

Case No. 15,664. UNITED STATES v. MCCRACKEN.
[3 Hughes, 344.]¹

Circuit Court, E. D. Virginia.

Jan. 10, 1878.

OBSTRUCTING MAIL—WHAT IS.

Under section 3995 of the Revised Statutes of the United States, *held*, that no offence is committed unless the mail is in transitu, and unless the horse or vehicle taken is employed in carrying the mail.

[Cited in *U. S. v. Sears*, 55 Fed. 270.]

On an indictment for obstructing the United States mail.

There were two indictments in this case, one of them charging that the defendant [M. McCracken] obstructed and retarded the passage of the mail by the detention of a horse, and the other for doing the same by the detention of a horse and carriage or sulky. The proof was that the mail-carrier took the mail to the defendant's livery stable in Fredericksburg, and was about to take out a horse which he was in the habit of using for carrying the mail to Orange Court-House, when the horse was held by the defendant for money due for keeping the horse. This was the gist of the testimony submitted to the jury. After the evidence was all in the judge asked if the district attorney thought it worth while to go on with the case, intimating that the evidence did not bring the act of the defendant within the terms of section 3995 of the Revised. Statutes of the United States, under which, the prosecution was instituted.

HUGHES, District Judge. The law declares that no one shall obstruct or wilfully retard the passage of the mail, or any carriage, or horse, or carrier, Carrying the same. It contemplates an obstruction while the mail is passing from one place to another, and the obstruction of a carriage and horse while engaged in carrying the mail, the mail being in transitu. The indictments under trial are for the offence just described, of obstructing and retarding a horse and vehicle in and while actually carrying the mail. Now this is a very different offence from that of preventing a horse from being-taken out of a stable to be used for the purpose of carrying the mail. This particular section of the law does not contemplate such an act, and therefore it is useless to go on with the ease. I would have to set aside the verdict if the jury should render one of guilty.

The prosecution submitted to a verdict of not guilty.

¹ [Reported by Hon. Robert W. Hughes, District Judge, and here reprinted by permission.]