BARNES, Assignee, *v.* VETTERLEIN and others.*

(*Circuit Court, S. D. New York.* June 6, 1883.)

1. FRAUDULENT ASSIGNMENT UNDER SECTION 5129, REV. ST.
Proofs showed satisfactorily that defendant was in contemplation of insolvency at the time he assigned, and that the assignment to his wife and children was purely voluntary, and presumptively fraudulent under section 5129, Rev. St.

2. SAME—DISPOSITION OF FIRM PROPERTY BY ITS MEMBERS.
It is entirely competent for the members of a firm, as between themselves, to make such disposition of the firm property as they see fit.

In Bankruptcy.

Jas. K. Hill, for plaintiff.

T. M. Tyng, for defendants.

WALLACE, J. The proofs show satisfactorily that Theodore H. Vetterlein was in contemplation of insolvency at the time he assigned the policies of insurance upon the life of Taylor, and that the assignment of the policies for the benefit of his wife and children was purely voluntary, and presumptively fraudulent under section 5129 of the Revised Statutes. The proofs also show satisfactorily that these policies had become the assets of the firm composed of Theodore H. Vetterlein and Bernhardt Vetterlein, and neither Mr. Maurer nor Theodore J. Vetterlien had any real interest in them. If the policies had been assigned by the firm, the bill would be defective in omitting to allege the insolvency or contemplation of insolvency of the firm at the time. But it was entirely competent for the members of the firm, as between themselves, to make such disposition of the firm property as they saw fit. They did see fit to treat these policies as belonging to Theodore H. Vetterlein, by permitting him to transfer them as his own in trust for the benefit of his wife and children. There is no merit in the objections urged to the decree of the district court, and the conclusions of the learned district judge are approved

The decree is affirmed, with costs.

*Affirmed. See 8 Sup. Ct. Rep. 441.

UNITED STATES *v.* KALTMEYER.*

(*Circuit Court, E. D. Missouri.* March 31, 1883.)

1. INDICTMENT—INSTRUMENT ENTERING INTO THE GIST OF THE OFFENSE SHOULD BE SET OUT—EXCEPTIONS TO RULE.

   A bill of indictment for depositing for mailing a notice of where an article for the prevention of conception may be obtained, should set out the notice, unless it cannot be copied without great inconvenience, or is so obscene as to be unfit to go upon public records.

2. SAME.

   Where there is any reason for a failure to set the notice out, apparent upon the face of the papers or of the indictment, the court will consider it.

3. SAME—EVIDENCE.

   Where there has been a failure, without excuse, to set the instrument out in the indictment, it will not be admissible in evidence.

4. SENDING NOTICE OF WHERE ARTICLES TO PREVENT CONCEPTION MAY BE OBTAINED—REV. ST. § 3893—DECOY LETTERS—EVIDENCE.

   Whether mailing such a notice in an envelope addressed to a fictitious person, in response to a decoy letter from a detective, is an indictable offense, and whether such a notice taken from the post-office at the place to which it was addressd, by the writer of the decoy letter, is admissible in evidence against the party who sent it, at the trial of an indictment against him for depositing it in the mail, *quære.*

Indictment for depositing for mailing a notice of where an article to prevent conception could be obtained.

The notice was not set out in the indictment, and no excuse for the failure to set it forth was given. It was mailed in response to a decoy letter written by a detective, and was addressed to a fictitious person, in whose name the decoy letter was written. It was taken from the mail by the detective at the place to which it was addressed. At the trial it was offered in evidence by the government. The defendant objected to its admission, and the court rendered the following opinion:

William H. Bliss, for the United States.

Thomas C. Fletcher, for the defendant.

MCCRARY, J. In the case now on trial we have given such consideration as we could to the objections to the evidence offered. The first question is one which arises independently of the provisions of the statute under which the prosecution was instituted. It is as to whether it is necessary, in a case of this character, to set out in the bill of indictment the letter or notice which, it is averred, the defendant sent through the mails in violation of the statute. In this in-

*Reported by B. F. Rex, Esq., of the St. Louis bar.