

UNITED STATES v. BROWN.

Circuit Court, D. Vermont.

August 8, 1890.

OFFENSES AGAINST POSTAL LAWS.

Mailing a letter inclosed in an envelope, on which the words "Excelsior Collection Agency" are printed in very large full-faced capital letters, which occupy more than half the envelope, and are so placed as to be entirely separate from the direction to return to the sender, is a violation of 25 St. at Large, U. S. 496, c. 1039, which forbids mailing any envelope on which appears any delineation, epithet, or language calculated and intended by its terms, manner, or style of display to reflect injuriously on the character or conduct of another.

At Law. On demurrer to indictment.

Frank Plumley, Dist. Atty.

William P. Dillingham, for respondent.

WHEELER, J. By chapter 1039 of the Laws of the First Session of the Fiftieth Congress, 1888, (25 St. at Large, 496,) all matter otherwise mailable upon the envelope or outside cover or wrapper of which any delineations, epithets, terms, or language calculated by the terms, or manner, or style of display, and obviously intended to reflect injuriously upon the character or conduct of another, may be written, or printed, or otherwise impressed or apparent, is declared to be non-mailable; and depositing such matter for mailing or delivery is made punishable by fine of not more than \$5,000, or imprisonment at hard labor not more than five years, or both, at the discretion of the court. The respondent is indicted for depositing for mailing and delivery matter upon the envelope of which the words "Excelsior Collection Agency" were printed in large letters, and calculated, by the terms, manner, and style of display, and obviously intended, to reflect injuriously upon the character and conduct of the person addressed. He has demurred to the indictment, and raised the question whether those words are capable of being so displayed upon an envelope or wrapper of mail matter as to be calculated, and obviously intended, to reflect injuriously upon the character or conduct of another person. If they can be, they are well charged in the indictment to have been so displayed as to be so calculated and obviously intended. To make the matter non-mailable, and constitute the offense that the delineation is calculated and obviously intended to so reflect, must be apparent from an inspection of the envelope. The design and intention must appear from that, and not from extrinsic facts averred or shown. The reflection upon character or conduct must come from seeing the envelope. The question here is whether it would come

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from seeing this envelope addressed to a person as mail matter. The sending of letters with those words on the outside to a person would lead to the inference that the character, or conduct, or both, of the person sent to, in respect to the fulfillment of pecuniary obligations, was such as to make the sending necessary or justifiable, unless they should be so restricted by connection with other words as to show that they were used for directions to return if not called for, or other legitimate purpose, not referring to the person addressed. The manner of display might indicate clearly whether the words were placed there for injurious reflection upon that person, or for legitimate transmission of the contents of the envelope through the mails. The indictment shows that the manner of this display indicated intended reflection. The indictment, therefore, appears to be sufficient. Whether the display of the words upon the envelope would support the averments of the indictment would be a question of fact for a jury.

The respondent's counsel and the district attorney have submitted a sample envelope printed like the one in question, upon a suggestion that if, in the opinion of the court, it would warrant a verdict of guilty, the respondent would plead guilty in answering over upon the overruling of the demurrer, although he was ignorant of the statute, and innocent of all intention to violate any law. Upon this sample the words "Excelsior Collection Agency" are printed in very large full-faced capital letters, which occupy more than the upper half of the envelope; are separate from directions to return to the respondent if not called for, in the lower left-hand corner; and were obviously placed there to attract attention, and reflect delinquency in making payments upon the person sent to. The object probably was to make the person pay up to avoid repetition of the reflection. The depositing of mail matter for delivery with such words so displayed upon the envelope would seem clearly to constitute an offense within the act of 1888, which appears to be aimed at all use injurious to the feelings of others of the outside of mail matter. Demurrer overruled, the respondent to answer over.