

Case No. 16,086.

{1 Lowell, 319.}²

UNITED STATES V. PRESSY.

District Court, D. Massachusetts.

April, 1869.

PEDLERS—LICENSE AND SPECIAL TAX—INDICTMENT.

A pedler who has duly applied to the assessor for a license in April, is not indictable for carrying on business without payment of the special tax, between the 1st and 7th days of May, before the tax was, in the usual course of business, assessed upon him for that year, if he intended during that time to pay the tax when it should be assessed, although when the tax bill was presented him on the 21st of May he refused to pay it, having stopped business on the 7th.

The defendant {Samuel J. Pressy} was indicted under the seventy-third section of the act of 1864, as amended by that of July 13, 1866 (14 Stat. 113), for carrying on the trade or business of a pedler of the third class without paying the special tax imposed on that business by the same statute. The evidence tended to show that the defendant had duly paid his tax for 1867, and that in April, 1868, he duly applied to the assessor of internal revenue of his district to pay the special tax for that fiscal year, beginning with May 1, 1868; that four or five days afterwards he sold out his business, and had not carried it on since. The taxes were usually assessed about the 20th of May in each year, and the bills were sent in on the next day. The defendant's bill was sent him as usual, but he had neglected and refused to pay the tax, and was indicted in January, 1869.

M. F. Dickinson, Jr., Asst. U. S. Dist. Arty.

S. E. Floyd, for defendant

LOWELL, District Judge, ruled that if the defendant had been guilty only of a neglect or refusal to pay his tax after he had ceased to carry on the business, he was not, for that alone, liable to indictment under the section cited. That the offence described in the law was the carrying on a trade or business without payment of a tax, and if the defendant, when he carried on the business before his tax was levied, had no intent to defraud the government, he could not be lawfully convicted. His application to be assessed was all that he could do, or was bound to do, until the bill was rendered. So that, while many defendants had been rightly convicted under this section who had never been assessed for a tax, because the failure to assess them arose out of their own wrong in not making application to the assessor, and therefore they could not be heard to object the want of assessment; yet this stringent penalty was not intended for delinquent taxpayers merely as such, if they had been guilty of no act or omission at the time they carried on their business. The government officers, in adopting what appeared to be a reasonable and perhaps necessary practice of giving credit for the tax for twenty days while their lists were preparing, did not thereby expose all tradesmen to indictment who took advantage of that credit.

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The district attorney declined to go to the jury on the question of intent, and the defendant was acquitted.

² [Reported by Hon. John Lowell, LL. D., District Judge, and here reprinted by permission.]