

Case No. 16,415, UNITED STATES V. SULZBERGER ET AL.
[7 Int. Rev. Rec. 201.]

District Court, S. D. New York.

1868.

INTERNAL REVENUE LAW—REMOVAL OF WHISKY WITHOUT PAYING TAX—CONSPIRACY.

In the ease of the United States against Ferdinand Sulzberger, George Strauss, Charles Hartman, Jacob Fleischauer and Jacob Hess, for conspiring to remove whisky without paying tax, tried before Judge Blatchford in the United States district court, Mr. Phelps, for the government, argued from the evidence that there was abundant proof of the conspiracy charged. He cited the requirements of the law as to the notice to be given by distillers to the collector, the regulations as to the cistern-rooms of distilleries, &c. He then spoke of the peculiar situation and arrangement of the premises in question, as being strong prima facie evidence of intended fraud, and said the evidence of spirits having been removed on the night in question was irresistible, as the testimony showed that the still had been running from 6 o'clock on the morning of the day in question till near midnight, about 17 hours. The capacity of the still was 1,000 gallons in 24 hours, giving about 700 gallons in the time stated, while only 267 gallons were found in

the cisterns, leaving 433 gallons unaccounted for, except on the hypothesis of their removal to the rectifying establishment.

THE COURT, in charging the jury, cited the sections of the law applicable to the case, and said that to prove a conspiracy, such as charged, it was simply necessary for the jury to be satisfied that the defendants were acting in concert, or with a mutual understanding, for the purpose of preventing the spirits from being inspected and branded according to law, or for effecting their removal, without being inspected and branded according to law, to a place other than a bonded warehouse.

After the jury had retired, Assistant District Attorney Bell moved that the defendants be remanded to the custody of the marshal to await the result of the verdict.

This motion was opposed by Mr. Fullerton, counsel for the defendants, who argued that the defendants were out on bail, and were entitled to their liberty until the case was finally disposed of.

Mr. Bell held that the condition of the bail bond was fulfilled, and that whether that was so or not it was the universal practice in this district for the court to remand the defendants to the custody of the marshal after the case had gone to the jury.

THE COURT refused to grant the motion, and thereupon the defendants took their departure.

The jury returned a verdict of guilty against all the defendants but Jacob Hess, who was acquitted.

On Thursday Hartman and Fleischauer appeared in court, the latter having disappeared with the other defendants, except Hartman, since the verdict was rendered. Sulzberger and Strauss were called and their bail forfeited for non-appearance. Hartman and Fleischauer were then arraigned for judgment. Counsel for defendants presented to the court testimonials of Fleischauer's good character and also depositions of Jacob Hess and Fleischauer to the effect that *the* latter had no connection with, intention or knowledge of the removal, if any had been made, of spirits from the distillery.

THE COURT in passing sentence said substantially that the penalty incurred by the defendant was a fine of not less than \$1,000 and not exceeding \$10,000 and two years' imprisonment, at the discretion of the court. It was the duty of the court and all those engaged in the administration of the law to carry out its provisions, and by that means to suppress the demoralization that existed, and create a healthy public opinion in its stead. In the case of Fleischauer the Conviction should stand against him, but the sentence should be suspended and remain in force to be hereafter, if found necessary, enforced at any time, should the defendant transgress the law. The case of Charles Hartman was different. The sentence of the court in his case should be a fine of \$5,000 and ten days' imprisonment, and to be further detained in custody until the fine shall be paid. Hartman was then removed to prison and Fleischauer released.