

UNITED STATES *v.* CALHOUN.

*District Court, D. South Carolina.*

August 29, 1889.

INTERNAL REVENUE—SALE OF SPIRITUOUS LIQUORS BY APOTHECARY.

An apothecary, who *bona fide* uses spirituous liquors in the preparation of a medicine, to be used as such, and not as a beverage, does not violate Rev. St. U. S. § 3242, by not paying the special tax required of a retail liquor dealer.

Indictment for Selling Liquor without Payment of Special Tax.

*Abiel Lathrop*, Dist. Atty.

*A. H. Dean*, for defendant.

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SIMONTON, J., (*charging jury*.) The defendant, an apothecary, is charged with violating section 3242, Rev. St., being a retail liquor dealer without paying the special tax. It is not denied that he sold to the several persons, witnesses for the government, a compound of rye whisky and calisaya bark. The defense is that this was a medicine originally put up under a prescription of a physician. An apothecary who *bona fide* uses spirituous liquor exclusively in the preparation or making up of medicines need not pay the special tax. These are the questions you must answer in this case: In the sale made by defendant to the witnesses for the government, did he *bona fide* sell them the compound as medicine, and not as a beverage, or was the compound simply whisky in disguise? Is it a medicine to cure disease, or is it intended to gratify the thirst for drink? If it is a medicine, has it intoxicating quality? If so, was this known to defendant? Did he sell it knowing or having reason to know that it was purchased to be used as a beverage? If it was sold *bona fide* as a medicine, to be used as a medicine, defendant is not guilty.