

UNITED STATES V. BROWN.

[1 Mason, 151.]²

Circuit Court, D. Massachusetts. Oct. Term, 1816.

PURCHASING ARMS FROM SOLDIER—STOLEN ARMS.

On an indictment under the act of March 16, 1802, c. 9, § 19 [2 Stat 136], for purchasing of a soldier "his arms," it must be proved, that the soldier was in the lawful possession of the arms, or had a special bailment of them, otherwise the indictment cannot be sustained. If the arms were stolen, the case is not within the act.

Indictment against the defendant [George Brown] for purchasing a soldier's arms, against the act of March 16, 1802, c. 9, § 19. Upon the trial, the evidence was that the defendant purchased a musket from a soldier, knowing him to be such, and that the soldier claimed the arms as his own. But it also appeared, that the musket was not lawfully in the possession of the soldier, but had been stolen by him from the arsenal of the United States, at Charlestown.

G. Blake, for the United States.

Wm. Austin, for defendant.

STORY, Circuit Justice. The act of congress declares, that every person, who shall purchase from a soldier his arms, uniform, clothing, or any part thereof, shall, on conviction, be liable to a limited fine or imprisonment at the discretion of the court having cognizance of the offence. To bring the case, within the statute, it is not necessary, that the arms should be strictly the absolute property of the soldier; for then the act would have no effect, as the arms used by the soldiers in the public service belong to the United States. It is sufficient, if the soldier have a special property therein by a bailment in the course of the service; or have a lawful possession, using them as his

own in the duties of the service. But if his possession be unlawful, or obtained by larceny, the arms are not in the sense of the act, "his arms." It may be a blot in the act (and unfortunately there are many blots in our Criminal Code) but it is competent only for the legislature to cure the defect

Verdict for plaintiff.

² [Reported by William P. Mason, Esq.]

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