

Case No. 15,769.

{13 Blatchf. 534.}²

UNITED STATES v. MILLARD.

Circuit Court, S. D. New York.

Dec 21, 1876.

INTERNAL REVENUE—POSSESSION OF CIGARS ON “WHICH TAX NOT PAID.

An indictment under section 3397 of the Revised Statutes charged that the defendant “did buy, receive and have in his possession” cigars on which the tax to which they were liable had not been paid, the statute using the words “buys, receives or has in his possession:” *Held*, that the averment was divisible, and that a conviction could be had on proof of possession alone.

UNITED STATES v. MILLARD.

Benjamin B. Foster, Asst. U. S. Dist. Atty.

Lucien Birdseye and Abram J. Dittenhoefer, for defendant

Before BENEDICT, District Judge.

This was an indictment [against Samuel H. Millard], under section 3397 of the Revised Statutes, charging that the defendant “did buy, receive and have in his possession” cigars on which the tax to which they were liable had not been paid. On the trial, it was held, that the averment was divisible, and that a conviction could be had on proof of possession alone, the statute using the words “buys, receives or has in his possession.”

² [Reported by Hon. Samuel Blatchford, District Judge, and nere reprinted by permission.]