to keep the record, or make a report, or who shall fail to pay the tax, as provided in sections 4 and 5 hereof, or who shall fail to pay the tax required in section 3 hereof, shall pay in addition to the tax a penalty equal to 50 per centum of the tax levied against him under this Act and shall be guilty of a misdemeanor, and upon conviction thereof, be fined not more than $10,000 or imprisoned for not more than one year, or both, together with the costs of prosecution.

§ 11. **Partial invalidity of act.**

If any provision of this Act or the application thereof to any person or circumstances as held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

§ 12. **Time of taking effect of act.**

No tax shall be imposed by this Act within four months after its passage, and no fine, imprisonment, or other penalty shall be enforced for any violation of this Act occurring within four months after its passage.

§ 13. **Powers of Secretary of Agriculture.**

The Secretary of Agriculture may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency or political subdivision thereof, or any person; and shall have the power to appoint, remove, and fix the compensation of such officers and employees, not in conflict with existing law, and make such expenditures for rent out-

side the District of Columbia, printing, telegrams, telephones, law books, books of reference, periodicals, furniture, stationery, office equipment, travel, and other supplies and expenses as shall be necessary to the administration of this Act in the District of Columbia and elsewhere, and there is hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for such purposes.

Sec. 415c. Stockyard Regulations.

On August 15, 1921, the Congress passed the statute for the regulation of stockyards and market agencies providing certain regulations for the use of pens for cattle, sheep, swine, horses, mules and goats and placed them under the supervision of the Secretary of Agriculture and declared against unjust and unreasonable and discriminatory services and authorized the recovery of five hundred dollars in a civil suit for each violation of the act, such suit to be brought in the name of the United States by the District Attorneys under the direction of the Attorney General.

Sec. 415d. Embezzlement by Court Officers.

The Act of May 29, 1920, reads as follows:—

Any United States marshal, clerk, receiver, referee, trustee, or other officer of a United States court, or any deputy, assistant, or employee of any such marshal, clerk, receiver, referee, trustee, or other officer who shall, after demand by the party entitled thereto, unlawfully retain or who shall convert to his own use or to the use of another any moneys received for or on account of costs or advance deposits to cover fees, expenses, or costs, deposits for fees or expenses in bankruptcy cases, composition funds or money of bankrupt estates, fees in naturalization matters, or any other money whatever which has come into his hands by virtue of his official relation or by the fact of his official position or employment shall be deemed guilty of embezzlement and shall, where the offense is not otherwise punishable by some statute of the United States, be fined not more than double the value of the money thus retained or converted or imprisoned not more than ten years, or both;

and it shall not be a defense in such case that the accused person had an interest, contingent or otherwise, in some part of such moneys or of the fund from which they were retained or converted.

Sec. 415e. Contributions to Influence Election of Members of Congress.

The Act of June 25, 1910, C. 392, 36 Stat. 822, makes provisions regulating election contributions and campaign expenses for representatives in Congress and provides a penalty for a wilfull violation thereof of not more than a thousand dollar fine or imprisonment not more than one year or both, pages 58-62 Barnes 1919 Fed. Code.

Sec. 415f. Farm Loan Statute and Penalties.

The Act of July 17, 1916, C. 245, 39 Stat. 382, provides for the creation of a farm loan board and bureau and federal land banks and national farm loan associations and for the appraisal of land upon which loans were to be made and for the issuance of farm loan bonds and for the amortization of the loan, the exemption from taxation of such operations, the examination of such banks and other provisions and then provides a punishment for any applicant who should make any false statement in his application for a loan, for any member of a loan committee or appraiser who should wilfully overvalue any land offered as security and for any examiner who should accept any loan or gratuity from any land bank and for any one who should forge or counterfeit any bond or paper in imitation of similiar instruments of said organizations, of a fine not exceeding five thousand dollars or by imprisonment not exceeding one year or both and for the latter offense the same fine or imprisonment not exceeding five years or both.

This is new legislation and covers in detail with appropriate penalties the violation of all of the essential provisions of the Act.

Sec. 415g. Hoarding of Food and Fuel.

In the Act of August 10, 1917, C. 53, Sec. 26, 40 Stat. 286, is the following section: "Any person carrying on or employed in commerce among the several States, or with foreign nations, or with or in the Territories or

other possessions of the United States in any article suitable for human food, fuel or other necessities of life, who, either in his individual capacity or as an officer, agent, or employee of a corporation or member of a partnership carrying on or employed in such trade, shall store, acquire, or hold, or who shall destroy or make away with any such article for the purpose of limiting the supply thereof to the public or affecting the market price thereof in such commerce, whether temporarily or otherwise, shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than $5,000 or by imprisonment for not more than two years, or both: Provided, That any storing or holding by any farmer or gardener, or other person of the products of any farm, garden, or other land cultivated by him shall not be deemed to be a storing or holding within the meaning of this Act: Provided further, That farmers and fruit growers, cooperative and other exchanges, or societies of a similiar character shall not be included within the provisions of this section: Provided further, That this section shall not be construed to prohibit the holding or accumulating of any such article by any such person in a quantity not in excess of the reasonable requirements of his business for a reasonable time or in a quantity reasonably required to furnish said article produced in surplus quantities seasonally throughout the period of scant or no production. Nothing contained in this section shall be construed to repeal the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, commonly known as the Sherman Antitrust Act. (Act Aug. 10, 1917, c. 53, Sec. 26, 40 Stat. 286)."

Sec. 415h. Hunting Birds or Taking Eggs from Breeding Grounds.

"Whoever shall hunt, trap, capture, wilfully disturb, or kill any bird of any kind whatever, or take the eggs of any such bird, on any lands of the United States which have been set apart or reserved as breeding grounds for birds, by any law, proclamation, or executive order, except under such rules and regulations as the Secretary of Agriculture may, from time to time, prescribe, shall be fined not more

than five hundred dollars, or imprisoned not more than six months, or both."

Sec. 415i. Injuries to Telegraph or Telephone.

"Whoever shall wilfully or maliciously injure or destroy any of the works, property, or material of any telegraph, telephone, or cable line, or system, operated or controlled by the United States, whether constructed or in process of construction, or shall wilfully or maliciously interfere in any way with the working or use of any such line, or system, or shall wilfully or maliciously obstruct, hinder, or delay the transmission of any communication over any such line, or system, shall be fined not more than one thousand dollars, or imprisoned not more than three years, or both."

Sec. 415j. Killing or Detention of Homing Pigeons.

That it be, and it hereby is, declared to be unlawful to knowingly entrap, capture, shoot, kill, possess, or in any way detain an Antwerp, or homing pigeon, commonly called carrier pigeon, which is owned by the United States or bears a band owned and issued by the United States having thereon the letters "U. S. A." or "U. S. N." and a serial number.

The possession or detention of any pigeon described in section one of this Act by any person or persons in any loft, house, cage, building, or structure in the ownership or under the control of such person or persons without giving immediate notice by registered mail to the nearest military or naval authorities, shall be prima facie evidence of a violation of this Act.

Any person violating the provisions of this Act shall, upon conviction, be punished by a fine of not more than $100, or by imprisonment for not more than six months, or by both such fine and imprisonment.

Sec. 415k. Contributions by Corporations.

The Act of 1907 and 1909 is as follows:

"It shall be unlawful for any national bank or any corporation organized by authority of any law of Congress, to make a money contribution in connection with any election to any political office. It shall also be unlawful for any corporation whatever to make a money contribution in connection with any election at which Presidential and Vice-Presidential electors or a Representative in Congress is to be voted for, or any election by any State legislature of a United States Senator. Every corporation which shall make any contribution

in violation of the foregoing provisions shall be fined not more than five thousand dollars; and every officer or director of any corporation who shall consent to any contribution by the corporation in violation of the foregoing provisions shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both."

Sec. 415l. Shanghaiing of Sailors.

Whoever, with intent that any person shall perform service of labor of any kind on board of any vessel engaged in trade and commerce among the several States or with foreign nations, or on board of any vessel of the United States engaged in navigating the high seas or any navigable water of the United States, shall procure or induce, or attempt to procure or induce, another, by force or threats or by representations which he knows or believes to be untrue, or while the person so procured or induced is intoxicated or under the influence of any drug, to go on board of any such vessel, or to sign or in anywise enter into any agreement to go on board of any such vessel to perform service or labor thereon; or whoever shall knowingly detain on board of any such vessel any person so procured or induced to go on board thereof, or to enter into any agreement to go on board thereof, by any means herein defined; or whoever shall knowingly aid or abet in the doing of any of the things herein made unlawful, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both.

Sec. 415m. War Risk Insurance Protection.

For the integrity of the War Risk Insurance Act Congress provided the following penalties and offenses:—

"False statements—Whoever in any claim or family allowance, compensation, or insurance, or in any document required by this Act or by regulation made under this Act, makes any statement of a material fact knowing it to be false, shall be guilty of perjury and shall be punished by a fine of not more than five thousand dollars, or by imprisonment for not more than two years or both. (Act Sept. 2, 1914, c. 293, sec. 25, as added by Act, Oct. 6, 1917, c. 105, sec. 2, 40 Stat. 402.)

(b) Fraudulent acceptance of payments—If any person entitled to payment of family allowance or compensation under this Act, whose right to such payment under this Act ceases upon the happening of any contingency, thereafter fraudently accepts any such payment,

he shall be punished by a fine of not more than two thousand dollars, or by imprisonment for not more than one year, or both. (Act Sept. 2, 1914, c. 293, Sec. 26, as added by Oct. 6, 1917, c. 105, sec. 2, 40 Stat. 402.)

(c) Fraudulent obtaining of money or insurance—Whoever shall obtain or receive any money, check, allotment, family allowance, compensation, or insurance under Articles II, III, or IV of this Act, without being entitled thereto, with intent to defraud the United States or any person in the military or naval forces of the United States, shall be punished by a fine of not more than two thousand dollars, or by imprisonment for not more than one year, or both. (Act Sept. 2, 1914, c. 293, sec. 27, as added by Act June 25, 1918, c. 104, sec. 2, 40 Stat)."

Sec. 415n. Criminal Correspondence With Foreign Governments.

Every citizen of the United States, whether actually resident or abiding within the same, or in any place subject to the jurisdiction thereof, or in any foreign country, without the permission or authority of the Government, directly or indirectly, commences or carries on any verbal or written correspondence or intercourse with any foreign government or any officer or agent thereof, with an intent to influence the measures or conduct of any foreign government or of any officer or agent thereof, in relation to any disputes or controversies with the United States, or to defeat the measures of the Government of the United States; and every person, being a citizen of or resident within the United States or in any place subject to the jurisdiction thereof, and not duly authorized, counsels, advises, or assists in any such correspondence with such intent, shall be fined not more than five thousand dollars and imprisoned not more than three years; but nothing in this section shall be construed to abridge the right of a citizen to apply, himself or his agent, to any foreign government or the agents thereof for redress of any injury which he may have sustained from such government or any of its agents or subjects. (C. C. sec. 5; R. S. sec. 5335; Act. March 4, 1909, c. 321, Sec. 5, 35 Stat. 1088.)

Sec. 415o. Submitting False Evidence as to Second-class Matter.

Whoever shall knowingly submit or cause to be submitted to any postmaster or to the Post-Office Department or any officer of the postal service, any false evidence relative to any publication for the purpose of securing the admission thereof at the second-class rate, for transportation in the mails, shall be fined not more than five hundred dollars. (C. C. sec. 223; Acts March 3, 1879, c. 180, sec. 13, 20 Stat. 359; June 18, 1888, c. 394, sec. 1, 25 Stat.187; March 2, 1905, c. 1304, 33 Stat. 823; March 4, 1909, c. 321, sec. 223, 35 Stat. 1133.)

Sec. 415p. Using or Selling Canceled Stamps or Stamped Envelope or Card; Removal of Stamps from Mail.

Whoever shall use or attempt to use in payment of postage, any canceled postage stamp, whether the same has been used or not; or shall remove, attempt to remove, or assist in removing, the canceling or defacing marks from any postage stamp, or the superscription from any stamped envelope, or postal card, that has once been used in payment of postage, with the intent to use the same for a like purpose, or to sell or offer to sell the same, or shall knowingly have in possession any postage stamp, stamped envelope, or postal card, with intent to use the same, or shall knowingly sell or offer to sell any such postage stamp, stamped envelope, or postal card, or use or attempt to use the same in payment of postage; or whoever unlawfully and wilfully shall remove from any mail matter any stamp attached thereto in payment of postage; or shall knowingly use or cause to be used in payment of postage, any postage stamp, postal card, or stamped envelope, issued in pursuance of law, which has already been used for a like purpose, shall, if he be a person employed in the postal service, be fined not more than five hundred dollars, or imprisoned not more than three years, or both; and if he be a person not employed in the postal service, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both. (C. C. sec. 205; R. S. secs. 3922-3925; Acts March 3, 1879, c. 180, sec. 28, 20 Stat. 362; March 4, 1909, c. 321, sec. 205, 35 Stat. 1127.),

Sec. 415q. Criminal Prosecution for Willful Infringement of Copyright.

Any person who willfully and for profit shall infringe any copyright secured by this Act, or who shall knowingly and willfully aid or abet such infringement, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment for not exceeding one year or by a fine of not less than one hundred dollars nor more than one thousad dollars, or both, in the discretion of the court: Provided, however, That nothing in this Act shall be so construed as to prevent the performance of religious or secular works such as oratorios, cantatas, masses, or octavo choruses by public schools, church choirs, or vocal societies, rented, borrowed, or obtained from some public library, public school, church choir, school choir, or vocal society, provided the performance is given for charitable or educational purposes and not for profit. (Act March 4, 1909, c. 320, sec. 28, 35 Stat. 1082.

Sec. 415r. Sale or Introduction of Intoxicating Liquors—Indian Country.

No ardent spirits, ale, beer, wine, or intoxicating liquor or liquors of whatever kind shall be introduced, under any pretense, into the Indian country. Every person who sells, exchanges, gives, barters, or disposes of any ardent spirits, ale, beer, wine, or intoxicating liquors of any kind to any Indian under charge of any Indian superintendent or agent, or introduces or attempts to introduce any ardent spirits, ale, wine, beer, or intoxicating liquor of any kind into the Indian country shall be punished by imprisonment for not more than two years, and by fine of not more than three hundred dollars for each offense. But it shall be a sufficient defense to any charge of introducing or attempting to introduce ardent spirits, ale, beer, wine, or intoxicating liquors into the Indian country that the acts charged were done under authority in writing from the War Department, or any officer duly authorized thereunto by the War Department.

No part of section twenty-one hundred and thirty-nine or section twenty-one hundred and forty of the Revised Statutes shall be a bar to the prosecution of any officer,

soldier, butler or storekeeper, attache, or employee of the Army of the United States who shall barter, donate, or furnish in any manner whatsoever liquors, beer, or any intoxicating beverage whatsoever to any Indian.

All complaints for the arrest of any person or persons made in violation of any of the provisions of this Act shall be made in the county where the offense shall have been committed, or if committed upon or within any reservation not included in any county, then in any county adjoining such reservation; but in all cases such arrests shall be made before any United States court commissioner residing in such adjoining county, or before any magistrate or judicial officer authorized by the laws of the State in which such reservation is located to issue warrants for the arrest and examination of offenders by section ten hundred and fourteen of the Revised Statutes of the United States. And all persons so arrested shall, unless discharged upon examination, be held to answer and stand trial before the court of the United States having jurisdiction of the offense.

Any person who shall sell, give away, dispose of, exchange, or barter any malt, spirituous, vinous liquor including beer, ale, and wine, or any ardent or other intoxicating liquor of any kind whatsoever, or any essence, extract, bitters, preparations, compound, composition, or any article whatsoever, under any name, label, or brand, which produces intoxication, to any Indian to whom allotment of land has been made while the title to the same shall be held in trust by the Government, or to any Indian a ward of the Government under charge of any Indian superintendent or agent, or any Indian, including mixed bloods, over whom the Government, through its departments, exercises, guardianship, and any person who shall introduce or attempt to introduce any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or intoxicating liquor of any kind whatsoever into the Indian country, which term shall include any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States, shall be punished

by imprisonment for not less than sixty days, and by a fine of not less than one hundred dollars for the first offense and not less than two hundred dollars for each offense thereafter: Provided, however, That the person convicted shall be committed until fine and costs are paid. But it shall be a sufficient defense to any charge of introducing or attempting to introduce ardent spirits, ale, beer, wine, or intoxicating liquors into the Indian country that the acts charged were done under authority, in writing, from the War Department or any officer duly authorized thereunto by the War Department.

Any person, whether an Indian or otherwise, who shall, in said Territory, manufacture, sell, give away, or in any manner, or by any means furnish to anyone, either for himself or another, any vinous, malt, or fermented liquors, or any other intoxicating drinks of any kind whatsoever, whether medicated or not, or who shall carry, or in any manner have carried, into said Territory any such liquors or drinks, or who shall be interested in such manufacture, sale, giving away, furnishing to anyone, or carrying into said Territory any of such liquors or drinks, shall, upon conviction thereof, be punished by fine not exceeding five hundred dollars and by imprisonment for not less that one month nor more than five years.

On and after September first, nineteen hundred and eighteen, possession by a person of intoxicating liquors in the Indian country where the introduction is or was prohibited by treaty or Federal statute shall be an offense and punished in accordance with the provisions of the Acts of July twenty-third, eighteen hundred and ninety-two, and January thirteenth, Eighteen hundred and ninety-seven.

Hereafter it shall be unlawful to introduce and use wines solely for sacramental purposes, under church authority, at any place within the Indian country or any Indian reservation, including the Pueblo Reservations in New Mexico. (First paragraph, R. S. sec. 2139; Acts July 9, 1832, c. 174, sec. 4, 4 Stat. 564; March 15, 1864, c. 33, 13 Stat. 29; Feb. 27, 1877, c. 69, sec. 1, 19 Stat. 244; July 23, 1892, c. 234, 27 Stat. 260; second paragraph, Act

July 4, 1884, c. 180, sec. 1, 23 Stat. 94; third paragraph, Act July 23, 1892, c. 234, 27 Stat. 261; fourth paragraph, Act. Jan. 30, 1897, c. 109, sec. 1, 29 Stat. 506; fifth paragraph Act March 1, 1895, c. 145, sec. 8, 28 Stat. 697; sixth paragraph, Act May 25, 1918, c. 86, sec. 1, 40 Stat. seventh paragraph, Act Aug. 24, 1912, c. 338, sec. 1, 37 Stat 519.)

Note.—By Act March 2, 1917, c. 146, sec. 17, 39 Stat. 983, Osage County, Okla. is made Indian country within the meaning of all liquor statutes.

Sec. 415s. Embezzlement, etc., Public Money-Banker or Person Receiving Unauthorized Deposit.

Every banker, broker, or other person not an authorized depositary of public moneys, who shall knowingly receive from any disbursing officer, or collector or internal revenue, or other agent of the United States, any public money on deposit, or by way of loan or accommodation, with or without interest, or otherwise than in payment of a debt against the United States, or shall use, transfer, convert, appropriate, or apply any portion of the public money for any purpose not prescribed by law; and every president, cashier, teller, director, or other officer of any bank or banking association who shall violate any provision of this section is guilty of embezzlement of the public money so deposited, loaned, transferred, used, converted, appropriated, or applied, and shall be fined not more than the amount embezzled, or imprisoned not more than ten years, or both. (C. C. sec. 96; R. S. sec. 5497; Act March 4, 1909, c. 321, sec. 96, 35 Stat. 1106.)

Sec. 415t. Census Offenses—Offenses of Officers and Employees.

Any supervisor, supervisor's clerk, enumerator, interpreter, special agent, or other employee, who, having taken and subscribed the oath of office required by this Act. shall, without justifiable cause, neglect or refuse to perform the duties enjoined on him by this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding five hundred dollars; or if he shall, without the authority of the Director of the Census, publish or communicate any in-

formation coming into his possession by reason of his employment under the provisions of this Act, or the Act to provide for a permanent Census Office, or Acts amendatory thereof or supplemental thereto, he shall be guilty of a misdemeanor and shall upon conviction thereof be fined not to exceed one thousand dollars, or be imprisoned not to exceed two years, or both so fined and imprisoned, in the discretion of the court; or if he shall wilfully and knowingly swear to or affirm falsely, he shall be deemed guilty of perjury, and upon conviction shall be imprisoned not exceeding five years and be fined not exceeding two thousand dollars; or if he shall wilfully and knowingly make a false certificate or a fictitious return, he shall be guilty of a misdemeanor, and upon conviction of either of the last-named offenses he shall be fined not exceeding two thousand dollars and be imprisoned not exceeding five years; or if any person who is or has been an enumerator shall knowingly or willfully furnish, or cause to be furnished, directly or indirectly, to the Director of the Census, or to any supervisor of the census, any false statement or false information with reference to any inquiry for which he was authorized and required to collect information, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding two thousand dollars and be imprisoned not exceeding five years. (Act July 2, 1909, c. 2, sec. 22, 36 Stat. 8.)

Sec. 415u. Political Contributions, etc.,

Solicitation or receipt of political contributions by officers.—No Senator or Representative in, or Delegate or Resident Commissioner to Congress, or Senator, Representative, Delegate, or Resident Commissioner elect or officer or employee of either House of Congress, and no executive, judicial, military, or naval officer of the United States, and no clerk or employee of any department, branch, or bureau of the executive, judicial, or military or naval service of the United States, shall, directly or indirectly, solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever, from any officer, clerk, or employee of

the United States, or any department, branch, or bureau thereof, or from any person receiving any salary or compensation from moneys derived from the Treasury of the United States. (C. C. sec. 118; Acts Jan. 16, 1883, c. 27, sec. 11, 22 Stat. 406; March 4, 1909, c 321, sec. 118, 35 Stat. 1110.)

(b) Same: in public building.—No person shall, in any room or building occupied in the discharge of official duties by any officer or employee of the United States mentioned in the preceding section, or in any navy-yard, fort, or arsenal, solicit in any manner whatever or receive any contribution of money or other thing of value for any political purposes whatever. (C. C. sec. 119; Acts Jan. 16, 1883, c. 27, sec. 12, 22 Stat. 407; March 4, 1909, c. 321, sec. 119, 35 Stat. 1110.)

(c) Immunity from official proscription.—No officer or employee of the United States mentioned in section one hundred and eighteen, shall discharge, or promote, or degrade, or in any manner change the official rank or compensation of any other officer or employee, or promise or threaten so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose. (C. C. sec. 120; Acts Jan. 16, 1883, c. 27, sec. 13, 22 Stat. 407; March 4, 1909, c. 321, sec. 120, 35 Stat. 1110.)

(d) Giving money to officers for political purposes.—No officer, clerk, or other person in the service of the United States shall, directly or indirectly, give or hand to any other officer, clerk, or person in the service of the United States, or to any Senator or Member of or Delegate to Congress, or Resident Commissioner, any money or other valuable thing on account of or to be applied to the promotion of any political object whatever. (C. C. sec. 121; Acts Jan. 16, 1883, c. 27, sec. 14, 22 Stat. 407; March 4, 1909, c. 321, sec. 212, 35 Stat. 1110.)

(e) Punishment for violation of four preceding sections.—Whoever shall violate any provision of the four preceding sections shall be fined not more than five thousand dollars, or imprisoned not more than three years, or both. (C. C. sec. 122; Acts Jan. 16, 1883, c. 27, sec. 15, 22 Stat. 407; March 4, 1909, c. 321, sec. 122, 35 Stat.

1110.) See U. S. v. Thayer, 154 F. 508; U. S. v. Thayer, 209 U. S., 39; U. S. v. Smith, 163 F. 926.

Sec. 415v. Commutation of Sentence for Good Behavior and Parole.

The Acts of 1902 and 1906 granted, for good behavior the following deductions:—

Upon a sentence of not less than six months nor more than one year, five days for each month; upon a sentence of more than one year and less than three years, six days for each month; upon a sentence of not less than three years and less than five years, seven days for each month; upon a sentence of not less than five years and less than ten years, eight days for each month; upon a sentence of ten years or more, ten days for each month. When a prisoner has two or more sentences, the aggregate of his several sentences shall be the basis upon which his deduction shall be estimated. Pages 2411-2412, Barnes' 1919 Federal Code.

Every prisoner whose record shows that he has observed the rules of the institution and who has served one-third of the total of such term, or terms for which he was sentenced, or if sentenced for the term of his natural life, has served not less than fifteen years, may be released on parole, Act June 25, 1910, page 2412 Barnes' 1919 Federal Code.

Sec. 415w. Law of Perjury Applicable to Search Warrants.

Sections one hundred and twenty-five and one hundred and twenty-six of the Criminal Code of the United States shall apply to and embrace all persons making oath or affirmation or procuring the same under the provisions of this title, and such persons shall be subject to all the pains and penalties of said sections. (Act June 15, 1917, c. 30, Title XI, sec. 19, 40 Stat. 230.)

Sec. 415x. Proof of Grounds and Probable Cause.

A search warrant can not be issued but upon probable cause, supported by affidavit, naming or describing the person and particularly describing the property and the place to be searched.

The judge or commissioner must, before issuing the warrant, examine on oath the complainant and any wit-

ness he may produce, and require their affidavits or take their depositions in writing and cause them to be subscribed by the parties making them. (Act June 15, 1917, c. 30, Title XI, secs. 3, 4, 40 Stat. 228.)

Search warrants; affidavits and depositions.—The affidavits or depositions must set forth the facts tending to establish the grounds of the application of probable cause for believing that they exist.

These statutes should be read in connection with the citations and suggestions contained in the paragraph relating to illegal searches and seizures.

Sec. 415y. Limitations.

No person shall be prosecuted, tried, or punished for treason or other capital offenses, willful murder excepted, unless the indictment is found within three years next after such treason or capital offense is done or committed. (R. S. sec. 1043; Act April 30, 1790, c. 9, sec. 32, 1 Stat. 119.)

(b) No person shall be prosecuted, tried, or punished for any offense, not capital, except as provided in section one thousand and forty-six, unless the indictment is found, or the information is instituted within three years next after such offense shall have been committed. But this act shall not have effect to authorize the prosecution, trial or punishment for any offense, barred by the provisions of existing laws. (R. S. sec. 1044; Act April 30, 1790, c. 9, sec. 32, 1 Stat. 119; April 13, 1876, c. 56, 19 Stat. 32.)

(c) Nothing in the two preceding sections shall extend to any person fleeing from justice. (R. S. sec. 1045; Act April 30, 1790, c. 9, sec. 1 Stat. 119.)

(d) No person shall be prosecuted, tried, or punished for any crime arising under the revenue laws, or the slave-trade laws of the United States, unless the indictment is found or the information is instituted within five years next after the committing of such crime.

No person shall be prosecuted, tried or punished for any of the various offenses arising under the internal revenue laws of the United States unless the indictment is found or the information instituted within three years next after the commission of the offense, in all cases

where the penalty prescribed may be imprisonment in the penitentiary, and within two years in all other cases; Provided, That the time during which the person.....committing the offense is absent from the district wherein the same is committed shall not be taken as any part of the time limited by law for the commencement of such proceedings: Provided further that the provisions of this act shall not apply to offenses committed prior to its passage: And provided further that where a complaint shall be instituted before a Commissioner of the United States within the period above limited, the time shall be extended until the discharge of the Grand Jury at its next session within the district: And provided further that this act shall not apply to offenses committed by officers of the United States. (First paragraph, R. S. sec. 1046; Acts March 26, 1804, c. 40, sec. 3, 2 Stat. 290; April 20, 1818, c. 91, sec. 9, 3 Stat. 452; second paragraph, Act July 5, 1884, c. 225, sec. 1, 23 Stat. 122.)

(e) No suit or prosecution for any penalty or forfeiture, pecuniary or otherwise, accruing under the laws of the United States, shall be maintained, except in cases where it is otherwise specially provided, unless the same is commenced within five years from the time when the penalty or forfeiture accrued: Provided, That the person of the offender, or the property liable for such penalty or forfeiture, shall, within the same period, be found within the United States; so that the proper process therefor may be instituted and served against such person or property. (R. S. sec. 1047; Acts March 2, 1799, c. 22, sec. 89, 1 Stat. 695; March 26, 1804, c. 40, sec. 3, 2 Stat. 290; April 20, 1818; c. 91, sec. 9, 3 Stat. 452; Feb. 28, 1839, c. 36, sec. 4, 5 Stat. 322; March 3, 1863, c. 76, sec. 14, 12 Stat. 741; July 25, 1868, c. 236, sec. 1, 15 Stat. 183.)

(f) No suit or action to recover any pecuniary penalty or forfeiture of property accruing under the customs revenue laws of the United States shall be instituted unless such suit or action shall be commenced within three years after the time when such penalty or forfeiture shall have accrued: Provided, That the time of

the absence from the United States of the person subject to such penalty or forfeiture, or of any concealment or absence of the property, shall not be reckoned within this period of limitation. (Act June 22, 1874, c. 391, sec. 22, 18 Stat. 190.)

No criminal prosecution shall be maintained under the copyright Act unless the same is commenced within three years after the cause of action arose. Act March 4, 1919.

Sec. 415z. Venue.

Capital cases; where triable.—The trial of offenses punishable with death shall be had in the county where the offense was committed, where that can be done without great inconvenience. (R. S. sec. 729; J. C. sec. 40; Act March 3, 1911, c. 231, sec. 40, 36 Stat. 1100.)

(b) Offenses on the high seas, or outside district, where triable.—The trial of all offenses committed upon the high seas, or elsewhere out of the jurisdiction of any particular State or district, shall be in the district where the offender is found, or into which he is first brought. (R. S. sec. 730; J. C. sec. 41; Act March 3, 1911, c. 231, sec. 41, 36 Stat. 1100.)

(c) Offenses begun in one district and completed in another.—When any offense against the United States is begun in one judicial district and completed in another, it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried, determined, and punished in either district, in the same manner as if it had been actually and wholly committed therein. (R. S. sec. 731; J. C. sec. 42; Act March 3, 1911, c. 231, sec. 48, 36 Stat. 1100.)

(d) Suits for penalties and forfeitures, where brought. —All pecuniary penalties and forfeitures may be sued for and recovered either in the district where they accrue or in the district where the offender is found. (R. S. sec. 732; J. C. sec. 43; Act March 3, 1911, c. 231, sec. 43, 36 Stat. 1100.)

(e) Suits for internal-revenue taxes, where brought.— Taxes accruing under any law providing internal revenue may be sued for and recovered either in the district where the liability for such tax occurs or in the district

where the delinquent resides. (R. S. sec. 733; J. C. sec. 44; Act March 3, 1911, c. 231, sec. 44, 36 Stat. 1100.)

(f) Seizures, where cognizable.—Proceedings on seizure made on the high seas, for forfeiture under any law of the United States, may be prosecuted in any district into which the property so seized is brought and proceedings instituted. Proceedings on such seizure made within any district shall be prosecuted in the district where the seizure is made, except in cases where it is otherwise provided. (R. S. sec. 734; J. C. sec. 45; Act March 3, 1911, c. 231, sec. 45, 36 Stat. 1100.)

(g) Capture of insurrectionary property, where cognizable.—Proceedings for the condemnation of any property captured, whether on the high seas or elsewhere out of the limits of any judicial district, or within any district, on account of its being purchased or acquired, sold or given, with intent to use or employ the same, or to suffer it to be used or employed, in aiding, abetting, or promoting any insurrection against the Government of the United States, or knowingly so used or employed by the owner thereof, or with his consent, may be prosecuted in any district where the same may be seized, or into which it may be taken and proceedings first instituted. (R. S. sec. 735; J. C. sec. 46; Act March 3, 1911, c. 231, sec. 46, 36 Stat. 1100.)

(h) Certain seizures cognizable in any district into which the property is taken.—Proceedings on seizures for forfeiture of any vessel or cargo entering any port of entry which has been closed by the President in pursuance of law, or of goods and chattels coming from a State or section declared by proclamation of the President to be in insurrection into other parts of the United States, or of any vessel or vehicle conveying such property, or conveying persons to or from such State or section, or of any vessel belonging, in whole or in part, to any inhabitant of such State or section, may be prosecuted in any district into which the property so seized may be taken and proceedings instituted; and the district court thereof shall have as full jurisdiction over such proceedings as if the seizure was made in that district.

(R. S. sec. 564; J. C. sec. 47; Act March 3, 1911, c. 231, sec. 47, 36 Stat. 1100.)

Sec. 415zz. Carriers—Indictment for Falsifying Accounts of Interstate Carrier.

An indictment under Interstate Commerce Act of Feb. 4, 1887, Compiled Statutes, 8592, for falsifying the records of an interstate carrier need not charge that such records were records prescribed by the Interstate Commerce Commission, Kennedy vs. U. S., 275 F. 183.

CHAPTER XXIV.

FORM OF INDICTMENT.

Form or Indictment under Section 225, old Sectio 4046, etc., for embezzlement:

"The United States of America.

"At a District Court of the United States of America, for the District of Massachusetts, begun and holden at Boston, within and for said district, on the first Tuesday of December in the year of our Lord one thousand nine hundred and nine.

"First Count. The jurors for the United States of America, within and for the District of Massachusetts, upon their oath, present that Frank H. Mason, of Boston, in said district, during all of the year nineteen hundred and eight, was, and ever since then has been, an officer of the United States, to wit, clerk of the District Court of the United States for the District of Massachusetts, and, on the first day of February, in the year nineteen hundred and nine, had in his possession and under his control, to wit, at Boston aforesaid, certain money of the United States, a particular description whereof is to said grand jurors unknown, to the amount and value of three hundred and eighty-seven dollars, which during said year nineteen hundred and eight had come into his possession and under his control in the execution of his office as such officer and clerk, and under authority and claim of authority as such officer and clerk, and which he should, on said first day of February, in the year nineteen hundred and nine, have accounted for and paid to the United States at Boston aforesaid in the manner provided by law; and that said Frank H. Mason, on said first day of February, in the year nineteen hundred and nine, at Boston aforesaid, the same money unlawfully and feloniously did embezzle.

"Second Count. And the jurors aforesaid, on their oath aforesaid, do further present, that said Frank H. Mason during all of the year nineteen hundred and eight was, and ever since has been, an officer of the United States, to wit, clerk of the District Court of the United States for the district of Massachusetts, and on said first day of February, in the year nineteen hundred and nine, had in his possession and under his control, to wit, at Boston aforesaid, certain public moneys of the United States, a particular description whereof is to said grand jurors unknown, to wit, moneys to the amount and of the value of three hundred and eighty-seven dollars, which during said year nineteen hundred and eight had come into his possession and under his control in the execution of his office as such officer, and under authority and claim of authority as such officer, and were a portion of a surplus of fees and emoluments of his said office over and above the compensation and allowances authorized by law to be

retained by him for said year nineteen hundred and eight, which said public moneys said Frank H. Mason, on said first day of February, in the year nineteen hundred and nine, as such officer was charged, by certain acts of Congress, to wit, sections 823, 828, and 844, of the Revised Statutes of the United States, and the Act approved June 28, 1902, 32 Statutes at Large, chapter 1301, and by divers other Acts of Congress, safely to keep; that said Frank H. Mason, on said first day of February, in the year nineteen hundred and nine, at Boston aforesaid, the same public moneys unlawfully did fail safely to keep as required by said Acts of Congress, and, on the contrary, the same then and there unlawfully did convert to his own use, and that thereby said Frank H. Mason then and there was guilty of embezzlement of said public moneys so converted."

For Loss of Life by Misconduct of Officers, Owners, Charterers, Inspectors, Etc., of Vessels, Under Section 282.

(Approved in U. S. vs. Van Schaick, 134 Federal, 594.)

Indictment No. 1 charges that Van Schaick was—

Guilty of misconduct, negligence and inattention to duty on such vessel as such master and captain, in that he then and there unlawfully had and kept on said vessel, among other life preserves, adjustable to the bodies of human beings, which had been place thereon for the use of the passengers and other persons on board of the said vessel in case of emergency, and intended for such use, divers, to wit, nine hundred and upwards, unsuitable, inefficient, and useless life preserves; that is to say, in the respect that, according to the laws relating thereto, and the regulations thereunder, the said life preserves on said vessel were required to be in good order and accessible for immediate use, adjustable to the bodies of passengers, and made of good sound cork blocks, or other suitable material, with belts and shoulder-straps properly attached in the manner prescribed by the laws of Congress relating thereto and the rules and regulations thereunder as aforesaid, and that every such life preserver should contain at least six pounds of good cork, which should have bouyancy of at least four pounds to each pound of cork; but in truth and in fact, large numbers of the same, to the amount of nine hundred and upwards, as aforesaid, through the unlawful misconduct,

negligence, and inattention to his duties by the said master and captain as aforesaid were unsafe, unsuitable, and unservicable, so that, at the times aforesaid, while the said William H. Van Schaick was master and captain as aforesaid, of the said steamboat, the said life preservrs, in large numbers, to wit, nine hundred of the same and upwards, were utterly useless for the protection and saving of human life, in that, in many instances, the covers thereof were rotten, and not of sufficient strength and soundness to make them impervious to water, and the shoulder-straps and bands of the same were so decayed that it was impossible to securely fasten the said life preserves to the human body; and the said life preservers did not have the buoyancy required by law; and the unsuitability and the inefficiency and uselessness of the said life preservers for the purpose which they were intended to serve should have been known to the said William H. Van Schaick, and he might, by the exercise of ordinary observation and inquiry, have ascertained the same, and should so have ascertained before the said vessel started on the excursion hereinafter mentioned; and which said unsuitable and inefficient appliances, he, the said William H. Van Schaick, notwithstanding the premises, unlawfully caused, suffered, and permitted to be and remain on said vessel, and he was guilty of misconduct, negligence and inattention to his duties upon said vessel, in that he permitted the said vessel to go, and took the said vessel, on said excursion, with the said unsuitable and inefficient life preservers on board, and caused, suffered, and permitted the same to be tendered and held out for the use of the passengers and other persons on board of said steamboat, at the time of her destruction by fire as hereinafter mentioned.

For Conspiracy to Violate the Lottery Statute.

(Champion vs. Ames, 47 Law Ed., 496.)

The indictment charged, in its first count, that on or about the 1st day of February, A. D. 1899, in Dallas County Texas, "C. F. Champion, alias W. W. Ogden, W. F. Champion, and Charles B. Park, did then and there

unlawfully, knowingly, and feloniously conspire together to commit an offense against the United States, to wit, for the purpose of disposing of the same, to cause to be carried from one state to another in the United States, to wit, from Dallas, in the State of Texas, to Fresno, in the State of California, certain papers, certificates, and instrument purporting to be and representing tickets, as they then and there well knew, chances, shares, and interests in and dependent upon the event of a lottery, offering prizes dependent upon lot and chance, that is to say, caused to be carried, as aforesaid, for the purpose of disposing of the same, papers, certificates, or instruments purporting to be tickets to represent the chances, shares, and interests in the prizes which by lot and chance might be awarded to persons, to these grand jurors unknown, who might purchase said papers, certificates, and instruments, representing and purporting to be tickets, as aforesaid, with the numbers thereon shown and indicated and printed, which by lot and chance should on a certain day, draw a prize or prizes at the purported lottery or chance company, to wit, at the purported monthly drawing of the so-called Pan-American Lottery Company, which purported to draw monthly at Asuncion, Paraguay, which said Pan-American Lottery Company purported to be an enterprise offering prizes dependent upon lot and chance, the specified method of such drawing being unknown to the grand jurors, but which said papers, certificates, and instruments purporting to be and representing tickets upon their face purporting to be entitled to participation in the drawing of a certain capital prize amounting to the sum of $32,000, and which said drawings for said capital prize, or the part or parts thereof allotted or to be allotted in conformity with the scheme of lot and chance, were to take place monthly, the manner and form of which is to the grand jurors unknown, but that said drawing and lot and chance by which said prize or prizes were to be drawn was purported to be under the supervision and direction of Enrigue Montes de Leon, manager, and Bernardo Lopez, intervener, and which said papers, certificates, and instruments purporting to be tickets of the said Pan-American Lot-

tery Company were so divided as to be called whole, half, quarter, and eighth tickets, the whole tickets to be sold for the sum of $2, the half tickets for the sum of $1, the quarter tickets for the sum of 50 cents, and the eighth tickets for the sum of 25 cents."

The indictment further charged that "in pursuance to said conspiracy, and to effect the object thereof, to wit, for the purpose of causing to be carried from one state to another in the United States, to wit, from the State of Texas to the State of California aforesaid, for the purpose of disposing of the same, papers, certificates, and instruments purporting to be and representing tickets, chances, and shares and interests in and dependent upon lot and chance, as aforesaid, as they then and there well knew, said W. F. Champion and Charles B. Pard did then and there, to wit, on or about the last day aforesaid, in the Dallas Division of the Northern District of Texas aforesaid, unlawfully, knowingly, and feloniously, for the purpose of being carried from one State to another in the United States, to wit, from Dallas, in the State of Texas, to Fresno, in the State of California, for the purpose of disposing of the same, deposit and cause to be deposited and shipped and carried with and by the Wells-Fargo Express Company, a corporation engaged in carrying freight and packages from station to station along and over lines of railway, and from Dallas, Texas, to Fresno, California, for hire, one certain box or package containing, among other things, two whole tickets or papers or certificates of said purported Pan-American Lottery Company, one of which said whole tickets is hereto annexed by the grand jury to this indictment and made a part hereof."

Under Section 5508, Conspiracy to Endanger, Etc., Citizens in the Exercise of Civil Rights.

(157 Federal, page 722.)

Omitting formal parts, the eleventh count of the indictment is as follows:

That on the 1st day of June, 1906, the defendants (naming them) did unlawfully and feloniously conspire,

combine, confederate, and agree together to injure, oppress, threaten and intimidate a certain citizen of the United States, to wit, John Reed, in the free exercise and enjoyment of rights and privileges secured to him by the Constitution and laws of the United States, to wit, the right to the free exercise and enjoyment of freedom from involuntary servitude and slavery; that in pursuance of said unlawful and felonious conspiracy, combination, confederation, and agreement, and to effect the object thereof, the said defendants (naming them) did then and there unlawfully and feloniously arrest, hold, imprison, and guard him, the said John Reed, and then and there unlawfully and feloniously compel by threats and intimidation him, the said John Reed, to then and there work and labor involuntarily and against his will for said defendants (naming them), contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Under Peonage Statute.

(United States vs. McClellan, 127 Federal, page 971.)

The grand jurors of the United States, selected, chosen, and sworn in and for the Eastern Division of the Southern District of Georgia, upon their oaths present: That heretofore, to wit, on the eleventh day of August in the year of our Lord one thousand nine hundred and two, one Thomas J. McClellan, late of said division and district, within said division and district, and within the jurisdiction of this Court, did then and there knowingly and unlawfully cause one John Wesley Boney to be held to a condition of peonage; for that the said Thomas J. McClellan in the county of Ware, in the State of Georgia, did forcibly seize the body of the said John Wesley Boney, without his consent and without authority of law, and did then and there sell the body of the said John Wesley Boney, without his consent and without authority of law, to Edward J. McRee, William McRee, and Frank I. McRee, then and there causing him, th said John Wesley Boney, to be held by the said Edward J. McRee, William McRee, and Frank I. McRee to a

condition of peonage; for that the said Edward J. McRee, William McRee and Frank I. McRee then and there having obtained the custody of the body of the said John Wesley Boney, did then and there, by force and against the will of him, the said John Wesley Boney, and without authority of law, transport the body of the said John Wesley Boney to the county of Lowndes, in said State, and did then and there hold the said John Wesley Boney, against his will, to labor for them, to work out a debt which they, the said Edward J. McRee, William McRee, and Frank I. McRee, claimed to be due them by the said John Wesley Boney, and to labor under the terms of an alleged cantract between them, the said Edward J. McRee, William McRee, and Frank I. McRee, and the said John Wesley Boney; he, the said Thomas J. McClellan, then and there well knowing that the said John Wesley Boney would be so held as aforesaid by the said Edward J. McRee, William McRee, and Frank I. McRee; whereby, in the manner aforesaid, the said Thomas J. McClellan did cause the said John Wesley Boney to be held to a condition of peonage, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States."

For Returning One to Peonage.

(Page 727, 49 Law Ed.; approved in Clyatt vs. U. S., by the Supreme Court, 197 U. S., 207.)

The grand jurors of the United States of America impaneled and sworn within and for the district aforesaid, on their oaths present that one Samuel M. Clyatt, heretofore, to wit: on the eleventh day of February, in the year of our Lord one thousand nine hundred and one, in the county of Levy, State of Florida, within the district aforesaid, and within the jurisdiction of this court, did then and there unlawfully and knowingly return one Will Gordon and one Mose Ridley to a condition of peonage, by forcibly, and against the will of them, the said Will Gordon and the said Mose Ridley, returning them, the said Will Gordon and Mose Ridley, to work to and for Samuel M. Clyatt and H. H. Tift, co-partners

doing business under the firm name and style of Clyatt & Tift, to be held by them, the said Clyatt & Tift, to work out a debt claimed to be due to them, the said Clyatt & Tift, by the said Will Gordon and Mose Ridley; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States."

For Polygamy, Under Section 313, Approved by Supreme Court in Cannon vs. United States, 116 U. S., 55, 29 Law Ed., 563.

The grand jury of the United States of America, within and for the district aforesaid, in the territory aforesaid, being duly empaneled and sworn, on their oaths do find and present: that Angus M. Cannon, late of said district, in the territory aforesaid, to wit: on the first day of June, in the year of our Lord 1882, and on divers other days and continuously between the said first day of June, A. D. 1882, and the first day of February, A. D. 1885, at the County of Salt Lake and Territory of Utah, did unlawfully cohabit with more than one woman, to wit: one Amanda Cannon and one Clara C. Mason, sometimes known as Clara C. Cannon, against the form of the statute of the said United States in such case made and provided, and against the peace and dignity of the same.

Under Section 3242 as Amended Illegal Retail Liquor Dealer, Approved in Ledbetter vs. U. S., 170 U. S., 608, 42 Law Ed., 1162.

That Lewis Ledbetter, late of said district, heretofore, to wit, on the 10th day of April, A. D. 1896, in the County of Appanoose, and town of Dallas, in the Southern District of Iowa, and within the jurisdiction of this Court, did then and there wilfuly, unlawfully, and feloniously carry on the business of a retail liquor dealer without first having paid the special tax therefor, as required by law, contrary to the statute in such case made and provided, and against the peace and dignity of the United States of America.

For Sale of Oleomargarine Not Properly Marked and Branded; Approved in Ex Parte Kollock, 165 U. S., 526, Law Ed., 814.

The first indictment against Kollock set forth that pursuant to the authority conferred on the Commissioner of Internal Revenue by the 6th section of the Act of August 2, 1886, "the said commissioner, with the approval of the Secretary of the Treasury, did, on the twelfth day of March, in the year of our Lord one thousand eight hundred and ninety-one, proscribed certain regulations, in substance and to the effect, among other things, that the wooden or paper packages in which retail dealers in oleomargarine were required by said Act of Congress to pack the oleomargarine sold by them, such retail dealers, should have printed or branded upon them in the case of each sale, the name and address of the retail dealer making the same; likewise, the words 'pound' and 'oleomargarine' in letters not less than one-fourth of one inch square, and likewise a figure or figures of the same size, indicating (in connection with the said words 'pound' and 'oleomargarine'), the quantity of oleomargarine so sold, written, printed, or branded on such wooden or paper packages and placed before the said word 'pound,' and that the said words 'oleomargarine' and 'pound' so required to be printed or branded on such packages as aforesaid in the case of each sale as aforesaid, and the said figure or figures so indicative of quantity as aforesaid in the case of each sale as aforesaid, and so required to be written, printed, or branded on such packages as aforesaid should be so placed thereon as to be plainly visible to the purchaser at the time of the delivery to him, such purchaser, by retail dealers of the oleomargarine sold to such purchaser by them, such retail dealers."

And thus continued:

"That on the fourteenth day of January, in the year of our Lord one thousand eight hundred and ninety-six, and at the District aforesaid, one Israel C. Kollock, late of the District aforesaid, being then and there engaged in business as a retail dealer in oleomargarine, at a store of him, the said Israel C. Kollock, situated on Fourth Street, southeast, in the city of Washington, in the said district, did then

and there, and at said store knowingly sell and leliver to a certain Florence Davis one-half of one pound of olemargarine as and for butter, which said one-half of one pound of olemargarine was not then and there and at the time of such sale and delivery thereof, packed in a new wooden or paper package having then and there printed or branded thereon the name and address of him, the said Israel C. Kollock, in letters one-fourth of one inch square, and the words 'pound' and 'olemargarine' in letters of like size, and a figure or figures of like size written, printed, or branded thereon indicative (in connection with the said words 'pound' and 'oleomargarine') of the quantiity of oleomargarine so sold and delivered to her, the said Florence Davis, as aforesaid, and which said one-half of one pound of oleomargarine at the time it was so knowingly sold and delivered to her, the said Florence Davis, as aforesaid, by him, the said Israel C. Kollock, as aforesaid, was then and there and at the time of the sale and delivery thereof as aforesaid packed in a paper package upon which there had not been printed, branded, or written any or either of the marks and characters aforesaid so required by the said regulations to be placed thereon as aforesaid as he, the said Israel C. Kollock, then and there well knew, against the form of the statute, etc., etc."

For Conspiracy to Violate Section 5358, to Plunder or Steal from Vessel, (7 Federal, 716).

The indictment alleges that the defendants—

"Did conspire, combine, confederate, and agree together between and among themselves, to plunder certain goods and merchandise, a more particular description of which said goods and merchandise being to the grand jurors aforesaid unknown, then and there belonging to the steamboat City of Vicksburg, the said steamboat being then and there wrecked and in distress on the waters of the Mississippi River, within the admiralty and maritime jurisdiction of the United States, while engaged in commerce and navigation in said river, to wit, between Vicksburg, in the State of Mississippi, and St. Louis, in the State of Missouri; and that, to effect the object of the said conspiracy the said Hercules Sanche then and there furnished and loaned to the said John Woods and Elias Boatright a certain skiff to be used by them, the said Woods and the said Boatright, in plundering said goods and merchandise from the said steamboat."

Under Section 5438, (Bridgeman vs. United States, 140 Federal, 578).

The twenty-first count is in these words:

"And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge and present: That one Morris L.

Bridgeman, late of the State and district of Montana, before and on the 5th day of October, A. D. 1901, and thenceforth until and on and after the 31st day of January, A. D. 1902, was then and there the United States Indian Agent at and of the Fort Belknap Indian reservation, in the State and district of Montana. That on the said 31st day of January, A. D. 1902, in the State and district of Montana, the said Morris L. Bridgeman, United States Indian Agent as aforesaid, did then and there knowingly, wilfully, and unlawfully make and cause to be made, and present and cause to be presented for approval, to the Commissioner of Indian Affairs of the United States, being then and there an officer of the civil service of the United States, a false, fictitious, and fraudulent claim upon and against the government of the United States for the sum of two hundred and eighty-five dollars and eighty-eight cents; that is to say, a certain claim purporting that the said Morris L. Bridgeman, as United States Indian Agent as aforesaid, had then and there expended and paid the said sum of two hundred and eighty-five dollars and eighty-eight cents to two certain Indians, to wit, Turns Around and Bracelet, in payment of fourteen thousand two hundred and ninety-four feet of rough lumber, and that the said aggregate sum of two hundred and eighty-five dollars and eighty-eight cents had been so expended and paid by said Morris L. Bridgeman, as United States Indian Agent, as aforesaid by paying to said Indian, Turns Around, the sum of eighty-five dollars and eighty-eight cents for four thousand two hundred and ninety-four feet of rough lumber, and by paying to said Indian, Bracelet, the sum of two hundred dollars for ten thousand feet of rough lumber. That the said claim was then and there, to wit, at the time of the making and presenting thereof as aforesaid, false, fictitious, and fraudulent in this: that the said Morris L. Bridgeman, United States Indian Agent, as aforesaid, had not paid the said sum of two hundred and eighty-five dollars and eighty-eight cents to said Indians, Turns Around and Bracelet, or either of them, in payment of fourteen thousand two hundred and ninety-four feet of rough lumber, and had not paid to said Indian, Turns Around, the sum of eighty-five dollars and eighty-eight cents for four thousand two hundred and ninety-four feet of rough lumber, and had not paid to said Indian; Bracelet, the sum of two hundred dollars for ten thousand feet of rough lumber; and that the said Morris L. Bridgeman, United States Indian Agent, as aforesaid, was not then and there entitled to have the said claim, so made and presented by him, as aforesaid, approved, he, the said Morris L. Bridgeman, United States Indian Agent, as aforesaid, at the time of so making and presenting the said claim, then and there well knowing the same to be false, fictitious, and fraudulent. And so the grand jurors aforesaid, upon their oaths aforesaid, do say that the said Morris L. Bridgeman, United States Indian Agent, as aforesaid, in the State and district of Montana, and in manner and form aforesaid, did, on the thirty-first day of January, A. D. 1902, make and cause to be made, and present and cause to be presented,

for approval, to the said Commissioner of Indian Affairs of the United States, a claim upon and against the Government of the United States, which said claim, he, the said Morris L. Bridgeman, then and there well knew to be false, fictitious and fraudulent, contrary to the form of the statute in such case made and provided, and against the peace and dginity of the United States of America."

Under Section 39, (Vernon vs. United States, 146 Federal, 122).

"That J. B. Vernon, whose Christian name is to the grand jurors aforesaid unknown, on the 1st day of August, in the year 1902, in the Northern Division of the Eastern Judicial District of Missouri, and within the jurisdiction of this court, did unlawfully, feloniously, and corruptly offer and give a large sum (the exact amount thereof being to the grand jurors aforesaid unknown) of the lawful money of the United States to one Charles L. Blanton, who was then and there, as he the said J. B. Vernon then and there well knew, a person acting for and on behalf of the United States in an official function under and by the authority of a department of the Government, to wit, the Treasury Department of the United States, with the intent then and there of him, the said J. B. Vernon, to unlawfully, feloniously and corruptly influence the action of the said Charles L. Blanton on a matter then and there pending before him in said official function as aforesaid, that is to say, in making examination of and reporting and recommending to the Secretary of the Treasury a site for a United States post-office at Kirksville, Missouri, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States."

For Larceny of Personal Property of United States, Under Section 46, (United States vs. Jones, 69 Federal, 973).

The first count of the indictment charged that the defendant, on the fifteenth day of June, 1893, and before the finding of this indictment,—

"Did unlawfully and feloniously take, steal and carry away from the United States Mint at Carson City, State and District of Nevada, personal property, to wit, gold metal, which said personal property belonged to the United States of America, and which said personal property was of the value of $23,000; the said unlawful and felonious taking and carrying away being with the intent, then and there, to steal the said property, and defraud the United States of America thereof," etc.

Under Section 79, (Green vs. United States, 150 Federal, 561).

"He, the said John Francis Green, then and there being at the time and place of said registration as aforesaid, came in person before Frank Asche Faron, then and there and before that time being a deputy registrar of voters at said registration for said election aforesaid, and made application and made and subscribed an affidavit for the purpose of causing himself to be registered as a voter at said registration, for said election; and the said John Francis Green so making the said application to be registered as said registraton, at and upon the making of said affidavit, it became and was then and there material to know whether the said John Francis Green had been naturalized as a citizen of the United States of America; and, thereupon, the said John Francis Green then and therewas in due manner sworn by the said Frank Asche Faron, and made oath before him then and there of and concerning the truth of the matter contained in the said affidavit; he, the said Frank Asche Faron, then and there being said deputy registrar of voters as aforesaid, and having then and there competent authority to administr the said oath to the said John Francis Green in that behalf; and the said John Francis Green so being sworn as aforesaid, then and there, in and by his said affidavit, wilfully, corruptly, and falsely, and contrary to his said oath, did depose and swear, as in the said affidavit set forth, that he was naturalized in the State of California on the 8th day of November, in the year 1900, whereas, in truth and fact, as the said John Francis Green well knew at the time he was so sworn and made affidavit, as aforesaid, the said John Francis Green at the time he was so sworn and made affidavit, as aforesaid, had never been naturalized as a citizen of the United States of America, and was an alien."

Under Section 126, Subornation of Perjury, (Boren vs. United States, 144 Federal, 801).

The first count charges that the accused, "on the fourteenth day of November, in the year of our Lord one thousand nine hundred and four; at Redding, in the county of Shasta, State and Northern District of California, then and there being, did then and there unlawfully, wilfully, knowingly, and feloniously procure, instigate, and suborn one John M. Layton to appear and take an oath before one Frank M. Swasey that a certain declaration and affidavit by him, John M. Layton, subscribed was true, said declaration and affidavit being then and there a matter in which the laws of the United States authorize an oath to be administered—that is to say,

a sworn statement,—for the purchase of timber and stone lands described therein as the northwest quarter of Section eight, twonship thirty-two north, of range eight west, in the district of lands subject to sale at Redding, California, and said Frank M. Swasey was then and there an officer competent to administer said oath—that is to say, the register of the United States land office at Redding—and that, in accordance with said procurement, instigation, and subornation, the said Frank M. Layton did appear before the said Frank M. Swasey and take an oath that the said Harry W. Miller, Frank E. Kincart, and William H. Boren, and each of them, did then and there unlawfully, wilfully, knowingly, and feloniously procure, instigate, and suborn said John M. Layton wilfully and contrary to his oath to state and subscribe in said declaration and affidavit a certain false and untrue material statement that he, John M. Layton, had personally examined the lands mentioned in said declaration and affidavit, and that he did not apply to purchase the land above described on speculation, but in good faith to appropriate it to his own exclusive use and benefit, and that he had not directly or indirectly made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title he might acquire from the United States may inure in whole or in part to the benefit of any person except himself, which statement he, John M. Layton, at the time of stating and subscribing the same, did not believe to be true, and knew to be untrue, in this: that he, John M. Layton had not personally examined said lands, and had theretofore entered into a contract for the sale of said land to the Washington Mill & Lumber Company. And that the said Harry W. Miller, Frank E. Kincart, and William H. Boren, and each of them, at the time of the aforesaid procurement, instigation, and subornation, well knew that the aforesaid statement was a false and untrue material statement, and well knew that said John M. Layton did not believe the same to be true.''

Under Section Clause of Section 5395, False Oath in Naturalization, (Moore v. United States 144 Federal, 962).

"That George K. Moore, to wit, on the 10th day of November, in the year of our Lord nineteen hundred and two, in the said district and within the jurisdiction of said court, in a proceeding for naturalization of one Setrack G. Moomjian,, then and there in the Common Pleas Division of the Supreme Court of the State of Rhode Island, in and for the county of Providence pending, knowingly and falsely before Alfred O. Makee, a notary public in and for the County of Providence, in said State of Rhode Island, duly qualified and authorized to administer oaths to persons making affidavits in proceedings for naturalization, did make a false affidavit touching matters in issue, and material in said proceedings for the naturalization of said Setrak G. Moomjian; in this, to wit, that he, the said George K. Moore, in said affidavit falsely swore that he, said Setrak G. Moomj had resided in Providence, in the said State of Rhode Island, for seven years last past, whereas in truth and in fact, the said Setrak G. Moomjian was at the date aforesaid, to wit, on the 10th day of November, A. D. 1902, a resident of the commonwealth of Massachusetts, to wit, the city of Worcester, and was not a resident of the State of Rhode Island, nor had he been such resident for a period of more than one year next before the 10th day of November, A. D. 1902. And the grand jurors aforesaid, on their oath aforesaid, further present that said affidavit so as aforesaid made by the said G[illegible] Moore was false and untrue, and was by the said George K. Moore known to be so false and untrue at the time of the making thereof, and that the said George K. Moore therein swore falsely to the residence of said Setrak G. Moomjian, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States."

For Murder on the High Seas, (St. Clair vs. United States, Book 38 Law Ed., 937).

The indictment charged that Thomas St. Clair, Herman Sparf, and Hans Hansen, mariners, late of that district, on the 13th day of January, 1893, with force and arms, on the high seas, and within the jurisdiction of the Court, and within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular State of the United States, in and on board of an American vessel, the bark Hesper, belonging to a citizen or citizens of the United States, whose name or names are or were to the grand jurors unknown, did, with

a certain instrument or weapon (the character and name of which were to the grand jury unknown) then and there held in the hands of one of the defendants (but of which particular one was to the grand jurors unknown) "then and there piratically, wilfully, and feloniously, and with malice aforethought, strike and beat the said Maurice Fitzgerald, then and there giving to the said Maurice Fitzgerald, several grievous, dangerous, and mortal wounds, and did then and there, to wit, at the time and place last above mentioned, him the said Maurice Fitzgerald cast and throw from and out of the said vessel into the sea, and plunge, sink, and drown him the said Maurice Fitzgerald in the sea aforesaid; of which said mortal wounds, casting, throwing, plunging, sinking, and drowning the said Maurice Fitzgerald in and upon the high seas aforesaid, out of the jurisdiction of any particular State of the United States of America, then and there instantly died.

"And the grand jurors aforesaid, upon their oath aforesaid, do say, that by reason of the casting and throwing the said Maurice Fitzgerald in the sea as aforesaid, they cannot describe the said mortal wounds or the character and nature of said weapon or instrument. And so the grand jurors aforesaid, upon their oaths aforesaid, do say that the said Thomas St. Clair, Herman Sparf, and Hans Hansen, him the said Maurice Fitzgerald at the time and place as aforesaid, upon the high seas as aforesaid, out of the jurisdiction of any particular State of the United States of America, in and upon the said American vessel, within the jurisdiction of the United States of America and of the admiralty and maritime jurisdiction of the said United States of America and of this court, in the manner and form aforesaid, piratically, wilfully, feloniously, and with malice aforethought, did kill and murder, against the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America, in such case made and provided."

For Falsely Certifying Checks Under Section 5208.
(Approved in Potter vs. U. S., 155 U. S., 444; 39 Law Ed., 215.)

The count, after stating time and venue, and that the defendant was president of the Maverick National Bank, and authorized to lawfully certify checks, charged.

"That said Potter as such president as aforesaid, did then and there, to wit, on said twenty-third day of July, at Boston, aforesaid,

within said district, and within the jurisdiction of this court, unlawfully, knowingly, and wilfully certify a certain check which said check was then and there drawn upon said association for the amount of twenty-four hundred and fifty dollars by certain persons, to wit, Irving A. Evans, Austin B. Tobey, and William S. Bliss, copartners, then and there doing business under the firm name and style of Irving A. Evans and Company, and which said check was then and there of the tenor following—that is to say:

'Boston, July 23, 1891. $2450. No. 54493.

Maverick National Bank.

Pay to the order of Hayward & Townsend, $2450, twenty-four hundred and fifty dollars.

Irving A. Evans & Co.

by then and there writing, placing and putting in and upon and across the face of said check the words and figures following—that is to say:

'Maverick National Bank.

Certified July 23, 1891.

Pay only through clearing house.

A. P. Potter, *P.*'

(meaning said Asa P. Potter, such president as aforesaid.)

'————— —————, *Paying Teller.*'

that the said persons, as copartners under the firm name and style as aforesaid, by whom said check was then and there drawn as aforesaid, did not then and there, to wit, at the time said check was so certified by said Potter as aforesaid, have on deposit with said association an amount of money then and there equal to the amount then and there specified in said check, to wit, the amount of twenty-four hundred and fifty dollars in money, as he, the said Potter, then and there well knew, against the peace and dignity of the United States and contrary to the form of the statute in such case made and provided.

Under Section 5209, for Embezzlement by Bank Officers.

(Approved in United States vs. Northway, 120 U. S., 327; 30 Law Ed., page 665.)

The count charges that the defendant, with proper allegations of time and place, "was then and there president and agent of a certain national banking association; to wit, 'The Second National Bank of Jefferson,' theretofore duly organized and established and then existing and doing business in the Village of Jefferson and County of Ashtabula, in the division and district aforesaid, under the laws of the United States; and the said Stephen A. Northway, as such president and agent, then and there had and received in and into his possession certain of the moneys and funds of said banking association of the amount and value of twelve thousand dollars, to wit, then and there being the property of said banking association, and then and there being in the possession of said Stephen A. Northway, as such president and agent aforesaid, he, the said Stephen A. Northway, then and there wrongfully unlawfully, and with intent to injure and defraud said banking association, did embezzel and convert to his, said Stephen A. Northway's own use," etc.

Under Section 32 for Falsely Pretending to be an United States Officer.

.....did then and there unlawfully, fraudulently, and falsely assume and pretend to be an officer, acting under the authority of the United States, to wit, a Deputy United States Marshal, and did then and there take upon himself to act as such Deputy United States Marshal, and did then and there, in such pretended character, obtain from.....five dollars, lawful current money of the United States of America, and of the value of five dollars, with the intention of him, the said.....to defraud the said.....; and the said five dollars was obtained from the said.....by the said.....pretending to be an officer of the United States, as aforesaid, and acting under the authority of the United States, with the intention of him the said....., so pretending to be an officer as aforesaid, to defraud the said.....of the said five dollars, and the value thereof; all of which was against the peace, etc.

General Form for Beginning and Ending of Indictment

At a regular term of the United States District Court for the Northern District of Texas, begun and holden at Dallas, Texas, on the second Monday of January, A. D., 1911, which was the eleventh day of said month, the grand jurors wherefor, good and lawful men, duly selected, empaneled, sworn, and charged to inquire into and a true presentment make of all crimes and offenses cognizable under the authority of the laws of the United States of America, committed within the Northern District of Texas, upon their oaths present into open Court that heretofore, to wit, etc.,.....all of which was contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

.....
Foreman of the Grand Jury.

.....
District Attorney.

Under Section 37 of the New Code for Conspiracy Against the United States.

.....that heretofore, to wit, on the .....day of ....., A. D. 1910, one John Doe and one Richard Roe, did unlawfully, fraudulently, and feloniously conspire together to commit an offense against the United States of America, to wit, to transport from one State to another State in the United States, certain obscene, lewd, and lascivious matter; and he, the said John Doe, and he, the said Richard Roe, in pursuance to said conspiracy, and to effect the object thereof, did, on the .....day of....., transport, carry, and send from Dallas, in the State of Texas, to Little Rock, in the State of Arkansas, certain obscene, lewd, and lascivious pamphlets which said obscene, lewd, and lascivious pamphlets were too lewd, obscene, and lascivious to be here set out and made a part of the records of this honorable Court, but which said pamphlets began with the words.....and ended with the words.....; contrary to the form of, etc.

Under Section 211 of the New Code, Old Section 3893, for Mailing Obscene Matter. . .

.....that heretofore, to wit, on the.....day of ....., John Doe did unlawfully, knowingly, and wilfully, deposit and cause to be deposited in the United States Post-office at Dallas, Texas, for mailing and delivery, certain non-mailable matter; that is to say, he, the said John Doe, on the date aforesaid, and within the venue aforesaid, did unlawfully, knowingly, and wilfully deposit the cause to be deposited, for mailing and delivery in the post-office of the United States at Dallas, Texas, a certain envelope, which said envelope was duly stamped with a two-cent United States postage stamp, and which said envelope was addressed "Mrs. Richard Roe, St. Louis, Missouri," and which said envelope, so stamped and so addressed, and so deposited and caused to be deposited, then and there contained one sheet of paper, upon which said sheet of paper there was writing, but which said writing is too obscene, lewd, and lascivious to be here set out and made a part of the records of this honorable Court, but which said writing began ....., and ended.....; and the said envelope so deposited and caused to be deposited, and so containing the said sheet of paper, with the writing thereof aforesaid, was by him, the said John Doe, so deposited and caused to be deposited, with full knowledge upon his part of the writing aforesaid upon the said sheet of paper, and the import thereof; all of which was contrary, etc.

Under Section 192 of the New Code, Old Section 5478, for Breaking Into and Entering Post-office.

.....did unlawfully forcibly, and feloniously, break into and enter a certain building used in part as the Post-office of the United States at————, with the intent to commit larceny in that part of said building so used as said United States Post-office at————; contrary, etc.

Under Section 215 of the New Code, old Section 5480, for Use of United States Mails to Promote Fraud.

.....did unlawfully, knowingly, and fraudulently devise a scheme and artifice to defraud, which said scheme and artifice to defraud was to be effected by the use and misuse of the United States Post-office establishment; and in furtherance of said scheme, did deposit and cause to be deposited in the United States mails, for mailing and delivery, divers letters and packets; which said scheme and artifice to defraud was, in substance, as follows, to wit: that the said.....would pretend to be engaged in the legitimate business of a wholesale dealer in produce, able and willing to pay for consignments of produce, and being financially responsible, and that he would make prompt and ready remittance for such consignments of produce as were made to him; that such representations would be made to produce dealers throughout the United States of America who were residents of towns other than that in which the said .....would purport to carry on the said business; that when the said produce dealers residing in towns other than that in which the said.....would purport to carry on said business, would make consignments in answer to said letters, of produce, to the said....., that the said..... would sell the said produce and convert the proceeds thereof to his own use and benefit, and make no remittance for the said produce, or any part thereof, and that the said ..... did not intend to make remittance for the said produce, or any part thereof, or to pay for the same at any time, but, as aforesaid, he would convert the produce and the proceeds to his own use and benefit; and in pursuance of such scheme and artifice, and to effect the object thereof, he, the said ....., on the ..... day of ....., within the jurisdiction of this Court, to wit, within ....., etc., did unlawfully, knowingly, fraudulently, and feloniously deposit and cause to be deposited, for mailing and delivery in the United States Post-office at ....., a certain envelope, duly stamped with two-cent United States postage stamps, and addressed to

....., and which said envelope, so deposited, and so stamped and addressed, contained the following letter, to wit:.....
and the grand jurors aforesaid, upon their oaths aforesaid, represent and show to the Court that the said ..... did not intent to pay the prices for the produce in said letter set forth and promised; that he was not financially responsible as represented in said letter; that he was not a reputable and legitimate produce dealer, as represented in said letter, but intended, as aforesaid, to appropriate the proceeds of the produce shipped to him in response thereto to his own use and benefit, and to not pay for the same, or any part thereof; contrary to the form, etc.

Under Section 206 of the New Code, False Returns to Increase Compensation of Postmaster.

.....one John Doe was postmaster of the United States Post-office at ....., in said county and district, the same being a post-office of the fourth class; and the said ....., so being such postmaster, as aforesaid, on the date aforesaid, and in the county and district aforesaid, did unlawfully, knowingly, and fraudulently, for the purpose of fraudulently increasing his compensation as such postmaster, under the act of Congress, make a certain false return to the Auditor of the Treasury for the Post-office Department of the United States; that is to say, a certain false return of the amount of postage stamps, stamped envelopes, postal-cards, and newspaper and periodical stamps canceled as postages on matter actually mailed at the said post-office, and of postage due stamps canceled in payment of under-charges and unpaid postages upon matter delivered at the said post-office during the quarter ending the ..... day of ....., by which said return the said amount appeared and was alleged to be ..... dollars and ....cents, which said return, at the time it was so made, as aforesaid, was false in this: that the amount of postage stamps, stamped envelopes, postal cards, and newspaper and periodical stamps canceled as postage on matter actually mailed at the said post-office, and of postage due

stamps canceled in payment of undercharges and unpaid postages upon matter delivered at the said post-office during the quarter aforesaid, was not ..... dollars and ..... cents, or any such sum, but was a different and much smaller sum, to wit, ... dollars, as he the said ....., at the time of making the said return, as aforesaid, then and there well knew; all of which was contrary, etc.

Form of Indictment Under Section 125, Old Section 5392, for Perjury.

"The United States of America.

"At a District Court of the United States of America, for the District of Massachusetts, begun and holden at Boston, within and for said district, on the first Tuesday of December in the year of our Lord one thousand nine hundred and nine.

"First Count. The jurors for the United States of America, within and for the District of Massachusetts, upon their oath, present that Frank H. Mason, of Boston, in said district, at the several times of the committing of the several offenses in this indictment hereafter charged, was clerk of the District Court of the United States for the District of Massachusetts, and as such clerk was by law required to make to the Attorney General of the United States, on the first days of January and July, in each year, and in the form prescribed by said Attorney General, a written return for the half year ending on said days respectively, showing, among other things, all the fees and emoluments of his office, of fevery name and character, and all the necessary expense of his office, and to verify such return by his oath; that said Frank H. Mason, on the twenty-fourth day of September, in the year nineteen hundred and eight, at Boston aforesaid, then so being such clerk, came in person before the Honorable Frederic Dodge, then and before that time judge of the District Court of the United States for the District of Massachusetts, and then and there made and described a certain declaration and certificate in writing before said judge, on the occasion of his making his return as aforesaid as such clerk for the half year ending on the thirtieth day of June, in the year 1908, and was, on the day first aforesaid, there in due manner sworn by said judge touching the truth of the matters contained in said return, and took his corporal oath, before said judge, that said written declaration and certificate by him the said Frank H. Mason subscribed was then just and true he the said Frederic Dodge as such judge then and there having competent authority, and being a tribunal and officer having authority, to administer said oath and take said written declaration and certificate; and that said Frank H. Mason then and there falsely, corruptly, and wilfully, and contrary to his said oath, did in and by his said written declaration

and certificate declare and certify certain material matters, among other things, in substance and to the effect that said return was in all respects just and true, according to his best knowledge and belief, and that he had neither received, directly or indirectly, any other money or consideration than therein stated. that the total amount of fees and emoluments received in bankruptcy proceedings was six thousand five hundred and fifteen dollars and eighty-five cents; that the total amount of fees and emoluments, not in bankruptcy proceedings, earned from parties other than the United States, was six hundred and thirty-four dollars and eighty-three cents; and that the balance then due to the United States from him as such clerk was four thousand and nineteen dollars and forty-six cents; whereas in truth and in fact said Frank H. Mason, at the time he took said oath and made and subscribed said written declaration and certificate, had, as he then well knew, received as such clerk, during said half year, fees and emoluments in bankruptcy proceedings a much greater total sum, to wit, the sum of six thousand six hundred and seventy-four dollars and eighty-five cents, and had earned fees and emoluments, not in bankruptcy proceedings, from parties other than the United States, a much greater total sum, to wit, the sum of six hundred and eighty-one dollars and eighty-three cents, and the balance then due to the United States from him as such clerk was a much greater sum, to wit, four thousand two hundred and twenty-five dollars and forty-six cents; and whereas in truth and fact said Frank H. Mason did not then believe it to be true that the total amount of such fees and emoluments so received by him in bankruptcy proceedings was six thousand five hundred and fifteen dollars and eighty-five cents, or that the total amount of fees and emoluments so earned by him, not in bankruptcy proceedings and from parties other than the United States, was six hundred and thirty-four dollars and eighty-three cents, or that such balance then due to the United States was four thousand and nineteen dollars and forty-six cents; and so said Frank H. Mason, at the time and place, and in the manner and form aforesaid, unlawfully did commit wilful and corrupt perjury."

Under Section 125 of the New Code, Old Section 5392, for Perjury.

.....that heretofore, to wit, on the ..... day of ....., in the year ....., there came on to be tried, in the District aforesaid, and in the United States District Court, before the Honorable ....., judge thereof, and a jury duly empaneled and sworn for that purpose, a certain issue duly joined between the said United States of America and one ....., upon a criminal indictment duly returned and then pending in said Court against the said ..... for having unlaw-

fully engaged in the business of a retail liquor dealer without first having paid the special tax thereof, as required by the United States statutes; and at and upon a trial of the said issue in the said Court, before the said judge and jury, to wit, on the ..... day of ..... in the same said year of ....., and within the city and district aforesaid, and State aforesaid, one John Jones appeared and was produced as a witness for and on behalf of the said defendant, the said ....., in the said indictment, and was then and there duly sworn, and took his oath as such witness before the said Court, that the evidence which he, the said John Jones, should give on the said trial should be the truth, the whole truth, and nothing but the truth, the said Court then and there having had competent authority to administer the said oath to the said John Jones on that behalf; and the said John Jones, so being sworn, as aforesaid, in the cause aforesaid, in and by the Court aforesaid, it then and there, upon the said trial of the said issue, became and was a material inquiry whether ..... and whether .....; and the grand jurors upon their oaths aforesaid, that the said John Jones, so being sworn and so having taken his oath as aforesaid, on the said ..... day of ....., in the said year of ....., and within the said county, division, district, and state aforesaid, upon the said trial of the said issue, as aforesaid, wilfully and corruptly, and contrary to his said oath, did swear and depose before the said Court and jury, amongst other things, in substance and to the effect following; that is to say, that ..... and that .....; whereas, in fact it was not, and is not, true, that ..... and that .....; and at the time of so swearing and deposing, the said John Jones did not believe it to be true that ..... and that .....; and the grand jurors aforesaid, upon their oaths aforesaid, do say that the said John Jones, in the manner and form aforesaid, having taken an oath before a competent tribunal aforesaid, in a case wherein a law of the said United States authorized an oath to be administered that he would truly depose and testify, wilfully, and contrary to his said oath, did depose and state material matters

which he did not then believe to be true, and thereby did commit wilful and corrupt perjury; contrary, etc.

For Making and Forging and Counterfeiting National Bank Notes, New Section 149, Old Section 5414.

..... one ....with intent to defraud certain persons to the grand jurors unknown, did unlawfully, feloniously, and fraudulently falsely make, forge, and counterfeit ten notes, in imitation of, and purporting to be, circulating notes of the national bank currency of the United States, to wit, the circulating notes of the ..... banking association, each of which said falsely made, forged, and counterfeited notes was in this tenor, as follows, to wit: (Here set out fully, or as nearly completely as possible); and the said counterfeited, falsely made, and forged circulating notes, as aforesaid, were so falsely made, forged and counterfeited for the purpose of defrauding certain persons, to the grand jurors unknown; contrary, etc.

For Passing or Attempting to Pass Counterfeit Notes of National Banking Associations.

..... did unlawfully, knowingly, fraudulently, and feloniously pass, utter, and publish, and attempt to pass, utter, and publish as true and genuine, a certain falsely made, forged, and counterfeited note, purporting to be issued by the ..... bank of ..... a banking association which had theretofore been authorized, and was acting under the laws of the United States of America, upon and to John Jones, with the intent and purpose of him, the said ..... of defrauding the said John Jones, the tenor of which said false, forged, and counterfeit note is as follows, to-wit; that is to say, (here set out the note) he, the said ....., at the time of so passing, uttering, and publishing, and attempting to pass, utter, and publish the aforementioned falsely made, forged, and counterfeited note, upon and to the said John Jones, then and there well knew that the same said falsely made, forged, and counterfeited note was falsely made, forged, and counterfeited, and

then and thereby intended to defraud the said John Jones; contrary, etc.

Under Section 163 of the New Code, Old Section 5457, for Counterfeiting Coins.

..... did then and there knowingly, wrongfully, unlawfully, fraudulently, and feloniously falsely make, forge, and counterfeit, and cause and procure to be falsely made, forged, and counterfeited, and willingly aided and assisted in falsely making, forging and counterfeiting, five hundred certain false, forged, and counterfeit coins, each of which said false, forged, and counterfeit coins was then and there in the resemblance and similitude of the silver coins which had theretofore been coined at the mints of the United States, and called silver dollars, and he, the said John Doe, then and here knowing the said false, forged, and counterfeit coins to be then and there false, forged, and counterfeited, with the intent of him, the said John Doe, then and there to defraud certain persons to the grand jurors unknown; contrary, etc.

For Passing, Etc., Counterfeit Coins, Section 163 of the New Code, Old Section 5457.

..... And the grand jurors aforesaid, upon their oaths aforesaid, do further present into open Court, that heretofore, to wit, on the ..... day of ....., A. D. ....., one John Doe, within the ..... Division of the ..... District of ....., did then and there knowingly, wrongfully, feloniously, and fraudulently, have in his possession five hundred certain false, forged, and counterfeited coins, each of which said, false, forged, and counterfeited coins was then and there in the resemblance and similitude of the silver coins which had theretofore been coined at the mints of the United States and called silver dollars, he, the said John Doe, then and there knowing the said false, forged, and counterfeited coins to be then and there false, forged, and counterfeited, did then and there knowingly, wrongfully, unlawfully, and fraudulently pass, utter, and publish one of the said

false, forged, and counterfeited coins upon and to one John Jones, with the intent of him, the said John Doe, to defraud the said John Jones, he, the said John Doe, then and there knowing the said coin so passed upon the said John Jones to be false, forged, and counterfeited, as aforesaid; contrary, etc.

For Receipting for Larger Sums Than Are Paid, New Section 86, Old Section 5483.

(Approved in U. S. vs. Mayers, 81 Federal, 159.)

"The jurors of the United States of America within and for the district and circuit aforesaid, on their oaths present that G. F. Mayers, late or Frederick County, in the district aforesaid, at said county, heretofore, to wit, on the.....day of....., in the year of our Lord one thousand eight hundred and ninety-two, at the said Western District of Virginia, and within the jurisdiction of this court, the said G. F. Myers being then and there an officer of the United States, to wit, postmaster at Stevens City, Virginia, charged with the payment of an appropriation made by an Act of Congress, to wit, an appropriation for the payment of letter carriers at experimental free delivery offices, did unlawfully pay to an employee of the United States, to wit, one Douglas K. Drake, and, to wit, one Edgar C. Cadwallader, who were then and there employees of the United States, to wit, letter carriers, a sum less than that provided by law, to wit, the sum of $122.92, and required said employees to give vouchers for an amount greater than that actually paid to and received by them, to wit, the sum of $306.17, against the peace of the said United States and their dignity, and against the form of the statute of the said United States in such case made and provided."

Form Approved in U. S. vs. Reynolds et al., 235 U. S., 133, for Violation Peonage Act, Sections U. R. S., 1990-5526, and 269 Criminal Code.

United States of America:
District Court of the United States for the Southern Division of the Southern District of Alabama, of the May Term, 1911.
Southern District of Alabama, **Southern Division.**

The grand jurors of the United States, chosen, selected, and sworn in and for the Southern Division of the Southern District of Alabama, upon their oath do find

and present that on, to wit, the eighth day of May, in the year of our Lord one thousand nine hundred and eleven, within the Southern Division of the Southern District of Alabama, and within the jurisdiction of this Court, and before the finding of this indictment, J. A. Reynolds, whose name, other than as herein stated, is unknown to this grand jury, late of the division and district aforesaid, did then and there hold Ed. Rivers in a condition of peonage; that is to say, did hold the said Ed. Rivers in involuntary servitude, to work out a debt which the said J. A. Reynolds then and there claimed that the said Ed. Rivers then and there owed the said J. A. Reynolds, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Second Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further find and present that on, to wit, the eighth day of May, in the year of our Lord one thousand nine hundred and eleven, within the Southern Division of the Southern District of Alabama, and within the jurisdiction of this Court, and before the finding of this indictment, J. A. Reynolds, whose name, other than as herein stated, is unknown to the grand jury, late of the division and district aforesaid, did then and there hold Ed. Rivers in a condition of peonage; that is to say, did hold the said Ed. Rivers in involuntary servitude, to work out a debt which the said J. A. Reynolds then and there claimed that the said Ed. Rivers then and there owed the said J. A. Reynolds; that is to say, that the said Ed. Rivers was, to wit, during the May Term, 1910, of the county Court of Monroe County, in the State of Alabama, convicted in said Court of the offense of petit larceny and was fined the sum of, to wit, fifteen dollars, and judgment was rendered against him by said Court for the amount of said fine and also for the further and additional sum of forty-three dollars and seventy-five cents cost; and thereupon the said J. A. Reynolds confessed judgment with the said Ed. Rivers in said Court for said fine and cost, and the said J. A. Reynolds did, after the

conviction of the said Ed. Rivers as aforesaid, and before the finding of this indictment, at the request of the said Ed. Rivers, pay the said sum of to wit, fifty-eight dollars and seventy-five cents in settlement of said fine and cost, and by reason of said payment the said Ed. Rivers became and was indebted to the said J. A. Reynolds in said sum of fifty-eight dollars and seventy-five cents; and thereupon the said Ed. Rivers did enter into a contract in writing with the said J. A. Reynolds whereby the said Ed. Rivers agreed to work and labor for him the said J. A. Reynolds, on the plantation of the said J. A. Reynolds, in Monroe County, and under his direction as a farm hand, to pay said sum of fifty-eight dollars and seventy-five cents, for the term of nine months and twenty-four days, at the rate of six dollars per month, together with board, lodging, and clothing during the said term of hire, said term of hire commencing on the fourth day of May, in the year of our Lord nineteen hundred and ten, and ending on the twenty-eighth day of February, in the year of our Lord nineteen hundred and eleven; which said contract was substantially in words and figures as follows:

"Labor Contract.

"The State of Alabama, **Monroe County**s

"Whereas, at the May Term, 1910, of the county Court, held in and for said county, I, Ed. Rivers was convicted in said Court of the offense of petit larceny and fined the sum of fifteen dollars, and judgment has been rendered against me for the amount of said fine, and also in the further and additional sum of forty three & 75-100 dollars, cost in said case, and whereas J. A. Reynolds, together with A. C. Hixon, have confessed judgment with me in said Court for said fine and cost. Now, in consideration of the premises, I, the said Ed. Rivers, agree to work and labor for him, the said J. A. Reynolds, on his plantation in Monroe County, Alabama, and under his direction as a farm hand to pay fine and cost for the term 9 months and 24 days, at the rate of $6.00 dollars per month, together with my board, lodg-

ing, and clothing during the said time of hire, said time of hire commencing on the 4 day of May, 1910, and ending on the 28 day of February, 1911, provided said work is not dangerous in its character.

"Witness our hands this 4 day of May, 1910.

"Ed. (his x mark) Rivers.

"J. A. Reynolds.

"Witness:

"John M. Coxwell."

That said contract was signed in open Court and was approved by I. B. Slaughter, as judge of said county court of Monroe County on the fourth day of May, 1910; that after the said contract was signed by said Ed. Rivers the said Ed. Rivers did work and labor for him, the said J. A. Reynolds, and during the time the said Ed. Rivers was so working for said J. A. Reynolds as aforesaid, the said J. A. Reynolds did threaten the said Ed. Rivers that of he, the said Ed. Rivers, refused to perform work and labor for said J. A. Reynolds and to work out the said debt, he, the said J. A. Reynolds, would have the said Ed. Rivers arrested and put in jail; and that the said Ed. Rivers did not, after said threats were so made, voluntarily perform work and labor for said J. A. Reynolds, but, coerced and intimidated by the said threats of the said J. A. Reynolds, as aforesaid, said Ed. Rivers did against his free will continue to perform work and labor for said J. A. Reynolds under the said contract until a later date, to wit, on or about the sixth day of June, in the year of our Lord nineteen hundred and ten; and the grand jurors aforesaid do charge and present that the said J. A. Reynolds did, in the manner aforesaid, hold the said Ed. Rivers in a condition of peonage, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Third Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further find and present that on, to wit, the

eighth day of May, in the year of our Lord one thousand nine hundred and eleven, within the Southern Division of the Southern District of Alabama, and within the jurisdiction of this Court, and before the finding of this indictment, J. A. Reynolds, whose name other than as herein stated is unknown to this grand jury, did then and there arrest and cause to be arrested one Ed. Rivers, whose name other than as herein stated is unknown to this grand jury, for the purpose of compelling the said Ed Rivers, to, by involuntary servitude, pay a debt which the said J. A. Reynolds claimed that the said Ed Rivers owed him, the said J. A. Reynolds; that is to say, the said J. A. Reynolds did, after the happening of the matters and things set forth in the second count of this indictment, which is here referred to, appear before one I. B. Slaughter, who was then and there the judge of the county Court of Monroe County, within said division and district, on, to wit, the sixth day of June, nineteen hundred and ten, and did make and swear to an affidavit substantially in words and figures as follows, to-wit:

"Affidavit and Complaint.—Violating Criminal Contract.

"The State of Alabama, **Monroe County, County Court:**

"Before me, I. B. Slaughter, judge of the county Court of said county, personally appeared J. A. Reynolds who, being duly sworn, says that he has probable cause for believing and does believe that Ed Rivers on whom a fine of fifteen dollars was imposed in the county Court of Monroe County, Alabama, at the May Term, 1910, of said Court, for the offense of petit larceny, who in open Court signed a written contract approved by the judge of said Court, whereby in consideration of J. A. Reynolds and A. C. Hixon becoming his sureties on a confession of judgment for the fine and cost, agreed to perform farm labor for the said J. A. Reynolds at the rate of six dollars per month for 9 months and 24 days, and who after being released on such confession of judgment, failed or refused, without a good and sufficient excuse, to perform said labor for said J. A. Reynolds, which in

said contract he promised and agreed to perform in said county within the past twelve said months, against the peace and dignity of the State of Alabama.

"J. A. Reynolds.

"Sworn to before me 6 day of June, 1910.

"I. B. Slaughter,

"Judge of the County Court."

And thereupon a warrant was issued by the said I. B. Slaughter, judge as aforesaid, for the arrest of the said Ed. Rivers, which warrant was duly executed; and thereupon at the June nineteen hundred and ten term of said county Court the said Ed Rivers was convicted of the offense of violating a criminal contract and was by the said Court fined the sum of 1 cent and judgment was by the said Court rendered against him, the said Ed Rivers, for the amount of said fine and also for the further and additional sum of eighty-seven dollars and 5 cents cost, and thereupon one G. W. Broughton, alias Gideon W. Broughton, whose name other than as herein stated is unknown to the grand jury, confessed judgment with the said Ed Rivers for the amount of said judgment; and thereupon the said G. W. Broughton, at the request of the said Ed Rivers, paid the amount of said judgment, out of which amount so paid by the said G. W. Broughton, alias Gideon W. Broughton, the said J. A. Reynolds was paid the amount which he claimed the said Ed Rivers then owed him; and the said Ed Rivers did then and there agree to work and labor for said G. W. Broughton, alias Gideon W. Broughton, on his plantation in Monroe County and under his direction as a farm hand, to pay said sum, for the term of fourteen months and fifteen days at the rate of six dollars per month, together with board, lodging, and clothing during the time of said hire, said time of hire commencing on the seventh day of June, nineteen hundred and ten, and ending on the twenty-second day of August, nineteen hundred and eleven; and the grand jurors aforesaid, upon their oath aforesaid, do further charge and present that the object and purpose of the said J. A. Reynolds

in making said affidavit and causing the arrest of the said Ed Rivers was, by means of said proceedings, to cause and compel the said Ed Rivers to, by involuntary servitude, work out the debt which the said J. A. Reynolds then and there claimed that the said Ed Rivers owed him, the said J. A. Reynolds; and that the said agreement, entered into by the said Ed. Rivers to work for said G. W. Broughton, alias Gideon W. Broughton, was not a voluntary agreement, but that the said Ed Rivers made said agreement under the constraint of the said proceedings in the said county Court; wherefore the grand jurors aforesaid, upon their oath aforesaid, do find and present that the said J. A. Reynolds did, in the manner aforesaid, arrest the said Ed. Rivers and did cause the said Ed Rivers to be arrested, and did aid in the arrest of the said Ed Rivers, to be held in a condition of involuntary servitude, to work out a debt which the said J. A. Reynolds then and there claimed that the said Ed Rivers owed him, the said J. A. Reynolds, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Form of Indictment Approved in U. S. vs. Lewis, 235, U. S., page 282, Under Meat Inspection Law of 1906, Against Alteration or Destruction of Tags and Labels, Etc.

United States of America,

District of Kansas, First Division, ss:

In the District Court of the United States in and for the district aforesaid, at the October Term thereof, A. D. 1913.

The grand jurors of the United States, impaneled, sworn, and charged at the term aforesaid, of the Court aforesaid, on their oath present that Charles Lewis, Lewis Howard, Fred Withers, and James McBee on or about the 23rd day of January, in the year 1913 in the said division of said district, and within the jurisdiction of said Court, in the county of Wyandotte and State of

Kansas, did then and there, without lawful authority, knowingly, wrongfully, unlawfully, wilfully, and feloniously alter, deface, break, and destroy a certain mark, tag, or label, in words and figures follows, to-wit: "Government Seal No. 4451074," then and there being upon a certain railroad freight car designated as Car S. R. L. No. 4422, containing meat and meat products then and there under Government supervision for inspection and offered for transportation from the State of Kansas to the State of New Jersey; said mark, tag, or label having theretofore been affixed to and upon said car containing said meat and meat products in accordance with the rules and regulations issued by the Secretary of Agriculture under authority of the act of Congress approved June 30, 1906, entitled: "An act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1907," which said rules and regulations were then and there in full force and effect.

And the grand jurors aforesaid, on their oath aforesaid, do further present that the said Charles Lewis, Lewis Howard, Fred Withers, and James McBee on or about the 23rd day of January, in the year 1913, in the said division of said district, and within the jurisdiction of said Court, in the county of Wyandotte and State of Kansas, did then and there, without lawful authority, knowingly, wrongfully, unlawfully, wilfully, and feloniously alter, deface, break, and destroy a certain seal, label or identification device in words and figures as follows to wit:

I. D. Form 109 E.
U. S. Department of Agriculture,
Bureau of Animal Industry.

WARNING.

Meat product—Do not break this seal
under penalty of the law.

PENALTY.

Fine not exceeding $10,000 or imprisonment for a period of not more than two years, or both.

James Wilson,
Secretary.

then and there affixed to and being upon a certain freight car designated as Car S. R. L. No. 4422, containing meat and meat products then and there under Government supervision for inspection and offered for transportation from the State of Kansas to the State of New Jersey; said seal, label, or identification device having theretofore been affixed to and upon said car containing said meat and meat products in accordance with the rules and regulations issued by the Secretary of Agriculture under authority of the act of Congress approved June 30, 1906, entitled "an act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1907," which said rules and regulations were then and there in full force and effect, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Form of Indictment for Harboring Prostitutes, Approved in U. S. vs. Portale et al, 235 U. S., page 27, Under White Slave Act of June 25, 1910; Not Confined to Those Who Were Concerned in Bringing into this Country.

The grand jurors of the United States of America, within and for the district of Colorado, good and lawful men, duly selected, empaneled, sworn, and charged, on their oaths present:

That one Louise Richar, alias Louise Alexander, an alien woman, did, on, to wit, the first day of January, nineteen hundred and thirteen, enter the United States from Great Britain, Great Britain being then and there and at all times mentioned in this indictment a party to

an agreement and arrangement for the suppression of the white slave traffic, adopted July twenty-fifth, nineteen hundred and two, as shown by the proclamation of the President of the United States, dated June fifteenth, nineteen hundred and eight; and that one Elie Portale and one Juliette Portale, alias Juliette Puppet, alias Madame Juliette, did knowingly, within three years after the entry of said alien woman into the United States, keep, maintain, control, and harbor her, said alien woman, at a certain house and place, to wit, at the premises known as nineteen thirty-five Larimer Street, in the city and county of Denver, State of Colorado, for the purpose of prostitution, for the period, to wit, from the twenty-eight day of July, nineteen hundred and thirteen, to the eighth day of September, nineteen hundred and thirteen.

That said Elie Portale and Juliette Portale, alias as aforesaid, and each of them, so knowingly keeping, maintaining, controlling, and harboring said Louise Richar, as aforesaid, at said city and county of Denver, State and district of Colorado, and within the jurisdiction of this Court, at said house and place, for the purpose of prostitution, as aforesaid, did willfully, unlawfully, and feloniously fail to file, within thirty days after said twenty-eight day of July, nineteen hundred and thirteen, the date of the commencement of said keeping, maintaining, controlling, and harboring of said alien woman, as aforesaid, with the Commissioner General of Immigration of the United States, as required by law so to do, a statement in writing, setting forth the name of said alien woman, the place at which she was then and there kept, and the facts as to the date of her entry into the United States, the port through which she entered, her age, nationality, and parentage, and concerning her procuration to come to this country within the knowledge of said Elie Portale and said Juliette Portale, alias as aforesaid; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Form of indictment for Violation of Quarantine Act of March 3, 1905, 33 Stat. 1264, as Amended March 4, 1913, Applying to Receivers Etc., as Approved in U. S. vs. Nixon et al., 235 U. S. 231.

The grand jurors of the United States of America, duly and legally chosen, selected, summoned and drawn from the body of the Western Division of the Western District of Missouri, and duly and legally examined, empaneled, sworn and charged to inquire of and concerning crimes and offenses against the United States in the Western Division of the Western District of Missouri, on their oaths present and charge that on or about the 16th day of August, A. D. 1913, and at all times hereinafter mentioned, one William C. Nixon and one William B. Biddle, and one Thomas H. West, were the duly appointed, qualified and acting receivers of the St. Louis and San Francisco Railroad Company, a corporation duly organized and incorporated according to law, and that as such receivers the said William C. Nixon and the said William B. Biddle and the said Thomas H. West on the 16th day of August, A. D. 1913, had charge of and were managing, conducting, and operating the property and business of said corporation as a common carrier of freight, live stock, cattle, and other animals for hire in interstate commerce from Hugo, Choctaw County in the State of Oklahoma, to Kansas City, Jackson County, in the State of Missouri; that on or about the 16th day of August, 1913, at Hugo, Choctaw County, Oklahoma, a certain shipment of thirty-eight head of cattle, consigned by H. L. Sanguin to the Clay-Robinson Live Stock Commission Company, Kansas City, Missouri, was delivered to the St. Louis and San Francisco Railroad Company, and said receivers for transportation from Hugo, Choctaw County, Oklahoma, to Kansas City, Jackson County, Missouri, and which said shipment was by said Railroad Company and said receivers transported in M. K. & T. car number 40669, in interstate commerce from Hugo, Choctaw County, Oklahoma, to Kansas City,

Jackson County, Missouri, and delivered to the Clay-Robinson Live Stock Commission Company as aforesaid.

And the grand jurors aforesaid, on their oaths aforesaid, do further present and charge that the Secretary of Agriculture of the United States, pursuant to and by virtue of the power and authority in him vested by the act of Congress, of the United States approved March 3, 1905, did on or about the 7th day of February, 1913, determine the fact to be that within certain portions of the State of Oklahoma, and more particularly within and including the county of Choctaw, in the State of Oklahoma, there existed among the cattle a contagious and infectious disease known as splenetic, southern, or Texas fever, and did on or about the 7th day of February, 1913, in accordance with the law in such cases made and provided, make, issue, and promulgate an order quarantining certain portions of the State of Oklahoma, and more particularly and including the county of Choctaw, in the State of Oklahoma, and did forbid the removal or transportation of cattle from said county of Choctaw, in the State of Oklahoma, into any other State or Territory in the United States not within the quarantined district so established by the said Secretary of Agriculture of the United States, except in accordance with the rules and regulations made and promulgated by the Secretary of Agriculture of the United States and then in full force and effect; that the said order and regulation of said Secretary of Agriculture was duly published, in accordance with law, in The Daily Oklahoma, a newspaper duly and regularly published in Oklahoma City, Oklahoma, in its issue of February 25, 1913; that notice of said order made, issued, and promulgated by the Secretary of Agriculture as aforesaid was duly and legally served upon said defendant, St. Louis and San Francisco Railroad Company, by service upon F. C. Reilly, assistant freight traffic manager of said railroad company, at St. Louis, Missouri, a duly and legally qualified agent of said railroad company, and service thereof was duly acknowledged on March 10, 1913.

That the Secretary of Agriculture of the United States, pursuant to and by virtue of the power and authority in him vested by the act of Congress of the United States approved March 3, 1905, did on or about the 17th day of March, 1909, make, issue, and promulgate the following rule and regulation governing the transportation of cattle and other live stock from the territory quarantined under the law hereinbefore referred to, and made, issued, and promulgated by the said Secretary of Agriculture of the United States as aforesaid, as follows:

"The proper officers of the transportation companies shall securely affix to both sides of all cars carryng interstate shipments of cattle from the quarantined area (except those accompanied by certificates of inspection issued by inspectors of the Bureau of Animal Industry, covering shipments of cattle dipped as provided in Regulation 17 hereof, and shipments of cattle from certain areas described in the 'Rule to prevent the spread of splenetic fever in cattle,' which rule should be construed in connection with these regulations) durable placards not less than 5 1-2 by 8 inches in size, on which shall be printed with permanent black ink and in boldface letters not less than 1 1-2 inches in height the words 'Southern Cattle.' These placards shall also show the name of the place from which the shipment was made, the date of the shipment (which must correspond with the date of the waybills and other papers), the name of the transportation company, and the name of the place of destination. Each of the waybills, conductors' manifests, memoranda, and bills of lading pertaining to such shipments by cars or boats shall have the words 'Southern Cattle' plainly written or stamped upon its face. Whenever such shipments are transferred to another transportation company or into other cars or boats, or are rebilled or reconsigned from any point not in the quarantined area to a point other than the original destination, the cars into which said cattle are transferred and the new waybills, conductors' manifests, memoranda, and bills of lading covering said shipments by cars or boats shall be marked as herein specified for cars carrying said

cattle from the quarantined area, and for the billing, etc., covering the same. If for any reason the placards required by this regulation are removed from the cars or are destroyed or rendered illegible, they shall be immediately replaced by the transportation company or its agents, the intention being that legible placards designating the shipment as 'Southern Cattle' shall be maintained on the car from the time such shipments leave the quarantined area until they are unloaded at final destination and the cars are treated as hereinafter specified."

That notice of said order and regulation of said Secretary of Agriculture was published in accordance with law in The Daily Oklahoman, a newspaper duly and regularly published in Oklahoma City, Oklahoma, in its issue of March 24, 1909, and that notice of said order, made, issued and promulgated by the Secretary of Agriculture as aforesaid, was served upon the defendant by service upon E. K. Voorhees, general freight agent, of said railroad company at St. Louis, Missouri, and a duly authorized agent of said Company, and service thereof duly acknowledged on March 30, 1909; that said Hugo, Choctaw County, Oklahoma, is within the quarantined district, and within the territory established and declared by the said order regulation of the Secretary of Agriculture of the United States as territory within which there existed among the cattle a contagious and infectious disease known as splenetic, southern, or Texas fever.

And the grand jurors aforesaid, on their oaths aforesaid, do further present and charge that on or about the 16th day of August, A. D. 1913, the said St. Louis and San Francisco Railroad Company, common carrier as aforesaid, and William C. Nixon and William B. Biddle and Thomas H. West, receivers as aforesaid, did unlawfully, wilfully, and feloniously receive for transportation the said thirty-eight head of cattle consigned by H. L. Sanguin to the Clay-Robinson Live Stock Commission Company, and did then and there unlawfully, wilfully, and feloniously transport said shipment of cattle as aforesaid from Hugo, Choctaw County, Oklahoma,

a point within that portion of the State of Oklahoma quarantined by order of the Secretary of Agriculture of the United States as aforesaid into Kansas City, Jackson County, Missouri, in the division and district aforesaid, the same being a point in an area and portion of the of the United States beyond and without the quarantined district theretofore established by the said Secretary of Agriculture as aforesaid beyond and outside of Choctaw County, Oklahoma; that the said defendants, the said St. Louis and San Francisco Railroad Company and said receivers as aforesaid received said cattle for transportation as aforesaid, and transported and delivered the same to the consignee at Kansas City, Missouri, as aforesaid, when the cars in which said cattle were transported by said defendants as aforesaid did not have securely affixed to both sides thereof durable placards of not less than five and one-half inches by eight inches in size, on which was printed with permanent black ink, in boldface letters of not less than one and one-half inches in height, the words, "Southern Cattle," or any other information concerning or pertaining to said shipment, as required by the statutes and regulations of the said Secretary of Agriculture, as hereinbefore set forth, and when the waybills, conductors' manifests and memoranda, and bills of lading pertaining to said shipment did not have the words, "Southern Cattle" plainly written or stamped upon their face, as required by the statutes, rules, and regulations made and promulgated by the Secretary of Agriculture as aforesaid, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States.

Form of Indictment for Fraudulent Use of the Mail, Section 215, Approved in Belden vs. United States, Fed. 223, 726.

The indictment charges Russell G. Belden and A. Eugene Wayland with having, prior to January 18, 1911, devised, and intended to devise, a scheme and artifice to defraud one John Neiderer, and divers other persons to the grand jury unknown, which said scheme and artifice to defraud was to be effected by the use and misuse of

the United States postoffice establishment, with intent to incite and induce such persons so intended to be defrauded to open correspondence with them, by means of printed circulars, letters, and reports distributed through the mail, deposited and caused to be deposited in said United States mail for mailing and delivery to such divers persons intended to be defrauded, which said scheme and artifice to defraud so devised and intended to be devised by said defendants, and each of them, was substantially as follows:

That defendants would cause to be organized a corporation to be styled the International Development Company, to be controlled and managed by defendants, and each of them, the purpose of the corporation being to act as the fiscal agent for certain other corporations and firms thereafter to be incorporated and organized by said defendants as a part of their scheme to defraud; that defendants would, by themselves and through the Development Company, cause to be procured and obtained certain coal claims, having little or no value, situated in British Columbia, Dominion of Canada, and would cause to be organized a corporation to be styled the Michel Coal Mines, Limited, with a capital stock of 1,500,000 shares, of the par value of $1 each, said claims to be transferred to said Michel Coal Mines, Limited, in consideration that the said Michel Company would issue to defendants and the Development Company a large majority of its capital stock, fully paid up; that defendants would thereafter procure and cause to be procured other claims adjoining the aforesaid claims, and would thereafter cause to be organized another corporation to be styled the Crown Coal & Coke Company, with a capital stock of 2,000,000 shares, of the par value of $1 each, for the purpose of taking over said coal claims, and that in consideration therefor the Crown Coal & Coke Company would issue to defendants and the Development Company a large amount of the capital stock of said Crown Company, fully paid up; that defendants would cause to be procured other claims, and cause to be organized another corporation, to be styled the Empire Coal & Coke Company, with a capital stock of 1,500,000 shares

of the par value of $1 each, for the purpose of taking over said claims, in consideration that said Empire Company would transfer to defendants and the Development Company a large majority of the stock of said corporation, fully paid up; that defendants would cause to be procured a charter for the construction and operation of a railroad, ostensibly to furnish transportation facilities for the product of the alleged coal mines, and to be operated in connection therewith, and would cause to be organized a corporation to be styled the Crows' Nest & Northern Railway Company, with a capital stock of 20,000 shares, of the par value of $100 each, the said charter to be transferred to the said Railway Company in consideration of the transfer by said Railway Company to defendants and the Development Company of a large amount of its capital stock; that the balance of the capital stock of each of the aforesaid corporations, namely, the Michel Company, the Crown Company, the Empire Company, and the Railroad Company should and would become the treasury stock of each of said corporations, respectively; that defendants would from time to time dispose of large amounts of the capital stock of the various corporations which had been transferred to them and the Development Company; that by means of stock ownership in the Development Company defendants would procure and maintain the management and control of the Development Company, and through said ownership, and by manipulation of the stock and books on account of the various corporations, said defendants would obtain and maintain control of all such corporations with intent and purpose to defraud said divers persons.

It was further a part of the scheme that defendants, in their own names and in the names of the Development Company, by means of letters, notices, reports, circulars, and a prospectus sent and to be sent through the United States post-office establishment, would induce persons to purchase shares of the capital stock of the aforesaid various corporations; and, in pursuance of such scheme, defendants did represent and state that the properties owned by said corporations, and the capital stock thereof, were and would become of great value, whereas in

truth and in fact, as defendants well knew, the properties had no value, except that the claims of the Crown Coal & Coke Company contained valuable deposits of coal, which fact was fraudulently used by the defendants and the Development Company to aid them in the sale of the worthless stock of the aforesaid various corporations so held individually by defendants and the Development Company, and did falsely and fraudulently represent and pretend that the claims of the Michel Company and the Empire Company contained valuable deposits of a very high quality of coal, all of which was false, as defendants well knew, and did further falsely represent that the Railway Company had acquired a right of way for the construction of a railroad a distance of 15 miles, that they would construct and operate said road in connection with the mines, and that the proceeds to be derived from sales of stock would be used to build and equip said railroad and develop and equip said coal mines, whereas in truth and in fact, as defendants well knew, the Railway Company had not acquired a right of way, and proceeds derived from the sale of said stock would not be, and the same were not, used to equip and develop the respective properties of said corporation, or to build said railroad, but that a large sum realized from such stock was diverted to the use of the defendants, all with the intent and purpose to defraud said divers persons.

And it was further a part of the scheme to represent to intending purchasers of stock in the Empire Company that with each $500 purchase there would be given a share of stock in the Railway Company, that of the proceeds received by the Empire Company $100 would be used by that company in the purchase of one share in the Railway Company, and that the $100 so expended would be placed in the treasury of the Railway Company to be used in the construction of said road, whereas in truth and in fact, as the defendants well knew, no part of said $100 would be used for the equipment and development of the pany, or used for the construction of said railroad, but would be and was appropriated by defendants to their own use and benefit. And it was a further part of the scheme that defendants would represent and pretend that

the stock of the various corporations to be offered for sale would be treasury stock of the various corporations, and that the proceeds derived from the sale of such stock would be used for the equipment and development of the properties, whereas, in truth and in fact, as defendants well knew, the stock so sold was not treasury stock, but was, with but few exceptins, the individual stock of defendants and the Development Company, and all the real property and a large amount of the money derived from the sales of such stock were appropriated by defendants and the Development Company to their own use and benefit, it being the intent and purpose of the defendants thus to divert the vast amount of property and large amount of money so obtained to their own use and benefit and that of the Development Company, with intent and purpose to defraud the said John Neiderer and said divers other persons.

And the said defendants, on or about January 21, 1911, for the purpose of executing said scheme and artifice, and attempting so to do, knowingly, willfully and feloniously placed and caused to be placed in the post-office of the United States at Spokane, Wash., for mailing and delivery a certain letter addressed to Mr. John Neiderer, Summerville, Ore. Then follows a copy of the letter, signed "International Development Co., per R. G. Belden."

Form for Indictment for Conspiracy to Violate White Slave Act, Approved in Linton vs. U. S., 223 Federal, 677.

"at Vancouver, in the province of British Columbia, in the Dominion of Canada, on the first day of January, A. D. one thousand nine hundred and thirteen, then and there being, did willfully, knowingly, feloniously, unlawfully, wickedly, and maliciously conspire, combine, confederate, and agree together, and together and with divers other persons to said grand jurors unknown, to commit an offense against the United States, to wit, to violate the 'White Slave Traffic Act' of June 25, 1910 (36 Statutes at Large, 825), in the following manner and particulars; that is to say: It was the purpose and object of the said conspirators, and each of them to willfully, knowingly, and feloniously transport and cause to be transported, and aid and assist in obtaining transportation for, and in transporting, a woman, to wit, the said Alta Smith, alias as aforesaid, in foreign commerce from the

city of Vancouver, in the said province of British Columbia, to the City of Seattle, in the Northern division of the Western District of Washington, in the United States of America, for the purpose of prostitution, debauchery, concubinage, and other immoral purposes, all in violation of the White Slave Traffic Act, as aforesaid. * * *"

Form of Indictment in U. S. vs. Jack Johnson, White Slave Violation.

NORTHERN DISTRICT OF ILLINOIS } Sct.
Eastern Division. }

The grand jurors of the United States of America, inquiring for the Eastern Division of the Northern District of Illinois, upon their oaths present that JOHN ARTHUR JOHNSON, otherwise known as Jack Johnson, late of the city of Chicago, on, to wit, the 15th day of October, in the year of our Lord nineteen hundred and ten, unlawfully and knowingly did cause to be transported in interstate commerce, that is to say from Pittsburgh, in the state of Pennsylvania, to Chicago, in the state of Illinois, through the said Eastern Division of the said Northern District of Illinois, over the railway routes of certain corporation common carriers, to wit, Pennsylvania Company, a corporation under the laws of the State of Pennsylvania, and Pittsburgh, Ft. Wayne and Chicago Railway Company, a corporation under the laws of the State of Illinois, which corporation common carriers were then and there engaged in the transportation of persons by railroad over their railway routes from Pittsburgh, in the State of Pennsylvania, to Chicago, in the State of Illinois, a certain girl, to wit, Belle Schreiber, otherwise known as Mrs. J. Johnson, for the purpose of prostitution; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

2. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that the said John Arthur Johnson, otherwise known as Jack Johnson, late of the city of Chicago, on, to wit, the 15th day of October, in the year of our Lord nineteen hundred ten, unlawfully and knowingly did cause to be transported in interstate commerce, that is to say from Pittsburgh, in the state

of Pennsylvania, to Chicago, in the state of Illinois, through the said Eastern Division of the said Northern District of Illinois, over the railway routes of certain corporation common carriers, to wit, Pennsylvania Company, corporation under the laws of the state of Pennsylvania, and Pittsburgh, Ft. Wayne and Chicago Railway Company, a corporation under the laws of the state of Illinois, which corporation common carriers were then and there engaged in the transportation of persons by railroad over their railway routes from Pittsburgh, in the state of Pennsylvania, to Chicago, in the state of Illinois, a certain girl, to wit, Belle Schreiber, otherwise known as Mrs. J. Johnson, for the purpose of debauchery; against the peace and dignity of the said United States, and contracy to the form of the statute of the same in such case made and provided.

3. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that the said John Arthur Johnson, otherwise known as Jack Johnson, late of the city of Chicago, on, to wit, the 15th day of October, in the year of our Lord nineteen hundred ten, within the division and district aforesaid, unlawfully, knowingly and feloniously did cause to be transported in interstate commerce, that is to say, from Pittsburgh, in the state of Pennsylvania, to Chicago, in the state of Illinois, through the said Eastern Division of the said Northern District of Illinois, over the railway routes of certain corporation common carriers, to wit, Pennsylvania Company, a corporation under the laws of the state of Pennsylvania, and Pittsburgh, Ft. Wayne and Chicago Railway Company, a corporation under the laws of the sate Illinois, which corporation common carriers were then and there engaged in the transportation of persons by railroad over their railway routes from Pittsburgh, in the state of Pennsylvania, to Chicago, in the state of Illinois, a certain girl, to wit, Belle Schreiber, otherwise known as Mrs. J. Johnson, for the purpose of prostitution; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

4. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that the said John Arthur Johnson, otherwise known as Jack Johnson, late of the city of Chicago, on, to wit, the 15th day of October, in the year of our Lord nineteen hundred ten, within the division and district aforesaid, unlawfully, knowingly and feloniously did cause to be transported in interstate commerce, that is to say, from Pittsburgh, in the state of Pennsylvania, to Chicago, in the state of Illinois, through the said Eastern Division of the said Northern District of Illinois, over the railway routes of certain corporation common carriers, to wit, Pennsylvania Company, a corporation under the laws of the state of Pennsylvania, and Pittsburgh, Ft. Wayne and Chicago Railway Company, a corporation under the laws of the state of Illinois, which corporation common carriers were then and there engaged in the transportation of persons by railroad over their railway routes from Pittsburgh, in the state of Pennsylvania, to Chicago, in the state of Illinois, a certain girl, to wit, Belle Schreiber, otherwise known as Mrs. J. Johnson, for the purpose of debauchery; against the peace and dignity of the said United States, and contrary to the form of the statute of hast enmie and contrary to the form of the statute of the same in such case made and provided.

5. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that the said John Arthur Johnson, otherwise known as Jack Johnson, late of the city of Chicago, on, to wit, the 15th day of October, in the year of our Lord nineteen hundred and ten, unlawfully, knowingly and feloniously did aid in obtaining transportation for a certain girl, to wit, Belle Schreiber, otherwise known as Mrs. Jack Johnson, in interstate commerce, that is to say, from Pittsburgh, in the state of Pennsylvania, to Chicago, in the state of Illinois, through the said Eastern Division of the said Northern District of Illinois, over the railway route of certain common carriers, to wit, Pennsylvania Company, a corporation under the laws of the state of Pennsylvania and Pittsburgh, Ft. Wayne & Chicago Railway Company, a corporation under the laws of the state of Illinois, which

corporation common carriers were then and there engaged in the transportation of persons by railroad over their railway route from Pittsburgh aforesaid to Chicago aforesaid, for a certain immoral purpose, to wit, for the purpose of having unlawful sexual intercourse with her, the said Belle Schreiber, otherwise known as Mrs. Jack Johnson; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

6. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that the said John Arthur Johnson, otherwise known as Jack Johnson, late of the city of Chicago, on, to wit, the 15th day of October, in the year of our Lord nineteen hundred and ten, unlawfully, knowingly and feloniously did assist in obtaining transportation for a certain girl, to wit, Belle Schreiber, otherwise known as Mrs. Jack Johnson, in interstate commerce, that is to say, from Pittsburgh in the state of Pennsylvania, to Chicago, in the state of Illinois, through the said Eastern Division of the said Northern District of Illinois, over the railway routes of certain common carriers, to wit, Pennsylvania Company, a corporation under the laws of the state of Pennsylvania and Pittsburgh, Ft. Wayne Chicago Railway Company, a corporation under the laws of the state of Illinois, which corporation common carries were then and there engaged in the transporation of persons by railroad over their railway routes from Pittsburgh aforesaid to Chicago aforesaid, for a certain immoral purpose, to wit, for the purpose of committing the crime against nature with her the said Belle Schreiber, otherwise known as Mrs. Jack Johnson; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

7. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that the said John Arthur Johnson, otherwise known as Jack Johnson, late of the city of Chicago, on, to wit, the 15th day of October, in the year of our Lord nineteen hundred and ten, unlawfully, knowingly and feloniously did cause to be procured a certain railroad ticket, the exact nature and descrip-

tion of which is to the said grand jurors unknown (which said railroad ticket entitled in the holder thereof to be transported from Pittsburgh, Pennsylvania, to Chicago, Illinois, over the railway routes of certain common carriers hereafter mentioned) to be used by a certain girl, to wit, Belle Schreiber, otherwise known as Mrs. Jack Johnson, in interstate commerce, that is to say, in going from Pittsburgh in the state of Pennsylvania to Chicago in the state of Illinois, over the railway routes of certain corporation common carriers, to wit, Pennsylvania Company, a corporation under the laws of the state of Pennsylvania, and Pittsburgh, Ft. Wayne and Chicago Railway Company, a corporation under the laws of Illinois, which corporation common carriers were then and there engaged in the transportation of persons by railroad over their railway routes from Pittsburgh, in the state of Pennsylvania, to Chicago, in the state of Illinois, for the purpose of prostitution, whereby said girl Belle Schreiber, otherwise known as Mrs. Jack Johnson, was then and there transported in interstate commerce from Pittsburgh aforesaid to Chicago aforesaid, over the railway routes of said corporation common carriers; against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

8. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that the said John Arthur Johnson, otherwise known as Jack Johnson, late of the city of Chicago, on, to wit, the 15th day of October, in the year of our Lord nineteen hundred and ten, unlawfully, knowingly and feloniously did aid in procuring a certain railroad ticket, the exact nature and description of which is to the said grand jurors unknown (which said railroad ticket entitled the holder thereof to be transported from Pittsburgh, Pennsylvania, to Chicago, Illinois, over the railway route of certain common carriers hereafter mentioned) to be used by a certain girl, to wit, Belle Schreiber, otherwise known as Mrs. Jack Johnson, in interstate commerce, that is to say, in going from Pittsburgh in the state of Pennsylvania to Chicago in the state of Illinois, over the railway route of certain corpora-

tion common carriers, to wit, Pennsylvania Company, a corporation under the laws of the state of Pennsylvania, and Pittsburgh, Ft. Wayne and Chicago Raailway Company, a corporation under the laws of Illinois, which corporation common carriers were then and there engaged in the transportation of persons by railroad over their railway route from Pittsburgh, in the state of Pennsylvania, to Chicago in the state of Illinois, for a certain immoral purpose, to wit, for the purpose of having unlawful sexual intercourse with her, the said Belle Schreiber, otherwise known as Mrs. Jack Johnson, whereby said girl, Belle Schreiber, otherwise known as Mrs. Jack Johnson, was then and there transported in interstate commerce from Pittsburgh aforesaid to Chicago aforesaid, over the railway route of said corporation common carriers; against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

9. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that the said John Arthur Johnson, otherwise known as Jack Johnson, late of the city of Chicago, on, to wit, the 15th day of October, in the year of our Lord nineteen hundred and ten, unlawfully, knowingly and feloniously did aid in procuring a certain railroad ticket, the exact nature and description of which is to the said grand jurors unknown (which said railroad ticket entitled the holder thereof to be transported from Pittsburgh, Pennsylvania, to Chicago Illinois, over the railroad routes of certain common carriers hereafter mentioned) to be used by a certain girl to wit, Belle Schreiber, otherwise known as Mrs. Jack Johnson, in intrstate commerce, that is to say, in going from Pittsburgh in the state of Pennsylvania to Chicago in the state of Illinois, over the railway routes of certain corporation common carriers, to wit, Pennsylvania Company, a corporation under the laws of the state of Pennsylvania, and Pittsburgh, Ft. Wayne and Chicago Railway Company, a corporation under the laws of Illinois, which corporation common carriers were then and there engaged in the transporation of persons by railroad over their railway routes from Pittsburgh, in the state

of Pennsylvania, to Chicago, in the state of Illinois, with the intent on the part of said John Arthur Johnson, otherwise known as Jack Johnson, to induce the said Belle Schreiber to give herself up to the practice of prostitution, whereby said girl, Belle Schrieber, otherwise known as Mrs. Jack Johnson, was then and there transported in interstate commerce from Pittsburgh aforesaid to Chicago aforesaid, over the railway routes of said corporation common carriers; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

10. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that the said John Arthur Johnson, otherwise known as Jack Johnson, late of the city of Chicago, on, to wit, the 15th day of October, in the year of our Lord nineteen hundred and ten, unlawfully did knowingly cause to be transported in interstate commerce, that is to say from Pittsburgh, in the state of Pennsylvania, to Chicago, in the state of Illinois, through the said Eastern Division of the said Northern District of Illinois, over the railway route of certain corporation common carriers, to wit, Pennsylvania Company, a corporation under the laws of the state of Pennsylvania, and Pittsburgh, Ft. Wayne and Chicago Railway Company, a corporation under the laws of the state of Illinois, which corporation common carriers were then and there engaged in the transportation of persons by railroad over their railway route from Pittsburgh, in the state of Pennsylvania, to Chicago, in the state of Illinois, a certain girl, to wit, Belle Schreiber, otherwise known as Mrs. J. Johnson, for a certain immoral purpose, to wit, for the purpose of having unlawful sexual intercourse with her, the said Belle Schreiber; against the peace and dignity of the said United States, and contrary to the from of the statute of the same in such case made and provided.

11. And the grand jurors aforesaid, upon their oath aforesaid, do further present that the said John Arthur Johnson, otherwise known as Jack Johnson, late of the city of Chicago, on, to wit, the 15th day of October, in the year of our Lord nineteen hundred and ten, unlaw-

fully did knowingly cause to be transported in interstate commerce, that is to say from Pittsburgh, in the state of Pennsylvania, to Chicago, in the state of Illinois, through the said Eastern Division of the said Northern District of Illinois, over the railway route of certain corporation common carriers, to wit, Pennsylvania Company, a corporation under the laws of the state of Pennsylvania, and Pittsburgh, Ft. Wayne and Chicago Railway Company, a corporation under the laws of the state of Illinois, which corporation common carriers were then and there engaged in the transporation of persons by railroad over their railway route from Pittsburgh, in the state of Pennsylvania, to Chicago, in the state of Illinois, a certain girl, to wit, Belle Schreiber, otherwise known as Mrs. J. Johnson, for a certain immoral purpose, to wit, for the purpose of committing the crime against nature with and upon her, the said Belle Schreiber, otherwise known as Mrs. J. Johnson; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

.....

United States Attorney.

PETITION FOR WRIT OF ERROR.

No.————

UNITED STATES OF AMERICA vs. JOHN DOE.	In the District Court of the United States for the Northern District of Texas.

John Doe, the defendant, in the above-numbered and entitled cause, feeling himself aggrieved by the verdict of the jury returned herein on the ..... day of ....A. D. 1915, and judgment rendered thereon on the ..... day of ..... A. D. 1915, comes by Lilian B. Aveilhe, his attorney, and petitions the Court for an order allowing the defendant to prosecute a writ of error

to the Honorable United States Circuit Court of Appeals for the Fifth Circuit under and according to the laws of the United States in that behalf provided, and your petitioner will ever pray.

Lilian B. Aveilhe,
Attorney for Defendant.

ORDER ALLOWING WRIT OF ERROR.

No.————

UNITED STATES OF AMERICA vs. JOHN DOE.	In the United States District Court for the Northern District of Texas, at Dallas.

This the 15th day of April, 1915, came the defendant, by his attorney, and filed herein and presented to the Court his petition praying for the allowance of a writ of error intended to be urged by him, praying also that a transcript of the records and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Fifth Judicial Circuit, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof the Court does allow the writ of error upon the defendant giving bond according to law in the sum of ..... dollars, which shall operate as a supersedeas bond.

.....
United States District Judge.

WRIT OF ERROR.

The United States Circuit Court of Appeals for the Fifth Circuit.
The United States of America
Fifth Judicial Circuit

The President of the United States, to the Honorable Judge of the District Court of the United States for the Northern District of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said District Court, before you, between the United States of America, plaintiffs, and John Doe, defendant, a manifest error hath happened, to the great damage of the said John Doe, defendant, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and complete justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all concerning the same, to the United States Circuit Court of Appeals for the Fifth Circuit, together with this writ, so that you have the same at New Orleans in said circuit within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid, being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

.....
United States District Judge.

WITNESS THE HONORABLE

_____

Judge of the District Court of the United States, this the ..... day of ....., 1915, and the ..... year of the independence of the United States of America.

ATTEST:

.....
Clerk.

CITATION

The United States Circuit Court of Appeals for the Fifth Circuit.

The United States of America
Fifth Judicial Circuit
To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at session of the United States Circuit of Appeals for the Fifth Circuit to be held at the city of New Orleans in said Circuit on the....day of.....next pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the Northern District of Texas, wherein John Doe is plaintiff in error and you are the defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speed justice should not be done to the parties in that behalf.

WITNESS THE HONORABLE EDWARD M. WHITE, CHIEF JUSTICE OF THE UNITED STATES, this the ..... day of ..... in the year of our Lord one thousand nine hundred and ....., and of the independence of the United States of America the One Hundred and .....

.....
United States District Judge.
or
.....
Clerk of the United States District Court of the Northern District of Texas.

WRIT OF ERROR BOND.

No.————

UNITED STATES OF AMERICA vs. JOHN DOE.	In the District Court of the United States for the Northern District of Texas.

We, John Doe, and the other subscribers hereto, jointly and severally, acknowledge ourselves indebted to the United States of America in the sum of one thousand dollars lawful money of the United States of America, to be levied on our and each of our goods, chattels, lands and tenements, upon this condition:

Whereas, the said John Doe, has sued out a writ of error from the judgment of the United States District Court for the Northern District of Texas, in Cause No. ..... in said Court, wherein the United States of America are plaintiffs and John Doe is defendant, for a review of the judgment in the United States Circuit Court of Appeals for the Fifth Circuit:

Now, if the said John Doe shall appear and surrender in the District Court of the United States for the Northern District of Texas on and after the filing in said District Court of the mandate of the United States Circuit Court of Appeals for the Fifth Circuit, and from time to time thereafter as he may be required to answer any further proceedings, and abide by and perform any judgment or order which may be had or rendered therein in this case, and shall abide by and perform any judgment or order which may be rendered in said United States Circuit Court of Appeals for the Fifth Circuit, and not depart from said District Court without leave thereof, then this obligation shall be void; otherwise to remain in full force and virtue.

WITNESS our hands and seals on this the ..... day of ..... A. D. 1915.

.....
.....
.....

Taken and approved this the .....
day of ..... A. D. 1915, before me.

.....
United States District Judge.

PRAECIPE FOR RECORD.

UNITED STATES OF AMERICA

vs.	In the United States
JOHN DOE.	District Court for the
To L. C. Maynard,	Northern District of
Clerk.	Texas, at Dallas.

SIR: Please prepare a transcript of the record in the case of United States vs. John Doe and include therein the following papers: Indictment; defendant's motion to abate; defendant's motion to quash; judgment; sentence; defendant's motion for a new trial; defendant's amended motion in arrest of judgment; bill of exceptions; charge of the Court; (if the Court orders the same sent up) assignments of error; petition for writ of error; order allowing writ of error and fixing bail; writ of error bond; writ of error; citation in error.

Respectfully,
Lilian B. Aveilhe,
Attorney for the Defendant.

CRIMINAL STATUTES.

Complete Penal Code, Together with an Appendix, which Contains a Reference to all Laws of a General Nature in force on December 1, 1909, which have Penal Provisions, and which are not Contained in the 1910 Criminal Code.

EXPLANATIONS—All criminal statutes were revised and collated into what is called the Revised Statutes of 1878. Between that time and 1910 there was, of course, much important criminal legislation and the 1910 Code, therefore, became necessary. That code, however, does not include all of the federal criminal statutes, many still remaining alive in the 1878 revision. There are also many laws having criminal provisions which are not included in either the Code or the Revised Statutes.

The government prepared, at its printing office, in 1911, a pamphlet which is supposed to contain all of the criminal stautes up to the date of such printing, or to at least point where such statute may be found. In order that this volume may be as complete as possible, I secured a copy of this government publication, and have included it herein. The information that comes under the head of appendix is valuable since the general headings thereof will enable one to trace and find quickly any criminal provision, which is not included in the 1910 act. The reference is to the 1878 statutes and also to the statutes-at-large.

The most important laws, enacted since 1910 are to be found in the preceding chapters. While the 1910 Code is in this chapter, the most important laws up to December 1st, 1921, will be found in this volume. With the preceding chapters and the Penal Code which follows this word practically every criminal statute or a reference to it, will be found.

For additional reference books I gladly commend Federal Statutes Annotated, U. S. Complied Statutes and Barnes Federal Code, the latter, though without annota-

tions, being the most portable. At the date of this writing it is composed of an original edition and of a 1921 supplement which, however, only covers the years 1919 and 1920, and does not embrace any of the legislation of 1921.

[Act of March 4, 1909; 35 Stat., 1088.]

An Act To codify, revise, and amend the penal laws of the United States

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the penal laws of the United States be, and they hereby are, codified, revised, and amended, with title, chapters, headnotes, and sections, entitled, numbered, and to read as follows:

CHAPTER ONE.

OFFENSES AGAINST THE EXISTENCE OF THE GOVERNMENT.

§ 1. **Treason.** — Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason. (R. S., s. 5331.)

U. S. v. Vilato, 2 Dall., 370; The Insurgents, 2 Dall., 385; Ex Parte Bollman & Swartout, 4 Cranch, 75; U. S. v. Burr, 4 Cranch, 469; Hanauer v. Doane, 12 Wall., 342; Carlisle v. U. S., 16 Wall., 147; Case of Fries, Wharton St. Tr., 458, 610, 9 Fed. Cas., 826, 924; Shortridge v. Macon, Chase, 136, 22 Fed. Cas., 20; U. S. v. Burr, 1 Burr's Trial, 14, 16, 2 Burr's Trial, 402, 405, 417, 25 Fed. Cas., 2, 52, 55, 210; U. S. v. Cathcart, 1 Bond, 556, 25 Fed. Cas., 344; U. S. v. Greathouse, 2 Ab. C. C., 364, 26 Fed. Cas., 18; U. S. v. Hodges, Brun. Col. Cas., 465, 26 Fed. Cas., 332, U. S. v. Hoxie, 1 Paine, 265, 26 Fed. Cas., 397; U. S. v. Mitchell, 2 Dall., 348, 26 Fed. Cas., 1277; U. S. v. Vigol, 2 Dall., 346, 28 Fed. Cas., 376; U. S. v. Pryor, 3 Wash., 234, 27 Fed. Cas., 628; Charges to Grand Jury, 2 Curt., 630, 30 Fed. Cas., 1024; 4 Blatch., 518, 30 Fed. Cas., 1032; 5 Blatch., 549, 30 Fed. Cas., 1034; 1 Bond, 609, 30 Fed. Cas. 1036; 1 Spr., 602, 30 Fed. Cas., 1039; 2 Spr., 292, 30 Fed. Cas., 1042; 1 story, 614, 30 Fed. Cas. 1046; 2 Wall., jr., 134, 30 Fed. Cas., 1047; 2 Spr. 285, 30 Fed. Cas., 1049.

§ 2. **Punishment of treason.**—Whoever is convicted of treason shall suffer death; or, at the discretion of the court, shall be imprisoned not less than five years and fined not less than ten thousand dollars, to be levied on and collected out of any or all of his property, real and personal of which he was the owner at the time of committing such treason, any sale or conveyance to the contrary notwithstanding; and every person so convicted of treason shall, moreover, be incapable of holding any office under the United States. (R. S., s. 5332.)

Confiscation Cases, 20 Wall., 92; Wallack et al. v. Van Riswick, 92 U. S., 202; Windsor v. McVeigh, 93 U. S., 274.

§ 3. **Misprision of treason.**—Whoever, owing allegiance to the United States and having knowledge of

the commission of any treason against them, conceals, and does not, as soon as may be, disclose and make known the same to the President or to some judge of the United States, or to the governor or to some judge or justice of a particular State, is guilty of misprision of treason and shall be imprisoned not more than seven years and fined not more than one thousand dollars. (R. S., s. 5333.)

U. S. v. Wiltberger, 5 Wheat, 97; Confiscation Cases, 1 Woods, 221, 6 Fed. Cas., 270; U. S. v. Tract of Land, 1 Woods, 475, 28 Fed. Cas., 203.

§ 4. **Inciting or engaging in rebellion or insurrection.**—Whoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States or the laws thereof, or gives aid or comfort thereto, shall be imprisoned not more than ten years, or fined not more than ten thousand dollars, or both; and shall, moreover, be incapable of holding any office under the United States. (R. S., s. 5334.)

§ 5. **Criminal correspondence with foreign governments.**—Every citizen of the United States, whether actually resident or abiding within the same, or in any place subject to the jurisdiction thereof, or in any foreign country, without the permission or authority of the Government, directly or indirectly, commences or carries on any verbal or written correspondence or intercourse with any foreign government or any officer or agent thereof, with an intent to influence the measures or conduct of any foreign government or of any officer or agent thereof, in relation to any disputes or controversies with the United States, or to defeat the measures of the Government of the United States, and every person, being a citizen of or resident within the United States or in any place subject to the jurisdiction thereof, and not duly authorized, counsels, advises, or assists in any such correspondence with such intent, shall be fined not more than five thousand dollars and imprisoned not more than three years; but nothing in this section shall be construed to abridge the right of a citizen to apply, himself or his agent, to any foreign government or the agents thereof for redress of any injury which he may have sus-

tained from such government or any of its agents or subjects. (R. S., s. 5335.)

§ 6. **Seditious conspiracy.**—If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined not more than five thousand dollars, or imprisoned not more than six years, or both. (R. S., s. 5336.)

Ex parte Lange, 18 Wall., 163.

§ 7. **Recruiting soldiers or sailors to serve against the United States.**—Whoever recruits soldiers or sailors within the United States, or in any place subject to the jurisdiction thereof, to engage in armed hostility against the same, or opens within the United States, or in any place subject to the jurisdiction thereof, a recruiting station for the enlistment of such soldiers or sailors to serve in any manner in armed hostility against the United States, shall be fined not more than one thousand dollars and imprisoned not more than five years. (R. S., s. 5337.)

§ 8. **Enlistment to serve against the United States.**—Every person enlisted or engaged within the United States or in any place subject to the jurisdiction thereof, with intent to serve in armed hostility against the United States, shall be fined one hundred dollars and imprisoned not more than three years. (R. S., s. 5338.)

CHAPTER TWO.

OFFENSES AGAINST NEUTRALITY.

§ 9. **Accepting a foreign commission.**—Every citizen of the United States who, within the territory or jurisdiction thereof, accepts and exercises a commission to serve a foreign prince, state, colony, district, or people, in war, by land or by sea, against any prince, state, colony, district, or people, with whom the United States are at peace, shall be fined not more than two thousand dollars and imprisoned not more than three years. (R. S. s. 5281.)

U. S. v. Williams, 3 Cranch, 83; Ker v. Illinois, 119 U. S., 436; Wiborg v. U. S., 163 U. S., 632, 73 Fed. Rep., 159; John Bassett Moore upon The Case of the Salvadorean Refugees, 29 Am. L. Rev., 1; The Ambrose Light, 5 Fed. Rep., 408.

§ 10. **Enlisting in foreign service.**—Whoever, within the territory or jurisdiction of the United States, enlists, or enters himself, or hires or retains another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people, as a soldier, or as a marine or seaman, on board of any vessel of war, letter of marque, or privateer, shall be fined not more than one thousand dollars and imprisoned not more than three years. (R. S. s. 5282.)

Chacon v. Bales of Cochineal, 1 Brock., 478, 5 Fed. Cas., 390; Stoughton v. Taylor, 2 Paine, 665, 13 Fed. Cas., 1179; Ex parte Needham, Pet. C. C., 487, 17 Fed. Cas., 1274, U. S. v. Hertz, 3 Pitts., L. J., 194, 26 Fed. Cas., 293; U. S. v. Kazinski, 2 Sprague, 7, 26 Fed. Cas., 682; 4 A. G. Op., 336; 7 A. G. Op., 367.

§ 11. **Arming vessels against people at peace with the United States.**—Whoever, within the territory or jurisdiction of the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out, or arming of any vessel, with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, or whoever issues or delivers a commission within the territory or jurisdiction of the United States for any vessel, to the intent that she may be so employed, shall be fined not more than ten thousand dollars and imprisoned not more than three years. And every such vessel, her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores which may have been procured for the building and equipment thereof, shall be forfeited; one-half to the use of the informer and the other half to the use of the United States. (R. S. s. 5283.)

U. S. v. Guinet, 2 Dall., 321; Moodie v. The Alfred, 3 Dall., 307; Gelston v. Hoyt, 3 Wheat., 246; The Estrella, 4 Wheat., 298; La Conception, 6 Wheat., 235; The Santissima Trinidad, 7 Wheat., 283; The Gran Para, 7 Wheat., 471; The Santa Maria, 7 Wheat., 490; The Arrogante Barcelones, 7 Wheat., 496; The Monta Allegre, 7 Wheat., 520; U. S. v. Reyburn, 6 Pet., 352; U. S. v. Quincy, 6 Pet., 445; The Bermuda, 3 Wall., 551; U. S. v. Weed, 72 U. S. 62; The Watchful, 73 U. S., 91; The Three Friends, 166 U. S., 1, 52, 78 Fed. Rep., 175. The Chapman, 4 Sawyer, 501, 5 Fed. Cas., 471; The Florida, 4 Ben., 452, 9 Fed. Cas., 321; Juando v. Taylor, 2 Paine, 652, 13 Fed. Cas., 1179; The Meteor, 1 Am. L. Rev., 401, 17 Fed. Cas., 178; Moodie v. The Brothers, Bee, 76, 17 Fed. Cas., 653; Sawyer v. Steele, 3 Wash., 464, 21 Fed. Cas., 583; U. S. v. Skinner, 1 Brun. Col. Cas., 446; 2 Wheeler's Crim. Cases, 232, 27 Fed. Cas., 1123; U. S. v. The Mary Hogan, 18 Fed. Rep., 529; U. S. v. Two Hundred and Fourteen Boxes, 20 Fed. Rep., 50; Stannick v. The Friendship, Bee, 40, 22 Fed. Cas., 1056; The City of Mexico, 24 Fed. Rep. 33, 25 Fed. Rep., 925; The City of Mexico, 28 Fed. Rep., 148, 32 Fed. Rep., 105; The Carondolet, 37 Fed. Rep., 799; The Conserva, 38 Fed. Rep., 431; U. S. v. The Resolute, 40 Fed. Rep., 543; U. S. v. The Robert and Minnie, 47 Fed. Rep., 84; U. S. v. Trumbull, 48 Fed. Rep., 99; The Itata, 56 Fed. Rep., 505, 49 Fed. Rep., 646; The Laurada, 85 Fed. Rep., 760, The Huascar, 3 Wharton's Dig., 474.

§ 12. **Augmenting force of foreign vessel of war.**—Whoever, within the territory or jurisdiction of the United States, increases or augments, or procures to be increased or augmented, or knowingly is concerned in increasing or augmenting, the force of any ship of war, cruiser, or other armed vessel which, at the time of her arrival within the United States, was a ship of war, or cruiser or armed vessel, in the service of any foreign

prince or state, or of any colony, district, or people, or belonging to the subjects or citizens of any such prince or state, colony, district, or people, the same being at war with any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, by adding to the number of the guns of such vessel, or by changing those on board of her for guns of a larger caliber, or by adding thereto any equipment solely applicable to war, shall be fined not more than one thousand dollars and imprisoned not more than one year. (R. S. s. 5285.)

The Alerta v. Moran, 9 Cranch, 359; U. S. v. Grassin, 3 Wash., 65, 26 Fed. Cas., 10.

§ 13. **Military expeditions against people at peace with the United States.**—Whoever, within the territory or jurisdiction of the United States, begins, or sets on foot, or provides or prepares the means for, any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, shall be fined not more than three thousand dollars and imprisoned not more than three years. (R. S. s. 5286.)

U. S. v. Pirates, 5 Wheat., 184; U. S. v. Hallock, 154 U. S., 537; Duvall v. U. S., 154 U. S., 548; U. S. v. Wiborg, 163 U. S., 632; The Three Friends, 166 U. S., 1, 78; The Chapman, 4 Sawyer, 501, 5 Fed. Cas., 471; Ex parte Needham, 1 Pet. C. C., 487, 17 Fed. Cas., 1275; U. S. v. Lumsden, 1 Bond, 5, 26 Fed. Cas., 1012; Charges to Grand Jury, 5 Blatch., 556, 30 Fed. Cas., 1017; 2 McLean, 1, 30 Fed. Cas., 1018; 5 McLean, 249, 30 Fed. Cas., 1020; 5 McLean, 306, 30 Fed. Cas., 1021; 4 Wkly. L. Gaz., 214, 30 Fed. Cas., 1023; 2 Curt., 630, 30 Fed. Cas., 1024; U. S. v. Rand, 17 Fed. Rep., 142; City of Mexico, 32 Fed. Rep., 105; The Cardondelet, 37 Fed. Rep., 799; U. S. v. The Resolute, 40 Fed. Rep., 543; U. S. v. The Robert and Minnie, 47 Fed. Rep., 84 U. S. v. Trumbull, 48 Fed. Rep., 99; The Itata, 46 Fed. Rep., 646; U. S. v. Ybanez, 53 Fed. Rep., 536; Hendrick v. Gonzales, 67 Fed. Rep., 351; U. S. v. Pena, 69 Fed. Rep., 983; U. S. v. Hughes, 70 Fed. Rep. 972, 75 Fed. Rep., 267; U. S. v. O'Brien, 75 Fed. Rep., 900; U. S. v. Hart, 78 Fed. Rep., 868, 74 Fed. Rep., 724; U. S. v. Nunez, 82 Fed. Rep. 599; Hart v. U. S., 84 Fed. Rep., 799; U. S. v. Murphy, 84 Fed. Rep., 609. The Madagascar Expedition, 29 Am. L. Rev., 539.

§ 14. **Enforcement of foreign provisions.**—The district courts shall take cognizance of all complaints, by whomsoever instituted, in cases of captures made within the waters of the United States, or within a marine league of the coasts or shores thereof. In every case in which a vessel is fitted out and armed, or attempted to be fitted out and armed or in which the force of any vessel of war, cruiser, or other armed vessel is increased or augmented, or in which any military expedition or enter-

prise is begun or set on foot, contrary to the provisions and prohibitions of this chapter; and in every case of the capture of a vessel within the jurisdiction or protection of the United States as before defined; and in every case in which any process issuing out of any court of the United States is disobeyed or resisted by any person having the custody of any vessel of war, cruiser, or other armed vessel of any foreign prince or state, or of any colony, district, or people, or of any subjects or citizens of any foreign prince or state, or of any colony, district, or people, it shall be lawful for the President, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States, or the militia thereof, for the purpose of taking possession of and detaining any such vessel, with her prizes, if any, in order to enforce the execution of the prohibitions and penalties of this chapter, and the restoring of such prizes in the cases in which restoration shall be adjudged; and also for the purpose of preventing the carrying on of any such expedition or enterprize from the territory or jurisdiction of the United States against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace. (R. S. s. 5287.)

Stoughton v. Dimick, 3 Blatch., 356;
29 Vt., 535, 23 Fed. Cas., 77.

§ 15. **Compelling foreign vessels to depart.**—It shall be lawful for the President, or such person as he shall empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, as shall be necessary to compel any foreign vessel to depart the United States in all cases in which, by the laws of nations or the treaties of the United States, she ought not to remain within the United States. (R. S. s. 5288.)

§ 16. **Armed vessels to give bond on clearance.**—The owners or consignees of every armed vessel sailing out of the ports of, or under the jurisdiction of, the United States, belonging wholly or in part to citizens thereof, shall, before clearing out the same, give bond to the United States, with sufficient sureties, in double the amount of the value of the vessel and cargo on board, including

her armament, conditioned that the vessel shall not be employed by such owners to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace. (R. S. s. 5289.)

U. S. v. Quincy, 6 Pet., 445; U. S. v. Quitman, 2 Am. L. Rev., 645, 27 Fed. Cas., 680.

§ 17. **Detention by collector of customs.**—The several collectors of the customs shall detain any vessel manifestly built for warlike purposes, and about to depart the United States, or any place subject to the jurisdiction thereof, the cargo of which principally consists of arms and munitions of war, when the number of men shipped on board, or other circumstances, render it probable that such vessel is intended to be employed by the owners to cruise or commit hostilities upon the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace, until the decision of the President is had thereon, or until the owner gives such bond and security as is required of the owners of armed vessels by the preceding section. (R. S., s. 5290.)

Hendricks v. Gonzales, 67 Fed. Rep., 659.

§ 18. **Construction of this chapter.**—The provisions of this chapter shall not be construed to extend to any subject or citizen of any foreign prince, state, colony, district, or people who is transiently within the United States and enlists or enters himself on board of any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States was fitted and equipped as such, or hires or retains another subject or citizen of the same foreign prince, state, colony, district, or people who is transiently within the United States to enlist or enter himself to serve such foreign prince, state, colony, district, or people on board such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such foreign prince, state, colony, district, or people. Nor shall they be construed to prevent the prosecution or punishment of treason, or of any piracy defined by the laws of the United States. (R. S., s. 5291.)

CHAPTER THREE.

OFFENSES AGAINST THE ELECTIVE FRANCHISE AND CIVIL RIGHTS OF CITIZENS.

§ 19. **Conspiracy to injure, etc., citizens in the exercise of civil rights.**—If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than five thousand dollars and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States. (R. S., s. 5508.)

U. S. v. Reese, 92 U. S., 214; U. S. v. Cruikshank et al., 92 U. S. 542, 1 Woods, 308, 25 Fed. Cas., 707; Strauder v. W. Va., 100 U. S., 303; Va. v. Reeves, 100 U. S., 313; Ex parte Virginia, 100 U. S., 339; Ex parte Siebold, 100 U. S., 371; Ex parte Clark, 100 U. S., 399; Neal v. Delaware, 103 U. S., 370; U. S. v. Harris, 106 U. S., 629; Civil Rights Cases, 109 U. S., 17; Ex parte Yarbrough, 110 U. S., 651; U. S. v. Waddell, 16 Fed. Rep., 221, 112 U. S., 76; Baldwin v. Frank, 120 U. S., 678; In re Coy, 127 U. S., 731; In re Neagle, 135 U. S., 1; In re Lancaster, 137 U. S., 393; Logan v. U. S., 144 U. S., 263; Brown v. U. S., 150 U. S., 93; In re Quarles, 158 U. S., 532; Motes v. U. S., 178 U. S., 458; Hodges v. U. S., 203 U. S., 1; Rakes v. U. S., 212 U. S., 55; Slaughter House Case, 1 Woods, 21, 15 Fed. Cas., 649, 16 Wall., 36; Seeley v. Knox, 2 Woods, 368, 21 Fed. Cas., 1014; U. S. v. Butler, 1 Hughes, 457, 25 Fed. Cas., 213; U. S. v. Butler, 4 Hughes, 512, 25 Fed. Cas., 226 U. S. v. Degrieff, 16 Blatch., 20, 25 Fed. Cas., 799; U. S. v. Mitchel, 1 Hughes, 439; 26 Fed. Cas., 1283; Le Grand v. U. S., 12 Fed. Rep., 577; In re Baldwin, 27 Fed. Rep., 187; U. S. v. Lancaster, 44 Fed. Rep., 885; U. S. v. Sanges, 48 Fed. Rep., 78; U. S. v. Patrick, 53 Fed. Rep., 356; U. S. v. Patrick, 54 Fed. Rep., 338; Haynes v. U. S., 101 Fed. Rep., 817; U. S. v. Davis, 103 Fed. Rep., 457; Mullen v. U. S., 106 Fed. Rep., 892; Davis v. U. S., 107 Fed.

Rep., 753; Karem v. U. S., 121 Fed. Rep., 250; Morris v. U. S., 125 Fed. Rep., 322; McKenna v. U. S., 127 Fed. Rep., 88; U. S. v. Eberhart, 127 Fed. Rep., 254; U. S. v. Moore, 129 Fed. Rep., 630; U. S. v. Powell, 151 Fed. Rep., 648; Smith v. U. S., 157 Fed. Rep., 721; U. S. v. Mason, 213 U. S., 115.

§ 20. **Depriving persons of civil rights under color of State law.**—Whoever, under color of any law, statute, ordinance, regulation, or custom, wilfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both. (R. S., s. 5510.)

Civil Rights Cases, 109 U. S., 16; U. S. v. Blackburn, 8 Chi. L. N., 26, 24 Fed. Cas., 1158; Re Parrott, 1 Fed. Rep., 481; U. S. v. Buntin, 10 Fed. Rep., 730; Le Grand v. U. S., 12 Fed. Rep., 577; U. S., v. Washington, 20 Fed. Rep., 630.

§ 21. **Conspiracy to prevent person from holding office or officer from performing duty under United States, etc.**—If two or more persons in any State, Territory, or District conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, Territory, District, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties, each of such persons shall be fined not more than five thouand dollars, or imprisoned not more than six years, or both. (R. S., s. 5518.)

Clune v. U. S., 159 U. S., 590.
U. S. v. Johnson, 2 Fed. Rep., 682.

§ 22. **Unlawful presence of troops at elections.**—Every officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, who orders, brings, keeps, or has under his authority or control any troops or armed men at any place where a

general or special election is held in any State, unless such force be necessary to repel armed enemies of the United States, shall be fined not more than five thousand dollars and imprisoned not more than five years. (R. S., s. 5528.)

§ 23. **Intimidation of voters by officers, etc., of Army and Navy.**—Every officer or other person in the military or naval service of the United States who, by force, threat, intimidation, order, advice, or otherwise, prevents or attempts to prevent, any qualified voter of any State from freely exercising the right of suffrage at any general or special election in such State shall be fined not more than five thousand dollars and imprisoned not more than five years. (R. S., s. 5529.)

§ 24. **Officers of Army or Navy prescribing qualifications of voters.**—Every officer of the Army or Navy who prescribes or fixes, or attempts to prescribe or fix, whether by proclamation, order, or otherwise, the qualifications of voters at any election in any State shall be punished as provided in the preceding section. (R. S., s. 5530.)

§ 25. **Officers, etc., of Army or Navy interfering with officers of election, etc.**—Every officer or other person in the military or naval service of the United States who, by force, threat, intimidation, order, or otherwise, compels, or attempts to compel, any officer holding an election in any State to receive a vote from a person not legally qualified to vote, or who imposes, or attempts to impose, any regulations for conducting any general or special election in a State different from those prescribed by law, or who interferes in any manner with any officer of an election in the discharge of his duty, shall be punished as provided in section twenty-three. (R. S., s. 5531.)

§ 26. **Persons disqualified from holding office; when soldiers, etc., may vote.**—Every person convicted of any offense defined in the four preceding sections shall, in addition to the punishment therein prescribed, be disqualified from holding any office of honor, profit, or trust

under the United States; but nothing therein shall be construed to prevent any officer, soldier, sailor, or marine from exercising the right of suffrage in any election district to which he may belong, if otherwise qualified according to the laws of the State in which he offers to vote. (R. S., 5532.)

CHAPTER FOUR.

OFFENSES AGAINST THE OPERATIONS OF THE GOVERNMENT.

65. Resisting revenue officer; rescuing or destroying seized property, etc.
66. Falsely assuming to be a revenue officer.
67. Offering presents to revenue officer.
68. Admitting merchandise to entry for less than legal duty.
69. Securing entry of merchandise by false samples, etc.
70. False certification by consular officer.
71. Taking seized property from custody of revenue officer.
72. Forging or altering ship's papers or custom-house documents.
73. Forging military bounty-land warrants, etc.
74. Forging, etc., certificate of citizenship.
75. Engraving, etc., plate for printing, or photographing, selling, or bringing into United States, etc., certificate of citizenship.
76. False personation, etc., in procuring naturalization.
77. Using false certificate of citizenship, or denying citizenship, etc.
78. Using false certificate, etc., as evidence of right to vote, etc.
79. Falsely claiming citizenship.
80. Taking false oath in naturalization proceedings.
81. Provisions applicable to all courts of naturalization.
82. Shanghaiing and falsely inducing person intoxicated to go on vessel prohibited.
83. Corporations, etc., not to contribute money for political elections, etc.
84. Hunting birds or taking their eggs from breeding grounds, prohibited.

§ 27. **Forgery of letters patent.**—Whoever shall falsely make forge, counterfeit, or alter any letters patent granted or purported to have been granted by the President of the United States; or whoever shall pass, utter, or publish, or attempt to pass, utter, or publish as genuine, any such forged, counterfeited, or falsely altered letters patent, knowing the same to be forged, counterfeited, or falsely altered, shall be fined not more than five thousand dollars and imprisoned not more than ten years. (R. S., s. 5416.)

U. S. v. Irwin, 5 McLean, 178, 26 Fed. Cas., 544.

§ 28. **Forging bond, bid, public record, etc.**—Whoever shall falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or willingly aid, or assist in the false making, altering, forging, or counterfeiting, any bond, bid, proposal, contract, guarantee, security, official bond, pub-

lic record, affidavit, or other writing for the purpose of defrauding the United States; or shall utter or publish as true, or cause to be uttered or published as true, or have in his possession with the intent to utter or publish as true, any such false, forged, altered or counterfeited bond, bid, proposal, contract, guarantee, security, official bond, public record, affidavit or other writing, for the purpose of defrauding the United States; knowing the same to be false, forged, altered, or counterfeited; or shall transmit to, or present, at, or cause or procure to be transmitted to, or presented at, the office of any officer of the United States, any such false, forged, altered, or counterfeited bond, bid, proposal, contract, guarantee, security, official bond, public record, affidavit, or other writing, knowing the same to be false, forged, altered or counterfeited, for the purpose of defrauding the United States, shall be fined not more than one thousand dollars, or imprisoned not more than ten years, or both. (R. S., ss. 5418, 5479.)

U. S. v. Hall, 131 U. S., 50; Cross v. North Carolina, 132 U. S., 131; U. S. v. Barney, 5 Blatch., 294, 24 Fed. Cas., 1011; U. S. v. Lawrence, 13 Blatch., 211, 26 Fed. Cas., 878; U. S. v. Wentworth, 11 Fed. Rep., 52; U. S. v. Houghton, 14 Fed. Rep., 544; U. S. v. Tod, 25 Fed. Rep., 815; U. S. v. Barnhart, 33 Fed. Rep., 459; U. S. v. Crecilius, 34 Fed. Rep., 30; U. S. v. Gowdy, 37 Fed. Rep. 332; U. S. v. Lehman, 39 Fed. Rep., 768; U. S. v. Albert, 45 Fed. Rep. 552; U. S. v. Van Leuven, 62 Fed. Rep., 69; Staton v. U. S., 88 Fed. Rep., 253; U. S. v. Bunting, 82 Fed. Rep., 883; U. S. v. McKinley, 127 Fed. Rep., 166, 168; Neff v. U. S., 165 Fed. Rep., 274; U. S. v. Cameron, 13 N. W. Rep., 561; State v. White, 71 S. W. Rep., 715; 19 A. G. Op., 649.

§ 29. **Forging deeds, powers of attorney, etc.**—Whoever shall falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or willingly aid or assist in the false making, altering, forging, or counterfeiting, any deed, power of attorney, order, certificate, receipt, contract, or other writing, for the purpose of obaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States, or any of their officers or agents, any sum of money; or whoever shall utter or publish as true, or cause to be uttered or published as true, any such false, forged, altered, or counterfeited deed, power of attorney, order, certificate, receipt, contract, or other writing, with intent to defraud the United States knowing the same to be false altered, forged, or counterfeited; or whoever shall transmit to,

or present at, or cause or procure to be transmitted to, or presented at, any office or officer of the Government of the United States, any deed, power of attorney, order, certificate, receipt, contract, or other writing, in support of, or in relation to, any account or claim, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited, shall be fined not more than one thousand dollars and imprisoned not more than ten years. (R. S., s. 5421.)

U. S. v. Staats, 8 How., 41; U. S. v. Barney, 5 Blatch., 294, 24 Fed. Cas., 1011; U. S. v. Bickford, 4 Blatch., 337, 24 Fed. Cas., 1144; U. S. v. Kohnstamm, 5 Blatch., 222, 26 Fed. Cas., 813; U. S. v. Reese, 4 Sawyer, 629, 27 Fed. Cas., 746; U. S. v. Corbin, 11 Fed. Rep., 238; U. S. v. Albert, 45 Fed. Rep., 552; U. S. v. Moore, 60 Fed. Rep., 738; U. S. v. Kessel, 62 Fed. Rep., 59; U. S. v. Hartman, 65 Fed. Rep., 490; U. S. v. Kuentsler, 74 Fed. Rep., 220; U. S. v. Hansee, 79 Fed. Rep., 303; U. S. v. Glaesener, 81 Fed. Rep., 566; Staton v. U. S., 88 Fed. Rep., 253; De Lemos v. U. S., 91 Fed. Rep., 497; Kellog v. U. S., 103 Fed. Rep., 200; U. S. v. Fout, 123 Fed. Rep., 625; U. S. v. Swan, 131 Fed. Rep., 140; Sena v. U. S., 147 Fed. Rep., 485; U. S. v. Spaulding, 13 N. W. Rep., 357.

§ 30. **Having forged papers in possession.**—Whoever, knowingly and with intent to defraud the United States, shall have in his possession any false, altered, forged, or counterfeited deed, power of attorney, order, certificate, receipt, contract, or other writing, for the purpose of enabling another to obtain from the United States, or from any officer or agent thereof, any sum of money, shall be fined not more than five hundred dollars, or imprisoned not more than five years, or both. (R. S., s. 5422.)

§ 31. **False acknowledgments.**—Whoever, being an officer authorized to administer oaths or to take and certify acknowledgments shall knowingly make any false acknowledgment, certificate, or statement concerning the appearance before him or the taking of an oath or affirmation by any person with respect to any proposal, contract, bond, undertaking, or other matter, submitted to, made with, or taken on behalf of, the United States, and concerning which an oath or affirmation is required by law or regulation made in pursuance of law, or with respect to the financial standing of any principal, surety, or other party to any such proposal, contract, bond, undertaking, or other instrument, shall be fined not more than two thousand dollars, or imprisoned not more than two years, or both.

§ 32. **Falsely pretending to be United States officer.**—Whoever, with intent to defraud either the United States or any person, shall falsely assume or pretend to be an officer or employee acting under the authority of the United States, or any department, or any officer of the Government thereof, and shall take upon himself to act as such, or shall in such pretended character demand or obtain from any person or from the United States, or any department, or any officer of the Government thereof, any money, paper, document, or other valuable thing, shall be fined not more than one thousand dollars, or imprisoned not more than three years, or both. (R. S., s. 5448. 18 Apr., 1884, 23 Stat. L. 11, c. 26; 1 Supp., 425.)

U. S. v. Curtain, 43 Fed. Rep., 433; U. S. v. Ballard, 118 Fed. Rep., 757; U. S. v. Bradford, 53 Fed. Rep., 542; U. S. v. Farnham, 127 Fed. Rep., 478; U. S. v. Taylor, 108 Fed. Rep., 621; Littel v. U. S., 169 Fed. Rep., 620.

§ 33. **False personation of holder of public stocks.**—Whoever shall falsely personate any true and lawful holder of any share or sum in the public stocks or debt of the United States, or any person entitled to any annuity, dividend, pension, prize money, wages, or other debt due from the United States, and, under color of such false personation, shall transfer or endeavor to transfer such public stock or any part thereof, or shall receive or endeavor to receive the money of such true and lawful holder thereof, or the money of any person really entitled to receive such annuity, dividend, pension, prize money, wages, or other debt, shall be fined not more than five thousand dollars and imprisoned not more than ten years. (R. S. s. 5435.)

§ 34. **False demand or fraudulent power of attorney.**—Whoever shall knowingly or fraudulently demand or endeavor to obtain any share or sum in the public stocks of the United States, or to have any part thereof transferred, assigned, sold, or conveyed, or to have any annuity, dividend, pension, prize money, wages, or other debt due from the United States, or any part thereof, received, or paid by virtue of any false, forged, or counterfeited power of attorney, authority, or instrument, shall be fined not more than five thousand dollars and imprisoned not more than ten years. (R. S., s. 5436.)

U. S. v. Logan, 105 Fed. Rep., 240.

§ 35. **Making or presenting false claims.**—Whoever shall make or cause to be made, or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent; or whoever, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, shall make or use, or cause to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry; or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim; or whoever, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, with intent to defraud the United States or willfully to conceal such money or other property, shall deliver or cause to be delivered, to any other person having authority to receive the same, any amount of such money or other property less than that for which he received a certificate or took a receipt; or whoever, being authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, shall make or deliver the same to any other person without a full knowledge of the truth of the facts stated therein, and with intent to defraud the United States, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both. And whoever shall knowingly purchase or receive in pledge for any obligation or indebtedness from any soldier, officer, sailor, or other person called into or employed in the military or naval service, any arms, equipments, ammunition, clothes military stores, or other public property, whether furnished to the soldier, sailor officer, or person, under a clothing allowance or other-

wise, such soldier, sailor, officer, or other person not having the lawful right to pledge or sell the same, shall be fined not more than five hundred dollars, and imprisoned not more than two years. (R. S., s. 5438. 30 May, 1908, 35 Stat. L., 555, c. 235.)

U. S. v. Perrin, 131 U. S., 55; In re Luis Oteiza v. Cortes, 136 U. S., 330; Ingraham v. U. S. 155 U. S., 434, 49 Fed. Rep., 155; Lalone v. U. S., 164 U. S., 255; Edington v. U. S., 164 U. S., 361; Ex parte Shaffenburg, 4 Dillon, 271, 21 Fed. Cas., 1144; U. S. v. Bittinger, 21 Int. Rev. Rec., 342, 24 Fed. Cas., 1150; U. S. v. Wright, 2 Cranch C. C., 296, 28 Fed. Cas. 790; U. S. v. Ambrose, 2 Fed. Rep., 764; U. S. v. Coggin, 3 Fed. Rep., 492; U. S. v. Murphy, 9 Fed. Rep., 27; U. S. v. Wentworth, 11 Fed. Rep., 52; U. S. v. Corbin, 11 Fed. Rep., 238; U. S. v. Griswold, 11 Fed. Rep., 807; U. S. v. Hull, 14 Fed. Rep., 324; U. S. v. Houghton, 14 Fed. Rep., 544; U. S. v. Miskell, 15 Fed. Rep., 369; U. S. v. Daubner, 17 Fed. Rep., 793; U. S. v. Russell, 19 Fed. Rep., 591; U. S. v. Griswold, 24 Fed. Rep., 361; U. S. v. Frisbie, 28 Fed. Rep., 808; U. S. v. Rhodes, 30 Fed. Rep., 431; U. S. v. Griswold 30 Fed. Rep., 604; U. S. v. Griswold, 30 Fed. Rep., 762; U. S. v. Reichert, 32 Fed. Rep., 142; U. S. v. Jones, 32 Fed. Rep., 482; U. S. v. Route, 33 Fed. Rep., 246; U. S. v. Gowdy, 37 Fed. Rep., 332; U. S. v. Wallace, 40 Fed. Rep., 144; U. S. v. Newton, 48 Fed. Rep., 218; U. S. v. Strobach, 48 Fed. Rep., 902; U. S. v. Adler, 49 Fed. Rep., 733; U. S. v. Van Leuven, 62 Fed. Rep., 62; U. S. v. Hartman, 65 Fed. Rep., 490; Rhodes v. U. S., 79 Fed. Rep., 740; Dimmick v. U. S., 116 Fed. Rep., 825; U. S. v. Lair, 118 Fed. Rep., 98; Pooler v. U. S., 127 Fed. Rep., 509; Bridgeman v. U. S., 140 Fed. Rep., 577; U. S. v. Hart, 146 Fed. Rep., 202; U. S. v. Michael, 153 Fed. Rep., 609; Greene v. U. S., 154 Fed. Rep., 401; U. S. v. Koplik, 155 Fed. Rep., 919; U. S. v. Smith, 156 Fed. Rep., 859; In re Peraltareavis, 41 Pac. Rep., 538; 18 A. G. Op., 72.

§ 36. **Embezzling arms, stores, etc.**—Whoever shall seal, embezzel, or knowingly apply to his own use, or unlawfully sell, convey, or dispose of, any ordinance, arms, ammunition, clothing, subsistence, stores, money, or other property of the United States, furnished or to be used for the military or naval service, shall be punished as prescribed in the preceding section. (R. S., s. 5439.)

Johnson v. Sayre, 158 U. S., 109; U. S. v. Bogart, 3 Ben., 257, 24 Fed. Cas., 1184; U. S. v. Murphy, 9 Fed. Rep., 26.

§ 37. **Conspiracy to commit offense against the United States; all liable for acts of one.**—If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than ten thousand dollars, or imprisoned not more than two years, or both. (R. S., s. 5440. 17 May, 1879, 21 Stat. L., 4, c. 8; 1 Supp., 264.)

Ex parte Carstendick, 93 U. S., 396; U. S. v. Hirsch, 100 U. S., 33; U. S. v. Chouteau, 102 U. S. 603; U. S. v. Britton, 108 U. S., 192; Mackin v. U. S., 117 U. S., 348; U. S. v. Hess, 124 U. S., 483; Re Coy, 31 Fed. Rep., 794, 127 U. S., 731; U. S. v. Perrin, 131 U. S., 55; U. S. v. Barber, 140 U. S., 177, U. S. v. Logan, 144 U. S., 263, Pettibone v. U. S., 148 U. S., 197; Ex parte Lenon 150 U. S., 393; Dealy v. U. S., 152 U. S., 539; Vannon v. U. S., 156 U. S., 464; Stokes v. U. S., 157 U. S., 187; Clune v. U. S., 159 U. S., 590; France v. U. S., 164 U. S., 676; Williamson v. U. S., 207 U. S., 425; U. S. v. Keitel, 211 U. S., 370; U. S. v. Biggs, 211 U. S., 507; Crawford v. U. S., 212 U. S., 183; Re

Callicot, 8 Int. Rev. Rec., 169, 4 Fed. Cas., 1075; U. S., v. Bayer, 4 Dillon, 407, 24 Fed. Cas. 1046; U. S. v. Boyden, 1 Lowell, 266, 24 Fed. Cas., 1213; U. S. v. Crafton, 4 Dillon, 145, 25 Fed. Cas., 681, U. S. v. DeGrieff, 16 Blatch., 20, 25 Fed. Cas., 799; U. S. v. Denee, 3 Woods, 47, 25 Fed. Cas., 818; U. S. v. Donau, 11 Blatch, 168, 25 Fed. Cas., 890; U. S. v. Goldberg, 7 Biss., 175, 25 Fed. Cas., 1342; U. S. v. Hammond, 2 Woods, 197, 26 Fed. Cas., 99; U. S. v. McDonald, 3 Dillon, 543, 26 Fed. Cas., 1085; U. S. v. McKee, 4 Dillon, 128, 26 Fed. Cas., 1116; U. S. v. Martin, 4 Cliff, 156, 26 Fed. Cas., 1175; U. S. v. Bindskopf, 6 Biss, 259, 27 Fed. Cas., 813; U. S. v. Nunnemacher, 7 Biss., 111, 27 Fed. Cas., 197; U. S. v. Smith, 2 Bond, 323, 27 Fed. Cas., 1144; U. S. v. Stevens, 2 Haskell, 164, 27 Fed. Cas., 1312; U. S. v. Walsh, 5 Dillon, 58, 28 Fed. Cas., 394; U. S. v. Sacia, 2 Fed. Rep., 754; Mussel Slough case, 5 Fed. Rep., 680; U. S. v. Sanche, 7 Fed. Rep., 715; U. S. v. Burgess, 9 Fed. Rep., 896; U. S. v. Watson, 17 Fed. Rep., 145; U. S. v. Gordon, 22 Fed. Rep., 250; U. S. v. Payne, 22 Fed. Rep., 426; U. S. v. Kane, 23 Fed. Rep., 748; U. S. v. Johnson, 26 Fed. Rep., 682; Re Wolf, 27 Fed. Rep., 606; U. S. v. Frishie, 28 Fed. Rep., 808; U. S. v. Thompson, 29 Fed. Rep., 86; U. S. v. Wooten, 29 Fed. Rep., 702; U. S. v. Thompson, 31 Fed. Rep., 331; U. S. v. Reichert, 32 Fed. Rep., 142; U. S. v. Owen, 32 Fed. Rep., 534; U. S. v. Johannesen, 35 Fed. Rep., 411; U. S. v. Milner, 36 Fed. Rep., 890; U. S. v. Smith, 40 Fed. Rep., 755; U. S. v. Stevens, 44 Fed. Rep., 132; U. S. v. Gardner, 42 Fed. Rep., 829; U. S. v. Lancaster, 44 Fed. Rep., 896; Re Newton, 48 Fed. Rep., 218; U. S. v. Adler, 49 Fed. Rep., 736; U. S. v. Newton, 52 Fed. Rep., 275; Toledo, &c., R. Co., v. Penn. Co., 54 Fed. Rep., 730; Waterhouse v. Conner, 55 Fed. Rep., 150; U. S. v. Howell, 56 Fed. Rep., 21; In re Benson, 58 Fed. Rep., 962; U. S. v. Wilson, 60 Fed. Rep., 890; U. S. v. Van Leuven, 62 Fed. Rep., 62; Thomas v. Ry. Co., 62 Fed. Rep., 803; Re Phelan, 62 Fed. Rep., 803; Charge to Grand Jury, 62 Fed. Rep., 828, 840; U. S. v. Debs, 63 Fed. Rep., 436; U. S. v. Barrett, 65 Fed. Rep., 62; U. S. v. Cassidy, 67 Fed. Rep., 698; U. S. v. Benson, 70 Fed. Rep., 591; U. S. v. McCord, 72 Fed. Rep., 159; U. S. v. Bunting, 82 Fed. Rep., 883; U. S. v. Taffe, 86 Fed. Rep., 113; Berkowitz v. U. S., 93 Fed. Rep., 452; U. S. v. Sweeney, 95 Fed. Rep., 434; Reilley v. U. S. 106 Fed. Rep., 896; Gantt v. U. S., 108, Fed. Rep., 61; Wright v. U. S. 108 Fed. Rep., 805; U. S. v. Greene, 113 Fed. Rep. 683; 115 Fed. Rep., 343; McKnight v. U. S., 115 Fed. Rep., 972; U. S. v. Feuschel, 116 Fed. Rep., 642; U. S. v. Clark, 121 Fed. Rep., 190; U. S. v. Curley, 122 Fed. Rep., 316; U. S. v. Marx, 122 Fed. Rep., 964; U. S. v. McKinley, 126 Fed. Rep., 242; U. S. v. Dietrich, 126 Fed. Rep., 664; Lehman v. U. S., 127 Fed. Rep., 42; Conrad v. U. S., 127 Fed. Rep., 798; Radford v. U. S., 129 Fed. Rep., 49; Curley v. U. S., 130 Fed. Rep., 1; Scott v. U. S., 130 Fed. Rep., 429; U. S. v. Grunberg, 131 Fed. Rep., 137; U. S. v. Radford, 131 Fed. Rep., 378; U. S. v. Hyde, 132 Fed. Rep., 545; Olson v. U. S., 133 Fed. Rep., 849; M'Gregor v. U. S., 134 Fed. Rep., 187; U. S. v. Stone, 135 Fed. Rep., 392; U. S. v. Scott, 139 Fed. Rep., 697; U. S. v. Mitchell, 141 Fed. Rep., 666; U. S. v. Cohn, 142 Fed. Rep., 983; Wilder v. U. S., 143 Fed. Rep., 433; U. S. v. Thomas, 145 Fed. Rep., 74; Grumberg v. U. S., 145 Fed. Rep., 81; U. S. v. Greene, 146 Fed. Rep., 803; Robens v. U. S. 146 Fed. Rep., 978; U. S. v. Bradford, 148 Fed. Rep., 413; U. S. v. Brace, 149 Fed. Rep., 874; U. S. v. Richards, 149 Fed. Rep., 443; U. S. v. Burkett, 150 Fed. Rep., 208; Bradford v. U. S., 152 Fed. Rep., 617; Stearns v. U. S., 152 U. S., 900; U. S. v. Peeke, 153 Fed. Rep., 166; Greene v. U. S., 154 Fed. Rep., 401; Ware v. U. S., 154 Fed. Rep., 577; Thomas v. U. S., 156 Fed. Rep., 897; U. S. v. Biggs, 157 Fed. Rep., 264; U. S. v. Keitel, 157 Fed. Rep., 396; U. S. v. Robbins, 157 Fed. Rep., 999; Johnson v. U. S., 158 Fed. Rep., 69; U. S. v. Lonabaugh, 158 Fed. Rep., 314; U. S. v. Black, 160 Fed. Rep., 431; U. S. v. Comstock, 162 Fed. Rep., 415; Jones v. U. S., 162 Fed. Rep., 417; U. S. v. Wells, 163 Fed. Rep., 313; U. S. v. Haas, 163 Fed. Rep., 908; U. S. v. Clark, 164 Fed. Rep., 75; U. S. v. Grodson, 164 Fed. Rep., 157; U. S. v. Stamatopoulos, 164 Fed. Rep., 524; Scott v. U. S., 165 Fed. Rep., 172; 14 A. G. Op., 43.

§ 38. **Delaying or defrauding captor or claimant, etc., of prize property.**—Whoever shall willfully do, or aid or advise in the doing, of any act relating to the bringing in, custody, preservation, sale, or other disposition of any property captured as prize, or relating to and documents or papers connected with the property, or to any deposition or other document or paper connected with the proceedings, with intent to defraud, delay, or injure the United States or any captor or claimant of such property, shall be fined not more than ten thousand dollars, or imprisoned not more than five years, or both. (R. S., s. 5441.)

§ 39. **Bribery of United States officer.**—Whoever shall promise, offer, or give, or cause or procure to be promised, offered, or given, any money or other thing of value, or shall make or tender any contract, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, to any officer of the United States, or to any person acting for or on behalf of the United States in any official function, under or by authority of any department or office of the Government thereof, or to any officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or both Houses thereof, with intent to influence his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be fined not more than three times the amount of money or value of the thing so offered, promised, given, made, or tendered, or caused or procured to be so offered, promised, given, made, or tendered, and imprisoned not more than three years. (R. S., s. 5451.)

U. S. v. Worrall, 2 Dall., 388; In re Paliser, 136 U. S., 257; U. S. v. Gibson, 47 Fed. Rep., 833; U. S. v. Kissel, 62 Fed. Rep., 57; U. S. v. Van Leuven, 62 Fed. Rep., 62; In re Yee Gee, 83 Fed. Rep., 145; U. S. v. Boyer, 85 Fed. Rep., 425; U. S. v. Ingham, 97 Fed. Rep., 935; U. S. v. Green, 136 Fed. Rep., 618; Vernon v. U. S., 146 Fed. Rep., 121.

§ 40. **Unlawfully taking or using papers relating to claims.**—Whoever shall take and carry away, without authority from the United States, from the place where it has been filed, lodged, or deposited, or where it may for the time being actually be kept by authority of the United States, any certificate, affidavit, deposition, written statement of facts, power of attorney, receipt, voucher, assignment, or other document, record, file, or paper, prepared, fitted, or intended to be used or presented in order to procure the payment of money from or by the United States, or any officer or agent thereof, or the allowance or payment of the whole or any part of any claim,

account, or demand against the United States, whether the same has or has not already been so used or presented, and whether such claim, account, or demand, or any part thereof, has or has not already been allowed or paid; or whoever shall present, use, or attempt to use, any such document, record, file, or paper so taken and carried away, in order to procure the payment of any money from or by the United States, or any officer or agent thereof, or the allowance or payment of the whole or any part of any claim, account, or demand against the United States, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both. (R. S., s. 5454.)

§ 41. **Persons interested not to act as agents of the Government.**—No officer or agent of any corporation, joint stock company, or association, and no member or agent of any firm, or person directly or indirectly interested in the pecuniary profits or contracts of such corporation, joint stock company, association, or firm, shall be employed or shall act as an officer or agent of the United States for the transaction of business with such corporation, joint stock company, association, or firm. Whoever shall violate the provision of this section shall be fined not more than two thousand dollars and imprisoned not more than two years. (R. S., s. 1783.)

§ 42. **Enticing desertions from the military or naval service.**—Whoever shall entice or procure, or attempt or endeavor to entice or procure, any soldier in the military service, or any seaman or other person in the naval service of the United States, or who has been recruited for such service, to desert therefrom, or shall aid any such soldier, seaman, or other person in deserting or in attempting to desert from such service; or whoever shall harbor, conceal, protect, or assist any such soldier, seaman, or other person who may have deserted from such service, knowing him to have deserted therefrom, or shall refuse to give up and deliver such soldier, seaman, or other person on the demand of any officer authorized to receive him, shall be imprisoned not more than three

years and fined not more than two thousand dollars. (R. S., ss. 1553, 5455. 27 Feb., 1877, 19 Stat. L., 253, c. 69.)

Kurtz v. Moffitt, 115 U. S. 487; U. S. v. Clark, 25 Fed. Cas., 452.

§ 43. **Enticing away workmen.**—Whoever shall procure or entice any artificer or workman retained or employed in any arsenal or armory, to depart from the same during the continuance of his engagement, or to avoid or break his contract with the United States; or whoever, after due notice of the engagement of such workman or artificer, during the continuance of such engagement, shall retain, hire, or in anywise employ, harbor, or conceal such artificer or workman, shall be fined not more than fifty dollars, or imprisoned not more than three months, or both. (R. S., s. 1668.)

§ 44 **Injuries to fortifications, harbor defenses, etc.**—Whoever shall willfully trespass upon, injure, or destroy any of the works or property or material of any submarine mine or torpedo, or fortification or harbor-defense system owned or constructed or in process of construction by the United States, or shall willfully interfere with the operation or use of any such submarine mine, torpedo, fortification, or harbor-defense system, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both. (7 July, 1898, 30 Stat. L., 717, c. 576, s. 1; 2 Supp. 885.)

§ 45. **Unlawfully entering upon military reservation, fort, etc.**—Whoever shall go upon any military reservation, army post, fort, or arsenal, for any purpose prohibited by law or military regulation made in pursuance of law, or whoever shall reenter or be found within any such reservation, post, fort, or arsenal, after having been removed therefrom or ordered not to reenter by any officer or person in command or charge thereof, shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both.

§ 46. **Robbery or larceny of personal property of the United States.**—Whoever shall rob another of any kind or description of personal property belonging to the United States, or shall feloniously take and carry away the same, shall be fined not more than five thousand dol-

lars, or imprisoned not more than ten years, or both. (R. S., s. 5456.)

Jolly v. U. S., 170 U. S., 402; U. S. v. Jones, 69 Fed. Rep., 973; Keller v. U. S., 168 Fed. Rep., 697.

§. 47. **Embezzling, stealing, etc., public property.**—Whoever shall embezzle, steal, or purloin any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, shall be fined not more than five thousand dollars, or imprisoned not more than five years or both. (3 Mar., 1875, 18 Stat. L., 479, c. 144, s. 1; 1 Supp., 88.)

Moore v. U. S., 160 U. S., 268; Faust v. U. S., 163 U. S. 452; U. S. v. Gilbert, 17 Int. Rev. Rec., 54, 25 Fed. Cas., 1318; U. S. v. DeGroat, 30 Fed. Rep., 764; U. S. v. Borneman, 26 Fed. Rep., 257; U. S. v. Jones, 69 Fed. Rep., 973; Dimmick v. U. S., 135 Fed. Rep., 257.

§ 48. **Receivers, etc., of stolen public property.**—Whoever shall receive, conceal, or aid in concealing, or shall have or retain in his possession with intent to convert to his own use or gain, any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, which has theretofore been embezzled, stolden, or purloined by any other person, knowing the same to have been so embezzled, stolen, or purloined, shall be fined not more than five thousand dollars, or imprisoned not more than five years or both; and such person may be tried either before or after the conviction of the principal offender. (3 Mar., 1875, 18 Stat. L., 479, c. 144, s. 2; 1 Supp., 88.)

Kerby v. U. S., 174 U. S., 47; U. S. v. De Bare, 6 Biss, 358, 25 Fed. Cas., 796; U. S. v. Montgomery, 3 Sawy., 544, 26 Fed. Cas., 1296.

§ 49. **Timber depredations on public lands.**—Whoever shall cut, or cause or procure to be cut, or shall wantonly destroy, or cause to be wantonly destroyed, any timber growing on the public lands of the United States; or whoever shall remove, or cause to be removed, any timber from said public lands, with intent to export or to dispose of the same; or whoever, being the owner, master, or consignee of any vessel, or the owner, director, or agent of any railroad, shall knowingly transport any timber so cut or removed from said lands, or lumber manufactured therefrom, shall be fined not more than one thousand dollars, or imprisoned not more than one

year, or both. Nothing in this section shall prevent any miner or agriculturalist from clearing his land in the ordinary working of his mining claim, or in the preparation of his farm for tillage, or from taking the timber necessary to support his improvements, or the taking of timber for the use of the United States. And nothing in this section shall interfere with or take away any right or privilege under any existing law of the United States to cut or remove timber from any public land. (3 June, 1878, 20 Stat. L., 90, c. 151, s. 4; 1 Supp., 168. 4 Aug., 1892, 27 Stat. L., 348, c. 375, s. 2; 2 Supp., 65.)

Railroad Co. v. U. S., 149 U. S., 733; Stone v. U. S., 159 U. S., 491; U. S. v. Nelson, 27 Fed. Cas., 86; The Timber Cases, 11 Fed. Rep., 81; U. S. v. Smith, 11 Fed. Rep., 487; U. S. v. Stores, 14 Fed. Rep., 824; U. S. v. Yoder, 18 Fed. Rep., 372; U. S. v. Williams, 18 Fed. Rep., 475; U. S. v. Lane, 19 Fed. Rep., 910; U. S. v. Benjamin, 21 Fed. Rep., 285; U. S. v. Leatherbury, 27 Fed. Rep., 606; 32 Fed. Rep., 780; U. S. v. Ball, 31 Fed. Rep., 667; U. S. v. Murphy, 32 Fed. Rep., 376; U. S. v. Edwards, 38 Fed. Rep., 812; Railroad Co. v. U. S., 40 Fed. Rep., 419; U. S. v. Garretson, 42 Fed. Rep., 22; U. S. v. Kankapot, 43 Fed. Rep., 64; U. S. v. Reder, 69 Fed. Rep., 965; U. S. v. Hacker, 73 Fed. Rep., 292; Pine River L. Co., v. Improvement Co., 89 Fed. Rep., 907; Grubbs v. U. S., 105 Fed. Rep., 314; Bryant v. U. S., 105 Fed. Rep., 941; Teller v. U. S., 113 Fed. Rep., 273; Morgan v. U. S., 148 Fed. Rep., 189; Nickell v. U. S., 167 Fed. Rep., 741; Robnett v. U. S., 169 Fed. Rep., 778; 18 A. G. Op., 555.

§ 50. **Timber, etc., depredations on Indian and other reservations.**—Whoever shall unlawfully cut, or aid in unlawfully cutting, or shall wantonly injure or destroy, or procure to be wantonly injured or destroyed, any tree, growing, standing, or being upon any land of the United States which, in pursuance of law, has been reserved or purchased by the United States for any public use, or upon any Indian reservation or lands belonging to or occupied by any tribe of Indians under the authority of the United States, or any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both. (R. S., s. 5388. 3 Mar., 1875, 18 Stat. L., 381, c. 451, s. 1; Supp., 91. 4 June, 1888, 25 Stat. v. L., 166, c. 340; 1 Supp., 588. 25 June, 1910, 36 Stat. L., 857, c. 431, s. 6.)

§ 51. **Boxing, etc., timber on public lands for turpentine, etc.**—Whoever shall cut, chip, chop, or box any tree upon any lands belonging to the United States, or upon any lands covered by or embraced in any unperfected

settlement, application, filing, entry, selection, or location, made under any law of the United States, for the purpose of obtaining from such tree any pitch, turpentine, or other substance, or shall knowingly encourage, cause, procure, or aid in the cutting, chipping, chopping, or boxing of any such tree, or shall buy, trade for, or in any manner acquire any pitch, turpentine, or other substance, or any article or commodity made from any such pitch turpentine, or other substance, when he has knowledge that the same has been so unlawfully obtained from such trees, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both. (4 June, 1906, 34 Stat. L., 208, c. 2571.)

§ 52. **Setting fire to timber on public lands.**—Whoever shall wilfully set on fire, or cause to be set on fire, any timber, underbrush, or grass upon the public domain, or shall leave or suffer fire to burn unattended near any timber or other inflammable material, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both. (24 Feb., 1897, 29 Stat. L., 594, c. 313, s. 1; 2 Supp., 562, 5 May, 1900, 31 Stat. L., 169 c. 349; 2 Supp., 1163.)

§ 53. **Failing to extinguish fires.**—Whoever shall build a fire in or near any forest, timber, or other inflammable material upon the public domain, or upon any Indian reservation, or lands belonging to or occupied by any tribe of Indians under the authority of the United States, or upon any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States, shall, before leaving said fire, totally extinguish the same; and whoever shall fail to do so shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both. (24 Feb., 1897, 29 Stat. L., 594, c. 313, s. 2; 2 Supp., 562. 5 May, 1900, 31 Stat. L., 170, c. 349, s. 2; 2 Supp., 1163. 25 June, 1910, 36 Stat. L., 857, c. 431, s. 6.)

§ 54. **Fines to be paid into school fund.**—In all cases arising under the two preceding sections the fines collected shall be paid into the public school fund of the county in which the lands where the offense was commit-

ted are situated. (24 Feb., 1897, 29 Stat. L., 594, c. 313, s. 3; 2 Supp., 562, 5 May, 1900, 31 Stat. L., 170, c. 349, s. 3, 2 Supp., 1163.)

§ 55. **Trespassing on Bull Run National Forest, Oregon.**—Whoever, except forest rangers, and other persons employed by the United States to protect the forest, federal and state officers in the discharge of their duties, and the employees of the water board of the city of Portland, State of Oregon, shall knowingly trespass upon any part of the reserve known as Bull Run National Forest, in the Cascade Mountains, in the State of Oregon, or shall enter thereon for the purpose of grazing stock, or shall engage in grazing stock thereon, or shall permit stock of any kind to graze thereon, shall be fined not more than five hundred dollars, or imprisoned not more than six months or both. (28 Apr., 1904, 33 Stat. L., 526, c. 1774.)

§ 56. **Breaking fence or gate inclosing reserved lands, or driving or permitting live stock to enter upon.**—Whoever shall knowingly and unlawfully break, open, or destroy any gate, fence, hedge, or wall inclosing any lands of the United States which, in pursuance of any law, have been reserved or purchased by the United States for any public use; or whoever shall drive any cattle, horses, hogs, or other live stock upon any such lands for the purpose of destroying the grass or trees on said lands, or where they may destroy the said grass or trees; or whoever shall knowingly permit his cattle, horses, hogs, or other live stock, to enter through any such inclosure upon any such lands of the United States, where such cattle, horses, hogs, or other live stock may or can destroy the grass or trees or other property of the United States on the said lands shall be fined not more than five hundred dollars or imprisoned not more than one year, or both: *Provided,* That nothing in this section shall be construed to apply to unreserved public lands. (3 Mar., 1875, 18 Stat. L., 481, c. 151, ss. 2, 3; 1 Supp., 91.)

§ 57. **Injuring or removing posts or monuments.**—Whoever shall willfully destroy, deface, change, or remove to another place any section corner, quarter-section corner, or meander post, on any Government line of survey, or shall willfully cut down any witness tree or any

tree blazed to bark the line of a Government survey, or shall willfully deface change, or remove any monument or bench mark of any Government survey, shall be fined not more than two hundred and fifty dollars, or imprisoned not more than six months, or both. (10 June, 1896, 29 Stat. L., 343, c. 398; 2 Supp., 516.)

§ 58. **Interrupting surveys.**—Whoever in any manner, by threats or force, shall interrupt, hinder, or prevent the surveying of the public lands, or of any private land claim which has been or may be confirmed by the United States, by the persons authorized to survey the same, in conformity with the instructions of the Commissioner of the General Land Office, shall be fined not more than three thousand dollars and imprisoned not more than three years. (R. S., s. 2412.)

§ 59. **Agreement to prevent bids at sale of lands.**—Whoever, before or at the time of the public sale of any of the lands of the United States, shall bargain, contract, or agree, or attempt to bargain, contract, or agree with any other person, that the last-named person shall not bid upon or purchase the land so offered for sale, or any parcel thereof; or whoever by intimidation, combination, or unfair management shall hinder or prevent, or attempt to hinder or prevent, any person from bidding upon or purchasing any tract of land so offered for sale, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both. (R. S., s. 2373.)

§ 60. **Injuries to United States telegraph, etc., lines.**—Whoever shall willfully or or maliciously injure or destroy any of the works, property, or material of any telegraph, telephone, or cable line, or system, operated or controlled by the United States, whether constructed, or in process of construction, or shall willfully or maliciously interfere in any way with the working or use of any such line, or system, or shall willfully or maliciously obstruct, hinder, or delay the transmission of any communication over any such line, or system, shall be fined not more than one thousand dollars, or imprisoned not more than three years, or both. (23 June, 1874, 18 Stat. L., 250 c. 461; 1 Supp., 46.)

§ 61. **Counterfeiting weather forecast.**—Whoever shall knowingly issue or publish any counterfeit weather forecast or warning of weather conditions falsely representing such forecast or warning to have been issued or published by the Weather Bureau, United States Signal Service, or other branch of the Government service, shall be fined not more than five hundred dollars, or imprisoned not more than ninety days, or both. (8 Aug., 1894, 28 Stat. L., 274, c. 238; 2 Supp., 233. 2 Mar., 1895, 28 Stat. L., 737, c. 169; 2 Supp., 406. 25 Apr., 1896, 29 Stat. L., 108, c. 140; 2 Supp., 459.)

§ 62. **Interfering with employees of Bureau of Animal Industry; penalty.**—Whoever shall forcibly assault, resist, oppose, prevent, impede, or interfere with any officer or employee of the Bureau of Animal Industry of the Department of Agriculture in the execution of his duties, or on account of the execution of his duties, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both; and whoever shall use any deadly or dangerous weapon in resisting any officer or employee of the Bureau of Animal Industry of the Department of Agriculture in the execution of his duties, with intent to commit a bodily injury upon him or to deter or prevent him from discharging his duties, or on account of the performance of his duties, shall be fined not more than one thousand dolars, or imprisoned not more than five years, or both. (3 Mar., 1905, 33 Stat. L., 1265, c. 1496, s. 5.)

§ 63. **Forgery of certificate of entry.**—Whoever shall forge, counterfeit, or falsely alter any certificate of entry made or required to be made in pursuance of law by an officer of the customs, or shall use any such forged, counterfeited, or falsely altered certificate, knowing the same to be forged, counterfeited, or falsely altered, shall be fined not more than ten thousand dollars and imprisoned not more than three years. (R. S., s. 5417.)

§ 64. **Concealment of destruction or invoices, etc.**—Whoever shall willfully conceal or destroy any invoice, book, or paper relating to any merchandise liable to duty, which has been or may be imported into the United States from any foreign port or country, after an in-

spection thereof has been demanded by the collector of any collection district, or shall at any time conceal or destroy any such invoice, book, or paper for the purpose of suppressing any evidence of fraud therein contained, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both. (R. S., s. 5443.)

§ 65. **Resisting revenue officers; rescuing or destroying seized property, etc.**—Whoever shall forcibly assault, resist, oppose, prevent, impede, or interfere with any officer of the customs or of the internal revenue or his deputy, or any person assisting him in the execution of his duties, or any person authorized to make searches and seizures, in the execution of his duty, or shall rescue, attempt to rescue, or cause to be rescued, any property which has been seized by any person so authorized; or whoever before, at, or after such seizure, in order to prevent the seizure or securing of any goods, wares, or merchandise by any person so authorized, shall stave, break, throw overboard, destroy, or remove the same, shall be fined not more than two thousand dollars, or imprisoned not more than one year, or both; and whoever shall use any deadly or dangerous weapon in resisting any person authorized to make searches or seizures, in the execution of his duty, with intent to commit a bodily injury upon him or to deter or prevent him from discharging his duty, shall be imprisoned not more than ten years. (R. S., s. 5447.)

§ 66. **Falsely assuming to be a revenue officer.**—Whoever shall falsely represent himself to be a revenue officer, and, in such assumed character, demand or receive any money or other article of value from any person for any duty or tax due to the United States, or for any violation or pretended violation of any revenue law of the United States, shall be fined not more than five hundred dollars and imprisoned not more than two years. (R. S., s. 5448. U. S. v. Brown, 119 Fed. Rep., 482; U. S. v. Farnham, 127 Fed. Rep., 478.)

§ 67. **Offering presents to revenue officers.**—Whoever, being engaged in the importation into the United States of any goods, wares, or merchandise, or being interested

as principal, clerk, or agent in the entry of any goods, wares, or merchandise, shall at any time make, or offer to make, to any officer of the revenue, any gratutity or present of money or other thing of value, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both. (R. S., s. 5452.)

§ 68. **Admitting merchandise to entry for less than legal duty.**—Whoever, being an officer of the revenue, shall, by any means whatever, knowingly admit or aid in admitting to entry, any goods, wares, or merchandise, upon payment of less than the amount of duty legally due thereon, shall be removed from office and fined not more than five thousand dollars, or imprisoned not more than two years, or both. (R. S., s. 5444.)

U. S. v. Mescall, 164 Fed. Rep., 584.

§ 69. **Securing entry of merchandise by false samples, etc.**—Whoever, by any means whatever, shall knowingly effect, or aid in effecting, any entry of goods, wares, or merchandise, at less than the true weight or measure thereof, or upon a false classification thereof as to quality or value, or by the payment of less than the amount of duty legally due thereon, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both. (R. S., s. 5445.)

U. S. v. Rosenthal, 126 Fed. Rep., 766.

§ 70. **False certification by consular officers.**—Whoever, being a consul, or vice-consul, or other person employed in the consular service of the United States, shall knowingly certify falsely to any invoice, or other paper, to which his certificate is by law authorized or required, shall be fined not more than ten thousand dollars and imprisoned not more than three years. (R. S., s. 5442.)

§ 71. **Taking seized property from custody of revenue officer.**—Whoever shall dispossess or rescue, or attempt to dispossess or rescue, any property taken or detained by any officer or other person under the authority of any revenue law of the United States, or shall aid or assist therein, shall be fined not more than three hundred dollars and imprisoned not more than one year. (R. S., s. 5446.)

§ 72. **Forging or altering ship's papers or custom-house documents.**—Whoever shall falsely make, forge, counterfeit, or alter any instrument in imitation of, or purporting to be, an abstract or official copy or certificate of the recording, registry or enrollment of any vessel, in the office of any collector of the customs, or a license to any vessel for carrying on the coasting trade or fisheries of the United States, or a certificate of ownership, pass, passport, sea letter, or clearance, granted for any vessel, under the authority of the United States, or a permit, debenture, or other official document granted by any collector or other officer of the customs by virtue of his office; or whoever shall utter, publish, or pass, or attempt to utter, publish, or pass, as true, any such false, forged, counterfeited, or falsely altered instrument, adstract, official copy, certificate, license, pass, passport, sea letter, clearance, permit, debenture or other official document herein specified, knowing the same to be false, forged, counterfeited, or falsely altered, with an intent to defraud, shall be fined not more than one thousand dollars and imprisoned not more than three years. (R. S., s. 5423.)

§ 73. **Forging military bounty-land warrant, etc.**—Whoever shall falsely make, alter, forge, or counterfeit any military bounty-land warrant, or military bounty-land warrant certificate, issued or purporting to have been issued by the Commissioner of Pensions under any law of Congress, or any certificate or duplicate certificate of location of any military bounty-land warrant, or military bounty-land warrant certificate upon any of the lands of the United States, or any certificate or duplicate certificate of the purchase of any of the lands of the United States, or any receipt or duplicate receipt for the purchase money of any of the lands of the United States, issued or purporting to have been issued by the register and receiver at any land office of the United States or by either of them; or whoever shall utter, publish, or pass as true, any such false, forged, or counterfeited military bounty-land warrant, military bounty-land warrant certificate, certificate or duplicate certificate of location, certificate or duplicate certificate of purchase,

receipt or duplicate receipt for the purchase money of any of the lands of the United States, knowing the same to be false, forged, or counterfeited, shall be imprisoned not more than ten years. (R. S., s. 5420.)

§ 74. **Forging, etc., certificate of citizenship.**—Whoever shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or shall knowingly aid or assist in falsely making, forging, or counterfeiting any certificate of citizenship, with intent to use the same, or with the intent that the same may be used by some other person, shall be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both. (29 June, 1906, 34 Stat. L., 602, c. 3592, s. 16.)

§ 75. **Engraving, etc., plate for printing, or photographing, selling, or bringing into United States, etc., certificate of citizenship, etc.**—Whoever shall engrave, or cause or procure to be engraved, or assist in engraving, any plate in the likeness of any plate designed for the printing of a certificate of citizenship; or whoever shall sell any such plate, or shall bring into the United States from any foreign place any such plate, except under the direction of the Secretary of Commerce and Labor or other proper officer; or whoever shall have in his control, custody, or possession any metallic plate engraved after the similitude of any plate from which any such certificate has been printed, with intent to use or to suffer such plate to be used in forging or counterfeiting any such certificate or any part thereof; or whoever shall print, photograph, or in any manner cause to be printed, photographed, made, or executed, any print or impression in the likeness of any such certificate, or any part thereof; or whoever shall sell any such certificate, or shall bring the same into the United States from any foreign place, except by direction of some proper officer of the United States; or whoever shall have in his possession a distinctive paper which has been adopted by the proper officer of the United States for the printing of such certificate, with intent unlawfully to use the same, shall be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both. (29 June, 1906, 34 Stat. L., 602, c. 3592, s. 17.)

§ 76. **False personation, etc., in procuring naturalization.**—Whoever, when applying to be admitted a citizen, or when appearing as a witness for any such person, shall knowingly personate any person other than himself, or shall falsely appear in the name of a deceased person, or in an assumed or fictitious name; or whoever shall falsely make, forge, or counterfeit any oath, notice, affidavit, certificate, order, record, signature, or other instrument, paper, or proceeding required or authorized by any law relating to or providing for the naturalization of aliens; or whoever shall utter, sell, dispose of, or shall use as true or genuine, for any unlawful purpose, any false, forged, antedated, or counterfeit oath, notice, certificate, order, record, signature, instrument, paper, or proceeding above specified; or whoever shall sell or dispose of to any person other than the person for whom it was originally issued any certificate of citizenship or certificate showing any person to be admitted a citizen, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both. (R. S.,s. 5424.)

U. S. v. York, 131 Fed. Rep., 323; U. S. v. Raisch, 144 Fed. Rep., 486.

§ 77. **Using false certificate of citizenship, or denying citizenship, etc.**—Whoever shall use or attempt to use, or shall aid, assist, or participate in the use of any certificate of citizenship, knowing the same to be forged, counterfeit, or antedated, or knowing the same to have been procured by fraud or otherwise unlawfully obtained; or whoever, without lawful excuse, shall knowingly possess any false, forged, antedated, or counterfeit certificate of citizenship purporting to have been issued under any law of the United States relating to naturalization, knowing such certificate to be false, forged, antedated, or counterfeit, with the intent unlawfully to use the same; or whoever shall obtain, accept, or receive any certificate of citizenship, knowing the same to have been procured by fraud or by the use or means of any false name or statement given or made with the intent to procure, or to aid in procuring, the issuance of such certificate, or knowing the same to have

been fraudulently altered or antedated; or whoever, without lawful excuse, shall have in his possession any blank certificate of citizenship provided by the Bureau of Immigration and Naturalization with the intent unlawfully to use the same; or whoever, after having been admitted to be a citizen, shall, on oath or by affidavit, knowingly deny that he has been so admitted, with the intent to evade or avoid any duty or liability imposed or required by law, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both. (R. S., s. 5425. 29 June, 1906, 34 Stat. L., 602, c. 3592, s. 19.)

U. S. v. Melfi, 118 Fed. Rep., 899.

§ 78. **Using false certificate, etc., as evidence of right to vote, etc.**—Whoever shall in any manner use, for the purpose of registering as a voter, or as evidence of a right to vote, or otherwise unlawfully, any order, certificate of citizenship, or certificate, judgment, or exemplification, showing any person to be admitted to be a citizen, whether heretofore or hereafter issued or made, knowing that such order, certificate, judgment, or exemplification has been unlawfully issued or made; or whoever shall unlawfully use, or attempt to use, any such order or certificate, issued to or in the name of any other person, or in a fictitious name or the name of a deceased person, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both. (R. S., s. 5426.)

U. S. v. Burley, 14 Blatch, 91, 24 Fed. Cas., 1301; U. S. v. Lehman, 39 Fed. Rep., 768.

§ 79. **Falsely claiming citizenship.**—Whoever shall knowingly use any certificate or naturalization heretofore or which hereafter may be granted by any court, which has been or may be procured through fraud by false evidence, or which has been or may hereafter be issued by the clerk of any other officer of the court without any appearance and hearing of the applicant in court and without lawfull authority; or whoever, for any fraudulent purpose whatever, shall falsely represent himself to be a citizen of the United States without having been duly admitted to citizenship, shall be fined not

more than one thousand dollars, or imprisoned not more than two years, or both. (R. S., s. 5428.)

Green, v. U. S., 150 Fed. Rep., 560.
U. S. v. Hamilton, 157 Fed. Rep., 569.

§ 80. **Taking false oath in naturalization.**—Whoever, in any proceeding under or by virtue of any law relating to the naturalization of aliens, shall knowingly swear falsely in any case where an oath is made or affidavit taken, shall be fined not more than one thousand dollars and imprisoned not more than five years. (R. S., s. 5395.)

Schmidt v. U. S., 133 Fed. Rep., 257;
Boren v. U. S., 144 Fed. Rep., 801;
Moon v. U. S., 144 Fed. Rep., 962.

§ 81. **Provisions applicable to all courts of naturalization.**—The provisions of the five sections last preceding shall apply to all proceedings had or taken, or attempted to be had or taken, before any court in which any proceeding for naturalization may be commenced or attempted to be commenced, and whether such court was vested by law with jurisdiction in naturalization proceedings or not. (R. S., s. 5429.)

§ 82. **Shanghaiing, and falsely inducing persons intoxicated to go on vessel prohibited.**—Whoever, with intent that any person shall perform service or labor of any kind on board of any vessel engaged in trade and commerce among the several States or with foreign nations, or on board of any vessel of the United States engaged in navigating the high seas or any navigable water of the United States, shall procure or induce, or attempt to procure or induce, another, by force or threats, or by representation which he knows or believes to be untrue, or while the person so procured or induced is intoxicated or under the influence of any drug, to go on board of any such vessel, or to sign or in any wise enter into any agreement to go on board of any such vessel to perform service or labor thereon; or whoever shall knowingly detain on board of any such vessel any person so procured or induced to go on board thereof, or to enter into any agreement to go on board thereof, by any means herein defined; or whoever shall knowingly aid or abet in the doing of any of the things herein made unlawful, shall be fined not more than one thousand dol-

lars, or imprisoned not more than one year, or both. (28 June 1906, 34 Stat. L., 551, c. 3583. 2 Mar., 1907, 34 Stat. L., 1233, c. 2539.)

§ 83. **Corporations, etc., not to contribute money for political elections, etc.**—It shall be unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a money contribution in connection with any election to any political office. It shall also be unlawful for any corporation whatever to make a money contribution in connection with any election at which Presidential and Vice-Presidential electors or a Representative in Congress is to be voted for, or any election by any state legislature of a United States Senator. Every corporation which shall make any contribution in violation of the foregoing provisions shall be fined not more than five thousand dollars; and every officer or director of any corporation who shall consent to any contribution by the corporation in violation of the foregoing provisions shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both. (26 Jan., 1907, 34 Stat. L., 864, c. 420.)

§ 84. **Hunting birds, or taking their eggs from breeding grounds prohibited.**—Whoever shall hunt, trap capture, wilfully disturb, or kill any bird of any kind whatever, or take the eggs of any such bird, on any lands of the United States which have been set apart or reserved as breeding grounds for birds, by any law, proclamation, or Executive order, except under such rules and regulations as the Secretary of Agriculture may, from time to time, prescribe, shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both. (28 June, 1906, 34 Stat. L., 536, c. 3565.)

CHAPTER FIVE.

OFFENSES RELATING TO OFFICIAL DUTIES.

§ 85. **Officer, etc., of the United States guilty of extortion.**—Every officer, clerk, agent, or employe of the United States, and every person representing himself to be or assuming to act as such officer, clerk, agent, or employee, who, under color of his office, clerkship, agency, or employment, or under color of his pretended or assumed office, clerkship, agency, or employment, is guilty of extortion, and every person who shall attempt any act which if performed would make him guilty of extortion, shall be fined not more than five hundred dollars, imprisoned not more than one year, or both. (R. S., s. 5481. 28 June, 1906, 34 Stat. L., 546, c. 3574.)

Williams v. U. S., 168 U. S., 382; Ogden v. Maxwell, 3 Blatch. 319, 18 Fed. Cas., 613; U. S. v. Carr, 3 Sawyer, 302, 25 Fed. Cas., 303. U. S. v. Waitz, 3 Sawyer, 473, 28 Fed. Cas., 386; U. S. v. Harned, 3 Fed. Rep., 376; U. S. v. Deaver, 14 Fed. Rep., 595; U. S. v. More, 18 Fed. Rep., 696; U. S. v. Schlierholz, 133 Fed. Rep., 333; 137 Fed. Rep., 616.

§ 86. **Receipting for larger sums than are paid.**—Whoever, being an officer, clerk, agent, employee, or other person charged with the payment of any appropriation made by Congress, shall pay to any clerk or other employee of the United States a sum less than that provided by law, and require such employee to receipt or give voucher for an amount greater that that actually paid to and received by him, is guilty of embezzlement, and shall be fined in double the amount so withheld from any employee of the Government and imprisoned not more than two years. (R. S., s. 5483.)

U. S. v. Mayers, Fed. Rep., 159.

§ 87. **Disbursing officer unlawfully converting, etc., public money.**—Whoever, being a disbursing officer of the United States, or a person acting as such, shall in any manner convert to his own use, or loan, with or without interest, or deposit in any place or in any manner, except as authorized by law, any public money intrusted to him; or shall, for any purpose not prescribed by law, withdraw from the Treasurer or any assistant treasurer, or any authorized depositary, or transfer, or

apply, any portion of the public money intrusted to him, shall be deemed guilty of an embezzlement of the moneys so converted, loaned, deposited, withdrawn, transferred, or applied, and shall be fined not more than the amount embezzled, or imprisoned not more than ten years, or both. (R. S., s. 5488.)

15 A. G. Op., 288.

§ 88. **Failure of Treasurer to safely keep public moneys.**—If the Treasurer of the United States or any assistant treasurer, or any public depositary, fails safely to keep all moneys deposited by any disbursing officer or disbursing agent, as well as all moneys deposited by any receiver, collector, or other person having money of the United States, he shall be deemed guilty of embezzlement of the moneys not so safely kept, and shall be fined in a sum equal to the amount of money so embezzled and imprisoned not more than ten years. (R. S., s. 5489. 31 Mar., 1886, 24 Stat. L., 9, c. 41, s. 1; 1 Supp., 489.)

15 A. G. Op., 288.

§ 89. **Cusodians of public money failing to safely keep, etc.**—Every officer or other person charged by any act of Congress with the safekeeping of the public moneys, who shall loan, use, or convert to his own use, or shall deposit in any bank or exchange for other funds, except as specially allowed by law, any portion of the public moneys intrusted to him for safe-keeping, shall be guilty of embezzlement of the moneys so loaned, used, coverted, deposited, or exchanged, and shall be fined in a sum equal to the amount of money so embezzled and imprisoned not more than ten years. (R. S., s. 5490.)

U. S. v. Cook, 17 Wall, 168; U. S. v. Forsythe, 6 McLean, 584, 25 Fed. Cas., 1152 7 A. G. Op., 82, 257.

§ 90. **Failure of officer to render accounts, etc.**—Every officer or agent of the United States who, having received pubic money which he is not authorized to retain as salary, pay, or emolument, fails to render his accounts for the same as provided by law shall be deemed guilty of embezzlement, and shall be fined in a sum equal

to the amount of the money embezzled and imprisoned not more than ten years. (R. S., s. 5491.)

U. S. v. Hutchison, 4 Pa. L. J. Rep., 211, 26 Fed. Cas., 452; 5 A. G. Op., 685.

§ 91. **Failure to deposit as required.**—Whoever, having money of the United States in his possession or under his control, shall fail to deposit it with the Treasurer, or some assistant treasurer, or some public depositary of the United States, when required so to do by the Secretary of the Treasury, or the head of any other proper department, or by the accounting officers of the Treasury, shall be deemed guilty of embezzlement thereof, and shall be fined in a sum equal to the amount of money embezzled and imprisoned not more than ten years. (R. S., s. 5492.)

U. S. v. Dimmick, 112 Fed. Rep., 350. 352; Dimmick v. U. S., 121 Fed. Rep., 638; 15 A. G. Op., 280.

§ 92. **Provisions of the five preceding sections, how applied.**—The provisions of the five preceding sections shall be construed to apply to all persons charged with the safe-keeping, transfer, or disbursement of the public money, whether such persons be indicted as receivers or depositaries of the same. (R. S., s. 5493.)

§ 93. **Record evidence of embezzlement.**—Upon the trial of any indictment against any person for embezzling public money under any provision of the six preceding sections, it shall be sufficient evidence, prima facie, for the purpose of showing a balance against such person, to produce a transcript from the books and proceedings of the Treasury, as required in civil cases, under the provisions for the settlement of accounts between the United States and receivers of public money. (R. S., s. 5494.)

§ 94. **Prima facie evidence.**—The refusal of any person, whether in or out of office, charged with the safe-keeping, transfer, or disbursement of the public money to pay any draft, order, or warrant, drawn upon him by the proper accounting officer of the Treasury, for any public money in his hands belonging to the United States, no matter in what capacity the same may have been received, or may be held, or to transfer or disburse

any such money, promptly, upon the legal requirement of any authorized officer, shall be deemed, upon the trial of any indictment against such person for embezzlement, prima facie evidence of such embezzlement. (R. S., s. 5495.)

§ 95. **Evidence of conversion.**—If any officer charged with the disbursement of the public moneys accepts, receives, or transmits to the Treasury Department to be allowed in his favor any receipt or voucher from a creditor of the United States without having paid to such creditor in such funds as the officer received for disbursement, or in such funds as he may be authorized by law to take in exchange, the full amount specified in such receipt or voucher, every such act is an act of conversion by such officer to his own use of the amount specified in such receipt or voucher. (R. S., s. 5496.)

§ 96. **Banker, etc., receiving deposit from disbursing officer.**—Every banker, broker, or other person not an authorized depositary of public moneys, who shall knowingly receive from any disbursing officer, or collector of internal revenue, or other agent of the United States, any public money on deposit, or by way of loan or accommodation, with or without interest, or otherwise than in payment of a debt against the United States, or shall use, transfer, convert, appropriate, or apply any portion of the public money for any purpose not prescribed by law; and every president, cashier, teller, director, or other officer of any bank or banking association who shall violate any provision of this section is guilty of embezzlement of the public money so deposited, loaned, transferred, used, converted, appropriated, or applied, and shall be fined not more than the amount embezzled, or imprisoned not more than ten years, or both. (R. S., s. 5497. 3 Feb., 1879, 20 Stat. L., 280, c. 42, s. 1; 1 Supp., 213.)

Cook County National Bank v. U. S., 107 U. S., 445; 15 A. G. Op. 288.

§ 97. **Embezzlement by internal-revenue officers, etc.**—Any officer connected with, or employed in, the Internal Revenue Service of the United States, and any assistant of such officer, who shall embezzle or wrongfully

convert to his own use any money or other property of the United States, and any officer of the United States, or any assistant of such officer, who shall embezzle or wrongfully convert to his own use any money or property which may have come into his possession or under his control in the execution of such office or employment, or under color or claim of authority as such officer or assistant, whether the same shall be the money or property of the United States or of some other person or party, shall, where the offense is not otherwise punishable by some statute of the United States, be fined not more than the value of the money and property thus embezzled or converted, or imprisoned not more than ten years, or both. (R. S., s. 5497. 3 Feb., 1879, 20 Stat. L., 280, c. 42, s. 1; 1 Supp., 213.

§ 98. **Officer contracting beyond specific appropriation.**—Whoever, being an officer of the United States, shall knowingly contract for the erection, repair, or furnishing of any public building, or for any public improvement, to pay a larger amount than the specific sum appropriated for such purpose, shall be fined not more than two thousand dollars and imprisoned not more than two years. (R. S., s. 5503.)

§ 99. **Officer of United States court failing to deposit money, etc.**—Whoever, being a clerk or other officer of a court of the United States, shall fail forthwith to deposit any money belonging in the registry of the court, or hereafter paid into court or received by the officers thereof, with the Treasurer, assistant treasurer, or a designated depositary of the United States, in the name and to the credit of such court, or shall retain or convert to his own use or to the use of another any such money, is guilty of embezzlement, and shall be fined not more than the amount embezzled, or imprisoned not more than ten years, or both; but nothing herein shall be held to prevent the delivery of any such money upon security, according to agreement of parties, under the direction of the court. (R. S., s. 5504.)

Henry v. Sowles, 28 Fed. Rep., 481;
U. S. v. Bixby, 10 Biss, 238.

§ 100. **Receiving loan or deposit from officer of court.**—Whoever shall knowingly receive, from a clerk or

other officer of a court of the United States, as a deposit, loan, or otherwise, any money belonging in the registry of such court, is guilty of embezzlement, and shall be punished as prescribed in the preceding section. (R. S., s. 5505.)

§ 101. **Failure to make returns or reports.**—Every officer who neglects or refuses to make any return or report which he is required to make at stated times by any act of Congress or regulation of the Department of the Treasury, other than his accounts, within the time prescribed by such act or regulation, shall be fined not more than one thousand dollars. (R. S., s. 1780.)

§ 102. **Aiding in trading in obscene literature, etc.**—Whoever, being an officer, agent, or employee of the Government of the United States shall knowingly aid or abet any person engaged in violating any provision of law prohibiting importing, advertising, dealing in, exhibiting, or sending or receiving by mail, obscene or indecent publications or representations, or means for preventing conception or producing abortion, or other article of indecent or immoral use or tendency, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both. (R. S., s. 1785, 1 Oct., 1890, 26 Stat. L., 615, c. 1244, s. 12; 1 Supp., 860. 27 Aug., 1894, 28 Stat. L., 549, c. 3494, s. 11; 2 Supp., 311. 24 July, 1879, 30 Stat. L., 209, c. 11, s. 17; 2 Supp., 708.)

U. S. v. Williams, 3 Fed. Rep., 489; see cases under R. S., 3893, Fed. Rep., Dig., 7446, 7451.

§ 103. **Collecting and disbursing officers forbidden to trade in public funds, etc.**—Whoever, being an officer of the United States concerned in the collection or the disbursement of the revenues thereof, shall carry on any trade or business in the funds or debts of the United States, or of any State, or in any public property of either, shall be fined not more than three thousand dollars, or imprisoned not more than one year, or both, and be removed from office, and thereafter be incapable of holding any office under the United States. (R. S., ss. 1788, 1789.)

14 A. G. Op., 352.

§ 104. **Certain officers forbidden to purchase, etc., witness, etc., fees.**—Whoever, being a judge, clerk, or deputy clerk of any court of the United States, or of any Territory thereof, or a United States district attorney, assistant attorney, marshal, deputy marshal, commissioner, or other person holding any office or employment, or position of trust or profit under the Government of the United States shall, either directly or indirectly, purchase at less than the full face value thereof, any claim against the United States for the fee, mileage, or expenses of any witness, juror, deputy marshal, or any other officer of the court whatsoever, shall be fined not more than one thousand dollars. (25 Feb., 1897, 29 Stat. L., 595, c. 316; 2 Supp., 563.)

§ 105. **Falsely certifying, etc., as to record of deeds.**—Whoever, being an officer or other person authorized by any law of the United States to record a conveyance of real property or any other instrument which by such law may be recorded, shall knowingly certify falsely that such conveyance or instrument has or has not been recorded, shall be fined not more than one thousand dollars, or imprisoned not more than seven years, or both.

§ 106. **Other false certificates.**—Whoever being a public officer or other person authorized by any law of the United States to make or give a certificate or other writing, shall knowingly make and deliver as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not elsewhere expressly provided by law, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both.

§ 107. **Inspector of steamboats receiving illegal fees.**—Every inspector of steamboats who, upon any pretense, receives any fee or reward for his services, except what is allowed to him by law, shall forfeit his office, and be fined not more than five hundred dollars, or imprisoned not more than six months, or both. (R. S., s. 5482.)

§ 108. **Pension agent taking fee, etc.**—Every pension agent, or other person employed or appointed by him, who takes, receives, or demands any fee or reward from

any pensioner for any service in connection with the payment of his pension, shall be fined not more than five hundred dollars. (R. S., s. 5487.)

§ 109. **Officer not to be interested in claims against United States.**—Whoever, being an officer of the United States, or a person holding any place of trust or profit, or discharging any official function under, or in connection with, any Executive Department of the Government of the United States, or under the Senate or House of Representatives of the United States, shall act as an agent or attorney for prosecuting any claim against the United States, or in any manner, or by any means, otherwise than in discharge of his proper official duties, shall aid or assist in the prosecution or support of any such claim, or receive any gratuity, or any share of or interest in any claim from any claimant against the United States, with intent to aid or assist, or in consideration of having aided or assisted, in the prosecution of such claim, shall be fined not more than five thousand dollars, or imprisoned not more than one year, or both. (R. S. s. 5498.)

Ex parte Curtis, 106 U. S., 371; Tyler's Motion, 18 Ct. Cl., 25; In re Winthrop, 31 Ct. Cl., 35; People v. Duane, 121 N. Y., 373; 16 A. G. Op., 478.

§ 110. **Member of Congress, etc., soliciting or accepting bribe.**—Whoever, being elected or appointed a Member of or Delegate to Congress, or a Resident Commissioner shall, after his election or appointment, and either before or after he has qualified, and during his continuance in office, directly or indirectly ask, accept, receive, or agree to receive, any money, property, or other valuable consideration, or any promise, contract, undertaking, obligation, gratuity, or security for the payment of money or for the delivery or conveyance of anything of value to him or to any person with his consent, connivance, or concurrence, for his attention to, or services, or with the intent to have his action, vote, or decision influenced on any question, matter, cause, or proceeding, which may at any time be pending in either House of Congress or before any committee thereof, or which by law or under the Constitution may be brought before him in his official capacity, or in his place as such Member, Delegate, or Resident Commissioner, shall be fined

not more than three times the amount asked, accepted, or received, and imprisoned not more than three years; and shall, moreover, forfeit his office or place, and thereafter be forever disqualified from holding any office of honor, trust, or profit under the Government of the United States. (R. S., ss. 1781, 5500, 5502.)

U. S. v. Kessel, 62 Fed. Rep., 57; U. S. v. Van Leuven, 62 Fed. Rep., 62.

§ 111. **Offering, etc., Member of Congress bribe, etc.**—Whoever shall promise, offer, or give, or cause to be promised, offered, or given, any money or other thing of value, or shall make or tender any contract, undertaking, obligation, gratuity, or security for the payment of money or for the delivery or conveyance of anything of value, to any Member of either House of Congress, or Delegate to Congress, or Resident Commissioner, after his election or appointment and either before or after he has qualified, and during his continuance in office, or to any person with his consent, connivance, or concurrence, with intent to influence his action, vote, or decision, on any question, matter, cause, or proceeding which may at any time be pending in either House of Congress, or before any committee thereof, or which by law or under the Constitution may be brought before him in his official capacity or in his place as such Member, Delegate, or Resident Commissioner, shall be fined not more than three times the amount of money or value of the thing so promised, offered, given, made, or tendered, and imprisoned not more than three years. (R. S., s. 5450.)

§ 112. **Member of Congress taking consideration for procuring contracts, offices, etc., offering Member consideration, etc.**—Whoever, being elected or appointed a Member of or Delegate to Congress, or a Resident Commissioner, shall after his election or appointment and either before or after he has qualified and during his continuance in office, or being an officer or agent of the United States, shall directly or indirectly take, receive, or agree to receive, from any person, any money, property, or other valuable consideration whatever, for procuring, or aiding to procure, any contract, appointive office, or place from the United States or from any officer or Department thereof, for any person whatever, or for giving any

such contract, appointive office, or place to any person whomsoever; or whoever, directly or indirectly, shall offer, or agree to give, or shall give or bestow, any money, property, or other valuable consideration whatever, for the procuring, or aiding to procure, any such contract, appointive office, or place, shall be fined not more than ten thousand dollars and imprisoned not more than two years; and shall, moreover, be disqualified from holding any office of honor, profit, or trust under the Government of the United States. Any such contract or agreement may, at the option of the President, be declared void. (R. S., s. 1781.)

Ex parte Curtis, 106 U. S., 371; U. S. v. Driggs, 125 Fed. Rep., 520; U. S. v. Dietrich, 126 Fed. Rep., 664, 676; 1 Comp. Dec., 859; 14 A. G. Op., 482.

§ 113. **Member of Congress taking compensation in matters to which United States is a party.**—Whoever, being elected or appointed a Senator, Member of or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment and either before or after he has qualified, and during his continuance in office, or being the head of a department, or other officer or clerk in the employ of the United States, shall, directly or indirectly, receive, or agree to receive, any compensation whatever for any services rendered or to be rendered to any person either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest or other matter or thing in which the United States is a party or directly or indirectly interested, before any department, court-martial, bureau, officer, or any civil, military, or naval commission whatever, shall be fined not more than ten thousand dollars and imprisoned not more than two years; and shall, moreover, thereafter be incapable of holding any office of honor, trust, or profit under the Government of the United States. (R. S., s. 1782.)

Ex parte Curtis, 106 U. S. 371; Burton v. U. S. 196 U. S., 283; 202 U. S., 344; U. S. v. Driggs, 125 Fed. Rep., 520; Burton v. U. S., 131 Fed. Rep., 552; U. S. v. Booth, 148 Fed. Rep., 112; 14 A. G. Op., 482; 17 A. G. Op., 420; 18 A. G. Op., 161; 1 Comp. Dec. 859.

§ 114. **Member of Congress not to be interested in contract.**—Whoever, being elected or appointed a Member of or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment and either

before or after he has qualified, and during his continuance in office, directly or indirectly, himself, or by any other person in trust for him, or for his use or benefit, or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract or agreement, made or entered into in behalf of the United States by any officer or person authorized to make contracts on its behalf, shall be fined not more than three thousand dollars. All contracts or agreements made in violation of this section shall be void; and whenever any sum of money is advanced by the United States, in consideration of any such contract or agreement, it shall forthwith be repaid; and in case of failure or refusal to repay the same when demanded by the proper officer of the Department under whose authority such contract or agreement shall have been made or entered into, suit shall at once be brought against the person so failing or refusing and his sureties, for the recovery of the money so advanced. (R. S., s. 3739.)

U. S. v. Dietrich, 126 Fed. Rep., 671.
2 A. G. Op., 38; 5 A. G. Op., 697; 15 A. G. Op., 280.

§ 115. **Officer making contract with Member of Congress.**—Whoever, being an officer of the United States, shall on behalf of the United States, directly or indirectly make or enter into any contract, bargain, or agreement, in writing or otherwise, with any Member of or Delegate to Congress, or any Resident Commissioner, after his election or appointment as such Member, Delegate, or Resident Commissioner, and either before or after he has qualified, and during his continuance in office, shall be fined not more than three thousand dollars. (R. S., s. 3742.)

4 A. G. Op., 47; 15 A. G. Op., 151, 280.

§ 116. **Contracts to which two preceding sections do not apply.**—Nothing contained in the two preceding sections shall extend, or be construed to extend, to any contract or agreement made or entered into, or accepted, by any incorporated company, where such contract or agreement is made for the general benefit of such incorporation or company; nor to the purchase or sale of bills of exchange or other property by any Member of or

Delegate to Congress, or Resident Commissioner, where the same are ready for delivery, and payment therefor is made, at the time of making or entering into the contract or agreement. (R. S., s. 3740.)

§ 117. **United States officer accepting bribe.**—Whoever, being an officer of the United States, or a person acting for or on behalf of the United States, in any official capacity, under or by virtue of the authority of any department or office of the Government thereof; or whoever, being an officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or of both Houses thereof, shall ask, accept, or receive any money, or any contract, promise, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, with intent to have his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, influenced thereby, shall be fined not more than three times the amount of money or value of the thing so asked, accepted, or received, and imprisoned not more than three years; and shall, moreover, forfeit his office or place and thereafter be forever disqualified from holding any office of honor, trust, or profit under the Government of the United States. (R. S., ss. 5501, 5502.)

U. S. v. Kessel, 62 Fed. Rep., 57; U. S. v. Van Leuven, 62 Fed. Rep., 62; U. S. v. Boyer, 85 Fed. Rep., 425; U. S. v. Ingham, 97 Fed. Rep., 935; King v. U. S., 112 Fed. Rep., 988; Sharp v. U. S., 138 Fed. Rep., 878.

§ 118. **Political contributions not to be solicited by certain officers.**—No Senator or Representative in, or Delegate or Resident Commissioner to Congress, or Senator, Representative, Delegate, or Resident Commissioner elect, or officer or employee of either House of Congress, and no executive, judicial, military, or naval officer of the United States, and no clerk or employee of any department, branch, or bureau of the executive, judicial, or military or naval service of the United States, shall, directly, or indirectly, solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any politi-

cal purpose whatever, from any officer, clerk, or employee of the United State, or any department, branch, or bureau thereof, or from any person receiving any salary or compensation from moneys derived from the Treasury of the United States. (16 Jan., 1883, 22 Stat. L., 406, c. 27, s. 11; 1 Supp., 395.)

§ 119. **Political contributions not to be received in public offices.**—No person shall, in any room or building occupied in the discharge of official duties by any officer or employee of the United States mentioned in the preceding section, or in any navy-yard, fort, or arsenal, solicit in any manner whatever or receive any contribution of money or other thing of value for any political purpose whatever. (16 Jan., 1883, 22 Stat. L., 407, c. 27, s. 12; 1 Supp., 396; U. S. v. Thayer, 209 U. S., 39; U. S. v. Thayer, 154 Fed. Rep., 508; U. S. v. Smith, 163 Fed. Rep., 926.)

§ 120. **Immunity from official proscription, etc.**—No officer or employee of the United States mentioned in section one hundred and eighteen, shall discharge, or promote or degrade, or in any manner change the official rank or compensation of any other officer or employee, or promise or threaten so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose. (16 Jan., 1883, 22 Stat. L., 407, c. 27, s. 13; 1 Supp., 396.)

§ 121. **Giving money, etc., to officials for political purposes prohibited.**—No officer, clerk, or other person in the service of the United States shall, directly or indirectly, give or hand over to any other officer, clerk, or person in the service of the United States, or to any Senator or Member of or Delegate to Congress, or Resident Commissioner, any money or other valuable thing on account of or to be applied to the promotion of any political object whatever. (16 Jan., 1883, 22 Stat. L., 407, c. 27, s. 14; 1 Supp., 396.)

§ 122. **Penalty for violating provinsions of four preceding sections.**—Whoever shall violate any provision of the four preceding sections shall be fined not more than five thousand dollars, or imprisoned not more than three years, or both. (16 Jan. 1883, 22 Stat. L., 407 c. 27, s. 15; 1 Supp., 396.)

§ 123. **Government officer, etc., giving out advance information respecting crop reports.**—Whoever, being an officer or employee of the United States or a person acting for or on behalf of the United States in any capacity under or by virtue of the authority of any Department or office thereof, and while holding such office, employment or position shall, by virtue of the office, employment, or position held by him, become possessed of any information which might exert an influence upon or affect the market value of any product of the soil grown within the United States, which information is by law or by the rules of the Department or office required to be withheld from publication until a fixed time, and shall willfully impart, directly or indirectly, such information, or any part thereof, to any person not entitled under the law or the rules of the Department or office to receive the same; or shall, before such information is made public through regular official channels, directly or indirectly speculate in any such product respecting which he has thus become possessed of such information, by buying or selling the same in any quantity, shall be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both: Provided, That no person shall be deemed guilty of a violation of any such rule unless prior to such alleged violation he shall have had actual knowledge thereof.

§ 124. **Government officer, etc., knowingly compiling or issuing false statistics respecting crops.**—Whoever, being an officer or employee of the United States, and whose duties require the compilation or report of statistics or information relative to the products of the soil, shall knowingly compile for issuance, or issue, any false statistics or information as a report of the United States, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

CHAPTER SIX.

OFFENSES AGAINST PUBLIC JUSTICE.

§ 125. **Perjury.**—Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall willfully and contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than two thousand dollars and imprisoned not more than five years. (R. S., s. 5392.)

U. S. v. Passmore, 4 Dall. 392; U. S. v. Bailey, 9 Pet., 238; U. S. v. Wood, 14 Pet., 430; U. S. v. Nickersen, 17 How., 204; U. S. v. Curtis, 107 U. S., 671; U. S. v. Ambrose, 108 U. S., 336, 2 Fed. Rep., 556; U. S. v. Barber, 140 U. S., 177; Logan v. U. S., 144 U. S., 263, 302; U. S. v. Eaton, 144 U. S., 677; Caha v. U. S., 152 U. S., 211, 215, 220; New York v. Eno, 155 U. S., 89, 97; Dunbar v. U. S., 156 U. S., 185, 192; Todd v. U. S., 158 U. S., 278, 284;

Bucklin v. U. S., 159 U. S., 680, 682; Markham v. U. S., 160 U. S., 319, 323; In re Pollock, 165 U. S., 526, 533; U. S. v. Atkins, 1 Sprague, 558, 24 Fed. Cas., 885; U. S. v. Babcock, 4 McLean, 113, 24 Fed. Cas., 928, U. S. v. Clark, 1 Gall., 497, 25 Fed. Cas., 411; U. S. v. Conner, 3 McLean, 573, 25 Fed. Cas., 595; U. S. v. Deming, 4 McLean, 3 25 Fed. Cas., 816; U. S. v. Kendrick, 2 Mas., 60, 26 Fed. Cas., 758; Ex. parte Bridges, 2 Woods, 428, 4 Fed. Cas., 99; U. S. v. Nichols, 4 McLean, 23, 27 Fed. Cas., 151; U. S. v. Smith, 1 Saw., 277, 27 Fed. Cas., 1175; U. S. v. Sonachall, 4 Biss., 425, 27 Fed. Cas., 1259; U. S. v. Volz, 14 Blatch., 15, 28 Fed. Cas., 384; U. S. v. Jones, 14 Blatch., 90, 26 Fed. Cas., 638; U. S. v. Baer, 18 Blatch., 493, 6 Fed. Cas., 42; U. S. v. Bartow, 10 Fed. Rep., 873; U. S. v. Neal, 14 Fed. Rep., 767; U. S. v. Madison, 21 Fed. Rep., 628; U. S. v. Walsh, 22 Fed. Rep., 644; U. S. v. Landsberg, 23 Fed. Rep., 585; U. S. v. Hearing, 26 Fed. Rep., 744; U. S. v. Grottkau, 30 Fed. Rep., 672; U. S. v. Burkhardt, 31 Fed. Rep., 141; U. S. v. Boggs, 31 Fed. Rep., 337; U. S. v. McConaughy, 33 Fed. Rep., 168; Babcock v. U. S., 34 Fed. Rep., 873; U. S. v. Howard, 37 Fed. Rep., 666; U. S. v. Cuddy, 39 Fed. Rep., 696; U. S. v. Edwards, 43 Fed. Rep., 67; U. S. v. Wood, 44 Fed. Rep., 753; U. S. v. Manion, 44 Fed. Rep., 800; U. S. v. Hall, 44 Fed. Rep., 864; U. S. v. Bedford, 49 Fed. Rep., 54; U. S. v. Law, 50 Fed. Rep., 915; U. S. v. Singleton, 54 Fed. Rep., 488; U. S. v. Wood, 70 Fed. Rep., 485; U. S. v. Pettus, 84 Fed. Rep., 791; U. S. v. Maid, 116 Fed. Rep., 650; Noah v. U. S., 128 Fed. Rep., 270; U. S. v. Hardison, 135 Fed. Rep., 419; Van Gesner v. U. S., 153 Fed. Rep., 46; U. S. v. Williamson, 153 Fed. Rep., 46; Nurnberger v. U. S., 156 Fed. Rep., 721; O'Leary v. U. S., 158 Fed. Rep., 176; Wechster v. U. S., 158 Fed. Rep., 579; Nickell v. U. S., 161 Fed. Rep., 702; Sullivan v. U. S., 161 Fed. Rep., 254; Barnard v. U. S., 162 Fed. Rep., 622; U. S. v. Lamson, 165 Fed. Rep., 80; Hashagen v. U. S., 169 Fed. Rep., 396; U. S. v. Patterson, 171 Fed. Rep., 241; U. S. v. Ammerman, 176 Fed. Rep., 635; 2 A. G. Op., 700; 2 Comp. Dec., 2583.

§ 126. **Subordination of perjury.**—Whoever shall procure another to commit any perjury is guilty of subornation or perjury, and punishable as in the preceding section prescribed. (R. S., s. 5393.)

U. S. v. Donnee, 3 Woods, 39, 25 Fed. Cas., 817; U. S. v. Wilcox, 4 Blatch., 393, 28 Fed. Cas., 600; U. S. v. Evans, 19 Fed. Rep., 912; U. S. v. Thompson, 31 Fed. Rep., 331; Babcock v. U. S., 34 Fed. Rep., 873; U. S. v. Howard, 132 Fed. Rep., 325; U. S. v. Cobban, 134 Fed. Rep., 290; U. S. v. Brace, 144 Fed. Rep., 869.

§ 127. **Stealing or altering process; procuring false bail, etc.**—Whoever shall feloniously steal, take away, alter, falsify, or otherwise avoid any record, writ, process, or other proceeding, in any court of the United States, by means whereof any judgment is reversed, made void, or does not take effect; or whoever shall acknowledge, or procure to be acknowledged, in any such court, any recognizance, bail, or judgment, in the name of any other person not privy or consenting to the same, shall be fined not more than five thousand dollars, or imprisoned not more than seven years or both; but this provision shall not extend to the acknowledgment of any judgment by an attorney, duly admitted for any person against whom such judgment is had or given. (R. S., s. 5394.)

U. S. v. Crecilius, 34 Fed. Rep., 30; Barber v. U. S., 35 Fed. Rep., 886; 5 A. G. Op., 523.

§ 128. **Destroying, etc., public records.**—Whoever shall wilfully and unlawfully conceal, remove, mutilate, obliterate, or destroy, or attempt to conceal, remove, mutilate, obliterate, or destroy, or, with intent to conceal, remove, mutilate, obliterate, destroy, or steal, shall take and carry away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined not more than two thousand dollars, or imprisoned not more than three years, or both. (R. S., s. 5403.)

U. S. v. Goldberg, 7 Biss., 175, 178, 25 Fed. Cas., 1342; Mackin v. U. S., 23 Fed. Rep., 334; Ex parte Porkins, 29 Fed. Rep., 900, 912; U. S. v. De Groat, 30 Fed. Rep., 764; Mc Inerney v. U. S., 143 Fed. Rep., 729; People v. Wise, 2 How. (N. S.), 92; Ayres v. Covill, 18 Barb., 263.

§ 129. **Destroying records by officer in charge.**—Whoever, having the custody of any record, proceeding, map, book, document, paper, or other thing specified in the preceding section, shall wilfully and unlawfully conceal, remove, mutilate, obliterate, falsify, or destroy any such record, proceeding, map, book, document, paper, or thing, shall be fined not more than two thousand dollars, or imprisoned not more than three years, or both; and shall moreover forfeit his office and be forever afterward disqualified from holding any office under the Government of the United States. (R. S., s. 5408.)

§ 130. **Forging signature of judge, etc.**—Whoever shall forge the signature of any judge, register, or other officer of any court of the United States, or of any Territory thereof, or shall forge or counterfeit the seal of any such court, or shall knowingly concur in using any such forged or counterfeit signature or seal, for the purpose of authenticating any proceeding or document, or shall tender in evidence any such proceeding or document with a false or counterfeit signature of any such judge, register, or other officer, or a false or counterfeit seal of the court, subscribed or attached thereto, knowing such signature or seal to be false or counterfeit, shall be fined not more than five thousand dollars and imprisoned not more than five years. (R. S., s. 5419.)

§ 131. **Bribery of a judge or judicial officer.**—Whoever, directly or indirectly, shall give or offer, or cause to

be given or offered, any money, property, or value of any kind, or any promise or agreement therefor, or any other bribe, to any judge, judicial officer, or other person authorized by any law of the United States to hear or determine any question, matter, cause, proceeding, or controversy, with intent to influense his action, vote, opinion, or decision thereon, or because of any such action, vote, opinion, or decision, shall be fined not more than twenty thousand dollars, or imprisoned not more than fifteen years, or both; and shall forever be disqualified to hold any office of honor, trust, or profit under the United States. (R. S., s. 5449.)

§ 132. **Judge or judicial officer accepting a bribe, etc.** —Whoever, being a judge of the United States, shall in any wise accept or receive any sum of money, or other bribe, present, or reward, or any promise, contract, obligation, gift, or security for the payment of money, or for the delivery or conveyance of anything of value, with the intent to be influenced thereby in any opinion, judgment, or decree in any suit, controversy, matter, or cause depending before him, or because of any such opinion, ruling, decision, judgment, or decree, shall be fined not more than twenty thousand dollars, or imprisoned not more than fifteen years, or both; and shall be forever disqualified to hold any office of honor, trust, or profit under the United States. (R. S., s. 5499.)

§ 133. **Juror, referee, master, etc., or judicial officer, etc., accepting bribe.**—Whoever, being a juror, referee, arbitrator, appraiser, assessor, auditor, master, receiver, United States commissioner, or other person authorized by any law of the United States to hear or determine any question, matter, cause, controversy, or proceeding, shall ask, receive, or agree to receive, any money, property, or value of any kind, or any promise or agreement therefor, upon any agreement or understanding that his vote, opinion, action, judgment, or decision, shall be influenced thereby, or because of any such vote, opinion, action, judgment, or decision, shall be fined not more than two thousand dollars, or imprisoned not more than two years, or both.

§ 134. **Witness accepting bribe.**—Whoever, being, or about to be, a witness upon a trial, hearing, or other proceeding, before any court or any officer authorized by the laws of the United States to hear evidence or take testimony, shall receive, or agree or offer to receive, a bribe, upon any agreement or understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial, hearing, or other proceeding, or because of such testimony, or such absence, shall be fined not more than two thousand dollars, or imprisoned not more than two years or both.

§ 135. **Intimidation or corruption of witness, or grand or petit juror, or officer.**—Whoever corruptly, or by threats or force, or by any threatening letter or communication, shall endeavor to influence, intimidate, or impede any witness, in any court of the United States or before any United States commissioner or officer acting as such commissioner, or any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States commissioner or officer acting as such commissioner, in the discharge of his duty, or who corruptly or by threats or force, or by any threatening letter or threatening communication, shall influence, obstruct, or impede, or endeavor to influence, obstruct, or impede, the due administration of justice therein, shall be fined not more than one thousand dollars, or imprisoned not more than one year or both. (R. S., ss. 5399, 5404.)

Ex parte Robinson, 19 Wall., 505; In re Savin, 131 U. S., 267; In re Neagle, 135 U. S., 63; Petibone v. U. S., 148 U. S., 197; U. S. v. Memphis R. Co., 6 Fed. Rep., 237; U. S. v. Kilpatrick, 16 Fed. Rep., 765; Sharon v. Hill, 24 Fed. Rep., 726; U. S. v. Polite, 35 Fed. Rep., 58; U. S. v. Kee, 39 Fed. Rep., 603; In re Neagle, 39 Fed. Rep., 833; U. S. v. Thomas, 47 Fed. Rep., 807; U. S. v. Armstrong, 59 Fed. Rep., 568; In re Brule, 71 Fed. Rep., 943; U. S. v. McLeod, 119 Fed. Rep., 416; U. S. v. Bittinger, 15 Am. L. Reg. (N. S.), 49.

§ 136. **Conspiracy to intimidate party, witness, or juror.**—If two or more persons conspire to deter by force, intimidation, or threat, any party or witness in any court of the United States, or in any examination before United States commissioner or officer acting as such commissioner, from attending such court or examination, or from testifying to any matter pending therein, freely, fully,

and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or on account of his being or having been such juror, each of such persons shall be fined not more than five thousand dollars, or imprisoned not more than six years, or both. (R. S., s. 5406.)

Todd v. U. S., 158 U. S., 278; U. S. v. Price, 96 Fed. Rep., 960.

§ 137. **Attempt to influence juror.**—Whoever shall attempt to influence the action or decision of any grand or petit juror of any court of the United States upon any issue or matter pending before such juror, or before the jury of which he is a member, or pertaining to his duties, by writing or sending to him any letter or any communication, in print or writing, in relation to such issue or matter, shall be fined not more than one thousand dollars, or imprisoned not more than six months, or both. (R. S., s. 5405.)

U. S. v. Kilpatrick, 16 Fed. Rep., 765.

§ 138. **Allowing prisoner to escape.**—Whenever any marshal, deputy marshal, ministerial officer, or other person has in his custody any prisoner by virtue of process issued under the laws of the United States by any court, judge, or commissioner, and such marshal, deputy marshal ministerial, or other person voluntarily suffers such prisoner to escape, he shall be fined not more than two thousand dollars, or imprisoned not more than two years, or both. (R. S., s. 5409.)

§ 139. **Application of preceding section.**—The preceding section shall be construed to apply not only to cases in which the prisoner who escaped was charged or found guilty of an offense against the laws of the United States, and to cases in which the prisoner may be in custody charged with offenses against any foreign government with which the United States have treaties of extradition, but also to cases in which the prisoner may be held in custody for removal to or from the Philip-

pine Islands as provided by law. (R. S., s. 5410. 6 Feb., 1905, 33 Stat., L., 698, c. 454, s. 2.)

§ 140. **Obstructing process or assaulting officer.**—Whoever shall knowingly and willfully obstruct, resist, or oppose any officer of the United States, or other person duly authorized, in serving, or attempting to serve or execute, any mesne process or warrant, or any rule or order, or any other legal or judicial writ or process of any court of the United States, or United States commissioner, or shall assault, beat, or wound any officer or other person duly authorized, knowing him to be such officer, or other person so duly authorized, in serving or executing any such writ, rule, order, process, warrant, or other legal or judicial writ or process, shall be fined not more than three hundred dollars and imprisoned not more than one year. (R. S., s. 5398.)

U. S. v. Bachelder, 2 Gall., 15, 24 Fed. Cas., 931; U. S. v. Fears, 3 Wood, 510, 25 Fed. Cas., 1053; U. S. v. Hudson, 1 Haskell, 527, 28 Fed. Cas., 406; U. S. v. Keen, 5 Mason, 453, 26 Fed. Cas., 693; U. S. v. Lowery, 2 Wash., 169, 26 Fed. Cas., 1008; U. S. v. Lukins, 3 Wash., 335, 26 Fed. Cas., 1011; U. S. v. McDonald, 8 Biss., 439, 26 Fed. Cas., 1074; U. S. v. Smith, 1 Dill., 212, 27 Fed. Cas., 1161; U. S. v. Slaymaker, 4 Wash., 169, 27 Fed. Cas., 1127; U. S. v. Stowell, Curt., 153, 27 Fed. Cas., 1350; U. S. v. Tinklepaugh, 3 Blatch., 425, 28 Fed. Cas., 193; U. S. v. Huff, 13 Fed. Rep., 630, 639; U. S. v. Martin, 17 Fed. Rep., 150; U. S. v. Terry, 41 Fed. Rep., 771; Blake v. U. S., 71 Fed. Rep., 286; U. S. v. Mullin, 71 Fed. Rep., 682.

§ 141. **Rescuing, etc., prisoner; concealing, etc., person for whom warrant has issued.**—Whoever shall rescue or attempt to rescue, from the custody of any officer or person lawfully assisting him, any person arrested upon a warrant or other process issued under the provisions of any law of the United States, or shall, directly or indirectly, aid, abet, or assist any person so arrested to escape from the custody of such officer or other person, or shall harbor or conceal any person for whose arrest a warrant or process has been so issued, so as to prevent his discovery and arrest, after notice or knowledge of the fact that a warrant or process has been issued for the apprehension of such person, shall be fined not more than one thousand dollars, or imprisoned not more than six months, or both. (R. S., ss. 5401, 5516.)

§ 142. **Rescue at execution.**—Whoever, by force, shall set at liberty or rescue any person found guilty in any court of the United States of any capital crime, while

going to execution or during execution, shall be fined not more than twenty-five thousand dollars and imprisoned not more than twenty-five years. (R. S., s. 5400.)

§ 143. **Rescue of prisoner.**—Whoever, by force, shall set at liberty or rescue any person who, before conviction, stands committed for any capital crime; or whoever, by force, shall set at liberty or rescue any person committed for or convicted of any offense other than capital, shall be fined not less than five hundred dollars and imprisoned not more than one year. (R. S., s. 5401.)

§ 144. **Rescue of body of executed offender.**—Whoever, by force, shall rescue or attempt to rescue, from the custody of any marshal or his officer, the dead body of an executed offender, while it is being conveyed to a place of dissection, as provided by section three hundred and thirty-one hereof, or by force shall rescue or attempt to rescue such body from the place where it has been deposited for dissection in pursuance of that section, shall be fined not more than one hundred dollars, or imprisoned not more than one year, or both. (R. S., s. 5402.)

§ 145. **Extortion by internal-revenue informers.**—Whoever shall, under a threat of informing, or as a consideration for not informing, against any violation of any law of the United States, demand or receive any money or other valuable thing, shall be fined not more than two thousand dollars, or imprisoned not more than one year, or both. (R. S., s. 5484.)

§ 146. **Misprision of felony.**—Whoever, having knowledge of the actual commission of the crime of murder or other felony cognizable by the courts of the United States, conceals and does not as soon as may be disclose and make known the same to some one of the judges or other persons in civil or military authority under the dollars, or imprisoned not more than three years, or both. United States, shall be fined not more than five hundred (R. S., s. 5390.)

CHAPTER SEVEN.

OFFENSES AGAINST THE CURRENCY, COINAGE, ETC.

§ 147. **"Obligation or other security of the United States" defined.**—The words "obligation or other se-

curity of the United States'' shall be held to mean all bonds, certificates of indebtedness, national bank currency, coupons, United States notes, Treasury notes, gold certificates, silver certificates, fractional notes, certificates of deposit, bills, checks, or drafts for money, drawn by or upon authorized officers of the United States, stamps and other representatives of value, of whatever denomination, which have been or may be issued under any act of Congress. (R. S., s. 5413. 28 Feb., 1878, 20 Stat. L., 26 c. 20, s. 3; 1 Supp., 152.

U. S. v. Bennett, 17 Blatch., 357, 24 Fed. Cas., 1107; U. S. v. Trout, 4 Biss., 105, 28 Fed. Cas., 223; Ex parte Houghton, 7 Fed. Rep., 657, 8 Fed. Rep., 897; U. S. v. Albert, 45 Fed. Rep., 552.

§ 148. **Forging or counterfeiting United States securities.**—Whoever, with intent to defraud, shall falsely make, forge, counterfeit, or alter any obligation or other security of the United States shall be fined not more than five thousand dollars and imprisoned not more than fifteen years. (R. S., s. 5414.)

U. S. v. Coppersmith 4 Fed. Rep., 198; U. S. v. Field, 16 Fed. Rep., 778; U. S. v. Crecilius, 34 Fed. Rep., 30; U. S. v. Jolly, 37 Fed. Rep., 108; U. S. v. Owens, 37 Fed. Rep., 112; U. S. v. Albert, 45 Fed. Rep., 552; Neall v. U. S., 118 Fed. Rep. 699.

§ 149. **Counterfeiting national-bank notes.**—Whoever shall falsely make, forge, or counterfeit, or cause or procure to be made, forged, or counterfeited, or shall willingly aid or assist in falsely making, forging, or counterfeiting, any note in imitation of, or purporting to be an imitation of, the circulating notes issued by any banking association now or hereafter authorized and acting under the laws of the United States; or whoever shall pass, utter, or publish, or attempt to pass, utter, or publish, any false, forged, or counterfeited note, purporting to be issued by any such association doing a banking business, knowing the same to be falsely made, forged, or counterfeited; or whoever shall falsely alter, or cause or procure to be falsely altered, or shall willingly aid or assist in falsely altering, any such circulating notes, or shall pass, utter, or publish, or attempt to pass, utter or publish as true, any falsely altered or spurious circulating note issued, or purporting to have been issued, by any such banking association, knowing the same to be falsely altered or spurious, shall be fined not more than one

thousand dollars and imprisoned not more than fifteen years. (R. S., s. 5415.)

U. S. v. Bennett, 17 Blatch., 357, 24 Fed. Cas., 1107; Ex parte Houghton, 7 Fed. Rep., 657; U. S. v. Crecilius, 34 Fed. Rep., 30; U. S. v. Owens, 37 Fed. Rep., 112; U. S. v. Wilson, 44 Fed. Rep., 751; Logan v. U. S., 123 Fed. Rep., 291; Thompson v. U. S., 144 Fed. Rep., 14; Gallagher v. U. S., 144 Fed. Rep., 87.

§ 150. **Using plates to print notes without authority, etc.**—Whoever, having control, custody, or possession of any plate, stone, or other thing, or any part thereof, from which has been printed, or which may be prepared by direction of the Secretary of the Treasury for the purpose of printing, any obligation or other security of the United States, shall use such plate, stone, or other thing, or any part thereof, or knowingly suffer the same to be used for the purpose of printing any such or similar obligation or other security, or any part thereof, except as may be printed for the use of the United States by order of the proper officer thereof; or whoever by any way, art, or means shall make or execute, or cause or procure to be made or executed, or shall assist in making or executing any plate, stone, or other thing in the likeness of any plate designated for the printing of such obligation or other security; or whoever shall sell any such plate, stone, or other thing, or bring into the United States or any place subject to the jurisdiction thereof, from any foreign place, any such plate, stone, or other thing, except under the direction of the Secretary of the Treasury or other proper officer, or with any other intent, in either case, than that such plate, stone, or other thing be used for the printing of the obligations or other securities of the United States; or whoever shall have in his control, custody, or possession any plate, stone, or other thing in any manner made after or in the similitude of any plate, stone, or other thing, from which any such obligation or other security has been printed, with intent to use such plate, stone, or other thing, or to suffer the same to be used in forging or counterfeiting any such obligation or other security, or any part thereof; or whoever shall have in his possession or custody, except under authority from the Secretary of the Treasury or other proper officer, any obligation or other security made or executed, in whole or in part, after the similitude of any obligation or other

security issued under the authority of the United States, with intent to sell or otherwise use the same; or whoever shall print, photograph, or in any other manner makes or execute, or cause to be printed, photographed, made, or executed, or shall aid in printing, photographing, making, or executing any engraving, photograph, print, or impression in the likeness of any such obligation or other security, or any part thereof, or shall sell any such engraving, photograph, print, or impression, except to the United States, or shall bring into the United States or any place subject to the jurisdiction thereof, from any foreign place any such engraving, photograph, print, or impression, except by direction of some proper officer of the United States; or whoever shall have or obtain in his control or possession, after a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under the authority of the Secretary of the Treasury or some other proper officer of the United States, shall be fined not more than five thousand dollars, or imprisoned not more than fifteen years, or both. (R. S., s. 5430.)

Ex parte Holcomb, 2 Dill., 392, 12 Fed. Cas., 328; U. S. v. Williams, 14 Fed. Rep., 550; Re Wilson, 18 Fed. Rep., 33; U. S. v. Smith, 40 Fed. Rep., 755; U. S. v. Sprague, 11 Biss., 376, 48 Fed. Rep., 828; U. S. v. Stevens, 52 Fed. Rep., 120; U. S. v. Kuhl, 85 Fed. Rep., 624; U. S. v. Fitzgerald, 91 Fed. Rep., 374; U. S. v. Barnett, 111 Fed. Rep., 369; U. S. v. Conners, 111 Fed. Rep., 734; U. S. v. Pitts., 112 Fed. Rep., 522; Krakowski v. U. S., 161 Fed. Rep., 88.

§ 151. **Passing, selling, concealing, etc., forged obligations.**—Whoever, with intent to defraud, shall pass, utter, publish, or sell, or attempt to pass, utter, publish, or sell, or shall bring into the United States or any place subject to the jurisdiction thereof, with intent to pass, publish, utter, or sell, or shall keep in possession or conceal with like intent, any falsely made, forged, counterfeited, or altered obligation or other security of the United States, shall be fined not more than five thousand dollars and imprisoned not more than fifteen years. (R. S. s. 5431.)

U. S. v. Marcus, 53 U. S., 784; U. S. v. Carll, 105, U. S., 611; Dunbar v. U. S., 156 U. S., 185; U. S. v. Nelson, 1 Abb. U. S., 135, 27 Fed. Cas., 80; U. S. v. Trout, 4 Biss., 105, 28 Fed. Cas., 223; U. S. v. Williams, 4 Biss., 302, 28 Fed. Cas., 635; U. S. v. Jolly, 37 Fed. Rep., 108; U. S. v.

Owens, 37 Fed. Rep., 112, U. S. v.
Clarke, 38 Fed. Rep., 500; U. S. v.
Holmes, 40 Fed. Rep., 750; U. S. v.
Albert, 45 Fed. Rep., 552; U. S. v.
Howell, 64 Fed. Rep., 110; U. S. v.
Taranto, 74 Fed. Rep., 219; U. S. v.
Beebe, 149 Fed. Rep., 618.

§ 152. **Taking impressions of tools, implements, etc.** Whoever, without authority from the United States, shall take, procure, or make, upon lead, foil, wax, plaster, paper, or any other substance or material, an impression, stamp, or imprint of, from, or by the use of any bedplate, bedpiece, die, roll, plate, seal, type or other, tool, implement, instrument, or thing used or fitted or intended to be used in printing, stamping, or impressing, or in making other tools, implements, instruments, or things to be used or fitted or intended to be used in printing, stamping, or impressing any kind or description of obligation or other security of the United States now authorized or hereafter to be authorized by the United States, or circulating note or evidence of debt of any banking association under the laws thereof, shall be fined not more than five thousand dollars or imprisoned not more than ten years, or both. (R. S., s. 5432.)

U. S. v. Bennett, 17 Blatch., 357, 24 Fed. Cas., 1107.

§ 153. **Having in possession unlawfully such impressions.**—Whoever, with intent to defraud, shall have in his possession, keeping, custody, or control, without authority from the United States, any imprint, stamp, or impression, taken or made upon any substance or material whatsoever, of any tool, implement, instrument, or thing, used, or fitted or intended to be used, for any of the purposes mentioned in the preceding section; or whoever, with intent to defraud, shall sell, give, or deliver any such imprint, stamp, or impression to any other person, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both. (R. S., s. 5433.)

§ 154. **Buying, selling, or dealing in forged bonds, notes, etc.**—Whoever shall buy, sell, exchange, transfer, receive, or deliver, any false, forged, counterfeited, or altered obligation or other security of the United States, or circulating note of any banking association organized or acting under the laws thereof, which has been or may hereafter be issued by virtue of any act of Congress, with the intent that the same be passed, published, or used as

true and genuine, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both. (R. S., s. 5434.)

§ 155. **Secreting or removing tools or material used for printing bonds, notes, stamps, etc.**—Whoever, without authority from the United States, shall secrete within, embezzle, or take and carry away from any building, room, office, apartment, vault, safe, or other place where the same is kept, used, employed, placed, lodged, or deposited by authority of the United States, any bedpiece, bedplate, roll, plate, die, seal, type, or other tool, implement or thing used or fitted to be used in stamping or printing or in making some other tool or implement used or fitted to be used in stamping or printing, any kind or description of bond, bill, note, certificate, coupon, postage stamp, revenue stamp, fractional currency note, or other paper, instrument, obligation, devise, or document, now or hereafter authorized by law to be printed, stamped, sealed, prepared, issued, uttered, or put in circulation on behalf of the United States; or whoever, without such authority, shall so secrete, embezzle, or take and carry away any paper, parchment, or other material prepared and intended to be used in the making of any such papers, instruments, obligations, devices, or documents; or whoever, without such authority, shall so secrete, embezzle, or take and carry away any paper, parchment, or other material printed or stamped, in whole or part, and intended to be prepared, issued, or put in circulation on behalf of the United States as one of the papers, instruments, or obligations hereinbefore named, or printed or stamped, in whole or part, in the similitude of any such paper, instrument, or obligation, whether intended to issue or put the same in circulation or not, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both. (R. S., s. 5453.)

§ 156. **Counterfeiting notes, bonds, etc., of foreign governments.**—Whoever, within the United States or any place subject to the jurisdiction thereof, with intent to defraud, shall falsely make, alter, forge, or counterfeit any bond, certificate, obligation, or other security in imi-

tation of, or purporting to be an imitation of, any bond, certificate, obligation, or other security of any foreign government, issued or put fourth under the authority of such foreign government, or any treasury note, bill or promise to pay issued by such foreign government, and intended to circulate as money, either by law, order, or decree of such foreign government; or whoever shall cause or procure to be so falsely made, altered, forged, or counterfeited, or shall knowingly aid or assist in making, altering, forging, or counterfeitig, any such bond, certificate, obligation, or other security, or any such treasury note, bill, or promise to pay, intended as aforesaid to circulate as money, shall be fined not more than five thousand dollars and imprisoned not more than five years. (16 May, 1884, 23 Stat. L., 22, c. 52, s. 1; 1 Supp., 429.)

U. S. v. Arjona, 120 U. S., 479; U. S. v. White, 25 Fed. Rep., 716, 27 Fed. Rep., 200; Bliss v. U. S. 105 Fed. Rep., 508.

§ 157. **Passing such forged notes, bonds, etc.**—Whoever, within the United States or any place subject to the jurisdiction thereof, knowingly and with intent to defraud, shall utter, pass, or put off, in payment or negotiation, any false, forged, or counterfeited bond, certificate, obligation, security, treasury note, bill, or promise to pay, mentioned in the section last preceding, whether the same was made, altered, forged, or counterfeited within the United States or not, shall be fined not more than three thousand dollars and imprisoned not more than three years. (16 May 1884, 23 Stat. L., 23, c. 52, s. 2; 1 Supp. 429.)

§ 158. **Counterfeiting notes on foreign banks.**—Whoever, within the United States or any place subject to the jurisdiction thereof, with intent to defraud, shall falsely make, alter, forge or counterfeit, or cause or procure to be so falsely made, altered, forged, or counterfeited, or shall knowingly aid and assist in the false making, altering, forging, or counterfeiting of any bank note or bill issued by a bank or corporation of any foreign country, and intended by the law or usage of such foreign country to circulate as money, such bank or corporation being authorized by the laws of such country, shall be fined not more than two thousand dollars and imprisoned not more

than two years. (16 May, 1884, 23 Stat. L., 23, c. 52, s. 3; 1 Supp., 429.)

U. S. v. Arjona, 120 U. S., 479.

§ 159. **Passing such counterfeit bank notes.**—Whoever, within the United States or any place subject to the jurisdiction thereof, shall utter, pass, put off, or tender in payment, with intent to defraud, any such false, forged altered, or counterfeited bank note or bill, as mentioned in the preceding section, knowing the same to be so false, forged, altered, and [*or*] counterfeited, whether the same was made, forged, altered, or counterfeited within the United States or not, shall be fined not more than one thousand dollars and imprisoned not more than one year. (16 May, 1884, 23 Stat. L., 23, c. 52, s. 4; 1 Supp., 429.)

§ 160. **Having in possession such forged notes, bonds, etc.**—Whoever, within the United States or any place subject to the jurisdiction thereof, shall have in his possession any false, forged, or counterfeit bond, certificate, obligation, security. Treasury note, bill, promise to pay, bank note, or bill issued by a bank or corporation of any foreign country, with intent to utter, pass, or put off the same, or to deliver the same to any other person with intent that the same may thereafter be uttered, passed, or put off as true, or shall knowingly deliver the same to any other person with such intent, shall be fined not more than one thousand dollars and imprisoned not more than one year. (16 May, 1884, 23 Stat. L., 23, c. 52, s. 5; 1 Supp., 429.)

§ 161. **Having unlawfully in possession or using plates for such notes, bonds, etc.**—Whoever, within the United States or any place subject to the jurisdiction thereof, except by lawful authority, shall have control, custody, or possession of any plate, stone, or other thing, or any part thereof, from which has been printed or may be printed any counterfeit note, bond, obligation, or other security, in whole or in part of any foreign government, bank, or corporation, or shall use such plate, stone, or other thing, or knowingly permit or suffer the same to be used in counterfeiting such foreign obligations, or any part thereof; or whoever shall make or engrave, or cause or procure to be made or engraved, or shall assist in mak-

ing or engraving, any plate, stone, or other thing, in the likeness or similitude of any plate, stone, or other thing designated for the printing of the genuine issues of the obligations of any foreign government, bank, or corporation; or whoever shall print, photograph, or in any other manner make, execute, or sell, or cause to be printed, photographed, made, executed, or sold, or shall aid in printing, photographing, making, executing, or selling, any engraving, photograph, print, or impression in the likeness of any genuine note, bond, obligation, or other security, or any part thereof, of any foreign government, bank or corporation; or whoever shall bring into the United States or any place subject to the jurisdiction thereof, any counterfeit plate, stone, or other thing, or engraving, photograph, print, or other impressions of the notes, bonds, obligations or other securities of any foreign government, bank, or corporation, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both. (16 May, 1884, 23 Stat. L., 23, c. 52, s. 6; 1 Supp., 429.)

U. S. v. Arjona, 120 U. S., 479.

§ 162. **Connecting parts of different instruments.**—Whoever shall so place or connect together different parts of two or more notes, bills, or other genuine instruments issued under the authority of the United States, or by any foreign government, or corporation, as to produce one instrument with intent to defraud, shall be deemed guilty of forgery in the same manner as if the parts so put together were falsely made or forged, and shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

§ 163. **Counterfeiting gold or silver coins or bars.**—Whoever shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or shall willingly aid or assist in falsely making, forging, or counterfeiting any coin or bars in resemblance or similtude of the gold or silver coins or bars which have been, or hereafter may be, coined or stamped at the mints and assays offices of the United States, or in resemblance or similitude of any foreign gold or silver coin which by law is, or hereafter may be, current in the United States, or are

in actual use and circulation as money within the United States; or whoever shall pass, utter, publish, or sell, or attempt to pass, utter, publish, or sell or bring into the United States or any place suject to the jurisdiction thereof, from any foreign place, knowing the same to be false, forged, or counterfeit, with intent to defraud any body politic or corporate, or any person or persons whomsoever, or shall have in his possession any such false, forged, or counterfeited coin or bars, knowing the same to be false, forged or counterfeited, with intent to defraud any body politic or corporate or any person or persons whomsoever, shall be fined not more than five thousand dollars and imprisoned not more than ten years. (R. S., s. 5457. 16 Jan., 1877, 19 Stat. L., 223, c. 24; 1 Supp., 128.)

U. S. v. Gardner, 10 Pet., 618; U. S. v. Marigold, 9 How., 560; U. S. v. Petit, 114 U. S., 429; Statler v. U. S., 157 U. S., 277; U. S. v. Burns, 5 McLean, 23, 24 Fed. Cas., 1313; U. S. v. King, 5 McLean, 208, 26 Fed. Cas., 787; U. S. v. Morrow, 4 Wash., C. C., 733, 26 Fed. Cas., 1352; U. S. v. Coppersmith, 4 Fed. Rep., 198; U. S. v. Yates, 6 Fed. Rep., 861; U. S. v. Abrams, 18 Fed. Rep., 823; U. S., v. Russell, 22 Fed. Rep., 390; U. S. v. Hopkins, 26 Fed. Rep., 443; U. S. v. Otey, 31 Fed. Rep., 68; Ex parte Waterman, 33 Fed. Rep., 29; U. S. v. Owens, 37 Fed. Rep., 112; U. S. v. Lehman, 39 Fed. Rep., 768; Ex parte Geisler, 50 Fed. Rep., 411; U. S. v. Howell, 64 Fed. Rep., 110; U. S. v. Bicksler, 1 Mackey, 341.

§ 164. **Counterfeiting minor coins.**—Whoever shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or shall willingly aid or assist in falsely making, forging, or counterfeiting any coin in the resemblance or similitude of any of the minor coins which have been, or hereafter may be, coined at the mints of the United States; or whoever shall pass, utter, publish, or sell, or bring into the United States or any place subject to the jurisdiction thereof, from any foreign place, or have in his possession any such false, forged, or counterfeited coin, with intent to defraud any person whomsoever, shall be fined not more than one thousand dollars and imprisoned not more than three years. (R. S., s. 5458.)

Statler v. U. S., 157 U. S., 277; U. S. v. Bicksler, 1 Mackey, 341.

§ 165. **Falsifying, mutilating, or lightening coinage.**—Whoever, fraudulently, by any art, way, or means, shall deface, mutilate, impair, diminish, falsify, scale, or lighten, or cause or procure to be fraudulently defaced, mutilated, impaired, diminished, falsified, scaled, or lightened, or willingly aid or assist in fraudulently defacing, mu-

tilating, impairing, diminishing, falsifying, scaling, or lightening, the gold or silver coins which have been, or which may hereafter be, coined at the mints of the United States, or any foreign gold or silver coins which are by law made current or are in actual use or circulation as money within the United States or in any place subject to the jurisdiction thereof; or whoever shall pass, utter, publish, or sell or attempt to pass, utter, publish, or sell or bring into the United States or any place subject to the jurisdiction thereof, from any foreign place, knowing the same to be defaced, mutilated, impaired, diminished, falsified, scaled, or lightened, with intent to defraud any person whomsoever, or shall have in his possession any such defaced, mutilated, impaired, diminished, falsified, scaled, or lightened coin, knowing the same to be defaced, mutilated, impaired, diminished, falsified, scaled, or lightened, with intent to defraud any person whomsoever, shall be fined not more than two thousand dollars and imprisoned not more than five years. (R. S., s. 5459. 3 Mar., 1897, 29 Stat. L., 625, c. 377; 2 Supp., 579.)

U. S. v. Lissner, 12 Fed. Rep., 840.

§ 166. **Debasement of coinage by officers of the mint.**—If any of the gold or silver coins struck or coined at any of the mints of the United States shall be debased, or made worse as to the proportion of fine gold or fine silver therein contained, or shall be of less weight or value than the same ought to be, pursuant to law, or if any of the scales or weights used at any of the mints or assay offices of the United States shall be defaced, altered, increased, or diminished through the fault or connivance of any officer or person employed at the said mints or assay offices, with a fraudulent intent; or if any such officer or person shall embezzle any of the metals at any time committed to his charge for the purpose of being coined, or any of the coins struck or coined at the said mints, or any medals, coins, or other moneys of said mints or assay offices at any time committed to his charge, or of which he may have assumed the charge, every such officer or person who commits any of the said offenses shall be fined not more than ten thousand dollars and imprisoned not more than ten years. (R. S., s. 5460.)

§ 167. **Making or uttering coins in resemblance of money.**—Whoever, except as authorized by law, shall make or cause to be made, or shall utter or pass, or attempt to utter or pass, any coins of gold or silver or other metal, or alloys of metals, intended for the use and purpose of current money, whether in the resemblance of coins of the United States or of foreign countries, or of original design, shall be fined not more than three thousand dollars, or imprisoned not more than five years, or both. (R. S., s. 5461.)

Ex parte Holcomb 2 Dill., 392, 12 Fed. Cas., 328; U. S. v. Bejandio, 1 Woods, 294, 24 Fed. Cas., 1076; U. S. v. Bogart, 9 Ben., 314, 24 Fed. Cas., 1185.

§ 168. **Making or issuing devices of minor coins.**—Whoever, not lawfully authorized, shall make, issue, or pass, or cause to be made, issued or passed, any coin, card, token, or device in metal, or its compounds, which may be intended to be used as money for any one-cent, two-cent, three-cent, or five-cent piece, now or hereafter authorized by law, or for coins of equal value, shall be fined not more than one thousand dollars and imprisoned not more than five years. (R. S., s. 5462.)

U. S. v. Roussopulous, 95 Fed. Rep., 977.

§ 169. **Counterfeiting, etc., dies for coins of United States.**—Whoever, without lawful authority, shall make, or cause or procure to be made, or shall willingly aid or assist in making, any die, hub, or mould, or any part thereof, either of steel or plaster, or any other substance whatsoever, in the likeness or similitude, as to the design or the inscription thereon, of any die, hub, or mold designated for the coining or making of any of the genuine gold, silver, nickle, bronze, copper, or other coins of the United States, that have been or hereafter may be coined at the mints of the United States; or whoever, without lawful authority, shall have in his possession any such die, hub, or mold, or any part thereof, or shall permit the same to be used for or in aid of the counterfeiting of any of the coins of the United States hereinbefore mentioned, shall be fined not more than five thousand dollars and imprisoned not more than ten years. (10 Feb., 1891, 26 Stat. L., 742, c. 127, s. 1; 1 Supp., 889.)

U. S. v. Roussopulous, 95 Fed. Rep., 977.

§ 170. **Counterfeiting, etc., dies for foreign coins.**—Whoever, within the United States or any place subject to the jurisdiction thereof, without lawful authority, shall make, or cause or procure to be made, or shall willingly aid or assist in making, any die, hub, or mold, or any part thereof, either of steel or plaster, or of any other substance whatsoever, in the likeness or similitude, as to the design or the inscription thereon, of any die, hub, or mold designated for the coining of the genuine coin of any foreign government; or whoever, without lawful authority, shall have in his possession any such die, hub, or mold, or any part thereof, or shall conceal, or knowingly suffer the same to be used for the counterfeiting of any foreign coin, shall be fined not more than two thousand dollars, or imprisoned not more than five years, or both. (10 Feb., 1891, 26 Stat. L., 742, c. 127, s. 2; 1 Supp., 890.)

§ 171. **Making, importing, or having in possession tokens, prints, etc., similar to United States or foreign coins.**—Whoever, within the United States or any place subject to the jurisdiction thereof, shall make, or cause or procure to be made, or shall bring therein, from any foreign country, or shall have in possession with intent to sell, give away, or in any other manner, use the same, any business or professional card, notice, placard, token, device, print, or impression, or any other thing whatsoever, in the likeness or similitude as to design, color, or the inscription thereon, of any of the coins of the United States or of any foreign country that have been or hereafter may be used as money, either under the authority of the United States or under the authority of any foreign government, shall be fined not more than one hundred dollars. But nothing in this section shall be construed to forbid or prevent the printing and publishing of illustrations of coins and medals, or the making of the necessary plates for the same, to be used in illustrating numismatic and historical books and journals and the circulars of legitimate publishers and dealers in the same. (10 Feb., 1891 26 Stat. L., 742, c. 127, s. 3; 1 Supp., 890, 3 Mar., 1903, 32 Stat. L., 1223, c. 1015.

Kaye v. U. S., 177 Fed. Rep., 147.

§ 172. **Counterfeit obligations, securities, coins, or material for counterfeiting, to be forfeited.**—All counterfeits of any obligation or other security of the United States or of any foreign government, or counterfeits of any of the coins of the United States or of any foreign government, and all material or apparatus fitted or intended to be used, or that shall have been used, in the making of any of such counterfeit obligation or other security or coins hereinbefore mentioned, that shall be found in the possession of any person without authority from the Secretary of the Treasury or other proper officer to have the same, shall be taken possession of by any authorized agent of the Treasury Department and forfeited to the United States, and disposed of in any manner the Secretary of the Treasury may direct. Whoever having the custody or control of any such counterfeits, material, or apparatus shall fail or refuse to surrender possession thereof upon request by any such authorized agent of the Treasury Department, shall be fined not more than one hundred dollars, or imprisoned not more than one year, or both. (10 Feb., 1891, 26 Stat. L., 742, c. 127, s. 4; 1 Supp., 890.)

§ 173. **Issue of search warrants in certain cases for suspected counterfeit obligations, securities, or coin, or material for counterfeiting, forfeiture.**—The several judges of courts established under the laws of the United States and United States commissionrs may upon proper oath or affirmation, within their respective jurisdictions, issue a search warrant authorizing any marshal of the United States, or any other person specifically mentioned in such warrant, to enter any house, store, building, boat, or other place named in such warrant, in which there shall appear probable cause for believeing that the manufacture of counterfeit money, or the concealment of counterfeit money, or the manufacture or concealment of counterfeit obligations or coins of the United States or of any foreign government, or the manufacture or concealment of dies, hubs, molds, plates, or other things fitted or intended to be used for the manufacture of counterfeit money, coins, or obligations of the United States or of any foreign government, or of any bank doing business under the authority of the United States

or of any State or Territory thereof, or of any bank doing business under the authority of any foreign government, or of any political division of any foreign government, is being carried on or practiced, and there search for any such counterfeit money, coins, dies, hubs, molds, plates, and other things, and for any such obligations, and if any such be found, to seize and secure the same and to make return thereof to the proper authority; and all such counterfeit money, coins, dies, hubs, molds, plates, and other things, and all such counterfeit obligations so seized shall be forfeited to the United States. (10 Feb., 1891, 26 Stat. L., 743, c. 127, s. 5; 1 Supp., 890.)

§ 174. **Circulating bills of expired corporations.**—In all cases where the charter of any corporation which has been or may be created by act of Congress has expired or may hereafter expire, if any director, officer, or agent of the corporation, or any trustee thereof, or any agent of such trustee, or any person having in his possession or under his control the property of the corporation for the purpose of paying or redeeming its notes and obligations, shall knowingly issue, reissue, or utter as money, or in any other way knowingly put in circulation any bill, note, check, draft, or other security purporting to have been made by any such corporation whose charter has expired, or by any officer thereof, or purporting to have been made under authority derived therefrom, or if any person shall knowingly aid in any such act, he shall be fined not more than ten thousand dollars,or imprisoned not more than five years, or both. But nothing herein shall be construed to make it unlawful for any person, not being such director, officer, or agent of the corporation, or any trustee thereof, or any agent of such trustee, or any person having in his possession or under his control the property of the corporation for the purpose hereinbefore set forth, who has received or may hereafter receive such bill, note, check, draft, or other security, bona fide and in the ordinary transactions of business, to utter as money or otherwise circulate the same. (R. S., s. 5437.)

§ 175. **Imitating national banking notes with printed advertisements thereon.**—It shall not be lawful to design, engrave, print, or in any manner make or execute, or to

utter, issue, distribute, circulate, or use any business or professional card, notice, placard, circular, handbill, or advertisement in the likeness or similitude of any circulating note or other obligation or security of any banking association organized or acting under the laws of the United States which has been or may be issued under any act of Congress, or to write, print, or otherwise impress upon any such note, obligation, or security, any business or professional card, notice or advertisement, or any notice or advertisement of any matter or thing whatever. Whoever shall violate any provision of this section shall be fined not more than one hundred dollars or imprisoned not more than six months, or both. (R. S., s. 5188.)

U. S. v. Laeseki, 29 Fed. Rep., 699.

§ 176. **Mutilating or defacing national-bank note.**—Whoever shall mutilate, cut, deface, disfigure, or perforate with holes, or unite or cement together, or do any other thing to any bank bill, draft, note, or other evidence of debt, issued by any national banking association, or shall cause or procure the same to be done, with intent to render such bank bill, draft, note, or other evidence of debt unfit to be reissued by said association, shall be fined not more than one hundred dollars, or imprisoned not more than six months, or both. (R. S., s. 5189.)

§ 177. **Imitating United States securities or printing business cards on them.**—It shall not be lawful to design, engrave, print, or in any manner make or execute or to utter, issue, distribute, circulate, or use, any business or professional card, notice, placard, circular, handbill, or advertisement, in the likeness or similitude of any bond, certificate of indebtedness, certificate of deposit, coupon, United States note, Treasury note gold certificate, silver certificate, fractional note, or other obligation or security of the United States which has been or may be issued under or authorized by any act of Congress heretofore passed or which may hereafter be passed; or to write, print, or otherwise impress upon any such instrument, obligation, or security, any business or professional card, notice, or advertisement, or any notice or advertisement, or any matter or thing whatever. Whoever shall violate any

provision of this section shall be fined not more than five hundred dollars. (R. S., s. 3708.)

U. S. v. Laeseki, 29 Fed. Rep., 699.

§ 178. **Notes of less than one dollar not to be issued.**—No person shall make, issue, circulate, or pay out any note, check, memorandum, token, or other obligation for a less sum than one dollar, intended to circulate as money or to be received or used in lieu of lawful money of the United States; and every person so offending shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both. (R. S., s. 3583.)

CHAPTER EIGHT.

OFFENSES AGAINST THE POSTAL SERVICE.

§ 179. **Conducting post-office without authority.**—Whoever, without authority from the Postmaster-General shall set up or profess to keep any office or place of business bearing the sign, name, or title of post-office, shall be fined not more than five hundred dollars. (R. S., s. 3829.)

§ 180. **Illegal carrying by carriers and others.**—Whoever, being concerned in carrying the mail, shall collect, receive, or carry any letter or packet, or cause or procure the same to be done, contrary to law, shall be fined not more than fifty dollars, or imprisoned not more than thirty days, or both. (R. S., s. 3981.)

4 A. G., 276; Op. A. G. McVeagh, June 29, 1881.

§ 181. **Conveyance of mail by private express forbidden.**—Whoever shall establish any private express for the conveyance of letters or packets, or in any manner cause or provide for the conveyance of the same by regular trips or at stated periods over any post route which is or may be established by law, or from any city, town, or place, to any other city, town, or place, between which the mail is regularly carried, or whoever shall aid or assist therein shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both: Provided, That nothing contained in this section shall be construed as prohibiting any person from receiving and

delivering to the nearest post-office, postal car, or other authorized depository for mail matter, any mail matter properly stamped.

R. S., s. 3982.
3 Mar., 1879, 20 Stat. L., 356, c. 180, s. 1; 1 Supp., 245.
1 Mar., 1884, 23 Stat. L., 3, c, 9; 1 Supp., 423 U. S. v. Bromley, 12 How., 88; U. S. v. Adams, 1 West, L. J., 315, 24 Fed. Cas., 761; U. S. v. Gray, 3 Hag. Reg. U. S., 227, 26 Fed. Cas., 18; U. S. v. Hal, 9 Am. L. Reg., 232, 26 Fled. Cas., 75; U. S. v. Kimball, 7 Law Rep., 32. 26 Fed. Cas., 782; U. S. v. Kochersparger, 9 Am. L. Reg., 145, 26 Fed. Cas., 803; U. S. v. Pomeroy, 3 N. Y. Leg. Obs., 143, 27 Fed. Cas., 588; U. S. v. Thompson, 9 Law Rep., 451, 28 Fed. Cas., 97; U. S. v. Express Co., 5 Biss., 91, 28 Fed. Cas., 352; Blackham v. Gresham, 16 Fed. Rep., 609; U. S. v. Easson, 18 Fed. Rep., 609; 4 A. G. Op., 349; 14 A. G. Op., 152; 19 A. G. Op., 670.

§ 182. **Transporting persons unlawfully conveying mail.**—Whoever, being the owner, driver, conductor, master, or other person having charge of any stagecoach, railway car, steamboat, or other vehicle or vessel, shall knowingly convey or knowingly permit the conveyance of any person acting or employed as a private express for the conveyance of letters or packets, and actually in possession of the same for the purpose of conveying them, contrary to law, shall be fined not more than one hundred and fifty dollars. (R. S., s. 3983.)

§ 183. **Sending letters by private express.**—Whoever shall transmit by private express or other unlawful means, or deliver to any agent thereof, or deposit or cause to be deposited at any appointed place, for the purpose of being so transmitted, any letter or packet, shall be fined not more than fifty dollars. (R. S., s. 3984.)

§ 184. **Conveying letters over post routes.**—Whoever, being the owner, driver, conductor, master, or other person having charge of any stagecoach, railway car, steamboat, or conveyance of any kind which regularly performs trips at stated periods on any post route, or from any city, town, or place to any other city, town, or place between which the mail is regularly carried, and which shall carry, otherwise than in the mail, any letters or packets, except such as relate to some part of the cargo of such steamboat or other vessel, to the current business of the carrier, or to some article carried at the same time by the same stage coach, railway car, or other vehicle, except as otherwise provided by law, shall be fined not more than fifty dollars. (R. S., s. 3985.)

4 A. G. Op., 159; ibid., 276; 21 A. G. Op., 394; U. S. v. U. S. Exp. Co., 5 Biss., 91; 28 Fed. Cas., 352.

§ 185. **Carrying letters out of the mail on board vessel.**—Whoever shall carry any letter or packet on board any vessel which carries the mail, otherwise than in such mail, except as otherwise provided by law, shall be fined not more than fifty dollars, or imprisoned not more than one month, or both. (R. S., s. 3986.)

§ 186. **When conveying of letters by private persons is lawful.**—Nothing in this chapter shall be construed to prohibit the conveyance or transmission of letters or packets by private hands without compensation, or by special messenger employed for the particular occasion only. (R. S., s. 3992.)

4 A. G. Op., 159.

§ 187. **Wearing uniform of carrier without authority.**—Whoever, not being connected with the letter-carrier branch of the postal service, shall wear the uniform or badge which may be prescribed by the Postmaster-General, to be worn by letter carriers, shall be fined not more than one hundred dollars, or imprisoned not more than six month, or both. (R. S., s. 3867.)

§ 188. **Vehicles, etc., claiming to be mail carriers.**—It shall be unlawful to paint, print, or in any manner to place upon or attach to any steamboat or other vessel, or any car, stagecoach, vehicle, or other conveyance, not actually used in carrying the mail, the words "United States Mail," or any words, letters, or characters of like import; or to give notice, by publishing in any newspaper or otherwise, that any steamboat or other vessel, or any car, stage-coach, vehicle, or other conveyance, is used in carrying the mail, when the same is not actually so used; and every person who shall violate, and every owner, receiver, lessee, or managing operator thereof, who shall cause, suffer, or permit the violation of any provision of this section, shall be liable, and shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both. (R. S., s. 3979.)

§ 189. **Injuring mail bags, etc.**—Whoever shall tear, cut, or otherwise injure any mail bag, pouch, or other thing used or designed for use in the conveyance of the mail, or shall draw or break any staple or loosen any part of any lock, chain, or strap attached thereto, with intent

to rob or steal any such mail, or to render the same insecure, shall be fined not more than five hundred dollars, or imprisoned not more than three years, or both. (R. S., s. 5476.)

§ 190. **Stealing post-office property.**—Whoever shall steal, purloin, or embezzle any mail bag or other property in use by or belonging to the Post-Office Department, or shall appropriate any such property to his own or any other than its proper use, or shall convey away any such property to the hindrance or detriment of the public service, shall be fined not more than two hundred dollars, or imprisoned not more than three years, or both. (R. S., s. 5475.)

U. S. v. Williams, 57 Fed. Rep., 201;
U. S. v. Yennie, 74 Fed. Rep., 211.

§ 191. **Stealing or forging mail locks or keys.**—Whoever shall, steal, purloin, embezzle, or obtain by any false pretense, or shall aid or assist in stealing, purloining, embezzling, or obtaining by any false pretense, any key suited to any lock adopted by the Post-Office Department and in use on any of the mails or bags thereof, or any key to any lock box, lock drawer, or other authorized receptacle for the deposit or delivery of mail matter; or whoever shall knowingly and unlawfully make, forge, or counterfeit, or cause to be unlawfully made, forged, or counterfeited, any such key, or shall have in his possession any such mail lock or key with the intent unlawfully or improperly to use, sell, or otherwise dispose of the same, or to cause the same to be unlawfully or improperly used, sold, or otherwise disposed of; or whoever, being engaged as a contractor or otherwise in the manufacture of any such mail lock or key, shall deliver or cause to be delivered, any finished or unfinished lock or key used or designed for use by the Department, or the interior part of any such lock, to any person not duly authorized under the hand of the Postmaster-General and the seal of the Post-Office Department, to receive the same, unless the person receiving it is the contractor for furnishing the same or engaged in the manufacture thereof in the manner authorized by the contract, or the agent of such manufacturer, shall be fined not more than five hundred dol-

lars and imprisoned not more than ten years. (R. S., s. 5477.)

§ 192. **Breaking into and entering post-office.**—Whoever shall forcibly break into or attempt to break into any post-office, or any building used in whole or in part as a post-office, with intent to commit in such post-office, or building, or part thereof, so used, any larceny or other depredation, shall be fined not more than one thousand dollars and imprisoned not more than five years. (R. S. s. 5478.)

U. S. v. Campbell, 16 Fed. Rep., 233; Re Byron, 18 Fed. Rep., 722; U. S. v. Lantry, 30 Fed. Rep., 232; U. S. v. Williams, 57 Fed. Rep., 210; U. S. v. Yennie, 74 Fed. Rep., 221; U. S. v. Saunders, 77 Fed. Rep., 170; U. S. v. Shelton, 100 Fed. Rep., 381; Considine v. U. S., 112 Fed. Rep., 342; U. S. v. Martin, 140 Fed. Rep., 256; Sorenson v. U. S., 143 Fed. Rep., 820; 168 Fed. Rep., 785.

§ 193. **Unlawfully entering postal car, etc.**—Whoever, by violence, shall enter a post-office car, or any apartment in any car, steamboat, or vessel, assigned to the use of the Mail Service, or shall wilfully or maliciously assault or interfere with any postal clerk in the discharge of his duties in connection with such car, steamboat, vessel, or apartment thereof, or shall wilfully aid or assist therein, shall be fined not more than one thousand dollars, or imprisoned not more than three years, or both. (3 Mar., 1903, 32 Stat. L., 1176, c. 1009, s. 5.)

U. S. v. Yennie, 74 Fed. Rep., 221;
U. S. v. Shelton, 100 Fed. Rep., 831.

§ 194. **Stealing, secreting, embezzling, etc., mail matter or contents.**—Whoever shall steal, take, or abstract, or by fraud or deception obtain, from or out of any mail, post-office, or station thereof, or other authorized depository for mail matter, or from a letter or mail carrier, any letter, postal card, package, bag, or mail, or shall abstract or remove from any such letter, package, bag, or mail, any article or thing contained therein, or shall secrete, embezzle, or destroy any such letter, postal card, package, bag, or mail, or any article or thing contained therein; or whoever shall buy, receive, or conceal, or aid in buying, receiving, or concealing, or shall unlawfully have in his possession, any letter, postal card, package, bag, or mail, or any article or thing contained therein, which has been so stolen, taken, embezzled, or abstracted, as herein described, knowing the same to have been

so stolen, taken, embezzled, or abstracted; or whoever shall take any letter, postal card, or package, out of any post-office or station thereof, or out of any authorized depository for mail matter, or from any letter or mail carrier, or which has been in any post-office or station thereof, or other authorized depository or in the custody of any letter or mail carrier, before it has been delivered to the person to whom it was directed, with a design to obstruct the correspondence, or to pry into the business or secrets of another, or shall open, secrete, embezzle, or destroy the same, shall be fined not more than two thousand dollars, or imprisoned not more than five years, or both. (R. S., ss. 3892, 5469, 5470.)

U. S. v. Hardyman, 13 Pet., 176; Grimm v. U. S., 156 U. S., 604; Goode v. U. S., 159 U. S., 663; Montgomery v. U. S., 162 U. S., 410; Hall v. U. S., 168 U. S., 632; Scott v. U. S., 172 U. S., 343; U. S. v. Beaty, Hempst., 487, 24 Fed. Cas., 1057; U. S. v. Bellew, 2 Brock., 280, 24 Fed. Cas., 1079; U. S. v. Bramham, 3 Hughes, 557, 24 Fed. Cas., 1220; U. S. v. Brent, 17 Int. Rev. Rec., 54, 24 Fed. Cas., 1225; U. S. v. Cottingham, 2 Blatch., 470, 25 Fed. Cas., 673; U. S. v. Driscoll, 1 Lowell, 303, 25 Fed. Cas., 914; U. S. v. Fisher, 5 McLean, 23, 25 Fed. Cas., 1086; U. S. v. Foye, 1 Curtis, 364, 25 Fed. Cas., 1198; U. S. v. Golding, 2 Cranch C. C., 212, 25 Fed. Cas., 1349; U. S., v. Harmison, 3 Sawy., 556, 26 Fed. Cas., 156; U. S. v. Jenther, 13 Blatch., 335, 26 Fed. Cas., 610; U. S. v. Keene, 5 McLean, 509, 26 Fed. Cas., 694; U. S. v. Lancaster, 2 McLean, 431, 26 Fed. Cas., 854; U. S. v. Laws, 2 Lowell, 115, 26 Fed. Cas., 892; U. S. v. Marselis, 2 Blatch., 108, 26 Fed. Cas., 1167; U. S. v. Martin, 2 McLean, 256, 26 Fed. Cas., 1183; U. S. v. Montgomery, 3 Sawy., 544, 26 Fed. Cas., 1296; U. S. v. Nott, 1 McLean, 499, 27 Fed. Cas., 189; U. S. v. Okie, 5 Blatch., 516, 27 Fed. Cas., 231; U. S. v. Oliver, 4 L. Rep., 197, 27 Fed. Cas., 232; U. S. v. Parsons, 2 Blatch., 104, 27 Fed. Cas., 451; U. S. v. Patterson, 6 McLean, 466, 27 Fed. Cas., 466; U. S. v. Pearce, 2 McLean, 14, 27 Fed. Cas., 480; U. S. v. Pelletreau, 14 Blatch., 126, 27 Fed. Cas., 485; U. S. v. Pond, 2 Curtis, 265, 27 Fed. Cas., 590; U. S. v. Sander, 6 McLean, 598, 27 Fed. Cas., 949; U. S. v. Tanner, 6 McLean, 128, 28 Fed. Cas., 12; U. S. v. Taylor, 1 Hughes, 514, 28 Fed. Cas., 19; U. S. v. Whittier, 5 Dill., 35, 28 Fed. Cas., 591; U. S. v. Baugh, 1 Fed. Rep., 784; U. S. v. Hamilton, 9 Fed. Rep., 422; U. S. v. Wynn, 9 Fed. Rep., 886; U. S. v. McCready, 11 Fed. Rep., 225; U. S. v. Blackman, 17 Fed. Rep., 837; New Orleans Nat. Bank v. Merchant, 18 Fed. Rep., 847; U. S. v. Hilbury, 29 Fed. Rep., 705; U. S. v. Thompson, 29 Fed. Rep., 706; U. S. v. Rapp, 30 Fed. Rep., 818; Re Burkhart, 33 Fed. Rep., 25; U. S. v. Gruver, 35 Fed. Rep., 59; U. S. v. Denicke, 35 Fed. Rep., 407; U. S. v. Mathews, 35 Fed. Rep., 890; U. S. v. Jolly, 37 Fed. Rep., 108; U. S. v. Taylor, 37 Fed. Rep., 200; U. S. v. Wight, 38 Fed. Rep., 106; U. S. v. Clarke, 40 Fed. Rep., 325; U. S. v. Holmes, 40 Fed. Rep., 750; U. S. v. Dorsey, 40 Fed. Rep., 752; Walster v. U. S., 42 Fed. Rep., 891; U. S. v. Byrne, 44 Fed. Rep., 188; U. S. v. Wilson, 44 Fed. Rep., 593; U. S. v. Bithea, 44 Fed. Rep., 802; U. S. v. Mulhollond, 50 Fed. Rep., 413; U. S. v. Delany, 55 Fed. Rep., 475; U. S. v. Safford, 66 Fed. Rep., 942; U. S. v. Thomas, 69 Fed. Rep., 588; U. S. v. Hall, 76 Fed. Rep., 566; U. S. v. Jones, 80 Fed. Rep., 513; U. S. v. Lee, 90 Fed. Rep., 256; U. S. v. Huilsman, 94 Fed. Rep., 486; U. S. v. Trosper, 127 Fed. Rep., 476; U. S. v. Meyers, 142 Fed. Rep., 907; Brown v. U. S., 148 Fed. Rep., 379; U. S. v. Bullington, 170 Fed. Rep., 121.

§ 195. **Postmaster or employee of postal service detaining, destroying, or embezzling letter, etc.**—Whoever, being a postmaster or other person employed in any department of the postal service, shall unlawfully detain, delay, or open any letter, postal card, package, bag, or mail intrusted to him or which shall come into his pos-

session, and which was intended to be conveyed by mail, or carried or delivered by any carrier, messenger, agent, or other person employed in any department of the postal service, or forwarded through or delivered from any post-office or station thereof established by authority of the Postmaster-General; or shall secrete, embezzle, or destroy any such letter, postal card, package, bag, or mail; or shall steal, abstract, or remove from any such letter, package, bag, or mail, any article or thing contained therein, shall be fined not more than five hundred dollars, or imprisoned not more than five years, or both. (R. S., ss. 3890, 2891, 5467.)

Bramberger v. U. S., 128 Fed. Rep., 551; Ennis v. U. S., 154 Fed. Rep., 346; Alexis v. U. S., 129 Fed. Rep., 842; U. S. v. Kerr, 159 Fed. Rep., 185; 60; Chitwood v. U. S., 153 Fed. Rep., Shaw v. U. S., 165 Fed. Rep., 174.

§ 196. **Postmaster, etc., detaining or destroying newspapers.**—Whoever, being a postmaster or other person employed in any department of the postal service, shall improperly detain delay, embezzle, or destroy any newspaper, or permit any other person to detain, delay, embezzle, or destroy the same, or open, or permit any other person to open, any mail or package of newspapers not directed to the office where he is employed; or whoever shall open, embezzle, or destroy any mail or package of newspapers not being directed to him, and he not being authorized to open or receive the same; or whoever shall take or steal any mail or package of newspapers from any post-office or from any person having custody thereof, shall be fined not more than one hundred dollars, or imprisoned not more than one year, or both. (R. S., s. 5471.)

§ 197. **Assaulting mail carrier with intent to rob, and robbing mail.**—Whoever shall assault any person having lawful charge, control, or custody of any mail matter, with intent to rob, steal, or purloin such mail matter or any part thereof, or shall rob any such person of such mail or any part thereof, shall, for a first offense, be imprisoned not more than ten years; and if in effecting or attempting to effect such robbery, he shall wound the person having the custody of the mail, or put his life in jeopardy by the use of a dangerous weapon, or for a sub-

sequent offense, shall be imprisoned twenty-five years. (R. S., ss. 5472, 5473.)

Harrison v. U. S., 163, U. S., 140; 78, 28 Fed. Cas., 699; U. S. v. Reeves, 38 Fed. Rep., 404; U. S. v. Bowman, U. S. v. Hare, 2 Wh. Cr. Cas., 283, 26 Fed. Cas., 148; U. S. v. Wilson, Baldw., 5 Pac. Rep., 333.

§ 198. **Injuring letter boxes or mail matter; assaulting carrier, etc.**—Whoever shall wilfully injure, tear down, or destroy any letter box, pillar box, lock box, lock drawer, or other receptacle established or approved by the Postmaster-General for the safe deposit of matter for the mail or for delivery, or any lock or similar device belonging or attached thereto, or any letter box or other receptacle designated or approved by the Postmaster-General for the receipt or delivery of mail matter on any rural free delivery route, star route, or other mail route, or shall break open the same; or shall wilfully injure, deface, or destroy any mail matter deposited in any letter box, pillar box, lock box, lock drawer, or other receptacle established or approved by the Postmaster-General for the safe deposit of matter for the mail or for delivery; or shall willfully take or steal such matter from or out of any such letter box, pillar box, lock box, lock drawer, or other receptacle, or shall willfully and maliciously assault any letter or mail carrier, knowing him to be such, while engaged on his route in the discharge of his duty as such carrier, or shall willfully aid or assist in any offense defined in this section, shall be fined not more than one thousand dollars, or imprisoned not more than three years or both. (R. S., ss. 3869, 5466. 21 Apr., 1902, 32 Stat. L., 113 c. 563. 3 Mar., 1903, 32 Stat. L., 1175, c. 1009, s. 3.)

§ 199. **Deserting the mail.**—Whoever, having taken charge of any mail, shall voluntarily quit or desert the same before he has delivered it into the post office at the termination of the route, or to some known mail carrier-messenger, agent, or other employee in the postal service authorized to receive the same, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both. (R. S., s. 5474.)

15 A. G. Op., 70.

§ 200. **Delivery of letters by master of vessel.**—The master or other person having charge or control of any

steamboat or other vessel passing between ports or places in the United States, arriving at any such port or place where there is a postoffice, shall deliver to the postmaster or at the post-office within three hours after his arrival, if in the daytime, and if at night, within two hours after the next sunrise, all letters and packages brought by him or within his power or control and not relating to the cargo, addressed to or destined for such port or place, for which he shall receive from the postmaster two cents for each letter or package so delivered, unless the same is carried under a contract for carrying the mail; and for every failure so to deliver such letters or packages, the master or other person having charge or control of such steamboat or other vessel, shall be fined not more than one hundred and fifty dollars. (R. S., s. 3977.)

§ 201. **Obstructing the mail.**—Whoever shall knowingly and willfully obstruct or retard the passage of the mail, or any carriage, horse, driver, or carrier, or car, steamboat or other conveyance or vessel carrying the same, shall be fined not more than one hundred dollars, or imprisoned not more than six months, or both. (R. S., s. 3995.)

U. S. v. Kirby, 7 Wall., 482; Re Debs, 158 U. S., 564; Clune v. U. S., 159 U. S., 590; U. S. v. Barney, 3 Hughes, 545, 24 Fed. Cas., 1014; U. S. v. Clark, 13 Phila., 476, 25 Fed. Cas., 443; U. S. v. Hart, Pet. C. C., 390; 26 Fed. Cas., 193; U. S. v. Harvey, 1 Brunner, 540, 26 Fed. Cas., 206; U. S. v. McCracken, 3 Hughes, 544, 26 Fed. Cas., 1049; U. S. v. Stevens, 2 Haskell, 164, 27 Fed. Cas., 1312; U. S. v. De Mott, 3 Fed. Rep., 478; U. S. v. Claypool, 14 Fed. Rep., 127; U. S. v. Kane, 19 Fed. Rep., 42; U. S. v. Woodward, 44 Fed. Rep., 592; U. S. v. Sears, 55 Fed. Rep., 268; U. S. v. Thomas, 55 Fed. Rep., 380; U. S. v. Cassidy, 67 Fed. Rep., 698; Salla v. U. S., 104 Fed. Rep., 544; Conrad v. U. S., 127 Fed. Rep., 798.

§ 202. **Ferryman delaying the mail.**—Whoever, being a ferryman, shall delay the passage of the mail by willful neglect or refusal to transport the same across any ferry, shall be fined not more than one hundred dollars. (R. S., s. 3996.)

§ 203. **Letters carried in a Foreign vessel to be deposited in a post-office.**—All letters or other mailable matter conveyed to or from any part of the United States by any foreign vessel, except such sealed letters relating to such vessel or any part of the cargo thereof as may be directed to the owners or consignees of the vessel, shall be subject to postage charge, whether addressed to any person in the United States or elsewhere, provided they

are conveyed by the packet or other ship of a foreign country imposing postage on letters or other mailable matter conveyed to or from such country by any vessel of the United States; and such letters or other mailable matter carried in foreign vessels, except such sealed letters relating to the vessel or any part of the cargo thereof as may be directed to the owners or consignees, shall be delivered into the United States post-office by the master or other person having charge or control of such vessel when arriving, and be taken from the United States, post-office when departing, and the postage justly chargeable by law paid thereon; and for refusing or failing to do so, or for conveying such letters or other mailable matter, or any letters or other mailable matter, intended to be conveyed in any vessel of such foreign country, over or across the United States, or any portion thereof, the party offending shall be fined not more than one thousand dollars. (R. S., s. 4016.)

§ 204. **Vessels to deliver letters at post-office; oath.**—No vessel arriving within a port or collection district of the United States shall be allowed to make entry or break bulk until all letters on board are delivered to the nearest post-office, and the master or other person having charge or control thereof has signed and sworn to the following declaration before the collector or other proper customs officer:

I, A. B., master ————, of the ————, arriving from ————, and now lying in the port of ————, do solemnly swear (or affirm) that I have to the best of my knowledge and belief delivered to the post-office at ———— every letter and every bag, packet, or parcel of letters which was on board the said vessel during her last voyage, or which were in my possession or under my power or control.

And any master or other person having charge or control of such vessel who shall break bulk before he has delivered such letters shall be fined not more than one hundred dollars. (R. S., s. 3988.)

§ 205. **Using, selling, etc., canceled stamps; removing cancellation marks from stamps, etc.**—Whoever shall use or attempt to use in payment of postage, any

canceled postage stamp, whether the same has been used or not; or shall remove, attempt to remove, or assist in removing, the canceling or defacing marks from any postage stamp, or the superscription from any stamped envelope, or postal card, that has once been used in payment of postage, with the intent to use the same for a like purpose, or to sell or offer to sell the same, or shall knowingly have in possession any such postage stamp envelope, or postal card, with in- any such postage stamp, stamped envelope, or postal card, with intent to use the same, or shall knowingly sell or offer to sell any such postage stamp, stamped envelope, or postal card, or use or attempt to use the same in payment of postage; or whoever unlawfully and willfully shall remove from any mail matter any stamp attached thereto in payment of postage; or shall knowingly use or cause to be used in payment of postage, any postage stamp, postal card, or stamped envelope, issued in pursuance of law, which has already been used for a like purpose; shall, if he be a person employed in the postal service, be fined not more than five hundred dollars, or imprisoned not more than three years, or both; and if he be a person not employed in the postal service, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both. (R. S., ss. 3922, 3923, 3924, 3925. 3 Mar., 1879, 20 Stat. L., 362, c. 180, s. 28; 1 Supp., 249.)

§ 206. **False returns to increase compensation.**—Whoever, being a postmaster or other person employed in any branch of the postal service, shall make, or assist in making, or cause to be made, a false return, statement, or account to any officer of the United States, or shall make, assist in making, or cause to be made, a false entry in any record, book, or account, required by law or the rules or regulations of the Post-Office Department to be kept in respect of the business or operations of any post-office or other branch of the postal service, for the purpose of fraudulently increasing his compensation or the compensation of the postmaster or any employee in a post-office; or whoever, being a postmaster or other person employed in any post-office or station thereof shall

induce, or attempt to induce, for the purpose of increasing the emoluments or compensation of his office, any person to deposit mail matter in, or forward in any manner for mailing at, the office where such postmaster or other person is employed, knowing such matter to be properly mailable at another post-office, shall be fined not more than five hundred dollars, or imprisoned not more than two years, or both. (17 June, 1878, 20 Stat. L., 141, c. 259, s. 1; 1 Supp., 186. 4 Aug., 1886, 24 Stat. L., 221, c. 901, s. 3; 1 Supp., 512.)

U. S. v. Snyder, 14 Fed. Rep., 554.

§ 207. **Collection of unlawful postage forbidden.**—Whoever, being a postmaster or other person authorized to receive the postage of mail matter, shall fraudulently demand or receive any rate of postage or gratuity or reward other than is provided by law for the postage of such mail matter, shall be fined not more than one hundred dollars, or imprisoned not more than six months, or both. (R. S., s. 3899.)

§ 208. **Unlawful pledging or sale of stamps.**—Whoever, being a postmaster or other person employed in any branch of the postal service, and being intrusted with the sale or custody of postage stamps, stamped envelopes, or postal cards, shall use or dispose of them in the payment of debts, or in the purchase of merchandise or other salable articles, or pledge or hypothecate the same, or sell or dispose of them except for cash; or sell or dispose of postage stamps or postal cards for any larger or less sum than the values indicated on their faces; or sell or dispose of stamped envelopes for a larger or less sum than is charged therefor by the Post-Office Department for like quantities; or sell or dispose of, or cause to be sold or disposed of, postage stamps, stamped envelopes, or postal cards at any point or place outside of the delivery of the office where such postmaster or other person is employed; or induce or attempt to induce, for the purpose of increasing the emoluments or compensation of such postmaster, or the emoluments or compensation of any other person employed in such post-office or any station thereof, or the allowances or facilities provided therefor, any person to purchase at such post-office or any station

thereof, or from any employee of such post-office, postage stamps, stamped envelopes, or postal cards; or sell or dispose of postage stamps, stamped envelopes, or postal cards, otherwise than as provided by law or the regulations of the Post-Office Department, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both. (R. S., s. 3920. 17 June, 1878, 20 Stat. L., 141, c. 259, s. 1; 1 Supp., 186.)

Palliser v. U. S., 136 U. S., 257; U. S. v. Williamson, 26 Fed. Rep., 690; U. S. v. Douglass, 33 Fed. Rep., 381; U. S. v. Walter Scott Stamp Co., 57 Fed. Rep., 721.

§ 209. **Failure to account for postage and to cancel stamps, etc., by officials.**—Whoever, being a postmaster or other person engaged in the postal service, shall collect and fail to account for the postage due upon any article of mail matter which he may deliver, without having previously affixed and canceled the special stamp provided by law, or shall fail to affix such stamp, shall be fined not more than fifty dollars. (3 Mar., 1879, 20 Stat. L., 362, c. 180, s. 27; 1 Supp., 249.)

§ 210. **Issuing money order without payment.**—Whoever, being a postmaster or other person employed in any branch of the postal service, shall issue a money order without having previously received the money therefor, shall be fined not more than five hundred dollars. (R. S., s. 4030.)

§ 211. **Obscene, etc., matter nonmailable.**—Every obscene, lewd, or lascivious, and every filthy, book, pamphlet, picture, paper, letter writing, print or other publication of an indecent character, and every article or thing designed, adapted, or intended for preventing conception or producing abortion, or for any indecent or immoral use; and every article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for preventing conception or producing abortion, or for any indecent or immoral purpose; and every written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information directly or indirectly, where, or how, or from whom, or by what means any of the hereinbefore-mentioned matters, articles, or things may be obtained or made, or where or by whom

any act or operation of any kind for the procuring or producing of abortion will be done or performed, or how or by what means conception may be prevented or abortion produced, whether sealed or unsealed; and every letter, packet, or package, or other mail matter containing any filthy, vile, or indecent thing, device, or substance; and every paper, writing, advertisement, or representation that any article, instrument, substance, drug, medicine, or thing may, or can be, used or applied for preventing conception or producing abortion, or for any indecent or immoral purpose; and every description calculated to induce or incite a person to so use or apply any such article, instrument, substance, drug, medicine, or thing, is hereby declared to be non-mailable matter and shall not be conveyed in the mails or delivered from any post-office or by any carrier. Whoever shall knowingly deposit, or cause to be deposited for mailing or delivery, anything declared by this section to be non-mailable, or shall knowingly take, or cause the same to be taken, from the mails for the purpose of circulating or disposing thereof, or of aiding in the circulation or disposition thereof, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both. (R. S., s. 3893. 26 Sept., 1888, 25 Stat. L., 496, c. 1039, s. 2; 1 Supp., 621. 27 May, 1908, 35 Stat. L., 416 c. 206.)

Ex parte Jackson, 96 U. S., 727; Re Rapier, 143 U. S., 110; U. S. v. Chase, 135 U. S., 255, 27 Fed. Rep., 807; Grimm v. U. S., 156 U. S., 604, 50 Fed. Rep., 528; Rosen v. U. S., 161 U. S., 29; Swearingen v. U. S., 161 U. S., 446; Andrews v. U. S., 162 U. S., 420, 58 Fed. Rep., 768; Price v. U. S., 165 U. S., 311; Dunlop v. U. S., 165 U. S., 486; Re Jackson, 14 Blatch., 245, 13 Fed. Cas., 194; U. S. v. Bennett, 16 Blatch., 338, 24 Fed. Cas., 1093; U. S. v. Bott, 11 Blatch., 346, 24 Fed. Cas., 1204; U. S. v. Cottingham, 2 Blatch., 470, 25 Fed. Cas., 673; U. S. v. Foote, 13 Blatch., 418, 25 Fed. Cas., 1140; U. S. v. Foye, 1 Curtis, 364, 25 Fed. Cas., 1198; U. S. v. Kelly, 3 Sawy., 566, 26 Fed. Cas., 695; U. S. v. Pond, 2 Curtis, 265, 2 Fed. Cas., 591; U. S. v. Pratt, 2 Am. L. T. Rep. (N. S.), 228, 27 Fed. Cas., 611; U. S. v. Whittier, 5 Dill. 35, 28 Fed. Cas., 591; U. S. v. Williams, 3 Fed. Rep., 484; Bates v. U. S., 10 Fed. Rep., 92; U. S. v. Smith, 11 Fed. Rep., 663; U. S. v. Kaltmeyer, 16 Fed. Rep., 760; U. S. v. Hanover, 17 Fed. Rep., 444; U. S. v. Gaylord, 17 Fed. Rep., 438, 50 Fed. Rep., 410; U. S. v. Britton, 17 Fed. Rep., 731; U. S. v. Morris, 18 Fed. Rep., 900; U. S. v. Moore, 19 Fed. Rep., 39; U. S. v. Chisman, 19 Fed. Rep., 497; U. S. v. Comerford, 25 Fed. Rep., 902; U. S. v. Thomas, 27 Fed. Rep., 882; U. S. v. Bebout, 28 Fed. Rep., 522; U. S. v. Wightman, 29 Fed. Rep., 636; U. S. v. Rapp, 30 Fed. Rep., 818; Ex parte Doran, 32 Fed. Rep., 76; U. S. v. Slenker, 32 Fed. Rep., 691; U. S. v. Harmon, 34 Fed. Rep., 872, 45 Fed. Rep., 414, 50 Fed. Rep., 921; U. S. v. Mathias, 36 Fed. Rep., 892; U. S. v. Clark, 37 Fed. Rep., 106; U. S. v. Davis, 38 Fed. Rep., 326; U. S. v. Clarke, 38 Fed. Rep., 500, 732, 40 Fed. Rep., 325; U. S. v. Harman, 38 Fed. Rep., 827; U. S. v. Huggitt, 40 Fed. Rep., 636; Re Wahll, 42 Fed. Rep., 822; U. S. v. Clark, 43 Fed. Rep., 574; U. S. v. Smith, 45 Fed. Rep., 476; U. S. v. Durant, 46 Fed. Rep., 753; U. S. v. Martin, 50 Fed. Rep., 918; U. S. v. Males, 51 Fed. Rep., 41; U. S. v. Wilson, 58 Fed. Rep., 768; U. S. v. Warner, 59 Fed. Rep., 355; U. S. v. Jarvis, 59 Fed. Rep., 357; U. S. v. Nathan, 61 Fed. Rep., 936; U. S. v. Ling, 61 Fed. Rep., 1001; U. S. v. Fuller, 72 Fed. Rep., 771; U. S. v. Reid,

73 Fed. Rep., 289; U. S. v. Lamkin, 73 Fed. Rep., 459; U. S. v. Janes, 74 Fed. Rep., 545; U. S. v. Brazeau, 78 Fed. Rep., 464; Safter v. U. S., 87 Fed. Rep., 329; U. S. v. Tubbs, 94 Fed. Rep., 356; U. S. v. Moore, 104 Fed. Rep., 78; U. S. v. Clifford, 104 Fed. Rep., 296; De Gignac v. U. S., 113 Fed. Rep., 197; U. S. v. Wyatt, 122 Fed. Rep., 316; U. S. v. Harris, 122 Fed. Rep., 551; Harvey v. U. S., 126 Fed. Rep., 357; U. S. v. Moore, 129 Fed. Rep., 159; U. S. v. Pupke, 133 Fed. Rep., 243; Burton v. U. S., 142 Fed. Rep., 57; Demolli v. U. S., 144 Fed. Rep., 363; Rinker v. U. S., 151 Fed. Rep., 755; Lee v. U. S., 156 Fed. Rep., 948; Hanson v. U. S., 157 Fed. Rep., 749; U. S. v. Musgrave, 160 Fed. Rep., 700; Shepard v. U. S., 160 Fed. Rep., 584; U. S. v. O'Donnell, 165 Fed. Rep., 218; U. S. v. Benedict, 165 Fed. Rep., 221; Barnes v. U. S., 166 Fed. Rep., 113; Knowles v. U. S., 170 Fed. Rep., 409. U. S. v. Somers, 164 Fed. Rep., 259; McFadden v. U. S., 165 Fed. Rep., 51;

§ 212. **Libelous and indecent envelopes and wrappers.**—All matter otherwise mailable by law, upon the envelope or outside cover or wrapper of which, or any postal card upon which, any delineations, epithets, terms, or language of an indecent, lewd, lascivious, obscene, libelous, scurrilous, defamatory, or threatening character, or calculated by the terms or manner or style of display and obviously intended to reflect injuriously upon the character or conduct of another, may be written or printed or otherwise impressed or apparent, are hereby declared non-mailable matter, and shall not be conveyed in the mails nor delivered from any post-office nor by any letter carrier, and shall be withdrawn from the mails under such regulations as the Postmaster-General shall prescribe. Whoever shall knowingly deposit or cause to be deposited, for mailing or delivery, anything declared by this section to be non-mailable matter, or shall knowingly take the same or cause the same to be taken from the mails for the purpose of circulating or disposing of or aiding in the circulation or disposition of the same, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both. (26 Sept., 1888, 25 Stat. L., 496, c. 1039, s. 1; 1 Supp., 621.)

U. S. v. Smith, 11 Fed. Rep., 663; Ex parte Doran, 32 Fed. Rep., 76; U. S. v. Barber, 37 Fed. Rep., 55; U. S. v. Davis, 38 Fed. Rep., 326; U. S. v. Bayle, 40 Fed. Rep., 664; U. S. v. Brown, 43 Fed. Rep., 135; U. S. v. Gee, 45 Fed. Rep., 194; U. S. v. Elliott, 51 Fed. Rep., 807; U. S. v. Jarvis, 59 Fed. Rep., 357; U. S. v. Simmons, 61 Fed. Rep., 640; U. S. v. Smith, 69 Fed. Rep., 971; U. S. v. Dodge, 70 Fed. Rep., 235; U. S. v. Burnell, 75 Fed. Rep., 824; Re Barber, 75 Fed. Rep., 980.

§ 213. **Lottery, gift, enterprise etc., circulars, etc., not mailable.**—No letter, package, postal card, or circular concerning any lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance; and no lottery ticket or part thereof, or paper, certificate, or instrument purporting to be or to represent a ticket, chance, share or interest in or dependent

upon the event of a lottery gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance; and no check, draft, bill, money, postal note, or money order, for the purchase of any ticket or part thereof or of any share or chance in any such lottery, gift enterprise, or scheme; and no newspaper, circular, phamplet, or publication of any kind containing any advertisement of any lottery, gift enterprise, or scheme of any kind offering prizes dependent in whole or in part upon lot or chance, or containing any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes, shall be deposited in or carried by the mails of the United States or be delivered by any postmaster or letter carrier. Whoever shall knowingly deposit or cause to be deposited, or shall knowingly send or cause to be sent anything to be conveyed or delivered by mail in violation of the provisions of this section, or shall knowingly deliver or cause to be delivered by mail anything herein forbidden to be carried by mail, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both; and for any subsequent offense shall be imprisoned not more than five years. Any person violating any provision of this section may be tried and punished either in the district in which the unlawful matter or publication was mailed, or to which it was carried by mail for delivery according to the direction thereon, or in which it was caused to be delivered by mail to the person to whom it was addressed. (R. S., s. 3894. 19 Sept., 1890, 26 Stat. L., 465, c. 908, s. 1; 1 Supp., 803. 2 Mar., 1895, 28 Stat. L., 963, c. 191, s. 1; 2 Supp., 435.)

Ex parte Jackson, 96 U. S., 727; Re Rapier, 143 U. S., 110; Horner v. U. S., 143 U. S., 570, 147 U. S., 449; Mac Daniel v. U. S., 171 U. S., 689, 87 Fed. Rep., 324; U. S. v. Parsons, 2 Blatch., 107, 27 Fed. Cas., 451; U. S. v. Noelke, 1 Fed. Rep., 426; U. S. v. Patty, 2 Fed. Rep., 664; U. S. v. Duff, 6 Fed. Rep., 45; U. S. v. Moore, 19 Fed. Rep., 39; U. S. v. Dauphin, 20 Fed. Rep., 625; U. S. v. Mason, 22 Fed. Rep., 707; U. S. v. Clark, 22 Fed. Rep., 708; U. S. v. Jackson, 29 Fed. Rep., 503; U. S. v. Zeisler, 30 Fed. Rep., 499; U. S. v. Jones, 31 Fed. Rep., 718; U. S. v. Horner, 44 Fed. Rep., 677; U. S. v. Bailey, 47 Fed. Rep., 117; U. S. v. Lynch, 49 Fed. Rep., 851; U. S. v. Wallis, 58 Fed. Rep., 942; U. S. v. Politzer, 59 Fed. Rep., 273; U. S. v. Conrad, 59 Fed. Rep., 458; MacDonald v. U. S., 63 Fed. Rep., 426; U. S. v. McDonald, 65 Fed. Rep., 486; U. S. v. Fulkerson, 74 Fed. Rep., 619; Hoover v. McChesney, 81 Fed. Rep., 472; U. S. v. Rosenblum, 121 Fed. Rep., 180; U. S. v. Irvine, 156 Fed. Rep., 376; Fitzsimmons v. U. S., 156 Fed. Rep., 439.

§ 214. **Postmasters not to be lottery agents.**—Whoever, being a postmaster or other person employed in the postal service, shall act as agent for any lottery office, or under color of purchase or otherwise, vend lottery tickets, or shall knowingly send by mail or delivery any letter, package, postal card, circular, or pamphlet advertising any lottery, gift enterprise, or similar scheme offering prizes depending in whole or in part upon any lot or chance, or any ticket, certificate, or instrument representing any chance, share, or interest in or dependent upon the event of any lottery, gift, enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes awarded by means of any scheme, shall be fined not more than one hundred dollars, or imprisoned not more than one year, or both. (R. S., s. 3851.)

§ 215. **Use of mails to promote frauds.**—Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, bank note, paper money, or any obligation or security of the United States, or of any State, Territory, municipality, company, corporation, or person or anything represented to be or intimated or held out to be such counterfeit or spurious article, or any scheme or artifice to obtain money by or through correspondence, by what is commonly called the "saw-dust swindle," or "counterfeit-money fraud," or by dealing or pretending to deal in what is commonly called "green articles," "green coin," "green goods," "bills," "paper goods," "spurious Treasury notes," "United States goods," "green cigars," or any other names or terms intended to be understood as relating to such counterfeit or spurious articles, shall, for the purpose of executing such scheme or artifice or attempting so to do, place, or cause to be placed any letter, postal card, package, writing, circular pamphlet, or advertisement whether addressed to any person residing within or outside the United States, in any post-office, or sta-

tion thereof, or street or other letter box of the United States, or authorized depository for mail matter, to be sent or delivered by the post-office establishment of the United States, or shall take or receive any such therefrom whether mailed within or without the United States, or shall knowingly cause to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such letter, postal card, package, writing, circular, pamphlet, or advertisement, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both. (R. S., s. 5480. 2 Mar., 1889, 25 Stat. L., 873, c. 393 s. 1; 1 Supp., 694.)

Re Henry, 123 U. S., 372; U. S. v. Hess, 124 U. S., 483; Stokes v. U. S., 157 U. S., 187; Streep v. U. S. 160 U. S., 128; Durland v. U. S., 161 U. S., 306; Brand v. U. S., 4 Fed. Rep., 394; U. S. v. Nye, 4 Fed. Rep., 888; U. S. v. Jones, 10 Fed. Rep., 469; U. S. v. Stickle, 15 Fed. Rep., 798; U. S. v. Owens, 17 Fed. Rep., 72; U. S. v. Fleming, 18 Fed. Rep., 907; U. S. v. Martin, 28 Fed. Rep., 812; U. S. v. Wooten, 29 Fed. Rep., 702; Re Haynes, 30 Fed. Hep., 767; U. S. v. Hoeflinger, 33 Fed. Rep., 469; U. S. v. Watson, 35 Fed. Rep., 358; U. S. v. Mitchell, 36 Fed. Rep., 492; U. S. v. Ried, 42 Fed. Rep., 134 U. S. v. Finney, 45 Fed. Rep., 41; U. S. v. Staples, 45 Fed. Rep., 195; U. S. v. Smith, 45 Fed. Rep., 561; U. S. v. Beatty, 60 Fed. Rep., 740; Weeber v. U. S., 62 Fed. Rep., 740; U. S. v. Harris, 68 Fed. Rep., 348; U. S. v. Beach, 71 Fed. Rep., 160; U. S. v. Charles, 74 Fed. Rep., 142; Howard v. U. S., 75 Fed. Rep., 986; Culp v. U. S., 82 Fed. Rep., 990; U. S. v. Fay, 83 Fed. Rep., 839; U. S. v. Bernard, 84 Fed. Rep., 634; Tingle v. U. S., 87 Fed. Rep., 320; U. S. v. Sauer, 88 Fed. Rep., 249; U. S. v. Loring, 91 Fed. Rep., 881; 14 A. G. Op., 18; 20 A. G. Op., 296; Milby v. U. S., 109 Fed. Rep., 638; Packer v. U. S., 106 Fed. Rep., 906; Larkin v. U. S., 107 Fed. Rep., 697; U. S. v. Post, 113 Fed. Rep., 852; Hume v. U. S., 118 Fed. Rep., 689; U. S. v. Horman, 118 Fed. Rep., 780; Stewart v. U. S., 119 Fed. Rep., 89; Milby v. U. S., 120 Fed. Rep., 1; O'Neill v. U. S., 120 Fed. Rep., 236; Melton v. U. S., 120 Fed. Rep., 504; U. S. v. Clark, 121 Fed. Rep., 190; U. S. v. Ryan, 123 Fed. Rep., 634; Hawley v. U. S., 123 Fed. Rep., 849; Kellogg v. U. S., 126 Fed. Rep., 323; Dalton v. U. S., 127 Fed. Rep., 534; Flachskamm v. U. S., 127 Fed. Rep., 674; Hawley v. U. S., 127 Fed. Rep., 929; U. S. v. Post, 128 Fed. Rep., 950; O'Hara v. U. S., 129 Fed. Rep., 551; Balliet v. U. S., 129 Fed. Rep., 689; Betts v. U. S., 132 Fed. Rep., 228; McDonnell v. U. S., 133 Fed. Rep., 293; Miller v. U. S., 133 Fed. Rep., 337; Post v. U. S., 135 Fed. Rep., 1; Ewing v. U. S., 136 Fed. Rep., 53; Booth v. U. S., 139 Fed. Rep., 252; U. S. v. Etheredge, 140 Fed. Rep., 376; Brown v. U. S., 143 Fed. Rep., 60; Runble v. U. S., 143 Fed. Rep., 772; U. S. v. Francis, 144 Fed. Rep., 520; Brown v. U. S., 146 Fed. Rep., 219; Brooks v. U. S., 146 Fed. Rep., 223; U. S. v. White, 150 Fed. Rep., 379; Van Deusen v. U. S., 151 Fed. Rep., 989; Walker v. U. S., 152 Fed. Rep., 111; Francis v. U. S., 152 Fed. Rep., 155; Hall v. U. S., 152 Fed. Rep., 420; Gourdain v. U. S., 154 U. S., 453; Dalton v. U. S., 154 Fed. Rep., 461; Booth v. U. S., 154 Fed. Rep., 836; U. S., v. Dexter, 154 Fed. Rep., 890; Faulkner v. U. S., 157 Fed. Rep., 840; U. S. v. Raish, 163 Fed. Rep., 911; U. S. v. McVicker, 164 Fed. Rep., 894; Lemon v. U. S., 164 Fed. Rep., 953; U. S. v. Smith, 166 Fed. Rep., 958; U. S. v. McCrory, 175 Fed. Rep., 802.

§ 216. **Fraudulently assuming fictitious address.**—Whoever, for the purpose of conducting, promoting, or carrying on, in any manner, by means of the post-office establishment of the United States any scheme or device mentioned in the section last preceding, or any other unlawful business whatsoever, shall use or assume, or request to be addressed by, any fictitious, false, or assumed

title, name or address, or name other than his own proper name, or shall take or receive from any post-office of the United States, or station thereof, or any other authorized depository of mail matter, any letter, postal card, package, or other mail matter addressed to any such fictitious, false, or assumed title, name, or address or name other than his own proper name, shall be punished as provided in the section last preceding. (2 Mar., 1889, 25 Stat. L., 873, c. 393, s. 2; 1 Supp., 695.)

§ 217. **Poisons and explosives nonmailable.**—All kinds of poison, and all articles and compositions containing poison, and all poisonous animals, insects, and reptiles, and explositives of all kinds, and imflammable materials, and infernal machines, and machanical, chemical, or other devices or compositions which may ignite or explode, and all disease germs or scabs, and all other natural or artificial articles, compositions, or materials of whatever kind which may kill, or in anywise hurt, harm, or injure another, or damage, deface, or otherwise injure the mails or other property, whether sealed as first-class matter or not, are hereby declared to be non-mailable matter, and shall not be conveyed in the mails or delivered from any post-office or station thereof, nor by any letter carrier; but the Postmaster-General may pemit the transmission in the mails, under such rules and regulations as he shall prescribe as to preparation and packing, of any articles hereinbefore described which are not outwardly or of their own force dangerous or injurious to life, health or property: Provided, That all spirituous, vinous, malted, fermented, or other intoxicating liquors of any kind, are hereby declared to be non-mailable and shall not be deposited in or carried through the mails. Whoever shall knowingly deposit or cause to be deposited for mailing or delivery, or shall knowingly cause to be delivered by mail according to the direction thereon, or at any place at which it is directed to be delivered by the person to whom it is addressed, anything declared by this section to be non-mailable, unless in accordance with the rules and regulations hereby authorized to be prescribed by the Postmaster-General, shall be fined not more than one thousand dollars, or impris-

oned not more than two years, or both; and whoever shall knowingly deposit or cause to be deposited for mailing or delivery, or shall knowingly cause to be delivered by mail according to the directions thereon, or at any place to which it is directed to be delivered by the person to whom it is addressed, anything declared by this section to be non-mailable, whether transmitted in accordance with the rules and regulations authorized to be prescribed by the Postmaster-General or not, with the design, intent, or purpose to kill, or in anywise hurt, harm, or injure another or damage, deface, or otherwise injure the mails or other property, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both. (R. S., s. 3878. 3 Mar., 1879, 20 Stat. L., 360, c. 180, s. 20; 1 Supp. 247. 8 June, 1896, 29 Stat. L., 262, c. 370; 2 Supp., 507.)

§ 218. **Counterfeiting money orders.**—Whoever, with intent to defraud, shall falsely make, forge, counterfeit, engrave, or print, or cause or procure to be falsely made, forged, counterfeited, engraved, or printed or shall willingly aid or assist in falsely making, forging, counterfeiting, engraving, or printing, any order in imitation of or purporting to be a money order issued by the Post-Office Department or by any postmaster or agent thereof; or whoever shall forge or counterfeit the signature of any postmaster, assistant postmaster, chief clerk, or clerk, upon or to any money order, or postal note, or blank therefor provided or issued by or under the direction of the Post-Office Department of the United States, or of any foreign country, and payable in the United States, or any material signature or indorsement thereon, or any material signature to any receipt or certificate of identification thereon; or shall falsely alter, or cause or procure to be falsely altered in any material respect, or knowingly aid or assist in falsely so altering any such money order or postal note; or shall, with intent to defraud, pass, utter, or publish any such forged or altered money order or postal note, knowing any material signature or indorsement thereon to be false, forged, or counterfeited, or any material alteration therein to have been falsely made; or shall issue any

money order or postal note without having previously received or paid the full amount of money payable therefor with the purpose of fraudulently obtaining, or receiving or fraudulently enabling any other person, either directly or indirectly, to obtain or receive from the United States, or any officer, employee, or agent thereof, any sum of money whatever; or shall, with intent to defraud the United States, or any person, transmit or present to, or cause or procure to be transmitted or presented to, any officer or employee or at any office of the Government of the United States, any money order or postal note, knowing the same to contain any forged or counterfeited signature to the same, or to any material indorsement, receipt, or certificate thereon, or material alteration therein unlawfully made, or to have been unlawfully issued without previous payment of the amount required to be paid upon such issue, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both. (R. S., s. 5463. 3 Jan., 1887, 24 Stat. L., 355, c. 13, s. 2; 1 Supp., 518. 18 June, 1888, 25 Stat. L., 187, c. 394, s. 2; 1 Supp., 593.)

U. S. v. Morris, 16 Blatch., 133, 26 Fed. Cas., 1321; Ex parte Hibbs, 26 Fed. Rep., 421; U. S. v. Long, 30 Fed. Rep., 678; Woodruff v. U. S., 58 Fed. Rep., 766; Vives v. U. S., 92 Fed. Rep., 355.

§ 219. **Counterfeiting postage stamps.** — Whoever shall forge or counterfeit any postage stamp, or any stamp printed upon any stamped envelope, or postal card, or any die, plate, or engraving therefor; or shall make or print, or knowingly use or sell, or have in possession with intent to use or sell, any such forged or counterfeited postage stamp, stamped envelope, postal card, die, plate, or engraving; or shall make, or knowingly use or sell, or have in possession with intent to use or sell, any paper bearing the watermark of any stamped envelope, or postal card, or any fraudulent imitation thereof; or shall make or print, or authorize or procure to be made or printed, any postage stamp, stamped envelope, or postal card, of the kind authorized and provided by the Post-Office Department, without the special authority and direction of said Department; or shall, after such postage stamp, stamped envelope, or postal card has been printed, with intent to defraud, deliver the same to any per-

son not authorized by an instrument in writing, duly executed under the hand of the Postmaster-General and the seal of the Post-Office Department, to receive it, shall be fined not more than five hundred dollars, or imprisoned not more than five years, or both. (R. S., s. 5464.)

U. S. v. Rellereau, 14 Blatch., 126, 27 Fed. Cas., 126; U. S. v. Coppersmith, 4 Fed. Rep., 198.

§ 220. **Counterfeiting, etc., foreign stamps.**—Who ever shall forge, or counterfeit, or knowingly utter or use any forged or counterfeited postage stamp of any foreign government, shall be fined not more than five hundred dollars, or imprisoned not more than five years, or both. (R. S., s. 5465.)

§ 221. **Inclosing higher-class in lower-class matter.**—Matter of the second, third, or fourth class containing any writing or printing in addition to the original matter, other than as authorized by law, shall not be admitted to the mails, nor delivered, except upon payment of postage for matter of the first class, deducting therefrom any amount which may have been prepaid by stamps affixed, unless by direction of the Postmaster-General such postage shall be remitted. Whoever shall knowingly conceal or inclose any matter of a higher class in that of a lower class, and deposit or cause the same to be deposited for conveyance by mail, at a less rate than would be charged for such higher class matter, shall be fined not more than one hundred dollars. (R. S., s. 3887. 20 Jan., 1888, 25 Stat. L., 2 c. — s. 2; 1 Supp., 578.)

§ 222. **Postmaster illegally approving bond, etc.**—Whoever, being a postmaster, shall affix his signature to the approval of any bond of a bidder, or to the certificate of sufficiency of sureties in any contract, before the said bond or contract is signed by the bidder or contractor and his sureties, or shall knowingly, or without the exercise of due diligence, approve any bond of a bidder with insufficient sureties or shall knowingly make any false or fraudulent certificate, shall be forthwith dismissed from office and be thereafter disqualified from holding the office of postmaster; and shall also be fined not more than five thousand dollars, or imprisoned not more than one year, or both. (R. S., s. 3947. 23 June, 1874, 18 Stat. L. 235, c. 456, s. 12; 1 Supp., 45.)

§ 223. **False evidence as to second-class matter.**—Whoever shall submit or cause to be submitted to any postmaster or to the Post-Office Department or any officer of the postal service, any false evidence relative to any publication for the purpose of securing the admission thereof at the second-class rate, for transportation in the mails, shall be fined not more than five hundred dollars. (18 June, 1888, 25 Stat. L., 187, c. 394, s. 1; 1 Supp., 593. 2 Mar., 1905, 33 Stat. L., 823, c. 1304.)

§ 224. **Inducing or prosecuting false claims.**—Whoever shall make, allege, or present, or cause to be made, alleged, or presented, or assist, aid, or abet in making, alleging, or presenting, any claim or application for indemnity for the loss of any registered letter, parcel, package, or other article or matter, or the contents thereof, knowing such claim or application to be false, fictitious, or fraudulent; or whoever for the purpose of obtaining or aiding to obtain the payment or approval of any such claim or application, shall make or use, or cause to be made or used, any false statement, certificate, affidavit, or deposition; or whoever shall knowingly and willfully misrepresent, or mis-state, or, for the purpose aforesaid shall knowingly and willfully conceal any material fact or circumstance in respect of any such claim or application for indemnity, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both.

§ 225. **Misappropriation of postal funds or property.**—Whoever, being a postmaster or other person employed in or connected with any branch of the postal service shall loan, use, pledge, hypothecate, or convert to his own use, or shall deposit in any bank, or exchange for other funds or property, except as authorized by law, any money or property coming into his hands or under his control in any manner whatever, in the execution or under color of his office, employment, or service, whether the same shall be the money or property of the United States or not; or shall fail or refuse to remit to or deposit in the Treasury of the United States or in a designated depository, or to account for or turn over to the proper officer or agent, any such money or property, when

required so to do by law or the regulations of the Post-Office Department, or upon demand or order of the Postmaster-General, either directly or through a duly authorized officer or agent, shall be deemed guilty of embezzlement; and every such person, as well as every other person advising or knowingly participating therein, shall be fined in a sum equal to the amount or value of the money or property embezzled, or imprisoned not more than ten years, or both. Any failure to produce or to pay over any such money or property, when required so to do as above provided, shall be taken to be prima facie evidence of such embezzlement; and upon the trial of any indictment against any person for such embezzlement, it shall be prima facie evidence of a balance against him to produce a transcript from the account books of the Auditor for the Post-Office Department. But nothing herein shall be construed to prohibit any postmaster depositing, under the direction of the Postmaster-General, in a national bank designated by the Secretary of the Treasury for that purpose, to his own credit as postmaster, any funds in his charge nor prevent his negotiating drafts or other evidences of debt through such bank or through United States disbursing officers or otherwise when instructed or required so to do by the Postmaster-General for the purpose of remitting surplus funds from one post-office to another. (R. S., ss. 4046, 4053.)

U. S. v. Young, 25 Fed. Rep., 710.
U. S. v. Royer, 122 Fed. Rep., 844;
U. S. v. Mann, 160 Fed. Rep., 552.

§ 226. **Employees not to become interested in contracts.**—Whoever, being a person employed in the postal service, shall become interested in any contract for carrying the mail, or act as agent, with or without compensation, for any contractor or person offering to become a contractor in any business before the Department, shall be immediately dismissed from office, and shall be fined not more than five thousand dollars, or imprisoned not more than one year, or both. (R. S., s. 412.)

§ 227. **Fraudulent use of official envelopes.**—Whoever shall make use of any official envelope, label, or indorsement authorized by law, to avoid the payment of postage or registry fee on his private letter, packet, pack-

age, or other matter in the mail, shall be fined not more than three hundred dollars. (3 Mar., 1877, 19 Stat. L., 335, c. 103, s. 5; 1 Supp., 135. 3 Mar., 1879, 20 Stat. L., 362, c. 180, s. 29. 5 July 1884, 23 Stat. L., 158, c. 234, s. 3; 1 Supp., 467. 2 July 1886, 24 Stat. L., 1122, c. 611; Supp., 500.)

§ 228. **Fraudulent increase of weight of mail.**—Whoever shall place or cause to be placed any matter in the mails during the regular weighing period, for the purpose of increasing the weight of the mail with intent to cause an increase in the compensation of the railroad mail carrier over whose route such mail may pass, shall be fined not more than twenty thousand dollars, or imprisoned not more than five years, or both. (13 June 1898, 30 Stat. L., 442, c. 446, s. 1; 2 Supp., 778.)

§ 229. **Offenses against foreign mail in transit.**—Every foreign mail shall, while being transported across the territory of the United States, under authority of law, be taken and deemed to be a mail of the United States so far as to make any violation thereof, or depredation thereon, or offense in respect thereto, or any part thereof, an offense of the same grade, and punishable in the same manner and to the same extent as though the mail was a mail of the United States; and in any indictment or information for any such offense, the mail, or any part thereof, may be alleged to be, and on the trial of any such indictment or information it shall be deemed and held to be, a mail or part of a mail of the United States. (R. S., s. 4013.)

§ 230. **Omission to take oath.**—Every person employed in the postal service shall be subject to all penalties and forfeitures for the violation of the laws relating to such service, whether he has taken the oath of office or not. (R. S., s. 3832.)

§ 231. **Definitions.**—The words "postal service," wherever used in this chapter, shall be held and deemed to include the "Post-Office Department."

CHAPTER NINE.

OFFENSES AGAINST FOREIGN AND INTERSTATE COMMERCE.

§ 232. **Dynamite, etc., not to be carried on vessels or vehicles carrying passengers for hire.**—It shall be unlawful to transport, carry, or convey, any dynamite, gunpowder, or other explosive, between a place in a foreign country and a place within or subject to the jurisdiction of the United States, or between a place in any State, Territory or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, and a place in any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, on any vessel or vehicle of any description operated by a common carrier, which vessel or vehicle is carrying passengers for hire: Provided, That it shall be lawful to transport on any such vessel or vehicle small arms ammunition in any quantity, and such fuses, torpedoes, rockets, or other signal devices, as may be essential to promote safety in operation, and properly packed and marked samples of explosives for laboratory exami-

nation, not exceeding a net weight of one half pound each, and not exceeding twenty samples at one time in a single vessel or vehicle; but such samples not to be carried in that part of a vessel or vehicle which is intended for the transportation of passengers for hire: Provided, further, That nothing in this section shall be construed to prevent the transportation of military or naval forces with their accompanying munitions of war on passenger equipment vessels or vehicles. (R. S., ss. 4278, 5353. 30 May, 1908, 35 Stat. L., 554, c. 234, s. 1.)

§ 233. **Interstate Commerce Commission to make regulations for transportation of explosives.**—The Interstate Commerce Commission shall formulate regulations for the safe transportation of explosives, which shall be binding upon all common carriers engaged in interstate or foreign commerce which transport explosives by land. Said commission, of its own motion, or upon application made by any interested party, may make changes or modifications in such regulations, made desirable by new information or altered conditions. Such regulations shall be in accord with the best known practicable means for securing safety in transit, covering the packing, marking, loading, handling while in transit, and the precautions necessary to determine whether the material when offered is in proper condition to transport. Such regulations, as well as all changes or modifications thereof, shall take effect ninety days after their formulation and publication by said commission and shall be in effect until reversed, set aside, or modified. (R. S., ss. 4279, 5355. 30 May, 1908, 35 Stat. L., 555 c. 234, s. 2.)

§ 234. **Liquid nitroglycerin, etc., not to be carried on certain vessels and vehicles.**—It shall be unlawful to transport, carry, or convey liquid nitroglycerin, fulminate in bulk in dry condition, or other like explosive, between a place in a foreign country and a place within or subject to the jurisdiction of the United States, or between a place in one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, and a place in any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, on

any vessel or vehicle of any description operated by a common carrier in the transportation of passengers or articles of commerce by land or water. (30 May, 1908, 35 Stat. L., 555, c. 234, s. 3.)

§ 235. **Marking of packages of explosives; deceptive marking.**—Every package containing explosives or other dangerous articles when presented to a common carrier for shipment shall have plainly marked on the outside thereof the contents thereof; and it shall be unlawful for any person to deliver, or cause to be delivered, to any common carrier engaged in interstate or foreign commerce by land or water, for interstate or foreign transportation, or to carry upon any vessel or vehicle engaged in interstate or foreign transportation, any explosive, or other dangerous article, under any false or deceptive marking, description, invoice, shipping order, or other declaration, or without informing the agent of such carrier of the true character thereof, at or before the time such delivery or carriage is made. Whoever shall knowingly violate, or cause to be violated, any provision of this section, or of the three sections last preceding, or any regulation made by the Interstate Commerce Commission in pursuance thereof, shall be fined not more than two thousand dollars, or imprisoned not more than eighteen months, or both. (30 May, 1908, 35 Stat. L., 555, c. 234, ss. 4, 5.)

§ 236. **Death or bodily injury caused by such transportation.**—When the death or bodily injury of any person is caused by the explosion of any article named in the four sections last preceding while the same is being placed upon any vessel or vehicle to be transported in violation thereof, or while the same is being so transported, or while the same is being removed from such vessel or vehicle, the person knowingly placing, or aiding or permitting the placing, of such articles upon any such vessel or vehicle, to be so transported, shall be imprisoned not more than ten years. (R. S., s. 5354.)

§ 237. **Importation and transportation of lottery tickets, etc.**—Whoever shall bring or cause to be brought into the United States or any place subject to the jurisdiction thereof, from any foreign country, for the purpose

of disposing of the same, any paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any advertisement of, or list of the prizes drawn or awarded by means of, any such lottery, gift enterprise, or similar scheme; or shall therein knowingly deposit or cause to be deposited with any express company or other common carrier for carriage, or shall carry, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, to any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any place in or subject to the jurisdiction of the United States through a foreign country to any place in or subject to the jurisdiction thereof or from any place in or subject to the jurisdiction of the United States to a foreign country, any paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon, the event of any such lottery, gift enterprise, or similar scheme, or any advertisement of, or list of the prizes drawn or awarded by means of, any such lottery, gift enterprise, or similar scheme, or shall knowingly take or receive, or cause to be taken or received, any such paper, certificate, instrument, advertisement, or list so brought, deposited, or transported, shall, for the first offense be fined not more than one thousand dollars, or imprisoned not more than two years, or both; and for any subsequent offense shall be imprisoned not more than two years. (2 Mar., 1895, 28 Stat. L., 963, c. 191, s. 1; 2 Supp., 435.)

France v. U. S., 164 U. S., 676; Champion v. Ames, 188 U. S., 321; Francis v. U. S., 188 U. S., 375; U. S. v. Ames, 95 Fed. Rep., 453; U. S. v. Whelpley, 125 Fed. Rep., 616.

§ 238. **Interstate shipment of intoxicating liquors; delivery of to be made only to bona fide consignee.**—Any officer, agent, or employee of any railroad company, express company, or other common carrier, who shall knowingly deliver or cause to be delivered to any person other than the person to whom it has been consigned, unless upon the written order in each instance of the bona fide

consignee, or any fictitous person, or to any person under a fictitous name, any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind which has been shipped from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both.

§ 239. **Common carrier, etc., not to collect purchase price of interstate shipment of intoxicating liquors.**—Any railroad company, express company, or other common carrier, or any other person who, in connection with the transportation of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, shall collect the purchase price or any part thereof, before, on, or after delivery, from the consignee, or from any other person, or shall in any manner act as the agent of the buyer or seller of any such liquor, for the purpose of buying or selling or completing the sale thereof, saving only in the actual transportation and delivery of the same, shall be fined not more than five thousand dollars.

§ 240. **Packages containing intoxicating liquors shipped in interstate commerce to be marked as such.**—Whoever shall knowingly ship or cause to be shipped, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign

country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, any package of or package containing any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, unless such package be so labeled on the outside cover as to plainly show the name of the consignee, the nature of its contents, and the quantity contained therein, shall be fined not more than five thousand dollars; and such liquor shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the seizure and forfeiture of property imported into the United States contrary to law.

§ 241. **Importation of certain wild animals, birds, and reptiles forbidden.**—The importation into the United States, or any Territory or District thereof, of the mongoose, the so-called "flying foxes" or fruit bats, the English sparrow, the starling, and such other birds and animals as the Secretary of Agriculture may from time to time declare to be injurious to the interests of agriculture or horticulture, is here prohibited; and all such birds and animals shall, upon arrival at any port of the United States, be destroyed or returned at the expense of the owner. No person shall import into the United States or into any Territory or District thereof, any foreign wild animal or bird, except under special permit from the Secretary of Agriculture: Provided, That nothing in this section shall restrict the importation of natural history specimens for museums or scientific collections, or of certain cage birds, such as domesticated canaries, parrots, or such other birds as the Secretary of Agriculture may designate. The Secretary of the Treasury is hereby authorized to make regulations for carrying into effect the provisions of this section. (25 May, 1900, 31 Stat. L., 188, c. 553, s. 2; 2 Supp., 1174.)

§ 242. **Transportation of prohibited animals.**—It shall be unlawful for any person to deliver to any common carrier for transportation, or for any common carrier to transport from any State, Territory, or District of the United States, to any other State, Territory, or District thereof, any foreign animals or birds, the importation of

which is prohibited, or the dead bodies or parts thereof of any wild animals or birds, where such animals or birds have been killed or shipped in violation of the laws of the State, Territory, or district in which the same were killed, or from which they were shipped: Provided, That nothing herein shall prevent the transportation of any dead birds or animals killed during the season when the same may be lawfully captured, and the export of which is not prohibited by law in the State, Territory, or District in which the same are captured or killed: Provided further, That nothing herein shall prevent the importation, transportation, or sale of birds or bird plumage manufactured from the feathers of barnyard fowls. (25 May, 1900, 31 Stat. L., 188, c. 553, s. 3; 2 Supp., 1174.)

U. S. v. Smith, 115 Fed. Rep., 423;
U. S. v. Thompson, 147 Fed. Rep., 637.

§ 243. **Marking of packages.**—All packages containing the dead bodies, or the plumage, or parts thereof, of game animals, or game or other wild birds, when shipped in interstate or foreign commerce, shall be plainly and clearly marked, so that the name and address of the shipper, and the nature of the contents, may be readily ascertained on an inspection of the outside of such package. (25 May, 1900, 31 Stat. L., 188, c. 553, s. 4; 2 Supp., 1174.)

§ 244. **Penalty for violation of preceding sections.**—For each evasion or violation of any provision of the three sections last preceding, the shipper shall be fined not more than two hundred dollars; the consignee knowingly receiving such articles so shipped and transported in violation of said section shall be fined not more than two hundred dollars; and the carrier knowingly carrying or transporting the same in violation of said sections shall be fined not more than two hundred dollars. (25 May, 1900, 31 Stat. L., 188, c. 553, s. 4; 2 Supp., 1174.)

§ 245. **Depositing obscene books, etc., with common carrier.**—Whoever shall bring or cause to be brought into the United States or any place subject to the jurisdiction thereof, from any foreign country, or shall therein knowingly deposit or cause to be deposited with any express company or other common carrier, for carriage from one State, Territory, or District of the United States, or place noncontiguous to but subject to the ju-

risdiction thereof, to any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any place in or subject to the jurisdiction of the United States through a foreign country to any place in or subject to the jurisdiction thereof, or from any place in or subject to the jurisdiction of the United States to a foreign country, any obscene, lewd, or lascivious, or filthy book, pamphlet, picture paper, letter, writing, print, or other matter of indecent character or any drug medicine, article, or thing designed, adapted, or intended for preventing conception, or producing abortion, or for any indecent or immoral use, or any written or printed card, letter, circular, book, pamphlet, advertisement or notice of any kind giving information, directly or indirectly, where, how, or of whom, or by what means any of the hereinbefore-mentioned articles, matters, or things may be obtained or made; or whoever shall knowingly take or cause to be taken from such express company or other common carrier any matter or thing the depositing of which for carriage is herein made unlawful, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both. (8 Feb., 1897, 29 Stat. L., 512, c. 172; 2 Supp., 547. 8 Feb., 1905, 33 Stat. L., 705, c. 550.)

CHAPTER TEN.

THE SLAVE TRADE AND PEONAGE.

§ 246. **Confining or detaining slaves on board vessel.**—Whoever being of the crew or ship's company of any foreign vessel engaged in the slave trade, or being of the crew or ship's company of any vessel owned wholly or in part or navigated for or in behalf of any citizen of the United States, forcibly confines or detains on board such vessel any person as a slave, or on board such vessel, offers or attempts to sell as a slave any such person, or on the high seas, or anywhere on tide water, transfers or delivers to any other vessel any such person with intent to make such person a slave, or lands or delivers on shore from on board such vessel any person with intent to make sale of, or having previously sold

such person as a slave, is a pirate, and shall be imprisoned for life. (R. S., s. 5375. 15 Jan., 1897, 29 Stat. L., 487, c. 29, s. 2; 2 Supp., 538.)

U. S. v. Corrie, 23 L. R., 145, 25 Fed. Cas., 658; U. S. v. Gordon, 5 Blatch., 18, 25 Fed. Cas., 1364; U. S. v. Libby, 1 Wood & M., 221, 26 Fed. Cas., 928.

§ 247. **Seizing slaves on foreign shore.**—Whoever, being of the crew or ship's company of any foreign vessel engaged in the slave trade, or being of the crew or ship's company of any vessel owned in whole or part, or navigated for, or in behalf of, any citizen of the United States, lands from such vessel, and on any foreign shore, seizes any person with intent to make such person a slave, or decoys, or forcibly brings, or carries or receives such person on board such vessel, with like intent, is a pirate, and shall be imprisoned for life. (R. S., s. 5376. 15 Jan., 1897, 29 Stat. L., 487, c. 29, s. 2; 2 Supp., 538.)

U. S. v. Corrie, 23 L. R., 145, 25 Fed. Cas., 658.

§ 248. **Bringing slaves into the United States.**—Whoever brings within the jurisdiction of the United States, in any manner whatsoever, any person from any foreign kingdom or country, or from sea, or holds, sells, or otherwise disposes of, any person so brought in, as a slave, or to be held to service or labor, shall be fined not more than ten thousand dollars, one-half to the use of the United States and the other half to the use of the party who prosecutes the indictment to effect; and moreover, shall be imprisoned not more than seven years. (R. S., s. 5377.)

U. S. v. Libby, 1 Wood & M., 221, 26 Fed. Cas., 928.

§ 249. **Equipping vessels for slave trade,**—Whoever builds, fits out, equips, loads, or otherwise prepares, or sends away, either as master, factor, or owner, any vessel, in any port or place within the jurisdiction of the United States, or causes such vessel to sail from any port or place whatsoever, within such jurisdiction, for the purpose of procuring any person from any foreign kingdom or country to be transported to any port or place whatsoever, to be held, sold, or otherwise disposed of as a slave, or held to service or labor, shall be fined not more than five thousand dollars one-half to the use of the United States and the other half to the use of the person prose-

cuting the indictment to effect; and shall, moreover, be imprisoned not more than seven years. (R. S., s. 5378.)

§ 250. **Transporting persons to be held as slaves.**—Whoever, within the jurisdiction of the United States, takes on board, receives or transports from any foreign kingdom, or country or from sea, any person in any vessel for the purpose of holding, selling, or otherwise disposing of such person as a slave or to be held to service or labor, shall be punished as prescribed in the section last preceding. (R. S., s. 5379.)

§ 251. **Hovering on coast with slaves on board.**—Whoever, being the captain, master, or commander of any vessel found in any river, port, bay, harbor, or on the high seas within the jurisdiction of the United States, or hovering on the coast thereof, having on board any person, for the purpose of selling such person as a slave, or with intent to land such person for any such purpose, shall be fined not more than ten thousand dollars and imprisoned not more than four years. (R. S., s. 5380.)

§ 252. **Serving in vessels engaged in slave trade.**—Whoever, being a citizen of the United States, or other person residing therein, voluntarily serves on board of any vessel employed or made use of in the transportation of slaves from any foreign country or place to another, shall be fined not more than two thousand dollars and imprisoned not more than two years. (R. S., ss. 5381, 5382.)

§ 253. **Receiving or carrying away any person to be sold or held as a slave.**—Whoever, being the master or owner or person having charge of any vessel, receives on board any other person, with the knowledge or intent that such person is to be carried from any place subject to the jurisdiction of the United States to any other place, to be held or sold as a slave, or carries away from any place subject to the jurisdiction of the United States any such person, with the intent that he may be so held, or sold as slave, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both. (R. S., s. 5524.)

§ 254. **Equipping, etc., vessel for slave trade.**—No person shall, for himself or for another, as master, factor, or owner, build, fit, equip, load, or otherwise prepare

any vessel in any port or place within the jurisdiction of the United States, or cause any vessel to sail from any port or place within the jurisdiction of the United States, for the purpose of procuring any person from any foreign kingdom, place, or country to be transported to any port or place whatsoever, to be held, sold, or otherwise disposed of, as a slave, or to be held to service or labor; and every vessel so built, fitted out, equipped, laden, or otherwise prepared, with her tackle, apparel, furniture, and lading, shall be forfeited; one moiety to the use of the United States and the other to the use of the person who sues for the forfeiture and prosecutes the same to effect. (R. S., s. 5551.)

The Emily, 9 Wheat., 281; U. S. v. Gooding, 12 Wheat., 460; The Slavers, 2 Wall., 350; U. S. v. Brune, 2 Wall., jr., 264, 24 Fed. Cas., 1280; Re Sah Quah, 31 Fed. Rep., 327.

§ 255. **Penalty on persons building, equipping, etc.**—Whoever so builds, fits out, equips, loads, or otherwise prepares or sends away any vessel, knowing or intending that the same shall be employed in such trade or business, contrary to the provisions of the section last preceding, or in any way aids or abets therein, shall, besides the forfeiture of the vessel, pay the sum of two thousand dollars; one moiety thereof to the use of the United States and the other moiety thereof to the use of the person who sues for and prosecutes the same to effect. (R. S., s. 5552.)

§ 256. **Forfeiture of vessel transporting slaves.**—Every vessel employed in carrying on the slave trade or on which is received or transported any person from any foreign kingdom or country, or from sea, for the purpose of holding, selling, or otherwise disposing of such person as a slave, or of holding such person to service or labor, shall, together with her tackle, apparel, furniture, and the goods and effects which may be found on board, or which may have been imported thereon in the same voyage, be forfeited; one moiety to the use of the United States and the other to the use of the person who sues for and prosecutes the forfeiture to effect. (R. S. s. 5553.)

§ 257. **Receiving persons on board to be sold as slaves.**—Whoever, being a citizen of the United States, takes on board, receives, or transports any person for the purpose

of selling such person as a slave shall, in addition to the forfeiture of the vessel, pay for each person so received on board or transported the sum of two hundred dollars, to be recovered in any court of the United States; the one moiety thereof to the use of the United States and the other moiety to the use of the person who sues for and prosecutes the same to effect. (R. S., s. 5554.)

§ 258. **Vessels found hovering on coast.**—Every vessel which is found in any river, port, bay, or harbor, or on the high seas, within the jurisdiction of the United States, or hovering on the coasts thereof, and having on board any person, with intent to sell such person as a slave, or with intent to land the same for that purpose, either in the United States or elsewhere, shall, together with her tackle, apparel, furniture, and the goods or effects on board of her, be forfeited to the United States. (R. S., s. 5555.)

§ 259. **Forfeiture of interest in vessels transporting slaves.**—It shall be unlawful for any citizen of the United States, or other person residing therein, or under the jurisdiction thereof, directly or indirectly to hold or have any right or property in any vessel employed or made use of in the transportation or carrying of slaves from one foreign country or place to another, and any such right or property shall be forfeited, and may be libeled and condemned for the use of the person suing for the same. Whoever shall violate the prohibition of this section shall also forfeit and pay a sum of money equal to double the value of his right or property in such vessel; and shall also forfeit a sum of money equal to double the value of the interest he had in the slaves which at any time may be transported or carried in such vessels. (R. S., s. 5556.)

§ 260. **Seizure of vessels engaged in the slave trade.**—The President is authorized, when he deems it expedient, to man and employ any of the armed vessels of the United States to cruise wherever he may judge attempts are making to carry on the slave trade, by citizens or residents of the United States, in contravention of laws prohibitory of the same; and, in such case, he shall instruct the commanders of such armed vessels to seize,

take, and bring into any port of the United States, to be proceeded against according to law, all American vessels, wheresoever found, which may have on board, or which may be intended for the purpose of taking on board, or of transporting, or may have transported any person, in violation of the provisions of any act of Congress prohibiting the traffic in slaves. (R. S., s. 5557.)

§ 261. **Proceeds of condemned vessels, how distributed.**—The proceeds of all vessels, their tackle, apparel, and furniture, and the goods and effects on board of them, which are so seized, prosecuted, and condemned, shall be paid into the Treasury of the United States. (R. S., s. 5558.)

§ 262. **Disposal of persons found on board seized vessel.**—The officers of the vessel making such seizure shall safely keep every person found on board of any vessel so seized, taken, or brought into port for condemnation, and shall deliver every such person to the marshal of the district into which he may be brought, if into a port of the United States, or if elsewhere, to such person as may unlawfully appointed by the President, in the manner directed by law, transmitted to the President, as soon as may be after such delivery, a descriptive list of such persons, in order that he may give directions for the disposal of them. (R. S., s. 5559.)

§ 263. **Apprehension of officers and crew.**—The commanders of such commissioned vessels shall cause to be apprehended and taken into custody every person found on board of such offending vessel so seized and taken, being of the officers or crew thereof, and him convey, as soon as conveniently may be, to the civil authority of the United States, to be proceeded against in due course of law. (R. S., s. 5560.)

§ 264. **Removal of persons delivered from seized vessels.**—The President is authorized to make such regulations and arrangements as he may deem expedient for the safe keeping, support, and removal beyond the limits of the United States of all such persons as may be so delivered and brought within its jurisdiction. (R. S., s. 5561.)

§ 265. **To what port captured vessels sent.**—It shall be the duty of the commander of any armed vessel of the United States, whenever he makes any capture under the preceding provisions, to bring the vessel and her cargo, for adjudication, into some port of the State, Territory, or District to which such vessel so captured may belong, if he can ascertain the same; if not, then into any convenient port of the United States. (R. S., s. 5563.)

§ 266. **When owners of foreign vessels shall give bond.**—Every owner, master, or factor of any foreign vessel clearing from any port within the jurisdiction of the United States, and suspected to be intended for the slave trade, and the suspicion being declared to the officer of the customs by any citizen, on oath, and such information being to the satisfaction of the officer, shall first give bond, with sufficient sureties, to the Treasurer of the United States that none of the natives of any other foreign country or place shall be taken on board such vessel to be transported or sold as slaves in any other foreign port or place whatever, within nine months thereafter. (R. S., s. 5564.)

§ 267. **Instructions to commanders of armed vessels.**—The President is authorized to issue instructions to the commanders of the armed vessels of the United States, directing them, whenever it is practicable, and under such rules and regulations as he may prescribe, to proceed directly to the country from which they were taken, and there hand over to the agent of the United States all such persons, delivered from on board vessels seized in the prosecution of the slave trade; and they shall afterward bring the captured vessels and persons engaged in prosecuting such trade to the United States for trial and adjudication. R. S., s. 5567.

§ 268. **Kidnaping.**—Whoever kidnaps or carries away any other person, with the intent that such other person be sold into involuntary servitude, or held as a slave; or who entices, persuades, or induces any other person to go on board any vessel or to any other place with the intent that he may be made or held as a slave, or sent out of the country to be so made or held; or who in any way knowingly aids in causing any other person

to be held, sold, or carried away to be held or sold as a slave, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both. (R. S., s. 5525.)

§ 269. **Holding or returning person to peonage.**—Whoever holds, arrests, returns, or causes to be held, arrested, or returned, or in any manner aids in the arrest or return of any person to a condition of peonage, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both. (R. S., s. 5526.)

Clyatt v. U. S., 197 U. S., 207; Peonage; Cases, 123 Fed. Rep., 671; 136 Fed. Rep., 707; 138 Fed. Rep., 686; U. S. v. Eberhart, 127 Fed. Rep., 252; U. S. v. McClellan, 127 Fed. Rep., 971; U. S. v. Cole, 153 Fed. Rep., 801; U. S. v. Clement, 171 Fed. Rep., 974.

§ 270. **Obstructing execution of above.**—Whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of the section last preceding, shall be liable to the penalties therein prescribed. (R. S. s. 5527).

§ 271. **Bringing kidnapped persons into United States.**—Whoever shall knowingly and willfully bring into the United States or any place subject to the jurisdiction thereof, any person inveigled or forcibly kidnapped in any other country, with intent to hold such person so inveigled or kidnapped in confinement or to any involuntary servitude; or whoever shall knowingly and willfully sell, or cause to be sold, into any condition of involuntary servitude, any other person for any term whatever; or whoever shall knowingly and willfully hold to involuntary servitude any person so brought or sold, shall be fined not more than five thousand dollars and imprisoned not more than five years. (23 June, 1874, 18 Stat. L. 251, c. 464, s. 1; 1 Supp., 46).

CHAPTER ELEVEN.

OFFENSES WITHIN THE ADMIRALTY AND MARITIME AND THE TERRITORIAL JURISDICTION OF THE UNITED STATES.

§ 272. **Maritime and territorial jurisdiction prescribed.**—The crimes and offenses defined in this chapter shall be punished as herein prescribed:

First. When committed upon the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, or when committed within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State on board any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory, or District thereof. (R. S. s. 5339.)

Wynne v. U. S., 217 U. S., 234.

Second. When committed upon any vessel registered licensed, or enrolled under the laws of the United States,

and being on a voyage upon the waters of any of the Great Lakes, namely: Lake Superior, Lake Michigan, Lake Huron, Lake Saint Clair, Lake Erie, Lake Ontario, or any of the waters connecting any of said lakes, or upon the River Saint Lawrence where the same constitutes the International boundary line. (4 Sept., 1890, 26 Stat. L., 421, c. 874 s. 1; 1 Supp., 799.)

U. S. v. Rogers, 150 U. S., 249; Ex parte Byers, 32 Fed. Rep., 46, 404; U. S. v. Rogers, 46 Fed. Rep., 1; U. S. v. Peterson, 64 Fed. Rep., 145.

Third. When committed within or on any lands reserved or acquired for the exclusive use of the United States, and under the exclusive jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building. (Const., Art. 1, sec. 8, cl. 17.)

Fourth. On any island, rock, or key, containing deposits of guano, which may, at the discretion of the President, be considered as appertaining to the United States. (R. S., s. 5570.)

Jones v. U. S., 137 U. S., 202.

§ 273. **Murder.**—Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate any arson, rape, burglary, or robbery; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree. Any other murder is murder in the second degree. (R. S., s. 5339.)

U. S. v. Cornell, 25 Fed. Cas., 646; U. S. v. Holmes, 5 Wheat., 412; U. S. v. Rogers, 4 How., 567; Ex parte Crow Dog, 109 U. S., 556 Cook v. U. S., 138 U. S., 157; Ball v. U. S., 140 U. S., 118; St. Clair v. U. S., 154 U. S., 134; Sparf & Hansen v. U. S., 156 U. S., 51; Winston v. U. S., 172 U. S., 303; Battle v. U. S., 209 U. S., 36; U. S. v. Martin, 14 Fed. Rep., 817; U. S. v. Meagher, 37 Fed. Rep., 875; U. S. v. Clark, 46 Fed. Rep., 633; U. S. v. Hewecker, 79 Fed. Rep., 59; U. S. v. Carter, 84 Fed. Rep., 622; U. S. v. Lewis, 111 Fed. Rep., 630; U. S. v. Linnier, 125 Fed. Rep., 83; U. S. v. Tully, 140 Fed. Rep., 899; U. S. v. Newth, 149 Fed. Rep., 302; U. S. v. Battle, 154 Fed. Rep., 540; U. S. v. Guiteau, 1 Mackey (D. C.), 498.

§ 274. **Manslaughter.**—Manslaughter is the unlawful killing of a human being without malice. It is of two kinds:

First. Voluntary—upon a sudden quarrel or heat of passion.

Second. Involuntary—in the commission of an unlawful act not amounting to a felony, or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection. (R. S., s. 5341.)

Roberts v. U. S., 126 Fed. Rep., 897.

§ 275. **Punishment for murder; for manslaughter.**—Every person guilty of murder in the first degree shall suffer death. Every person guilty of murder in the second degree shall be imprisoned not less than ten years and may be imprisoned for life. Every person guilty of voluntary manslaughter shall be imprisoned not more than ten years. Every person guilty of involuntary manslaughter shall be imprisoned not more than three years, or fined not exceeding one thousand dollars, or both. (R. S., ss. 5339, 5343.)

§ 276. **Assault with intent to commit murder, rape, robbery, etc.**—Whoever shall assault another with intent to commit murder, or rape, shall be imprisoned not more than twenty years. Whoever shall assault another with intent to commit any felony, except murder, or rape, shall be fined not more than three thousand dollars, or imprisoned not more than ten years, or both. Whoever, with intent to do bodily harm, and without just cause or excuse, shall assault another with a dangerous weapon, instrument, or other thing, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both. Whoever shall unlawfully strike, beat, or wound another, shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both. Whoever shall unlawfully assault another, shall be fined not more than three hundred dollars, or imprisoned not more than three months, or both. (R. S., s. 5346.)

§ 277. **Attempt to commit murder or manslaughter.**—Whoever shall attempt to commit murder or manslaughter, except as provided in the preceding section, shall be fined not more than one thousand dollars and imprisoned not more than three years. (R. S., s. 5342.)

§ 278. **Rape.**—Whoever shall commit the crime of rape shall suffer death. (R. S., s. 5345. 9 Feb., 1889, 25 Stat. L., 658, c. 120; 1 Supp., 641.)

§ 279. **Having carnal knowledge of female under 16.**—Whoever shall carnally and unlawfully know any female under the age of sixteen years, or shall be accessory to such carnal and unlawful knowledge before the fact, shall, for a first offense, be imprisoned not more than fifteen years, and for a subsequent offense be imprisoned not more than thirty years. (9 Feb., 1889, 25 Stat. L., 658, c. 120; 1 Supp., 641.)

§ 280. **Seduction of female passenger on vessel.**—Every master, officer, seaman, or other person employed on board of any American vessel who, during the voyage, under promise of marriage, or by threats, or the exercise of authority, or solicitation, or the making of gifts or presents, seduces and has illicit connection with any female passenger, shall be fined not more than one thousand dollars or imprisoned not more than one year, or both; but subsequent intermarriage of the parties may be pleaded in bar of conviction. (R. S., s. 5349.)

§ 281. **Payment of fine to female seduced; evidence required; limitation on indictment.**—When a person is convicted of a violation of the section last preceding, the court may, in its discretion, direct that the amount of the fine, when paid, be paid for the use of the female seduced, or her child, if she have any; but no conviction shall be had on the testimony of the female seduced, without other evidence, nor unless the indictment is found within one year after the arrival of the vessel on which the offense was committed at the port of its destination. (R. S., ss. 5350, 5351.)

§ 282. **Punishment for loss of life by misconduct of officers, owners, charterers, inspectors, etc., of vessels.**—Every captain, engineer, pilot, or other person employed on any steamboat or vessel, by whose misconduct, negligence, or inattention to his duties on such vessel the life of any person is destroyed, and every owner, charterer, inspector, or other public officer, through whose fraud, neglect, connivance, misconduct, or violation of law the life of any person is destroyed, shall be fined not more

than ten thousand dollars, or imprisoned not more than ten years, or both: Provided, That, when the owner or charterer of any steamboat or vessel shall be a corporation, any executive officer of such corporation, for the time being actually charged with the control and management of the operation, equipment, or navigation of such steamboat or vessel, who has knowingly and willfully caused or allowed such fraud, neglect, connivance, misconduct or violation of law by which the life of any person is destroyed shall be fined not more than ten thousand dollars or imprisoned not more than ten years, or both. (R. S., s. 5344. 3 Mar., 1905, 33 Stat. L., 1025, c. 1454, s. 5.)

U. S. v. Holmes, 104 Fed. Rep., 884; 592; Van Schaick v. U. S., 159 Fed. U. S. v. Van Schaick, 134 Fed. Rep., Rep., 847.

§ 283. **Maiming.**—Whoever with intent to maim or disfigure, shall cut, bite, or slit, the nose, ear, or lip, or cut out or disable the tongue, or put out or destroy an eye or cut off or disable a limb or any member of another person; or whoever, with like intent, shall throw or pour upon another person, any scalding hot water, vitriol, or other corrosive acid, or caustic substance whatever, shall be fined not more than one thousand dollars, or imprisoned not more than seven years, or both. (R. S., s. 5348.)

§ 284. **Robbery.**—Whoever, by force and violence, or by putting in fear, shall feloniously take from the person or presence of another anything of value, shall be imprisoned not more than fifteen years. (R. S., s. 5370.)

§ 285. **Arson of dwelling house.**—Whoever shall willfully and maliciously set fire to, burn, or attempt to burn, or by means of a dangerous explosive destroy or attempt to destroy, any dwelling house, or any store, barn, stable, or other building, parcel of a dwelling house, shall be imprisoned not more than twenty years. (R. S., s. 5385.)

14 A. G. Op., 559.

§ 286. **Arson of arsenal, etc.; other building, etc.**—Whoever shall maliciously set fire to, burn, or attempt to burn, or by any means destroy or injure, or attempt to destroy or injure, any arsenal, armory, magazine, ropewalk, ship-house, warehouse blockhouse, or barrack, or

any store-house, barn, or stable not parcel of a dwelling house or any other building not mentioned in the section last preceding, or any vessel built, building, or undergoing repair, or any light-house, or beacon, or any machinery, timber, cables, rigging, or other materials or appliances for building, repairing, or fitting out vessels, or any pile of wood, boards, or other lumber, or any military, naval, or victualing stores, arms or other munitions of war, shall be fined not more than five thousand dollars and imprisoned not more than twenty years. (R. S., s. 5386.)

U. S. v. Cardish, 143 Fed. Rep., 640.

§ 287. **Larceny.**—Whoever shall take and carry away, with intent to steal or purloin, any personal property of another, shall be punished as follows: If the property taken is of a value exceeding fifty dollars, or is taken from the person of another, by a fine of not more than ten thousand dollars, or imprisonment for not more than ten years, or both; in all other cases, by a fine of not more than one thousand dollars, or by imprisonment not more than one year, or both. If the property stolen consists of any evidence of debt, or other written instrument, the amount of money due thereon, or secured to be paid thereby, and remaining unsatisfied, or which in any contingency might be collected thereon, or the value of the property the title to which is shown thereby, or the sum which might be recovered in the absence thereof, shall be deemed to be the value of the property stolen. (R. S., s. 5356.)

Ex parte Crow Dog 109 U. S., 556; U. S. v. Davis, 5 Mason, 356, 25 Fed. Cas., 781; U. S. v. Davis, 2 N. Y. Leg. Obs., 35, 25 Fed. Cas., 784; U. S. v. Hamilton, 1 Mason, 152, 26 Fed. Cas., 93; U. S. v. Jackson, 2 N. Y. Leg. Obs., 3, 26 Fed. Cas., 558; U. S. v. Maxon, 5 Blatch., 360, 26 Fed. Cas., 1220; U. S. v. Morel, 13 Am. Jurist, 279. 26 Fed. Cas., 1310; Cochran v. U. S., 147 Fed. Rep., 206.

§ 288. **Receiving, etc., stolen goods.**—Whoever shall buy, receive, or conceal, any money, goods, bank notes, or other thing which may be the subject of larceny, which has been feloniously taken, stolen, or embezzled, from any other person, knowing the same to have been so taken, stolen, or embezzled, shall be fined not more than one thousand dollars and imprisoned not more than three years; and such person may be tried either before or af-

ter the conviction of the principal offender. (R. S., s. 5357.)

Ex parte Crow Dog, 109 U. S., 556.
Bise v. U. S., 144 Fed. Rep., 374.

§ 289. **Laws of States adopted for punishing wrongful acts, etc.**—Whoever, within the territorial limits of any State, organized Territory, or district, but within or upon any of the places now existing, or hereafter reserved or acquired, described in section two hundred and seventy-two of this act, shall do or omit the doing of any act or thing which is not made penal by any law of Congress, but which if committed or omitted within the jurisdiction of the State, Territory, or District in which such place is situated, by the laws thereof now in force would be penal, shall be deemed guilty of a like offense and be subject to a like punishment; and every such State, Territorial, or District law shall, for the purposes of this section continue in force, notwithstanding any subsequent repeal or amendment thereof by any such State, Territory, or District. (R. S., s. 5391. 7 July, 1898, 30 Stat. L., 717, s. 2; 2 Supp., 885.)

U. S. v. Hudson, 7 Cr., 32; U. S. v. Paul, 6 Pet., 141; Ex parte Siebold, 100 U. S., 388; Franklin v. U. S., 216 U. S., 559; U. S. v. Barney, 24 Fed. Cas., 1011; U. S. v. Wright, 28 Fed. Cas., 791; U. S. v. Coppersmith, 4 Fed. Rep., 205; U. S. v. Barnaby, 51 Fed. Rep., 23; In re Kelly, 71 Fed. Rep., 545.

CHAPTER TWELVE.

PIRACY AND OTHER OFFENSES UPON THE SEAS.

§ 290. **Piracy under the law of nations.**—Whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life. (R. S., s. 5368. 15 Jan., 1897, 29 Stat. L., 487, c. 29, s. 2; 2 Supp., 538.)

U. S. v. Smith, 5 Wheat., 153, U. S. v. Pirates, 5 Wheat., 184; The Three Friends, 166 U. S., 1; The Ambrose Light, 25 Fed. Rep., 408.

§ 291. **Mal-treatment of crew by officers of vessel.**—Whoever, being the master or officer of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, beats, wounds, or without justifiable cause, imprisons any of the crew of such vessel, or withholds from them suitable food and nourishment, or inflicts upon them any cruel and unusual punishment, shall be fined not more than one thousand dollars, or impris-

oned not more than five years or both. Nothing herein contained shall be construed to repeal or modify section forty-six hundred and eleven of the Revised Statutes. (R. S., s. 5347. 3 Mar., 1897, 29 Stat. L., 691, c. 389, s. 18; 2 Supp., 609.)

U. S. v. Dauscher, 119 U. S., 407; U. S. v. Alden, 1 Sprague, 95, 24 Fed. Cas., 768; U. S. v. Bennett, 3 Hughes, 466, 24 Fed. Cas., 1111; U. S. v. Collins, 2 Curtis, 194, 25 Fed. Cas., 545; U. S. v. Cutler, 1 Curtis, 501, 25 Fed. Cas., 740; U. S. v. Freeman, 4 Mason, 505, 25 Fed. Cas., 1208; U. S. v. Taylor, 2 Sumn., 584, 28 Fed. Cas., 31; U. S. v. Winn, 3 Sumn., 209, 28 Fed. Cas., 733; Re Smith, 13 Fed. Rep., 25; U. S. v. Trice, 30 Fed. Rep., 490.

§ 292. **Inciting revolt or mutiny on shipboard.**—Whoever, being of the crew of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, endeavors to make a revolt or mutiny on board such vessel, on combines, conspires, or confederates with any other person on board to make such revolt or mutiny, or solicits, incites, or stirs up any other of the crew to disobey or resist the lawful orders of the master or other officer of such vessel, or to refuse or neglect their proper duty on board thereof, or to betray their proper trust, or assembles with others in a tumultuous and mutinous manner, or makes a riot on board thereof, or unlawfully confines the master or other commanding officer thereof, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both. (R. S., s. 5359.)

U. S. v. Kelly, 11 Wheat., 417; The Hibernia, 1 Sprague, 78, 12 Fed. Cas., 112; U. S. v. Ashton, 2 Sumn., 13, 24 Fed. Cas., 873; U. S. v. Barker, 5 Mason, 404, 24 Fed. Cas., 985; U. S. v. Bladen, Pet. C. C., 213, 24 Fed. Cas., 1161; U. S. v. Borden, 1 Sprague, 374, 24 Fed. Cas., 1202; U. S. v. Cassedy, 2 Sumn., 582, 25 Fed. Cas., 321; U. S. v. Gardner, 5 Mason, 402, 25 Fed. Cas., 1259; U. S. v. Givings, 1 Sprague, 75, 25 Fed. Cas., 1331; U. S. v. Haines, 5 Mason, 272, 26 Fed. Cas., 62; U. S. v. Hamilton, 1 Mason, 443, 26 Fed. Cas., 93; U. S. v. Hemmer, 4 Mason, 105, 26 Fed. Cas., 259; U. S. v. Henry, 4 Wash., 428, 26 Fed. Cas., 276; U. S. v. Keefe, 3 Mason, 475, 26 Fed. Cas., 685; U. S. v. Lawrence, 1 Cranch, C. C., 94, 26 Fed. Cas., 885; U. S. v. Lynch, 2 N. Y. Leg. Obs., 51, 26 Fed. Cas., 1033; U. S. v. Matthews, 2 Sumn., 470, 26 Fed. Cas., 1207; U. S. v. Morrison, 1 Sumn., 448, 26 Fed. Cas., 1351; U. S. v. Nye, 2 Curtis, 225, 27 Fed. Cas., 210; U. S. v. Roberts, 2 N. Y. Leg. Obs., 99, 27 Fed. Cas., 822; U. S. v. Rogers, 3 Sumn., 342, 27 Fed. Cas., 890; U. S. v. Savage, 5 Mason, 460, 27 Fed. Cas., 966; U. S. v. Seagrist, 4 Blatch., 420, 27 Fed. Cas., 1002; U. S. v. Sharp, Pet. C. C., 118, 27 Fed. Cas., 1041; U. S. v. Smith, 1 Mason, 147, 27 Fed. Cas., 1166; U. S. v. Smith, 3 Wash., 78, 27 Fed. Cas., 1246; U. S. v. Staly, 1 Wood & M., 338, 27 Fed. Cas., 1290; U. S. v. Stevens, 4 Wash., 547, 27 Fed. Cas., 1335, U. S. v. Thompson, 1 Sumn., 168, 28 Fed. Cas., 102; U. S. v. Winn, 3 Sumn., 209, 28 Fed. Cas., 733; U. S. v. Stone, 8 Fed. Rep., 232; U. S. v. Huff, 13 Fed. Rep., 630.

§ 293. **Revolt and mutiny on shipboard.**—Whoever, being of the crew of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, unlaw-

fully and with force, or by fraud, or intimidation, usurps the command of such vessel from the master or other lawful officer in command thereof, or deprives him of authority and command on board, or resists or prevents him in the free and lawful exercise thereof, or transfers such authority and command to another not lawfully entitled thereto, is guilty of a revolt and mutiny, and shall be fined not more than two thousand dollars and imprisoned not more than ten years. (R. S., s. 5360.)

U. S. v. Borden Sprague, 374, 24 Fed. Cas., 1202; U. S. v. Forbes, Crabbe, 558, 25 Fed. Cas., 1141; U. S. v. Givings, 1 Sprague, 75, 25 Fed. Cas., 1331; U. S. v. Haskell, 4 Wash., 402, 26 Fed. Cas., 207; U. S. v. Peterson, 1 Wood & M., 305, 27 Fed. Cas., 515.

§ 294. **Seaman laying violent hands on his commander.**—Whoever, being a seaman, lays violent hands upon his commander, thereby to hinder and prevent his fighting in defense of his vessel or the goods intrusted to him, is a pirate, and shall be imprisoned for life. (R. S., s. 5369. 15 Jan., 1897, 29 Stat. L., 487, c. 29, s. 2; 2 Supp., 538.)

U. S. v. Kessler, 1 Baldw., 15, 26 Fed. Cas., 766.

§ 295. **Abandonment of mariners in foreign ports.**—Whoever, being master or commander of a vessel of the United States, while aboard, maliciously and without justifiable cause forces any officer or mariner of such vessel on shore, in order to leave him behind in any foreign port or place, or refuses to bring home again all such officers and mariners of such vessel whom he carried out with him, as are in a condition to return and willing to return, when he is ready to proceed on his homeward voyage, shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both. (R. S., s. 5363.)

Nieto v. Clark, 1 Cliff, 145, 18 Fed. Cas., 236; U. S. v. Coffin, 1 Sumn., 394, 25 Fed. Cas., 485; U. S. v. Netcher, 1 Story, 307, 27 Fed. Cas., 89; U. S. v. Riddle, 4 Wash., 644, 27 Fed. Cas., 809; U. S. v. Ruggles, 5 Mason, 192, 27, Fed. Cas., 912; Chinise laborers, 13 Fed. Rep., 291.

§ 296. **Conspiracy to cast away vessel.**—Whoever, on the high seas, or within the United States, wilfully and corruptly conspires, combines, and confederates with any other person, such other person being either within or without the United States, to cast away or otherwise destroy any vessel, with intent to injure any person that

may have underwritten or may thereafter underwrite any policy of insurance thereon or on goods on board thereof, or with intent to injure any person that has lent or advanced, or may lend or advance, any money on such vessel on bottomry or respondentia; or whoever, within the United States, builds, or fits out, or aids in building or fitting out, any vessel with intent that the same be cast away or destroyed, with the intent hereinbefore mentioned, shall be fined not more than ten thousand dollars and imprisoned not more than ten years. (R. S., s. 5364.)

U. S. v. Cole, 5 McLean, 513, 25 Fed. Cas., 493; U. S. v. Hand, 6 McLean, 274, 26 Fed. Cas., 102.

§ 297. **Plundering vessel in distress, etc.**—Whoever plunders, steals, or destroys any money, goods, merchandise, or other effects, from or belonging to any vessel in distress, or wrecked, lost, stranded, or cast away, upon the sea, or upon any reef, shoal, bank or rocks of the sea, or in any other place within the admiralty and maritime jurisdiction of the United States, shall be fined not more than five thousand dollars and imprisoned not more than ten years; and whoever willfully obstructs the escape of any person endeavoring to save his life from such vessel, or the wreck thereof; or whoever holds out or shows any false light, or extinguishes any true light, with intent to bring any vessel sailing upon the sea into danger, or distress, or shipwreck, shall be imprisoned not less than ten years and may be imprisoned for life. (R. S., s. 5358.)

U. S. v. Coombs, 12 Pet., 72; U. S. v. Kessler, Baldw., 15, 26 Fed. Cas., 766; U. S. v. Pitman, 1 Sprague, 196, 27 Fed. Cas., 540; U. S. v. Smiley, 6 Sawyer, 640, 27 Fed. Cas., 1132; U. S. v. Lauche, 7 Fed. Rep., 715; U. S. v. Stone, 8 Fed. Rep., 232.

§ 298. **Attacking vessel with intent to plunder.**—Whoever, upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, by surprise or by open force, maliciously attacks or sets upon any vessel belonging to another, with an intent unlawfully to plunder the same, or to despoil any owner thereof of any moneys, goods, or merchandise laden on board thereof, shall be fined not more than five thousand dollars and imprisoned not more than ten years. (R. S., s. 5361.)

U. S. v. Stone, 8 Fed. Rep., 232.

§ 299. **Breaking and entering vessel, etc.**—Whoever, upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular State, breaks or enters any vessel, with intent to commit any felony, or maliciously cuts, spoils or destroys any cordage, cable, buoys, buoy rope, head fast, or other fast, fixed to the anchor or moorings belonging to any vessel, shall be fined not more than one thousand dollars and imprisoned not more than five years. (R. S., s. 5362.)

§ 300. **Owner destroying vessel at sea.**—Whoever, upon the high seas or on any other waters within the admiralty an maritime jurisdiction of the United States, willfully and corruptly casts away or otherwise destroys any vessel, of which he is owner, in whole or in part, with intent to prejudice any person that may underwrite any policy of insurance thereon, or any merchant that may have goods threon, or any other owner of such vessel shall be imprisoned for life or for any term of years. (R. S., s. 5365. 6 Aug., 1894, 28 Stat. L., 233, c. 227; 2 Supp., 225.)

U. S. v. Johns, 4 Dall, 412, 1 Wash., 363; U. S. v. Amedy, 11 Wheat., 329; U. S. v. Jacobson, 1 Brun. Col. Cas., 410, 26 Fed. Cas., 567; U. S. v. Vanranst, 3 Wash., 146; U. S. v. Wilson, 3 Blatch., 435.

§ 301. **Other persons destroying or attempting to destroy vessel at sea.**—Whoever, not being an owner, upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, willfully and corruptly casts away or otherwise destroys any vessel of the United States to which he belongs, or, willfully, with intent to destroy the same, sets fire to any such vessel, or otherwise, attempts the destruction thereof, shall be imprisoned not more than ten years. (R. S., ss. 5366, 5367. 6 Aug., 1894, 28 Stat. L., 233, c. 227, s. 2; 2 Supp., 225.)

U. S. v. Vanranst, 3 Wash., 146, 28 435, 28 Fed. Cas., 718; U. S. v. McAvoy, Fed. Cas., 360; U. S. v. Wilson, 3 Blatch., 4 Blatch., 418, 26 Fed. Cas., 1044.

§ 302. **Robbery on shore by crew of piratical vessel.**—Whoever, being, engaged in any piratical cruise, or enterprise, or being of the crew of any piratical vessel, land from such vessel, and on shore commits robbery, is a pirate, and shall be imprisoned for life. (R. S., s. 5371. 15 Jan., 1897, 29 Stat. L., 487, c. 29, s. 2; 2 Supp., 538.)

§ 303. **Arming vessel to cruise against citizens of the United States.**—Whoever, being a citizen of the United States, without the limits thereof, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly aids or is concerned in furnishing, fitting out, or arming, any private vessel of war or privateer, with intent that such vessel shall be employed to cruise or commit hostilities upon the citizens of the United States, or their property, or whoever takes command of or enters on board of any such vessel, for such intent, or who purchases any interest in any such vessel with a view to share in the profits thereof, shall be fined not more than ten thousand dollars and imprisoned not more than ten years. The trial for such offense, if committed without the limits of the United States, shall be in the district in which the offender shall be apprehended or first brought. (R. S., s. 5284.)

U. S. v. Howard, 3 Wash., 340, 26 Fed. Cas., 390.

§ 304. **Piracy under color of a foreign commission.**—Whoever, being a citizen of the United States, commits any murder or robbery, or any act of hostility against the United States, or against any citizen thereof, on the high seas, under color of any commission from any foreign prince, or state, or on pretense of authority from any person, is, notwithstanding the pretense of such authority, a pirate, and shall be imprisoned for life. (R. S., s. 5373. 15 Jan., 1897, 29 Stat. L., 487, c. 29, s. 2; 2 Supp., 538.)

U. S. v. Palmer, 3 Wheat., 610; U. S. v. Baker, 5 Blatch., 6, 24 Fed. Cas., 962; U. S. v. Hutchings, 1 Brun. Col. Cas., 489, 26 Fed. Cas., 440; U. S. v. Terrel, Hempst., 413, 1 Fed. Cas., 999.

§ 305. **Piracy by subjects or citizens of a foreign state.**—Whoever, being a citizen or subject of any foreign state, is found and taken on the sea making war upon the United States, or cruising against the vessels and property thereof, or of the citizens of the same, contrary to the provisions of any treaty existing between the United States and the state of which the offender is a citizen or subject, when by such treaty such acts are declared to be piracy, is guilty of piracy, and shall be imprisoned for life. (R. S., s. 5374. 15 Jan., 1897, 29 Stat. L., 487, c. 29, s. 2; 2 Supp., 538.)

§ 306. **Running away with or yielding up vessel or cargo.**—Whoever, being a captain or other officer or mariner of a vessel upon the high seas or on any other waters within the admiralty or maritime jurisdiction of the United States, piratically or feloniously runs away with such vessel, or with any goods or merchandise thereof, to the value of fifty dollars, or who yields up such vessel voluntarily to any pirate, shall be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both. R. S., s. 5383.)

U. S. v. Haskell, 4 Wash., 402, 26 Fed. Cas., 207; U. S. v. Kessler, Baldw., 15, 26 Fed. Cas., 766; U. S. v. Tully, 1 Gall., 247, 28 Fed. Cas., 226.

§ 307. **Confederating, etc., with pirates.**—Whoever attempts or endeavors to corrupt any commander, master, officer, or mariner to yield up or to run away with any vessel, or with any goods, wares, or merchandise, or to turn pirate, or to go over to or confederate with pirates, or in any wise to trade with any pirate, knowing him to be such, or furnishes such pirate with any ammunition, stores, or provisions of any kind, or fits out any vessel knowingly and, with a design to trade with, supply, or correspond with any pirate or robber upon the seas; or whoever consults, combines, confederates, or corresponds with any pirate or robber upon the seas, knowing him to be guilty of any piracy or robbery; or whoever, being a seaman, confines the master of any vessel, shall be fined not more than one thousand dollars and imprisoned not more than three years. (R. S., s. 5384.)

U. S. v. Howard, 3 Wash., 340, 26 Fed. Cas., 390.

§ 308. **Sale of arms and intoxicants forbidden in the Pacific islands.**—Whoever, being subject to the authority of the United States, shall give, sell, or otherwise supply any arms, ammunition, explosive substance, intoxicating liquor, or opium to any aboriginal native of any of the Pacific islands lying within the twentieth parallel of north latitude and the fortieth parallel of south latitude, and the one hundred and twentieth meridian of longitude west and one hundred and twentieth meridian of longitude east of Greenwich, not being in the possession or under the protection of any civilized power, shall be fined not more than fifty dollars, or imprisoned not more

than three months, or both. In addition to such punishment, all articles of a similar nature to those in respect to which an offense has been committed, found in the possession of the offender, may be declared forfeited. If it shall appear to the court that such opium, wine, or spirits have been given bona fide for medical purposes, it shall be lawful for the court to dismiss the charge. (14 Feb., 1902, 32 Stat. L., 33 c. 18, ss. 1, 2.)

§ 309. **Offenses under preceding section deemed on high seas.**—All offenses against the provisions of the section last preceding, committed on any of said islands or on the waters, rocks, or keys adjacent thereto, shall be deemed committed on the high seas on board a merchant ship or vessel belonging to the United States, and the courts of the United States shall have jurisdiction accordingly. (14 Feb., 1902, 32 Stat. L., 33, c. 18, s. 3.)

§ 310. **"Vessels of the United States" defined.**—The words "vessel of the United States," wherever they occur in this chapter, shall be construed to mean a vessel belonging in whole or in part to the United States, or any citizen thereof, or any corporation created by or under the laws of the United States, or of any State, Territory, or District thereof.

CHAPTER THIRTEEN.

CERTAIN OFFENSES IN THE TERRITORIES.

§ 311. **Places within which sections of this chapter shall apply.**—Except as otherwise expressly provided, the offenses defined in this chapter shall be punished as hereinafter provided, when committed within any Territory or District, or within or upon any place within the exclusive jurisdiction of the United States,

§ 312. **Circulation of obscene literature; promoting abortion; how punished.**—Whoever shall sell, lend, give away, or in any manner exhibit, or offer to sell, lend, give away, or in any manner exhibit, or shall otherwise publish or offer to publish in any manner, or shall have in his possession for any such purpose, any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article of an immoral nature, or any drug or medicine, or any article whatever, for the prevention of conception, or for causing unlawful abortion, or shall advertise the same for sale, or shall write or print, or cause to be written or printed, any card, circular, book, pamphlet, advertisement, or notice of any kind, stating when, where, how, or of whom, or by what means, any of the articles above mentioned can be purchased or obtained, or shall manufacture, draw, or print, or in any wise make any of such articles, shall be fined not more than two

thousand dollars, or imprisoned not more than five years, or both. (R. S., s. 5389.)

U. S. v. Williams, 3 Fed. Rep., 484.

§ 313. **Polygamy.**—Every person who has a husband or wife living, who marries another, whether married or single, and any man who simultaneously, or on the same day, marries more than one woman, is guilty of polygamy, and shall be fined not more than five hundred dollars and imprisoned not more than five years. But this section shall not extend to any person by reason of any former marriage whose husband or wife by such marriage shall have been absent for five successive years, and is not known to such person to be living, and is believed by such person to be dead, nor to any person by reason of any former marriage which shall have been dissolved by a valid decree of a competent court, nor to any person by reason of any former marriage which shall have been pronounced void by a valid decree of a competent court, on the ground of nullity of the marriage contract. (R. S., s. 5352. 22 Mar., 1882, 22 Stat. L., 30, c. 47, s. 1; 1 Supp., 331.)

Cannon v. U. S., 116 U. S., 55; Ex parte Snow, 120 U. S., 274; U. S. v. Higginson, 46 Fed. Rep., 750.

§ 314. **Unlawful cohabitation.**—If any male person cohabits with more than one woman, he shall be fined not more than three hundred dollars, or imprisoned not more than six months, or both. (22 Mar., 1882, 22 Stat. L., 31, c. 47, s. 3; 1 Supp., 332.)

Cannon v. U. S., 116 U. S., 55; Ex parte Snow, 120 U. S., 274; U. S. v. Higginson, 46 Fed. Rep., 750.

§ 315. **Joinder of counts.**—Counts for any or all of the offenses named in the two sections last preceding may be joined in the same information or indictment. (22 Mar., 1882, 22 Stat. L., 31, c. 47, s. 4; 1 Supp., 331.)

§ 316. **Adultery.**—Whoever shall commit adultery shall be imprisoned not more than three years; and when the act is committed between a married woman and a man who is unmarried, both parties to such act shall be deemed guilty of adultery; and when such act is committed between a married man and a woman who is unmarried, the man shall be deemed guilty of adultery. (3 Mar.,

1887, 24 Stat. L., 635, c. 397, s. 3; 1 Supp., 568.)

§ 317. **Incest.**—Whoever being related to another person within and not including the fourth degree of consanguinity computed according to the rules of the civil law shall marry or cohabit with, or have sexual intercourse with such other so related person, knowing her or him to be within said degree of relationship, shall be deemed guilty of incest, and shall be imprisoned not more than fifteen years. (3 Mar., 1887, 24 Stat. L., 635, c. 397, s. 4; 1 Supp., 568.)

Re Nelson, 69 Fed. Rep., 712.

§ 318. **Fornification.**—If any unmarried man or woman commits fornification each shall be fined not more than one hundred dollars, or imprisoned not more than six months. (3 Mar., 1887, 24 Stat. L., 636, c. 397, s. 5; 1 Supp., 568.)

§ 319. **Certificates of marriage; penalty for failure to record.**—Every ceremony of marriage, or in the nature of a marriage ceremony of any kind, whether either or both or more of the parties to such ceremony be lawfully competent to be the subjects of such marriage or ceremony or not, shall be certified by a certificate stating the fact and nature of such ceremony, the full name of each of the parties concerned, and the full name of every officer, priest, and person, by whatever style or designation called or known, in any way taking part in the performance of such ceremony, which certificate shall be drawn up and signed by the parties to such ceremony and by every officer, priest, and person taking part in the performance of such ceremony, and shall be by the officer, priest, or other person solemnizing such marriage or ceremony filed in the office of the probate court, or, if there be none, in the office of the court having probate powers in the county or district in which such ceremony shall take place, for record, and shall be immediately recorded, and be at all times subject to the inspection as other public records. Such certificate or the record thereof, or a duly certified copy of such record, shall be prima facie evidence of the facts required by this section to be stated therein in any proceeding, civil or criminal, in which the matter shall be drawn in question. But nothing in this section shall

be held to prevent the proof of marriages, whether lawful or unlawful, by any evidence otherwise legally admissible for that purpose. Whoever shall willfully violate any provision of this section shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both. The provisions of this section shall apply only within the Territories of the United States. (3 Mar., 1887, 24 Stat. L., 636, c. 397, ss. 9, 10; 1 Supp., 568.)

§ 320. **Prize fights, bull fights, etc.**—Whoever shall voluntarily engage in a pugilistic encounter between man and man or a fight between a man and a bull or any other or animal for money or for other thing of value, or for any championship, or upon the result of which any money or anything of value is bet or wagered, or to see which any admission fee is directly or indirectly charged, shall be imprisoned not more than five years. The provisions of this section shall apply only within the Territories of the United States and the District of Columbia. (7 Feb., 1896, 29 Stat. L., 5, c. 12; 2 Supp., 446.)

§ 321. **"Pugilistic encounter" defined.**—By the term "pugilistic encounter," as used in the section last preceding, is meant any voluntary fight by blows by means of fists or otherwise, whether with or without gloves, between two or more men, for money or for a prize of any character, or for any other thing of value, or for any championship, or upon the result of which any money or anything of value is bet or wagered, or to see which any admission fee is directly or indirectly charged. (7 Feb., 1896, 29 Stat. L., 5, c. 12; 2 Supp., 446.)

§ 322. **Train robberies in Territories, etc.**—Whoever shall willfully and maliciously trespass upon or enter upon any railroad train, railroad car, or railroad locomotive, with the intent to commit murder, or robbery, shall be fined not more than five thousand dollars, or imprisoned not more than twenty years, or both. Whoever shall willfully and maliciously trespass upon or enter upon any railroad train, railroad car, or railroad locomotive, with intent to commit any unlawful violence upon or against any passenger on said train, or car, or upon

or against any engineer, conductor, fireman, brakeman, or any officer or employee connected with said locomotive, train, or car, or upon or against any express messenger or mail agent on said train or in any car thereof, or to commit any crime or offense against any person or property thereon, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both. Whoever shall counsel, aid, abet, or assist in the perpetration of any of the offenses set forth in this section shall be deemed to be a principal therein. Upon the trial of any person charged with any offense set forth in this section, it shall not be necessary to set forth or prove the particular person against whom it was intended to commit the offense, or that it was intended to commit such offense against any particular person. (1 July, 1902, 32 Stat. L., 727, c. 1376.)

CHAPTER FOURTEEN.

GENERAL AND SPECIAL PROVISIONS.

§ 323. **Punishment of death by hanging.**—The manner of inflicting the punishment of death shall be by hanging. (R. S., s. 5325.)

§ 324. **No conviction to work corruption of blood or forfeiture of estate.**—No conviction or judgment shall work corruption of blood of any forfeiture of estate. (R. S., s. 5326.)

U. S. v. Coppersmith, 4 Fed. Rep., 198.

§ 325. **Whipping and the pillory abolished.**—The punishment of whipping and of standing in the pillory shall not be inflicted. (R. S., s. 5327.)

§ 326. **Jurisdiction of State Courts.**—Nothing in this Title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof. (R. S., s. 5328.)

Cross v. North Carolina, 132 U. S., 131; Re Loney, 134 U. S., 372, 38 Fed. Rep., 101; Fitzgerald v. Green, 134 U. S., 377; Pettibone v. U. S., 148 U. S., 197; Re Thomas, 173 U. S., 276, 87 Fed. Rep., 453; Ex parte Houghton, 7 Fed. Rep., 657; Re Miller 42 Fed. Rep., 307; U. S. v. Gibson, 47 Fed. Rep., 833; Ex parte Geisler, 50 Fed. Rep., 411; Re Welch, 57 Fed. Rep., 576; Re Waite, 81 Fed. Rep., 359; Ex parte Ballinger, 88 Fed. Rep., 71.

§ 327. **Pardoning power.**—Whenever, by the judgment of any court or judicial officer of the United States, in any criminal proceedings, any person is sentenced to two kinds of punishment, the one pecuniary and the other corporal, the President shall have full discretionary power to pardon or remit, in whole or in part, either one of the two kinds, without, in any manner, impairing the legal validity of the other kind, or of any portion of either kind, not pardoned or remitted. (R. S., s. 5330.)

Knote v. U. S., 95 U. S., 149; 8 A. G. Op., 281; 9 A. G. Op., 478; 11 A. G. Op., 35; 14 A. G. Op., 124; 16 A. G. Op., 1; 19 A. G. Op., 377, 476; 20 A. G. Op., 330, 668.

§ 328. **Indians committing certain crimes; how punished.**—All Indians committing against the person or property of another Indian or other person any of the following crimes, namely—murder, manslaughter, rape, assault with intent to kill, assault with a dangerous weapon, arson, burglary, and larceny, within any Territory of the United States, and either within or without an Indian reservation, shall be subject therefor to the laws of such Territory relating to said crimes, and shall be tried therefor in the same courts and in the same manner and shall be subject to the same penalties as are all other persons charged with the commission of said crimes, respectively; and the said courts are hereby given jurisdiction in all such cases. And all such Indians committing any of the above named crimes against the person or property of another Indian or other person within the boundaries of any State of the United States, and within the limits of any Indian reservation, shall be subject to the same laws, tried in the same courts and in the same manner, and be subject to the same penalties as are all other persons committing any of the above crimes within the exclusive jurisdiction of the United States: Provided, That any Indian who shall commit the offense of rape upon any female Indian within the limits of any Indian reservation shall be imprisoned at the discretion of the court. (3 Mar., 1885, 23 Stat. L., 385, c. 341; 1 Supp., 482. 15 Jan., 1897, 29 Stat. L., 487, c. 29, s. 5; 2 Supp., 538.)

Toy Toy v. Hopkins, 212 U. S., 542; U. S. v. Celestine, 215 U. S., 278; U. S. v. Kiya, 126 Fed. Rep., 879.

§ 329. **Crimes committed on Indian reservations in South Dakota.**—The circuit and district courts of the United States for the district of South Dakota shall have jurisdiction to hear, try, and determine all actions and proceedings in which any person shall be charged with the crime of murder, manslaughter, rape, assault with intent to kill, assault with a dangerous weapon, arson, burglary, or larceny, committed within the limits of any Indian reservation in the State of South Dakota. Any person convicted of murder, manslaughter, rape, arson, or burglary, committed within the limits of any such reservation, shall be subject to the same punishment as is imposed upon persons committing said crimes within the exclusive jurisdiction of the United States: Provided, That any Indian who shall commit the crime of rape upon any female Indian within any such reservation shall be imprisoned at the discretion of the court. Any person convicted of the crime of assault with intent to kill, assault with a dangerous weapon, or larceny, committed within the limits of any such reservation, shall be subject to the same punishment as is provided in cases of other persons convicted of any of said crimes under the laws of the State of South Dakota. This section is passed in pursuance of the cession of jurisdiction contained in chapter one hundred and six, Laws of South Dakota, nineteen hundred and one. (2 Feb., 1903, 32 Stat. L., 793, c. 351. Laws of South Dakota, 1901, c. 106.)

§ 330. **Qualified verdicts in certain cases.**—In all cases where the accused is found guilty of the crime of murder in the first degree, or rape, the jury may qualify their verdict by adding thereto "without capital punishment;" and whenever the jury shall return a verdict qualified as aforesaid, the person convicted shall be sentenced to imprisonment for life. (15 Jan., 1897, 29 Stat. L., 487, c. 29, s. 1; 2 Supp., 538.)

§ 331. **Body of executed offender may be delivered to surgeon for dissection.**—The court before which any person is convicted of murder in the first degree, or rape, may, in its discretion, add to the judgment of death, that the body of the offender be delivered to a surgeon for dissection; and the marshal who executes such judgment

shall deliver the body, after execution, to such surgeon as the court may direct; and such surgeon, or some person appointed by him, shall receive and take away the body at the time of execution. (R. S., s. 5340.)

§ 332. **Who are principals.**—Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal. (R. S., ss. 5323, 5427. Dolan v. U. S., 133 Fed. Rep., 440.)

§ 333. **Punishment of accessories.**—Whoever, except as otherwise expressly provided by law, being an accessory after the fact to the commission of any offense defined in any law of the United States, shall be imprisoned not exceeding one-half the longest term of imprisonment, or fined not exceeding one-half the largest fine prescribed for the punishment of the principal, or both, if the principal is punishable by both fine and imprisonment; or if the principal is punishable by death, then an accessory shall be imprisoned not more than ten years. (R. S., ss. 5533, 5534, 5535.)

§ 334. **Accessories to robbery or piracy.**—Whoever, without lawful authority, receives or takes into custody any vessel, goods, or other property, feloniously taken by any robber or pirate against the laws of the United States, knowing the same to have been feloniously taken, and whoever, knowing that such pirate or robber has done or committed any such piracy or robbery, on the land or at sea, receives, entertains, or conceals any such pirate or robber, is an accessory after the fact to such robbery or piracy, and shall be imprisoned not more than ten years. (R. S., s. 5324.)

Hempst., 413, 1 Fed. Cas., 999.

§ 335. **Felonies and misdemeanors.**—All offenses which may be punished by death, or imprisonment for a term exceeding one year, shall be deemed felonies. All other offenses shall be deemed misdemeanors.

§ 336. **Murder and manslaughter; place where crime deemed to have been committed.**—In all cases of murder or manslaughter, the crime shall be deemed to have been committed at the place where the injury was in-

flicted, or the poison administered, or other means employed which caused the death, without regard to the place where the death occurs. (R. S., ss. 5339, 5341.)

Ball v. U. S., 140 U. S., 136; U. S. v. McGill, 26 Fed. Cas., 1086; U. S. v. Hewecker, 79 Fed. Rep., 59; U. S. v. Guiteau, 1 Mackey (D. C.), 498.

§ 337. **Construction of words.**—Words used in this title in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word "person" and the word "whoever" include a corporation as well as a natural person; writing includes printing and typewriting, and signature or subscription includes a mark when the person making the same intended it as such. The words "this Title," wherever they occur herein, shall be construed to mean this act.

§ 338. **Omission of words "hard labor" not to deprive court of power to impose.**—The omission of the words "hard labor" from the provisions prescribing the punishment in the various sections of this act, shall not be construed as depriving the court of the power to impose hard labor as a part of the punishment, in any case where such power now exists.

§ 339. **Arrangement and classification of sections.**—The arrangement and classification of the several sections of this title have been made for the purpose of a more convenient and orderly arrangement of the same, and therefore no inference or presumption of a legislative construction is to be drawn by reason of the chapters under which any particular section is placed.

§ 340. **Jurisdiction of circuit and district courts.**—The crimes and offenses defined in this title shall be cognizable in the circuit and district courts of the United States, as prescribed in sections five hundred and sixty-three and six hundred and twenty-nine of the Revised Statutes.

CHAPTER FIFTEEN.

REPEALING PROVISIONS.

§ 341. **Sections, acts, and parts of acts repealed.**—The following sections of the Revised Statutes and Acts and parts of Acts are hereby repealed:

Sections four hundred and twelve, fifteen hundred and fifty-three, sixteen hundred and sixty-eight; sections seventeen hundred and eighty to seventeen hundred and eighty three, both inclusive; sections seventeen hundred and eighty-five, seventeen hundred and eighty-seven, seventeen hundred and eighty-eight, seventeen hundred and eighty-nine, twenty-three hundred and seventy-three, twenty-four hundred and twelve, thirty-five hundred and eighty-three, thirty-seven hundred and eight, thirty-seven hundred and thirty-nine, thirty-seven hundred and forty, thirty-seven hundred and forty-two, thirty-eight hundred and thirty-two, thirty-eight hundred and fifty-one, thirty-eight hundred and sixty-nine, thirty-eight hundred and eighty-seven; sections thirty-eight hundred and ninety to thirty-eight hundred and ninety-four, both inclusive; section thirty-eight hundred and ninety-nine; sections thirty-nine hundred and twenty-two to thirty-nine hundred and twenty-five, both inclusive; sections thirty-nine hundred and forty-seven, thirty-nine hundred and fifty-four, thirty-nine hundred and seventy-seven, thirty-nine hundred and seventy-nine; sections thirty-nine hundred and eighty-one to thirty-nine hundred and eighty-six, both inclusive; sections thirty-nine hundred and eighty-eight, thirty-nine hundred and ninety-two, thirty-nine hundred and ninety-five, thirty-nine hundred and ninety-six, four thousand and thirteen, four thousand and sixteen, four thousand and thirty, four thousand and fifty-three, fifty-one hundred and eighty-eight, fifty-one

hundred and eighty-nine; sections fifty-two hundred and eighty-one to fifty-two hundred and ninety-one, both inclusive; sections fifty-three hundred and twenty-three to fifty-three hundred and ninety-five, both inclusive; sections fifty-three hundred and ninety-eight to fifty-four hundred and ten, both inclusive; sections fifty-four hundred and thirteen to fifty-four hundred and eighty-four, both inclusive; sections fifty-four hundred and eighty-seven to fifty-five hundred and ten, both inclusive; sections fifty-five hundred and sixteen, fifty-five hundred and eighteen, fifty-five hundred and nineteen; sections fifty-five hundred and twenty-four to fifty-five hundred and thirty-five, both inclusive; sections fifty-five hundred and fifty-one to fifty-five hundred and sixty-seven, both inclusive, of the Revised Statutes:

That part of section thirty-eight hundred and twenty-nine of the Revised Statutes which reads as follows: "And every person who, without authority from the Postmaster-General, sets up or professes to keep any office or place of business bearing the sign, name, or title of post-office, shall, for every such offense, be liable to a penalty of not more than five hundred dollars;"

That part of section thirty-eight hundred and sixty-seven of the Revised Statutes which reads as follows: "And any person not connected with the letter-carrier branch of the postal service who shall wear the uniform which may be prescribed shall, for every such offense, be punishable by a fine of not more than one hundred dollars, or by imprisonment for not more than six months, or both;"

That part of section four thousand and forty-six of the Revised Statutes which reads as follows: "Every post-master, assistant, clerk, or other person employed in or connected with the business or operations of any money-order office who converts to his own use, in any way whatever, or loans, or deposits in any bank, except as authorized by this title, or exchanges for other funds, any portion of the public money-order funds, shall be deemed guilty of embezzlement; and any such person, as well as every other person advising or participating therein, shall, for every such offense, be imprisoned for not

less than six months nor more than ten years, and be fined in a sum equal to the amount embezzled; and any failure to pay over or produce any money-order funds intrusted to such person shall be taken to be prima facie evidence of embezzlement; and upon the trial of any indictment against any person for such embezzlement, it shall be prima facie evidence of a balance against him to produce a transcript from the money-order account books of the Sixth Auditor. But nothing herein contained shall be construed to prohibit any postmaster depositing, under the direction of the Postmaster-General, in a national bank designated by the Secretary of the Treasury for that purpose, to his own credit as postmaster, any money order or other funds in his charge, nor prevent his negotiating drafts or other evidences of debt through such bank, or through United States disbursing officers, or otherwise, when instructed or required to do so by the Postmaster-General, for the purpose of remitting surplus money-order funds from one postoffice to another, to be used in payment of money orders."

"An Act to protect lines of telegraph constructed or used by the United States for malicious injury and obstruction," approved June twenty-third, eighteen hundred and seventy-four;

"An Act to protect persons of foreign birth against forcible constraint or involuntary servitude," approved June twenty-third, eighteen hundred and seventy-four;

That part of "An Act making appropriations for the service of the Post-Office Department for the fiscal year ending June thirtieth, eighteen hundred and seventy-five and for other purposes," approved June twenty-third, eighteen hundred and seventy-four, which reads as follows: "That any postmaster who shall affix his signature to the approval of any bond of a bidder or to the certificate of sufficiency of sureties in any contract before the said bond or contract is signed by the bidder or contractor and his sureties, or shall knowingly, or without the exercise of due diligence approve any bond of a bidder with insufficient sureties, or shall knowingly make any false or fraudulent certificate, shall be forthwith dis-

missed from office and be thereafter disqualified from holding the office of postmaster, and shall also be deemed guilty of a misdemeanor, and on conviction thereof be punished by a fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or both;"

Sections one, two, and three of "An Act to protect ornamental and other trees on Government reservations and on lands purchased by the United States, and for other purposes," approved March third eighteen hundred and seventy-five;

"An Act to punish certain larcenies and the receivers of stolen goods," approved March third, eighteen hundred and seventy-five;

"An Act to amend section fifty-four hundred and fifty-seven of the Revised Statutes of the United States, relating to counterfeiting," approved January sixteenth, eighteen hunderd and seventy-seven;

That part of section five of "An act establishing post-roads, and for other purposes," approved March third, eighteen hundred and seventy-seven, which reads as follows: "And if any person shall make use of any such official envelope to avoid the payment of postage on his private letter, package, or other matter in the mail, the person so offending shall be deemed guilty of a misdemeanor and subject to a fine of three hundred dollars, to be prosecuted in any court of competent jurisdiction;"

That part of section one of "An Act making appropriations for the service of the Post-Office Department for the year ending June thirtieth, eighteen hundred and seventy-nine, and for other purposes," approved June seventeenth, eighteen hundred and seventy-eight, which reads as follows: "And any postmaster who shall make a false return to the auditor, for the purpose of fraudulently increasing his compensation under the provisions of this or any other Act, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in a sum not less than fifty nor more than five hundred dollars, or imprisoned for a term not exceeding one year, or punished by both such fine and imprisonment, in the discretion of the court; and no postmaster of any class, or other person connected with the postal service, in-

trusted with the sale or custody of postage stamps, stamped envelopes, or postal cards, shall use or dispose of them in the payment of debts or in the purchase of merchandise or other salable articles, or pledge or hypothecate the same, or sell or dispose of them except for cash, or sell or dispose of postage stamps or postal cards for any larger or less sum than the values indicated on their faces, or sell or dispose of stamped envelopes for a larger or less sum than is charged therefor by the Post-Office Department for like quantities, or sell or dispose of postage stamps, stamped envelopes, or postal cards otherwise than as provided by law and the regulations of the Post-Office Department; and any postmaster or other person connected with the postal service who shall violate any of these provisions shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not less than fifty nor more than five hundred dollars, or imprisoned for a term not exceeding one year;"

"An Act to amend section fifty-four hundred and ninety-seven of the Revised Statutes, relating to embezzlement by officers of the United States," approved February third, eighteen hundred and seventy-nine;

That part of section one of "An Act making appropriations for the service of the Post-Office Department for the fiscal year ending June thirtieth, eighteen hundred and eighty, and for other purposes," approved March third, eighteen hundred and seventy-nine, which reads as follows: "That nothing contained in section thirty-nine hundred and eighty-two of the Revised Statutes shall be construed as prohibiting any person from receiving and delivering to the nearest postoffice or postal car mail matter properly stamped." Also sections thirteen, twenty-three, twenty-seven, and twenty-eight of said Act;

"An Act to amend section fifty-four hundred and forty of the Revised Statutes," approved May seventeenth, eighteen hundred and seventy-nine;

Sections one, three, and four of "An Act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," approved March twenty-second, eighteen hundred and eighty-two;

Sections eleven, twelve, thirteen, and fourteen, and fifteen of "An Act to regulate and improve the civil service of the United States," approved January sixteenth, eighteen hundred and eighty-three;

"An Act making it a felony for a person to falsely and fraudulently assume or pretend to be an officer or employee acting under authority of the United States or any department or officer thereof, and prescribing a penalty therefor," approved April eighteenth, eighteen hundred and eighty-four;

"An Act to prevent and punish the counterfeiting within the United States of notes, bonds, or other securities of foreign governments," approved May sixteenth, eighteen hundred and eighty-four;

Section nine of "An Act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the year ending June thirtieth, eighteen hundred and eighty-six, and for other purposes," approved March third, eighteen hundred and eighty-five;

Section two of "An Act to amend the Act entitled 'An Act to modify the money-order system, and for other purposes,' approved March third, eighteen hundred and eighty-three," approved January third, eighteen hundred and eighty-seven;

Section three, four, five, nine, and ten of "An Act to amend an Act entitled 'An Act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes,' approved March twenty-second, eighteen hundred and eighty-two," approved March third, eighteen hundred and eighty-seven;

Section two of "An Act relating to permissible marks, printing or writing, upon second, third, and fourth class matter, and to amend the twenty-second and twenty-third sections of an Act entitled 'An Act making appropriations for the service of the Post-Office Department for the fiscal year ending June thirtieth, eighteen hundred and eighty, and for other purposes,'" approved January twentieth, eighteen hundred and eighty-eight;

"An Act to amend section fifty-three hundred and eighty-eight of the Revised Statutes of the United States in relation to timber depredations," approved June fourth, eighteen hundred and eighty-eight;

"An Act relating to postal crimes, and amendatory of the statutes therein mentioned," approved June eighteenth, eighteen hundred and eighty-eight;

"An Act amendatory of 'An Act relating to postal crimes and amendatory of the statutes therein mentioned," approved June eighteenth, eighteen hundred and eighty-eight, and for other purposes," approved September twenty-sixth, eighteen hundred and eighty-eight;

"An Act to punish, as a felony, the carnal and unlawful knowing of any female under the age of sixteen years," approved February ninth, eighteen hundred and eighty-nine;

Sections one and two of "An Act to punish dealers and pretended dealers in counterfeit money and other fraudulent devices for using the United States mails," approved March second, eighteen hundred and eighty-nine;

Section one of "An Act to amend certain sections of the Revised Statutes relating to lotteries, and for other purposes," approved September nineteenth, eighteen hundred and ninety;

"An Act further to prevent counterfeiting or manufacture of dies, tools, or other implements used in counterfeiting, and providing penalties therefor, and providing for the issue of search warrants in certain cases," approved February tenth, eighteen hundred and ninety-one;

"An Act to amend sections fifty-three hundred and sixty-five and fifty three hundred and sixty-six of the Revised Statutes relating to barratry on the highseas," approved August sixth, eighteen hundred and ninety-four;

Sections one and two of "An Act for the suppression of lottery traffic through national and interstate commerce and the postal service, subject to the jurisdiction and laws of the United States," approved March second, eighteen hundred and ninety-five;

"An Act to prohibit prize fighting and pugilism and fights between men and animals, and to provide penalties therefor in the Territories and the District of Columbia," approved February seventh, eighteen hundred and ninety-six;

That part of "An Act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, eighteen hundred and ninety-five," approved August eighth, eighteen hundred and ninety-four, and that part of "An Act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, eighteen hundred and ninety-six," approved March second, eighteen hundred and ninety-five, and that part of "An Act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, eighteen hundred and ninety-seven," approved April twenty-fifth, eighteen hundred and ninety-six, which reads as follows: "Any person who shall knowingly issue or publish any weather forecasts or warnings of weather conditions falsely representing such forecasts or warnings to have been issued or published by the Weather Bureau, United States Signal Service, or other branch of the government service, shall be deemed guilty of a misdemeanor, and, on conviction thereof, for each offense be fined in a sum not exceeding five hundred dollars, or imprisoned not to exceed ninety days, or be both fined and imprisoned, in the discretion of the court;"

That part of "An Act making appropriations for current and contingent expenses of the Indian Department and fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, eighteen hundred and ninety-seven, and for other purposes," approved June tenth, eighteen hundred and ninety-six, which reads as follows: "Provided further, That hereafter it shall be unlawful for any person to destroy, deface, change, or remove to another place any section corner, quarter-section corner, or meander post on any Government line of survey, or to cut down any witness tree or any tree blazed to mark the line of a Government survey, or to deface, change, or remove any monument or bench mark of any Government survey. That any

person who shall offend against any of the provisions of this paragraph shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court, shall be fined not exceeding two hundred and fifty dollars or be imprisoned not more than one hundred days. All the fines accruing under this paragraph shall be paid into the Treasury, and the informer in each case of conviction shall be paid the sum of twenty-five dollars;"

"An Act to reduce the cases in which the penalty of death may be inflicted," approved January fifteenth, eighteen hundred and ninety-seven;

"An Act to prevent the carrying of obscene literature and articles designed for indecent and immoral use from one State or Territory into another State or Territory," approved February eight, eighteen hundred and ninety-seven;

"An Act to prevent forest fires on the public domain," approved February twenty-fourth, eighteen hundred and ninety-seven;

"An Act to prevent the purchasing of or speculating in claims against the Federal Government by United States officers," approved February twenty-fifth, eighteen hundred and ninety-seven;

"An Act to amend section fifty-four hundred and fifty-nine of the Revised Statutes, prescribing the punishment for mutilating United States coins, and for uttering or passing or attempting to utter or pass such mutilated coins," approved March third, eighteen hundred and ninety-seven;

Section eighteen of "An Act to amend the laws relating to navigation," approved March third, eighteen hundred and ninety-seven;

That part of section one of "An Act making appropriations for the service of the Post-Office Department for the fiscal year ending June thirtieth, eighteen hundred and ninety-nine," approved June thirteenth, eighteen hundred and ninety-eight, which reads as follows: "Provided, That any person or persons who shall place or cause to be placed any matter in the mails during the regular weighing period, for the purpose of increasing the weight of the mails with intent to cause an increase in the com-

pensation of the railroad mail carrier over whose route such mail matter may pass, shall be deemed guilty of a misdemeanor, and shall on conviction thereof be fined not less than five hundred dollars nor more than twenty thousand dollars, and shall be imprisoned at hard labor not less than thirty days nor more than five years;"

Section seventeen of "An Act to provide revenue for the Government, and to encourage the industries of the United States," approved July twenty-fourth, eighteen hundred and ninety-seven;

Section three of an Act entitled "An Act making appropriations for the service of the Post-Office Department for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes," approved March third, nineteen hundred and three;

"An Act to protect the harbor defenses and fortifications constructed or used by the United States from malicious injury, and for other purposes," approved July seventh, eighteen hundred and ninety-eight;

"An Act to amend an Act entitled 'An Act to prevent forest fires on the public domain,' approved February twenty-fourth, eighteen hundred and ninety-seven," approved May twenty-fifth, nineteen hundred;

Sections two, three, and four of "An Act to enlarge the powers of the Department of Agriculture, prohibit the transportation by interstate commerce of game killed in violation of local laws, and for other purposes," approved May twenty-fifth, nineteen hundred;

"An Act to prevent the sale of firearms, opium, and intoxicating liquors in certain islands of the Pacific," approved February fourteenth, nineteen hundred and two;

"An Act for the suppression of train robbery in the Territories of the United States and elsewhere, and for other purposes," approved July first, nineteen hundred and two;

"An Act conferring jurisdiction upon the circuit and district courts for the district of South Dakota in certain cases, and for other purposes," approved February second, nineteen hundred and three;

"An Act to amend section three of the 'Act further to prevent counterfeiting or manufacturing of dies, tools, or other implements used in manufacturing,' and so forth, approved February tenth, eighteen hundred and ninety-one," approved March third, nineteen hundred and three;

"An Act for the protection of the Bull Run Forest Reserve and the sources of the water supply of the city of Portland, State of Oregon," approved April twenty-eighth, nineteen hundred and four;

"An Act to amend the Act of February eighth, eighteen hundred and ninety-seven, entitled 'An Act to prevent the carrying of obscure literature and articles designed for indecent and immoral use from one State or Territory into another State or Territory,' so as to prevent the importation and exportation of the same;" approved February eighth, nineteen hundred and five;

"An Act to amend section thirteen of chapter three hundred and ninety-four of the Supplement of the Revised Statutes of the United States," approved March second nineteen hundred and five;

Section five of "An Act to amend sections forty-four hundred and seventeen, forty-four hundred and fifty-three, forty-four hundred and eighty-eight, and forty-four hundred and ninety-nine of the Revised Statues relating to misconduct by officers or owners of vessels," approved March third, nineteen hundred and five;

"An Act to punish the cutting, chipping, or boxing of trees on the public lands," approved June fourth, nineteen hundred and six.

Sections sixteen, seventeen, and nineteen of "An Act to establish a bureau of immigration and naturalization, and to provide for a uniform rule for the naturalization of aliens throughout the United States," approved June twenty-ninth, nineteen hundred and six.

An Act entitled "An Act to prohibit corporations from making money contributions connection with political elections," approved January twenty-sixth, nineteen hundred and seven.

An Act entitled "An Act to amend sections one, two, and three of an Act entitled 'An Act to prohibit shang-

haiing in the United States,' approved June twenty-eight, nineteen hundred and six," approved March second, nineteen hundred and seven.

An Act entitled "An Act to promote the safe transportation in interstate commerce of explosives and other dangerous articles, and to provide penalties for its violation," approved May thirteenth, nineteen hundred and eight.

An Act entitled "An Act to amend section fifty-four hundred and thirty-eight of the Revised Statutes," approved May thirtieth, nineteen hundred and eight.

Also all other sections and parts of sections of the Revised Statutes and Acts and parts of Acts of Congress, in so far as they are embraced within and superseded by this Act, are hereby repealed; the remaining portions thereof to be and remain in force with the same effect and to the same extent as if this Act had not been passed.

§ 342. **Accrued rights, etc., not affected.**—The repeal of existing laws or modifications thereof embraced in this title shall not affect any act done, or any right accurring or accrued, or any suit or proceeding had or commenced in any civil cause prior to said repeal or modifications, but all liabilities under said laws shall continue and may be enforced in the same manner as if said repeal or modifications had not been made.

§ 343. **Prosecutions and punishments.**—All offenses committed, and all penalties, forfeitures, or liabilities incurred prior to the taking effect hereof, under any law embraced in, or changed, modified, or repealed by this title, may be prosecuted and punished in the same manner and with the same effect as if this Act had not been passed.

§ 344. **Acts of limitation.**—All acts of limitation, whether applicable to civil causes and proceedings, or for the recovery of penalties or forfeitures, embraced in, modified, changed, or repealed by this title, shall not be affected thereby; and all suits or proceedings for causes arising or acts done or committed prior to the taking effect hereof may be commenced and prosecuted within the same time and with the same effect as if said repel had not been made.

§ 345. **Date this act shall be effective.**—This Act shall take effect and be in force on and after the first day of January, nineteen hundred and ten.

Approved, March 4, 1909.

INDEX TO FOREGOING PENAL CODE.

Containing a reference to all laws of a general nature, permanent in character, in force December 1, 1909, having penal provisions not properly separable from the administrative provisions, not contained in the Criminal Code, but embraced in the general revision of the Laws of the United States.

TITLE II.

THE CONGRESS.

Chapter Six.—The Library of Congress.

Stealing or injuring books of Library of Congress ---------- 19 June, 1878; 20 Stat., 171.

Chapter Seven.—Congressional investigations.

Witness refusing to testify in congressional inquiry ---------- R. S., s. 102.

Chapter Eight.—Contested elections.

Witnesses refusing to testify in contested-election case ---------- R. S., s. 116.

Failure to deliver up papers in contested-election case ---------- R. S., s. 123.

TITLE VI.

THE DEPARTMENT OF THE TREASURY.

Chapter One.—The Department.

Officers in Treasury Department engaging in trade, etc. ---------- R. S., s. 243.

Clerks in Treasury Department trading in debts or funds of any State or United States ---------- R. S., s. 244.

TITLE XII.

THE DEPARTMENT OF COMMERCE AND LABOR.

Chapter Six.—The Bureau of Statistics.

Person transporting commodities to foreign countries failing to deliver manifest to collector of customs ----- 3 Mar., 1893; 27 Stat., 689.

TITLE XIV.

THE CIVIL SERVICE.

Chapter One.—Appointments, qualifications, duties, and payments of clerks and employees.

Officers and employees violating duties concerning examination of applicants } 16 Jan., 1883, s. 7; 22 Stat., 405.

TITLE XV.

ESTIMATES AND APPROPRIATIONS.

Chapter Two.—Appropriations.

Expenditures not to exceed appropriations; voluntary service, etc., or employment of unauthorized personal service prohibited ---------- R. S. s. 3679. 27 Feb., 1906; 34 Stat., 49.

TITLE XVI.

THE JUDICIARY.

Chapter Three.—District courts; Removal of causes.

Clerk of state court refusing to give copy of record ---------- 3 Mar., 1875, s. 7; 18 Stat., 72.

Chapter Four.—District court; Miscellaneous provisions.

Receiver failing to properly manage property ---------- 13 Aug., 1888, s. 2; 25 Stat., 436.

Chapter Eleven.—District attorneys, marshals, clerks, commissioners, and stenographers.

Clerk of court refusing to make certificate ---------- 22 Feb., 1875, s. 6; 18 Stat., 334.

Chapter Twelve.—Pay and allowances of court officers, jurors and witnesses.

Marshal, attorney, or other officer accepting illegal fee ---------- 28 May, 1896, s. 18; 29 Stat., 183.

Chapter Twenty.—Extradition.

Opposing, etc., agent of United States appointed to receive from foreign government person accused of crime within jurisdiction of United States--- R. S., s. 5277.

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Chapter Eleven.—Articles of war.

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TITLE XX.

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Chapter Ten.—Articles for the government of the navy.

Witness refusing to appear or to testify before court-martial or court of inquiry of the navy ---------- 16 Feb., 1909, s. 12; 35 Stat., 622.

TITLE XXI.

DIPLOMATIC AND CONSULAR OFFICERS.

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Consular officer accepting appointment from foreign country as administrator and failing to give bond or account for moneys	30 June, 1902, s. 2; 32 Stat., 547.
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Chapter Five.—Homesteads.

Making false affidavit before commanding officer by person in military or naval service	R. S., s. 2293.
Making false affidavit before United States commissioner	R. S., s. 2294. 4 Mar., 1904; 33 Stat., 59.
Officer demanding excessive fees for entries and for final proof	R. S., s. 2294. 4 Mar., 1904; 33 Stat., 59.

Chapter Six.—Mineral lands.

Citizens of certain States and Territories cutting timber for other than specified purposes	3 June, 1878, s. 3; 20 Stat., 89.

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Chapter Fifteen.—Unlawful inclosures.
Inclosing public lands without title; obstructing settlement of or transit over ---- 25 Feb., 1885, s. 4; 23 Stat., 322. 10 Mar. 1908, s. 1; 35 Stat., 40.

Chapter Nineteen.—Public lands in Oklahoma.
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Importing neat cattle and hides, etc. ---- 5 Aug., 1909, ss. 12, 13; 36 Stat., 86.
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Bribery of customs officer or employee-- 5 Aug., 1909, s. 28; 36 Stat., 103.
Officer demanding or receiving greater fee, etc., than allowed by law ---- R. S., s. 2336. 5 Aug., 1909, s. 28 36; Stat., 103.
Inspector, weigher, gauger, or measurer receiving fee, etc., other than allowed by law ---- R. S., s. 2637.
False certification of shipment by inspector or other officer ---- R. S., s. 2637.
Customs officers owning vessels or engaging in importation ---- R. S., s. 2638.
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Master failing to make report of arrival of vessel at port	R. S., s. 2774.
Master of vessel failing to make special report of spirits and wines	R. S., s. 2775.
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Vessel having more sea stores than in entry; master liable	R. S., s. 2797. 3 Mar., 1897, s. 17; 29 Stat., 691.
Concealing dutiable articles in baggage	R. S., s. 2802.
Master failing to have correct manifest	R. S., s. 2809.
Master failing to produce manifest upon demand of proper officer	R. S., s. 2814.
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Master of vessel failing to mail copy of manifest to Auditor for Treasury Department	2 Mar., 1895, s. 9; 28 Stat., 808.
Master failing to deliver duplicate manifests of merchandise for Mississippi River, etc., ports	R. S., s. 2802. 16 June, 1880; 21 Stat., 283.
Master failing to deliver manifests for merchandise for Mississippi River, etc., ports on arrival at port of entry	R. S., s. 2822. 16 June, 1880; 21 Stat., 283.
Master failing to deliver duplicate manifests of merchandise for ports in district of New Orleans	R. S., s. 2823.
Master failing to deliver manifests of merchandise for ports in district of New Orleans on arrival at port of entry	R. S., s. 2823.
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Master failing to deposit manifest	R. S., s. 2834. 22 June, 1874, s. 2; 18 Stat., 186. 3 Mar., 1897, s. 15; 29 Stat., 691.
Master refusing to receive inspector	R. S., s. 2834. 22 June, 1874, s. 2; 18 Stat., 186. 3 Mar., 1907, s. 15; 29 Stat., 691.
Making false statement in declaration	5 Aug., 1909, s. 28; 36 Stat., 95.

Chapter Four—Entry of Merchandise—Con

Making false entry of imported merchandise ---------- R. S., s. 2864. 5 Aug., 1909, s. 28; 36 Stat., 97.
Smuggling merchandise ---------- R. S., s. 2865.
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Unlading without permit ---------- R. S., s. 2867.
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Obliterating, etc., inspection marks, etc.--R. S., s. 2886.
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Refusing to testify or swearing falsely before appraiser ---------- 5 Aug., 1909, s. 28; 36 Stat., 100.

Chapter Seven.—The bond and warehouse system.

Failing to remove or destroy, etc., stamps on packages or casks that had contained imported liquors ---------- 1 Mar., 1879, s. 12; 20 Stat., 342. 28 May, 1880, s. 12; 21 Stat., 148.
Selling or having in possession empty cask or package with undestroyed stamp affixed ---------- 1 Mar., 1879, s. 13; 20 Stat., 343. 28 May, 1880, s. 13; 21 Stat., 148.
Altering, defacing, or obliterating mark of revenue officer on package of warehoused merchandise ---------- R. S., s. 2985.
Unlawfully opening warehouse ---------- R. S., s. 2986.
Fraudulently removing or concealing warehoused merchandise ---------- R. S., s. 2987.
Failure to transport and deliver merchandise from port in one collection district to port in another district ----- R. S., s. 3001.
Relanding merchandise exported to Mexico or to British North America provinces ---------- R. S., s. 3008.

Chapter Eight.—Immediate transportation in bond to inland ports.

Opening, breaking, etc., any car, vessel, etc., containing merchandise delivered for transportation ---------- R. S., s. 2998.
Knowingly receiving merchandise unlawfully removed from car, vessel, etc.--R. S., s. 2998.

Chapter Ten.—Drawback.

Relanding goods entered for drawback	R. S., s. 3049. 24 July, 1897; 30 Stat., 195.
Making false entry for benefit of drawback	R. S., s. 3050.

Chapter Eleven.—Enforcement of customs laws.

Person in charge of beast or vehicle refusing to allow search	R. S., s. 3062.
Master obstructing or hindering officer from boarding vessel	R. S., s. 3068.
Articles separate from cargo missing, or seals broken on arrival at port of entry; master liable	R. S., s. 3069.
Unlawfully breaking locks and fastenings	R. S., s. 3070.
Refusing to assist officer in making search	R. S., s. 3071.
Importing merchandise contrary to law	R. S., s. 3081.
Knowingly buying, selling, receiving, etc., merchandise imported contrary to law	R. S., s. 3081.
Officer receiving part of informer's fee, except in smuggling cases	22 June, 1874, s. 7; 18 Stat., 187.
Officer offering to compromise claims for fines, etc.	22 June, 1874, s. 19; 18 Stat. 190. 22 Jan., 1875; 18 Stat., 303.

Chapter Twelve.—Commerce with contiguous countries.

Master or other person failing to deliver manifests of goods from contiguous territory	R. S., s. 3099.
Owner, master, etc., of vessel failing to proceed to places of destination named in manifest	R. S., s. 3104.
Unauthorized person breaking, etc., sealed packages, etc.	R. S., s. 3105.
Receiving or depositing unlawfully imported merchandise in building on boundary line	R. S., s. 3108.
Shipping sea stores in excess of amount necessary	R. S., s. 3112.
Owner failing to report saloon stores	R. S., s. 3113.
Unlading merchandise taken from one port in United States to another in other than specified hours	R. S., s. 3120.
Masters of vessels engaged in foreign and domestic trade on northern, etc., frontiers, etc., failing to observe rules in R. S., ss. 3116 to 3124, inclusive	R. S., s. 3125.
Registered vessels touching at foreign ports failing to observe laws concerning manifests and report and entry of vessels	R. S., s. 3126.
Master of vessel failing to observe certain rules of Secretary of Treasury concerning entry of vessels laden with products of British North America provinces	R. S., s. 3129.

TITLE XXV.

INTERNAL REVENUE.

Chapter One.—Officers.

Internal-revenue officers making false statement or failing to render statement of fees ---------- R. S., s. 3158.

Internal-revenue officers disclosing operations of manufacturers, etc. ----- R. S., s. 3167. 28 Aug., 1894, s. 34; 28 Stat., 557.

Internal-revenue officers or agents becoming interested in certain manufactures ---------- R. S., s. 3168. 1 Mar., 1879, s. 2; 20 Stat., 329.

Certain offenses of internal-revenue officers: ----------

- Being guilty of extortion, etc., under color of law ---------- R. S., s. 3168. 1 Mar., 1879, s. 2; 20 Stat., 329.
- Demanding or receiving other or greater fees than those allowed by law ---------- R. S., s. 3168. 1 Mar., 1879, s. 2; 20 Stat., 329.
- Neglecting to perform duties enjoined by law ---------- R. S., s. 3168. 1 Mar., 1879, s. 2; 20 Stat., 329.
- Conspiring of colluding to defraud the United States ---------- R. S., s. 3168. 1 Mar., 1879, s. 2; 20 Stat., 329.
- Making opportunity for person to defraud the United States ------ R. S., s. 3168. 1 Mar., 1879, s. 2; 20 Stat., 329.
- Enabling other person to defraud the United States ---------- R. S., s. 3168. 1 Mar., 1879, s. 2; 20 Stat., 329.
- Permitting violation of law -------- R. S., s. 3168. 1 Mar., 1879, s. 2; 20 Stat., 329.
- Making false entry or signing false certificate ---------- R. S., s. 3168. 1 Mar., 1879, s. 2; 20 Stat., 329.
- Failing to report knowledge of violation of revenue laws -------- R. S., s. 3168. 1 Mar., 1879, s. 2; 20 Stat., 329.

Collectors issuing stamps before collection of tax ---------- 1 Mar., 1879, s. 1; 20 Stat., 327.

District attorney demanding or accepting anything for compromise of violation of internal-revenue laws -------- R. S., s. 3170.

Chapter Two.—Assessments and collections.

Owner of premises refusing to admit revenue officers or interfering with same ---------- R. S., s. 3177. 1 Mar., 1879, s. 2; 20 Stat., 329.

Making false return to collector -------- R. S., s. 3179.

Chapter Three.—Special taxes.

Failing to display special-tax stamp in place of business	R. S., s. 3239. 1 Oct., 1890, s. 26; 26 Stat., 618.
Carrying on business as rectifier, liquor dealer, etc., without payment of special tax	R. S., ss. 3242, 3281. 8 Feb., 1875, s. 16; 18 Stat., 310. 13 June, 1898, s. 36; 30 Stat., 467.
Manufacturing oleomargarine without payment of special tax	2 Aug., 1886, s. 4; 24 Stat., 209.
Manufacturing filled cheese without payment of special tax	6 June, 1896, s. 4; 29 Stat., 254.
Manufacturing adulterated or renovated butter without payment of special tax.	9 May, 1902, s. 4; 32 Stat., 195.
Officer collecting special tax for rectifying, etc., on premises less than 600 feet from distillery	R. S., s. 3244.

Chapter Four.—Distilled spirits.

Adding substances to distilled spirits to create fictitious proof	R. S., s. 3252.
Evading tax on distilled spirits	R. S., s. 3256.
Distiller defrauding or attempting to defraud United States of tax	R. S., s. 3257.
Failing to register stills	R. S., s. 3258.
Failing to give notice of intention to carry on business of rectifier or distiller	R. S., s. 3259.
Distiller failing to give bond	R. S., s. 3260. 28 May, 1880, s. 1; 21 Stat., 145.
Collector approving bond before regulations are complied with	R. S., s. 3261.
Setting up still without permit	R. S., s. 3265.
Distilling on certain prohibited premises	R. S., s. 3266.
Breaking, etc., locks to cistern room, etc.	R. S., s. 3268.
Failing to keep pipes at distilleries painted as directed	R. S., s. 3269.
Building fence exceeding 5 feet in height around distillery; refusing to furnish key to officer	R. S., s. 3275.
Obstructing revenue officer from entering distillery	R. S., s. 3276. 1 Mar., 1879, s. 5; 20 Stat., 335.
Refusing to facilitate examination by internal-revenue officer	R. S., s. 3277. 1 Mar., 1879; 20 Stat., 329.
Signs to be put up by distillers, rules concerning, and penalties for violation	R. S., s. 3279.
Carrying grain, etc., to distillery where there is no sign	R. S., s. 3279.
Failing to give bond for carrying on distillery	R. S., s. 3282. 1 Mar., 1879, s. 5; 20 Stat., 335.
Making and selling mash, wort, etc., at unauthorized distillery	R. S., s. 3283.
Manufacture of vinegar, regulations concerning and penalties for violation	R. S., s. 3283.

Chapter Four—Distilled Spirits—Continued.

Using still in forbidden hours	R. S., s. 3284.
Using material, etc., and removing spirits in absence of storekeeper	R. S., s. 3284.
Distiller refusing to draw off water and clean worm tubs	R. S., s. 3286. 1 Mar., 1879, s. 5; 20 Stat., 335.
Gauger employing distiller, etc., to use brands or perform his duties	R. S., s. 3290.
Gauger making false inspection, etc.	R. S., s. 3292.
Removing or concealing spirits contrary to law	R. S., s. 3296.
Transfer of spirits, etc., from one warehouse to another; rules concerning, and penalties for violation	3 Mar., 1877, s. 7; 19 Stat., 394.
Removal of fruit brandy to special warehouse; rules concerning and penalties for violation	3 Mar., 1877, s. 11; 19 Stat., 395. 18 Oct., 1888; 25 Stat., 560.
Removal of distilled spirits from distillery warehouse to general bonded warehouse; rules concerning, and penalties for violation	28 Aug., 1894, s. 59; 28 Stat., 566.
Officers of scientific institutions using alcohol withdrawn for scientific purposes for other purposes	R. S., s. 3297. 3 May, 1878; 20 Stat., 48.
Removal of distilled spirits from distillery warehouse to sorghum factories; rules concerning, and penalties for violation	3 Mar., 1891; 26 Stat., 1050.
Reusing stamps or bottles and other violations of law concerning same	3 Mar., 1897, s. 6; 29 Stat., 627.
Forging or counterfeiting stamps	3 Mar., 1897, s. 7; 29 Stat., 627.
Storekeeper removing, etc., packages or contents before being stamped or without permission of collector	R. S., s. 3300.
Making false entries in books of storekeeper or distiller	R. S., s. 3305.
Issuing false weights	R. S., s. 3306.
Using unregistered materials	R. S., s. 3306.
Carrying on business of distiller after time fixed in notice of suspension	R. S., s. 3310. 28 May, 1880, s. 7; 21 Stat., 147.
Breaking, etc., any lock, seal, etc., to furnace, still, etc.	R. S., s. 3311.
Revenue officer using, etc., stamps contrary to law	R. S., s. 3316.
Carrying on business of rectifier with intent, etc., to defraud the United States.	R. S., s. 3317. 1 Mar., 1879, s. 5; 20 Stat., 339.
Rules concerning the keeping of books by rectifiers and distillers, and penalties for violation	R. S., s. 3318. 1 Mar., 1879, s. 5; 20 Stat., 339.
Purchasing more than twenty gallons of distilled spirits from person other than authorized rectifier	R. S., s. 3319.
Rectifier or dealer refusing to make return of distilled spirits received and sent out	R. S., s. 3323. 16 July, 1892; 27 Stat., 200.

Chapter Four.—Distilled Spirits.—Continued.

Failing to efface and destroy stamps, etc.—R. S., s. 3324.

Transportation company carrying empty casks with uneffaced stamps—R. S., s. 3324.

Buying or selling empty casks having inspection marks—R. S., s. 3325.

Changing stamps; shifting spirits—R. S., s. 3326.

Affixing imitation stamps on packages of distilled spirits—8 Feb., 1875, s. 17; 18 Stat., 311.

Removing distilled spirits during unlawful hours—R. S., s. 3327.

Counterfeiting, altering, or reusing stamps on imitation wines—R. S., s. 3328.

Unlawfully using wine spirits, etc.—1 Oct., 1890, s. 44; 26 Stat., 622.

Using wine spirits which have not been tax-paid—1 Oct., 1890, s. 48; 26 Stat., 623.

Fraudulently claiming drawback on distilled spirits—R. S., s. 3330.

Relanding of distilled spirits—R. S., s. 3330.

Unlawful to use or sell alcohol withdrawn for denaturing, for purposes other than arts and industries—7 June, 1906, s. 2; 34 Stat., 217.

Chapter Five.—Fermented Liquors.

Owner, etc., of brewery evading tax, etc.—R. S., s. 3340.

Books of brewer; regulations concerning, and penalties for violation—R. S., s. 3340.

Brewer failing to affix and cancel stamps on packages containing fermented liquor—R. S., s. 3342. 3 Mar., 1875; 18 Stat., 484.

Affixing fraudulent stamp—R. S., s. 3342. 3 Mar., 1875; 18 Stat., 484.

Selling, removing, etc., fermented liquors in packages without stamp, or with false stamp, or with twice-used stamp—R. S., s. 3343.

Withdrawing fermented liquor from package without destroying or defacing stamp—R. S., s. 3344.

Removing lager beer from depot or warehouse without affixing stamp—R. S., s. 3345.

Making, using, etc., false stamp, die, or permit—R. S., s. 3346. 1 Mar., 1879, s. 5; 20 Stat., 340.

Using stamp fraudulently—R. S., s. 3346. 1 Mar., 1879, s. 5; 20 Stat., 340.

Removing name of manufacturer on package—R. S., s. 3349.

Person other than owner removing stamp on package of fermented liquor—R. S., s. 3353.

Withdrawing fermented liquor from unstamped package for bottling, or unlawfully bottling on brewery premises—R. S., s. 3354. 18 June, 1896; 26 Stat., 161.

Chapter Six.—Tobacco, snuff, and opium.

Tobacco manufacturer failing to procure or post certificate—R. S., s 3355. 1 Mar. 1879, s. 14; 20 Stat., 344.

Chapter Six.—Tobacco, snuff, and opium—Continued.

Tobacco or snuff manufacturer failing to give bond	R. S., s. 3355. 1 Mar., 1879; s. 14; 20 Stat., 344.
Manufacturer failing to put up sign	R. S., s. 3356.
Manufacturer failing to give annual inventory	R. S., s. 3358.
Books of dealers in leaf tobacco; rules concerning, and penalties for violation	R. S., s. 3360. 1 Mar., 1879, s. 14; 20 Stat., 345.
Selling or offering for sale tobacco not put up in packages and stamped	R. S., s. 3363. 1 Oct., 1890, s. 31; 26 Stat., 619.
Purchasing tobacco or snuff not branded or stamped	R. S., s. 3366.
Manufacturing tobacco on shares, or by one person for another; rules concerning, and penalties for violation	R. S., s. 3370.
Tobacco and snuff; rules governing the removal and sale of, and penalties for violation	R. S., s. 3372.
Removing tobacco from manufactory or offering for sale, etc., without stamp	R. S., s. 3374.
Affixing false stamp, etc.	R. S., s. 3375.
Failing to destroy stamps on empty packages	R. S., s. 3376.
Selling packages of tobacco or snuff having fraudulent stamp affixed	R. S., s. 3376.
Importers of cigars and tobacco failing to pay same tax as required of domestic manufacturers	R. S., s. 3377. 1 Mar., 1879, s. 14; 20 Stat., 346.
Officer of customs permitting packages of tobacco or snuff to pass from his hands before the provisions of law have been complied with	R. S., s. 3377. 1 Mar., 1879, s. 14; 20 Stat., 346.
Failure of dealers in, manufacturers and peddlers of, tobacco to register	5 Aug., 1909, s. 35; 36 Stat., 111.
Retail dealer in leaf tobacco refusing to keep books, or to furnish information; or making false entry, or false statement, etc.	5 Aug., 1909, s. 35; 36 Stat., 111.
Peddlers of tobacco failing to obtain and exhibit certificate	R. S., s. 3383. 1 Oct., 1890, s. 29; 26 Stat., 618.
Peddling tobacco unlawfully	R. S., s. 3384. 1 Mar., 1879, s. 15; 20 Stat., 346.
Relanding tobacco, snuff, etc., shipped for exportation	R. S., s. 3385. 8 Aug., 1882; 22 Stat., 372.
Rules concerning tax on opium manufactured in United States, and who may engage in manufacture	1 Oct., 1890, s. 36; 26 Stat., 621.
Rules governing the manufacture of opium	1 Oct., 1890, s. 37; 26 Stat., 620.
Rules concerning stamps to be affixed to opium imported into United States	1 Oct., 1890, s. 38; 26 Stat., 621.

Chapter Seven.—Cigars.

Manufacturing cigars without giving bond	R. S., s. 3387. 1 Oct., 1890, s. 35; 26 Stat., 620.
Cigar manufacturer failing to display sign	R. S., s. 3388.
Annual inventory; rules governing, and penalties for violation	R. S., s. 3390.
Cigars; rules relating to packing, and penalties for violation	R. S., s. 3392. 1 Oct., 1890, s. 32; 26 Stat., 619.
Manufacturer of cigars neglecting to affix label to box	R. S., s. 3393. 1 Mar., 1879, s. 16; 20 Stat., 348.
Packages of tobacco, snuff, cigars, and cigarettes not to contain lottery, etc., tickets	R. S., s. 3394. 5 Aug., 1909, s. 33; 36 Stat., 110.
Removing cigars from manufactory without properly packing	R. S., s. 3397. 1 Mar., 1879, s. 16; 20 Stat., 348.
Using counterfeit stamp, or making fraudulent use of stamp	R. S., s. 3397. 1 Mar., 1879, s. 16; 20 Stat., 348.
Cigars manufactured on shares, etc.; rules governing, and penalties for violation	R. S., s. 3399.
Forfeiture for selling cigars contrary to law, or for false entry, or for affixing forged stamp	R. S., s. 3400.
Officer permitting imported cigars to pass out of his hands without compliance with law by the owner	R. S., s. 3402.
Selling imported cigars not packed according to law	R. S., s. 3403.
Purchasing, etc., cigars not branded or stamped according to law	R. S., s. 3404.
Neglecting to destroy stamps on empty boxes or disposing of boxes with undestroyed stamps	R. S., s. 3406.

Chapter Eight.—Oleomargarine, adulterated butter, and filled cheese.

Rules governing the packing and selling of oleomargarine, and penalties for violation	2 Aug., 1886, s. 6; 24 Stat., 210.
Manufacturer neglecting to affix label on package containing oleomargarine	2 Aug., 1886, s. 7; 24 Stat., 210.
Officers of customs permitting packages of oleomargarine to pass out of his hands before owner's compliance with stamp regulations, etc.	2 Aug., 1886, s. 10; 24 Stat., 211.
Removing, defacing, etc., stamps, etc., on packages of oleomargarine	2 Aug., 1886, s. 15; 24 Stat., 212.
Manufacturer of oleomargarine attempting to defraud United States of tax	2 Aug., 1886, s. 17; 24 Stat., 212.
Purchasing, etc., oleomargarine not branded, etc., according to law	2 Aug., 1886, s. 11; 24 Stat., 211.
Purchasing, etc., oleomargarine from manufacturer who has not paid special tax	2 Aug., 1886, s. 12; 24 Stat., 211.

Chapter Eight—Oleomargarine, adulterated butter, and filled cheese—Continued.

Failing to destroy stamps on empty oleomargarine packages	2 Aug., 1886, s. 13; 24 Stat., 211.
Selling empty packages on which stamps are not destroyed	2 Aug., 1886, s. 13; 24 Stat., 211.
Manufacturer of oleomargarine failing to comply with laws	2 Aug., 1886, s. 12; 24 Stat., 212.
Selling adulterated butter in other than original packages	9 May, 1902, s. 4; 32 Stat., 195.
Manufacturer neglecting to affix specified label on adulterated butter	9 May, 1902, s. 4; 32 Stat., 195.
Failing to label "Renovated" or "Process" butter as such	9 May, 1902, s. 5; 32 Stat., 197.
Wholesale dealers in oleomargarine or in adulterated or renovated butter failing to keep books	1 Oct., 1890, s. 41; 26 Stat., 621. 9 May, 1902, s. 6; 32 Stat., 197.
Filled cheese; rules for packing and retailing and penalties for violation	6 June, 1896, s. 6; 29 Stat., 254.
Dealers in filled cheese neglecting to display sign	6 June, 1896, s. 7; 29 Stat., 255.
Manufacturer of filled cheese neglecting to affix label	6 June, 1896, s. 8; 29 Stat., 255.
Purchasing filled cheese not branded or stamped	6 June, 1896, s. 12; 29 Stat., 256.
Purchasing filled cheese from manufacturer who has not paid special tax	6 June, 1896, s. 13; 29 Stat., 256.
Failing to destroy stamps on empty packages of filled cheese	6 June, 1896, s. 14; 29 Stat., 256.
Notices, inventories, books, to be kept by manufacturers of oleomargarine, adulterated butter, and filled cheese; rules concerning, and penalties for violation	2 Aug., 1886, s. 5; 24 Stat., 210. 6 June, 1896, s. 5; 29 Stat., 254. 9 May, 1902, s. 14; 32 Stat., 195.

Chapter Nine.—Mixed flour.

Neglecting to brand, etc., packages of mixed flour	13 June, 1898, s. 37; 30 Stat., 467.
Mixed flour; rules governing the putting up and retailing of, and penalties for violation	13 June, 1898, s. 38; 30 Stat., 468.
Manufacturer of mixed flour neglecting to affix label and notice	13 June, 1898, s. 39; 30 Stat., 468.
Mixed flour; rules for packing in barrels, etc., and penalties for violation	13 June, 1898, s. 40; 30 Stat., 468.
Purchasing, etc., mixed flour that has not been branded, etc.	13 June, 1898, s. 42; 30 Stat., 469.
Purchasing mixed flour from maker, etc., who has not paid special tax	13 June, 1898, s. 43; 30 Stat., 469.
Exporter of mixed flour subject to same provisions as maker, etc.	13 June, 1898, s. 44; 30 Stat., 469.
Penalty for second offense of violation of laws concerning mixed flour	13 June, 1898, s. 48; 30 Stat., 470.

Chapter Ten.—Banks and bankers.

Banker neglecting to make monthly return	R. S., s. 3415.

Chapter Eleven.—Corporations.

Revenue officer, etc., divulging information obtained in discharge of duty in collection of corporation tax ------ 5 Aug., 1909, s. 38; 36 Stat., 116.

Chapter Twelve.—Playing cards.

Tax stamps on playing cards; rules governing and penalties for violation --- 28 Aug. 1894, s. 39; 28 Stat., 560.

Manufacturer of playing cards failing to register ---------- 28 Aug., 1894, s. 40; 28 Stat., 560.

Selling, etc., playing cards without affixing stamp ---------- 28 Aug., 1894, s. 43; 28 Stat., 562.

Removing stamp from playing cards, or fraudulently using stamp ---------- 28 Aug., 1894, s. 44; 28 Stat., 562.

Selling, etc., or concealing, etc., playing cards without stamps --------- 28 Aug., 1894, s. 45; 28 Stat., 562.

Manufacturing of playing cards failing to pay tax ---------- 28 Aug., 1894, s. 46; 28 Stat., 562.

Chapter Thirteen.—Provisions common to several objects of taxation.

Distillers, etc., and manufacturers of tobacco, etc., failing to do things required, and doing things forbidden by law - ----------R. S., s. 3456.

Inclosing lottery tickets, etc., in packages of tobacco, etc. ---------- 24 July, 1897, s. 10; 30 Stat., 206. 1 July, 1902, s. 2; 32 Stat., 715.

Fraudulently claiming drawback ------R. S., s. 3443. 8 Feb., 1875, s. 25; 18 Stat., 312.

Removing liquor or wines under other than trade names ----------R. S., s. 3449.

Removing, concealing, etc., articles with intent to evade United States tax ----R. S., s. 3450.

Fraudulently executing documents required by internal-revenue law ------R. S., s. 3451.

Having property in possession with intent to sell in fraud of law, or to evade taxes ----------R. S., s. 3452.

Selling, purchasing, etc., empty stamped packages - ----------R. S., s. 3455.

Manufacturing boxes, barrels, etc., unlawfully stamped ----------R. S., s. 3455.

Forging or counterfeiting stamps, dies, or plates; using forged or counterfeited stamps, dies, or plates; cutting, tearing, etc., impression of stamp, die, or plate, or fraudulently using same; having stamps, dies, or plates in possession unlawfully ---------- R. S., s. 3429. 1 Mar., 1879, s. 17; 20 Stat., 349. 28 Aug., 1894, s. 42; 28 Stat., 561. 13 June, 1898, s. 8; 30 Stat., 452.

TITLE XXVIII.

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Chapter One.—Organization and powers.

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Chapter Two.—Circulating notes.

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Chapter Three.—Regulation of the banking business.

Holding United States notes as collateral -- R. S., s. 5207.
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TITLE XXIX.

THE PUBLIC MONEYS.

Chapter One.—Custody.

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Clerk acting as assistant treasurer subject to same penalties ---------- R. S., s. 3613.
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THE PUBLIC DEBT.

Counterfeiting, etc., certificates of indebtedness ---------- 13 June, 1898, s. 32; 30 Stat., 466.

TITLE XXXI.

DEBTS AND CLAIMS.

Chapter One.—Collection and payment.

Making false claim against Government -- R. S., s. 3490.

TITLE XXXII.

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Officer making contract failing to make return thereof ---------- R. S., s. 3746.
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TITLE XXXIV.

THE PUBLIC HEALTH AND MARINE-HOSPITAL SERVICE.

Chapter Two.—Sanitation and quarantine.

Vessel from foreign port entering port in violation of quarantine law ------ 15 Feb., 1893, s. 1; 27 Stat., 449.
Vessel from foreign port to secure bill of health before sailing ---------- 15 Feb., 1893, s. 2; 27 Stat., 450.

Chapter Two.—Sanitation and quarantine—Continued.

Vessel or person entering within limits of quarantine grounds or stations or departing therefrom without permission — 19 June, 1906, s. 4; 34 Stat., 300.

Owner or master of vessel violating rule regulating inspection of vessels or making false statement as to sanitary conditions of vessel — 19 June, 1906, s. 4; 34 Stat., 300.

Person trespassing on quarantine reservation or vessel entering in violation of quarantine — 1 Aug., 1888; 25 Stat., 355.

Violating regulation for suppressing contagious diseases — 27 Mar., 1890, s. 1; 26 Stat., 31.

Quarantine officer or person employed in service violating regulation for preventing spread of contagious disease — 27 Mar., 1890, s. 2; 26 Stat., 31.

Common carrier or officer or agent thereof violating quarantine law or regulation — 27 Mar., 1890, s. 3; 26 Stat., 32.

TITLE XXXVII.

FOREIGN RELATIONS.

Violating safe-conduct or assaulting public minister — R. S., s. 4062.

Suing out writ or process, etc., against public minister — R. S., s. 4064.

Failing to appear or refusing to testify in suit pending in foreign country — R. S., s. 4073.

Issuing false passport, etc. — R. S., s. 4078; 14 June, 1902, s. 3; 32 Stat., 386.

Murder, and insurrection against certain countries — R. S., s. 4102.

TITLE XXXVIII.

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Chapter One.—Officers and agencies.

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Employees in Indian affairs trading with Indians — R. S., s. 2078.

Chapter Two.—Performance of treaty obligations.

Receiving money from Indians under prohibited contracts — R. S., s. 2105.

Chapter Three.—Government and protection.

Sending seditious message to Indians — R. S., s. 2111.

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Corresponding with foreign nations to incite Indians to war — R. S., s. 2113.

Attempting to negotiate treaty with Indians without authority — R. S., s. 5394.

Driving stock to feed on Indian lands — R. S., s. 2117.

Settling on or surveying Indian lands — R. S., s. 2118.

Chapter Four.—Government of Indian countries.

Purchasing cattle of Indians without consent of agent	4 July, 1884; 23 Stat., 94.
Residing in Indian Country as trader without a license	R. S., s. 2133. 31 July, 1882; 22 Stat., 179.
Foreigner going into Indian country without passport	R. S., s. 2134.
Purchasing certain prohibited articles from Indians	R. S., s. 2135.
Hunting on Indian lands	R. S., s. 2137.
Removing cattle, etc., from Indian country	R. S., s. 2138.
Selling intoxicating liquors to Indians	R. S., s. 2139. 30 Jan., 1897; 29 Stat., 506
Operating a distillery in Indian country	R. S., s. 2141.
Assaulting an Indian or other person	R. S., s. 2142.
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TITLE XXXIX.

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TITLE XLI.

COPYRIGHTS.

Failure of proprietor of copyright to deposit with Register of Copyrights copies of copyrighted words	4 Mar., 1909, s. 13; 35 Stat., 1078.
Making false affidavit, etc., for purpose of obtaining registration of copyright	4 Mar., 1909, s. 17; 35 Stat., 1079.
Willfully infringing copyright for profit	4 Mar., 1909, s. 28; 35 Stat., 1082.
Fraudulently giving notice of copyright upon uncopyrighted article, or knowingly issuing or selling article bearing such false notice	4 Mar., 1909, s. 29; 35 Stat., 1082.

TITLE XLII.

PENSIONS.

Chapter One.—Wars prior to eighteen hundred and sixty-one.

Making false oath concerning Indian war pensions	27 July, 1892, s. 3; 27 Stat., 282.

Chapter Five.—Applications and attorneys.

Making false affidavits, certificates, vouchers, etc.	R. S., s. 4746. 7 July, 1898; 30 Stat., 718.
Attorney or agent charging unlawful fee or withholding pension from pensioner	27 June, 1890, s. 4; 26 Stat., 183. 19 Apr., 1908, s. 3; 35 Stat., 64.

Chapter Five.—Applications and attorneys—Continued.

Agent or attorney charging unlawful fee for securing increase of pension ——— 3 Mar., 1891; 26 Stat., 1082.

Charging excessive fees in pension or bounty land cases ——— R. S., s. 5485. 4 July, 1884, s. 4; 23 Stat., 101.

Receiving compensation for securing legislation ——— 10 Mar., 1902; 32 Stat., 62. 24 Apr., 1906; 34 Stat., 133. 28 May, 1908, s. 1; 35 Stat., 419.

Claiming fee, etc., for securing pension for army nurse ——— 5 Aug., 1892; 27 Stat., 349.

Chapter Eight.—General provisions.

Guardian, etc., embezzling pension of ward ——— R. S., ss. 4783, 5486. 10 Feb., 1891; 26 Stat., 746.

Claim agents withholding discharge papers without consent ——— 21 May, 1872; 17 Stat., 137.

TITLE XLIV.

TERRITORIES AND INSULAR POSSESSIONS.

Chapter One.—Provisions common to all the Territories.

Owners of coal mines failing to comply with regulations concerning machinery, ventilation, etc. ——— 3 Mar., 1891, s. 7; 26 Stat., 1105.

Employing children in mines ——— 3 Mar., 1891, s. 12; 26 Stat., 1105.

Chapter Two.—New Mexico, Arizona and Oklahoma.

Railroads failing to have stations at town sites ——— 8 Aug., 1894, ss. 1, 2; 28 Stat., 263.

Chapter Three.—Alaska.

Clerk of court failing to account for fees received ——— 6 June, 1900, s. 16; 31 Stat., 328.

Person appointed road overseer refusing to serve ——— 27 Apr., 1904; 33 Stat., 392.

Road overseer failing to deliver records, etc., to successor ——— 27 Apr., 1904; 33 Stat., 392.

Persons failing to work on roads, etc. ——— 27 Apr., 1904; 33 Stat., 392.

Persons refusing to do reasonable day's work, etc. ——— 27 Apr., 1904; 33 Stat., 393.

Road overseer failing to perform duties ——— 27 Apr., 1904; 33 Stat., 393.

Chapter Six.—The Philippine Islands.

Employing slave labor ——— 1 July, 1902, s. 74; 32 Stat., 709.

TITLE XLV.

RIVERS AND HARBORS.

Chapter One.—Improvements.

Failing to furnish shipping statistics to persons in charge of harbor works ——— 8 Feb., 1891; 26 Stat., 766

Chapter Two.—Obstructions to navigation.

Regulations concerning the construction of bridges, wharves, etc., and penalties for violation	3 Mar., 1899, s. 12; 30 Stat., 1151. 20 Feb., 1900; 31 Stat., 32.
Violating rules of Secretary of War concerning dumping of refuse in navigable waters	19 Sept., 1890, s. 6; 26 Stat., 453. 18 Aug., 1894, ss. 6, 7, 8; 28 Stat., 363. 3 Mar., 1899, s. 13; 30 Stat., 1152.
Depositing refuse in navigable waters; obstructing channels, etc.	3 Mar., 1899, s. 16; 30 Stat., 1153.
Rules concerning drawbridges, and penalties for violation	18 Aug., 1894, s. 5; 28 Stat., 362. 13 June, 1902, s. 6; 32 Stat., 374.
Rules concerning the use of canals, and penalties for violation	18 Aug., 1894, s. 4; 28 Stat., 362. 13 June, 1902, s. 11; 32 Stat., 374.
Rules concerning floating timber and logs, and penalties for violation	9 May, 1900, s. 2; 31 Stat., 172.

Chapter Three.—Provisions applicable to particular rivers, harbors, and canals.

Violating rules for protecting South Pass, Mississippi River	11 Aug., 1888, s. 5; 25 Stat., 424. 19 Sept., 1890, s. 3; 26 Stat., 452.
Violating rules for protecting reservoirs at headwaters of Mississippi River	11 Aug., 1888; 25 Stat., 419.
Violating regulations for protecting certain anchorage grounds	16 May, 1888, s. 2; 25 Stat., 151. 6 Feb., 1893, s. 2; 27 Stat., 431. 6 June, 1900, s. 2; 31 Stat., 682.
Violating regulations for anchorage of vessels in St. Marys River	6 Mar., 1896, s. 3; 29 Stat., 54. 26 Apr., 1906, s. 1; 34 Stat., 136.
Refusing to obey instructions of harbormaster at Washington, D. C.	2 Mar., 1895, s. 2; 28 Stat., 741.
Depositing refuse, etc., in Potomac River	19 May, 1896, s. 3; 29 Stat., 127.
Willful violation of regulations for navigation of South and Southwest passes of Mississippi River	3 Mar., 1909, s. 5; 35 Stat., 818.

Chapter Four.—New York Harbor

Depositing refuse in New York Harbor	29 June, 1888, s. 1; 25 Stat., 209.
Master, etc., of vessel, towing scow, etc., loaded with refuse	29 June, 1888, s. 2; 25 Stat., 209.
Moving scow, etc., loaded with refuse without permit	29 June, 1888, s. 3; 25 Stat., 209. 18 Aug., 1894, s. 3; 28 Stat., 360.

Chapter Four—New York Harbor—Continued.

Dumping refuse, etc., in other place than specified in permit	29 June, 1888, s. 3; 25 Stat., 209. 18 Aug., 1894, s. 3; 28 Stat., 361. 28 May, 1908, s. 3; 35 Stat., 426.
Bribing inspector	29 June, 1888, s. 3; 25 Stat., 209. 18 Aug., 1894, s. 3; 28 Stat, 362.
Failing to indorse and return permit	28 June, 1888, s. 3; 25 Stat., 209. 18 Aug., 1894, s. 3; 28 Stat., 362.
Violating rules concerning disposition of dredged matter	28 June, 1888, s. 4; 25 Stat., 209.
Fishing for shellfish, or interfering with navigation in New York Harbor	18 Aug., 1894, s. 2; 28 Stat., 360.

Chapter Six.—California Debris Commission.

Injuring, etc., any dam or work erected under the provisions of this title and chapter	1 Mar., 1893, s. 22; 27 Stat., 510.
Mining by hydraulic process so as to injure navigable waters	1 Mar., 1893, s. 22; 27 Stat., 510.

TITLE XLVI.

THE POSTAL SERVICE.

Chapter Two.—City, rural, and immediate delivery.

Special-delivery messenger deemed postal employee and to be subject to same penalties	4 Aug., 1886, s. 4; 24 Stat., 221. 3 Mar., 1903, s. 4; 32 Stat., 1176.

Chapter Eight.—Carrying the mail.

Surety on bond of bidder for carrying the mail willfully swearing falsely	R. S., s. 3964. 11 Aug., 1876, s. 246; 19 Stat., 129.
Combining to prevent bids for carrying the mail	R. S., s. 3950.

TITLE XLVII.

COMMERCE AND NAVIGATION.

Chapter One.—Registry and recording.

Master making false oath to secure registration of vessel	R. S., s. 4144.
Failing to deliver up certificate when required	R. S., s. 4146. 16 Jan., 1895, s. 2; 28 Stat. 624.
Failing to have tonnage number marked on vessel, etc.	R. S., s. 4153. 19 June, 1886, s. 5; 24 Stat., 81.

Chapter One—Registry and recording—Continued.

Failing to provide space for crew in vessel	3 May, 1897, s. 2; 29 Stat., 743.
Failing to surrender certificate granted purchaser	R. S., s. 4160.
Failing to surrender certificate granted agent	R. S., s. 4162.
Failing to surrender certificate obtained upon loss of original	R. S., s. 4168.
Failing to register anew when required	R. S., s. 4169.
Failing to report change of master	R. S., s. 4171.
Failing to have number carved, etc., on beam	R. S., s. 4177. 19 June, 1886, s. 6; 24 Stat., 81.
Rules governing painting of name on stern of vessel, and penalty for violations	R. S., s. 4178. 20 Jan., 1897, s. 1; 29 Stat., 491.
Making false register, certificate of registry, or giving false information as to description of vessel, etc.	R. S., s. 4187.
Officers neglecting duties	R. S., s. 4188.
Making or using forged sea letters, passports, certificates of registry, etc.	R. S., s. 4191.

Chapter Two.—Clearance and entry.

Vessel departing from foreign port without delivering manifest and obtaining clearance	R. S., s. 4197.
Master of foreign vessel failing to deposit papers with consul, etc., on arrival	R. S., s. 4209.
Foreign consul delivering papers to master before clearance	R. S., s. 4211.
Master failing to furnish statement to collector of services rendered by consul	R. S., s. 4213. 26 June, 1884, s. 13; 23 Stat., 56.
Pleasure yachts, etc., engaging in trade, and otherwise violating laws	R. S., s. 4146. 16 Jan., 1895, ss. 4-6; 28 Stats, 625.

Chapter Four.—Emigrant vessels.

Rules concerning compartments for emigrants, and penalties for violation	2 Aug., 1882, s. 1; 22 Stat., 186.
Rules and regulations concerning berths for emigrants, and penalties for violation	2 Aug., 1882, s. 2; 22 Stat., 186.
Rules concerning ventilation, hygiene, etc., of passenger decks, and penalties for violation	2 Aug., 1882, s. 3; 22 Stat., 187.
Rules governing food, meals, etc., and penalties for violation	2 Aug., 1882, s. 4; 22 Stat., 188.
Rules concerning hospital compartment, surgeon, medicines, etc., and penalties for violation	2 Aug., 1882, s. 5; 22 Stat., 188.
Rules concerning discipline and cleanliness, and penalties for violation	2 Aug., 1882, s. 6; 22 Stat., 188.
Officers, seamen, etc., visiting passengers apartments	2 Aug., 1882, s. 7; 22 Stat., 189.
Rules for carrying explosives, horses and cattle, etc., and penalties for violation	2 Aug., 1882, s. 8; 22 Stat., 189.

Chapter Four.—Emigrant vessels—Continued.

Master permitting the board of vessel by other than specified persons	2 Aug., 1882, s. 19; 22 Stat., 189. 31 Mar., 1900, ss. 1, 2; 31 Stat., 58.
Rules of Secretary of Commerce and Labor concerning boarding of vessels, and penalties for violation	2 Aug., 1882, s. 9; 22 Stat., 189. 31 Mar., 1900, ss. 1, 2; 31 Stat., 58.
Master refusing to pay ten dollars in each case of death at sea	2 Aug., 1882, s. 10; 22 Stat., 190.
Vessel leaving port before being duly cleared by collector	2 Aug., 1882, s. 12; 22 Stat., 190.

Chapter Five.—Liability of vessels.

Shipping inflammable material in vessel	R. S., s. 4288.
Inserting in bill of lading, etc., clause relieving from liability	13 Feb., 1893, ss. 1, 7; 27 Stat., 445.
Inserting covenants in bill of lading, etc., avoiding exercise of due diligence	13 Feb., 1893, s. 2; 27 Stat., 445.
Rules concerning bills of lading, and penalties for violation	13 Feb., 1893, ss. 4, 7; 27 Stats., 445.
Refusing to issue bill of lading on demand	13 Feb., 1893, s. 5; 27 Stat., 446.

Chapter Six.—Log books.

Neglecting to keep up log book in manner required, or making entry more than 24 hours after arrivals, etc.	R. S., s. 4292.

Chapter Nine.—Vessels engaged in foreign commerce.

Vessel departing without passport	R. S., s. 4307.
Master failing to deposit ship's papers with consul	R. S., s. 4310.

Chapter Ten.—Vessel engaged in domestic commerce.

Rules for exchange of enrollment and register when vessel in another district, and penalty for violation	R. S., s. 4323.
Master failing to deliver license at expiration	R. S., s. 4325. 24 Apr., 1906, s. 2; 34 Stat., 136.
Owner failing to have name of vessel painted on stern	R. S., s. 4334. 26 June, 1884, s. 21; 23 Stat., 58.
New master failing to report change of master	R. S., s. 4335.
Master not exhibiting enrollment or license when required	
Foreign vessels transporting passengers between United States ports	R. S., s. 4336. 17 Feb., 1898, s. 2; 30 Stat., 248.
Foreign vessels carrying passengers between United States and Philippines	30 Apr., 1906, s. 2; 34 Stat., 154.
Vessel departing without having left duplicate manifest of lading; master liable	R. S., s. 4350.

Chapter Ten—Vessel engaged in domestic commerce—Continued.

Master of vessel containing certain goods failing to deliver up manifest before unlading, etc. ---------- R. S., s. 4352.

Vessel proceeding without manifest and permit; master liable ---------- R. S., s. 4354.

Master of vessel under twenty tons failing to deliver up manifest ---------- R. S., s. 4356.

Master of vessel failing to exhibit manifest on arrival; additional penalty if distilled spirits on board; refusing to answer interrogatories truly ---------- R. S., s. 4360.

Refusing to deliver up permit for merchandise to be transported inland, etc. -- R. S., s. 4363.

Fishing vessels, permitted to land at foreign ports, failing to deliver manifests and entries ---------- R. S., s. 4364.

Master neglecting to report when vessel puts into port other than destination -- R. S., s. 4366.

Master of foreign vessel bound coastwise failing to deliver duplicate manifests, etc.; refusing to swear to verity of manifest, etc. ---------- R. S., s. 4367.

Master of foreign vessel bound coastwise failing to deliver manifest to collector on arrival; failing to swear to verity of manifest; failing to deliver permit ---------- R. S., s. 4368.

Vessel entitled to do documented trading without a license ---------- 19 June, 1886, s. 7; 24 Stat., 81.

Making illegal enrollment or license; giving false information as to vessel to be enrolled or licensed ---------- R. S., s. 4373.

Failing or refusing to perform duties prescribed by this chapter ---------- R. S., s. 4374.

Forging or altering enrollment, license, etc. ---------- R. S., s. 4375.

Obstructing officers ---------- R. S., s. 4376.

Chapter Eleven.—Vessels engaged in fisheries.

Fisherman deserting or absconding himself from vessel ---------- R. S., s. 4392.

Chapter Twelve.—Inspection of steam vessels.

Inspection of sea-going barges; requirements before registry; penalty for violation, etc. ---------- 28 May, 1908, ss. 10-13; 35 Stat., 428.

Pilot, mate, or master, etc., violating regulations relating to passing of vessels ---------- R. S., s. 4413. 7 June, 1897, s. 5; 30 Stat., 103.

Inspector serving without specified qualifications ---------- R. S., s. 4416. 3 Mar., 1905, s. 2; 33 Stat., 1029.

Carry passengers and gunpowder contrary to law ---------- R. S., s. 4424.

Inspector certifying falsely touching steam vessels ---------- R. S., s. 4425.

Improperly constructing boilers ---------- R. S., s. 4429. 7 Aug., 1882; 22 Stat., 310.

Chapter Twelve.—Inspection of steam vessels—Continued.

Affixing fraudulent, etc., stamp to boiler plate	R. S., s. 4430. 22 Jan., 1894; 28 Stat., 28.
Counterfeiting stamps prescribed for boiler iron or steel plates; falsely marking iron or steel plates	R. S., s. 4432.
Obstructing safety valve, etc.	R. S., s. 4437.
Employing certain persons who are not licensed by inspectors	R. S., s. 4438. 25 Jan., 1907; 34 Stat., 864. 28 May, 1908, s. 2; 35 Stat., 425.
Making false oath; changing certificate	R. S., s. 4445. 23 Mar., 1900; 31 Stat., 50.
Neglecting to place license where it can be seen	R. S., s. 4446. 19 Feb., 1907; 34 Stat., 897.
Navigating vessel after notice to make repairs	R. S., s. 4454.

Chapter Thirteen.—Transportation of passengers and merchandise.

Navigating vessel with less than required number of licensed officers and men	R. S., s. 4463. 2 Apr., 1908, s. 1; 35 Stat., 55.
Violating rules governing regattas or marine parades	28 Apr., 1908, s. 4; 35 Stat., 69.
Failing to keep passenger list	R. S., s. 4468. 28 May, 1908, s. 4; 35 Stat., 425.
Unlawfully carrying cotton or hemp	R. S., s. 4473.
Rules concerning use of petroleum as fuel and penalties for violation	R. S., s. 4474. 18 Oct., 1888; 25 Stat., 564.
Shipping or attempting to ship dangerous articles not duly marked or packed	R. S., s. 4476.
Failing to provide proper stairways	R. S., s. 4484.
Failure to keep sufficient watchmen on vessel to guard against fire and other dangers	R. S., s. 4478.
Overcrowding or occupying passenger space with freight, etc.	R. S., s. 4485.
Manufacturing or selling, etc., life-preservers unlawfully constructed; manufacturing or selling, etc., inefficient life-preservers, etc.	R. S., s. 4488. 3 Mar., 1905, s. 3; 33 Stat., 1024.
Owner neglecting or refusing to carry life-boats, rafts, life-preservers, etc.	R. S., s. 4489. 2 Mar., 1889, s. 2; 25 Stat., 1012. 11 Apr., 1892; 27 Stat., 16.
Barges carrying passengers failing to have fire buckets, axes, etc.	R. S., s. 4492.
Failing to keep on board and to deliver to passengers requesting same, copies of chapters twelve and thirteen of this title	R. S., s. 4494.
Failing to keep name of steam vessel painted in designated places	R. S., s. 4495.
Customs officer negligently or intentionally failing to require name of vessel to be placed on pilot house or wheelhouse	R. S., s. 4497.

Chapter Thirteen—Transportation of passengers and merchandise.—Continued.

Persons, etc., owning, etc., steam vessels failing to comply with terms of chapter of this title ---------- R. S., s. 4499; 3 Mar., 1905, s. 4; 33 Stat., 1025.

Penalty for violating any of the provisions of chapters twelve and thirteen of this title, not otherwise specifically provided for ---------- R. S., s. 4500.

Chapter Fourteen.—Rules of navigation.

Rules for the prevention of collisions on inland waters, and penalty for violation ---------- 7 June, 1897, s. 3; 30 Stat., 102.

Rules to be established by supervising inspectors, and penalty for violation ---------- 7 June, 1897, s. 2; 30 Stat., 102.

Rules for the prevention of collisions on inland waters, and penalty against vessel for violation ---------- 7 June, 1897, s. 4; 30 Stat, 103.

Rules to prevent collisions on the Great Lakes, and penalties for violation ---------- 8 Feb., 1895, s. 2; 28 Stat., 649.

Owners, agents, etc., failing to report accidents to collectors of customs ---------- 20 June, 1874, s. 10; 18 Stat., 128.

Owner, etc., failing to report probable loss of vessel, etc. ---------- 20 June, 1874, s. 11; 18 Stat., 128.

Navigating vessel without proper signal lights ---------- 19 Feb., 1895, s. 3; 28 Stat., 672; 7 June, 1897, s. 5; 30, Stat. 103.

Failing to render assistance to vessel in distress ---------- 4 Sept., 1890, s. 2; 26 Stat., 425.

Chapter Fifteen.—Reciprocal privileges.

Opposing an officer of the United States in enforcing certain rules concerning foreign vessels that have violated proclamation ---------- 19 June, 1886, s. 17; 24 Stat., 82.

Persons of British North America violating rules and proclamations of President concerning fishing rights in American waters ---------- 3 Mar., 1887; 24 Stat., 475.

TITLE XLVIII.

MERCHANT SEAMAN.

Chapter One.—Shipping commissioners.

Unauthorized person acting as shipping commissioner ---------- R. S., s. 4504.

Rules concerning indenture of apprentices and penalties for violation ---------- R. S., s. 4510.

Vessel carrying person to sea as one of crew without agreement ---------- R. S., s. 4514.

Master engaging seamen contrary to law ---------- R. S., s. 4515.

Master engaging seamen in foreign port without complying with provisions of law ---------- R. S., s. 4518.

Master failing to post copy of shipping agreement ---------- R. S., s. 4519.

Master shipping seamen without articles ---------- R. S., s. 4521.

Shipping commissioner, etc., taking unlawful fees ---------- R. S., s. 4595.

Chapter Two.—Wages and effects.

Paying seamen advance wages	21 Dec., 1898, s. 24; 30 Stat., 763. 26 Apr., 1904; 33 Stat., 308.
Demanding, etc., remuneration for providing seaman without employment	21 Dec., 1898, s. 24; 30 Stat., 763. 26 Apr., 1904; 33 Stat., 308.
Falsely claiming to be relative of seaman	21 Dec., 1898, s. 24; 30 Stat., 763.
Master failing to take charge and account for deceased seaman's effects	R. S., s. 4050.
Shipping commissioner failing to deliver deceased seaman's effects to district court	R. S., s. 4543.

Chapter Three.—Discharge.

Master discharging seaman in manner other than that provided by law	R. S., s. 4549.
Master failing to deliver account of wages to discharged seaman or shipping commissioner	R. S., s. 4550.
Master failing to give discharged seaman certificate of discharge	R. S., s. 4551.

Chapter Four.—Protection and relief.

Owner, master, etc., failing to appear or to produce books, etc., before shipping commissioner	R. S., s. 4555.
Master failing to apply for surveyors upon complaint that ship is unseaworthy	R. S., s. 4550. 21 Dec., 1898, s. 7; 30 Stat., 757.
Sending, etc., an American ship to sea in an unseaworthy condition	R. S., s. 4561. 21 Dec., 1898, s. 11; 30 Stat., 758.
Master failing to pay charges of inspection and wages	R. S., s. 4563.
Master or owner failing to provide sufficient quantity of stores	R. S., s. 4564. 21 Dec., 1898, s. 12; 30 Stat., 759.
Master failing to provide suitable provisions and water, after complaint	R. S., s. 4565.
Master refusing seaman permission to go ashore to make complaint	R. S., s. 4567.
Owner failing to provide vessel with slop chest	26 June, 1884, s. 11; 23 Stat., 56. 19 June, 1886, s. 13; 24 Stat., 82.
Owner or master failing to provide vessel with medicines, etc.	R. S., s. 4570.
Master neglecting to serve out lime juice, etc.	R. S., s. 4570.
Master failing to keep on board and use proper weights and measures	R. S., s. 4571.
Owner or master failing to provide warm clothing and room for use of seamen in cold weather	R. S., s. 4572. 21 Dec., 1898, s. 15; 30 Stat., 759.

Chapter Four—Protection and relief—Continued.

Rules concerning list of ship's crew, and penalties for violation	R. S., s. 4575.
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Refusing to join vessel or proceed to sea, etc.	R. S., s. 4596. 21 Dec., 1898, s. 19; 30 Stat., 760.
Wilfully disobeying any lawful command, etc.	R. S., s. 4596. 21 Dec., 1898, s. 19; 30 Stat., 760.
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Assaulting master or mate	R. S., s. 4596. 21 Dec., 1898, s. 19; 30 Stat., 760.
Damaging vessel or embezzling stores	R. S., s. 4596. 21 Dec., 1898, s. 19; 30 Stat., 760.
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Railroads not to carry products in which interested	29 June, 1906, s. 1; 34 Stat., 585.
Railroads to construct switches and to furnish cars to shippers	29 June, 1906, s. 1; 34 Stat., 585.
Making of special rate or giving of rebate unlawful	4 Feb., 1887, s. 2; 24 Stat., 379. 2 Mar., 1889, s. 2; 25 Stat., 857.
Undue preferences to persons, localities, and traffic prohibited	4 Feb., 1887, s. 3; 24 Stat., 380. 2 Mar., 1889, s. 2; 25 Stat., 857.
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