

UNITED STATES V. DAMIANI ET AL.

District Court, N. D. Florida.

1869.

INTERNAL REVENUE—TOBACCO—DEALER—DEBT
FOR PENALTY—BURDEN OF PROOF—ACT JULY
20, 1868.

Held, that any person who keeps leaf tobacco for sale is a dealer, and a single sale is sufficient to fix his character as such; that if such dealer does not keep a book and make returns of his purchases and sales, as required by the 76th section of the act of July 20, 1868 [15 Stat. 158], he becomes liable to the penalty of five hundred dollars prescribed by that section; that in an action of debt for the penalty under that section the jury cannot find a greater sum than five hundred dollars, although the act fixes the penalty at not less than that sum. The plaintiff having proved sales of leaf tobacco by the defendants, and that said defendants had not paid the special tax as dealers in leaf tobacco, and had not procured or kept a book, as required by the act, so far as was known to the assessor of internal revenue, the burden of proof was, by such prima facie case, shifted upon the defendants to show that they had kept such book, and had made the proper returns therein; and, having failed so to do, the jury might infer that no such book was kept by them.

{Decided by FRASER, District Judge. Nowhere reported; opinion not now accessible. The above statement of the decision was taken from 11 Int. Rev. Rec. 5.]

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