

UNITED STATES *v.* AMBROSE.\**Circuit Court, S. D. Ohio.*

June, 1880.

## INDICTMENT—DESIGNATION OF OFFICER—ITEMS OF ACCOUNT—REV. ST. § 5438.

On demurrer to an indictment under section 5438, U.S. Rev. St. for making, as clerk of a United States court, false claims against the government.

SWAYNE, C. J. *Held:*

1. That it is sufficient to charge a presentation to the “First Auditor of the Treasury” without naming the person who held such office.
2. That the different items of an account may all be included in one count of the indictment, and that it is not necessary that there should be separate counts for each false item.
3. Section 5438, U. S. Rev. St., provides that “every person who makes or causes to be *made*, or presents or causes to be *presented*, for *payment or approval*,” etc., any claim against the government, knowing it to be false, etc., shall be guilty, etc. In the original statute, (12 St. at Large, 696, 698,) from which this section in the Revised Statutes is taken, a *semicolon* followed the word “*made*,” in the first clause, instead of the *comma* now there, and there was no comma after the word “*presented*,” whereas in the Revision there is. An indictment under this 5438th section, which charges that the accused did “unlawfully *make* a claim against the government of the United States,” well knowing the same to be false, etc., is insufficient. It should charge that the claim was made “*for payment or approval*.” The changes in the punctuation of the original statute have altered the meaning of this section, and the phrase “*for*

*payment or approval*" is a part of both the first and second clauses of the section.

\*Reported by Messrs. Florien Giaque and J. C. Harper, of the Cincinnati Bar.

This volume of American Law was transcribed for use on the Internet

through a contribution from [Stacy Stern](#). 