

UNITED STATES *v.* GEE.*(District Court, W. D. Michigan, S. D. December, 1890.)*

POSTAL LAWS—OBJECTIONABLE MATTER ON WRAPPER.

Act Cong. Sept. 26, 1888, prohibiting the mailing of matter on the outside cover or wrapper containing language "calculated by its terms * * * and obviously intended to reflect injuriously upon the character or conduct of another," does not apply to a printed paper containing such language, which is not inclosed in a wrapper, but which is merely folded, and the postage stamps placed on the paper itself.

At Law.

Lewis G. Palmer, U. S. Atty., and *F. W. Stevens*, Asst. U. S. Atty.
H. P. Stewart and *H. J. Felker*, for defendant.

SEVERENS, J. Defendant was indicted for a violation of the act of congress of September 26, 1888, (25 St. at Large, p. 496, amended section 3,) which prohibits the mailing of matter upon the outside cover or wrapper of which is language "calculated by its terms * * * and obviously intended to reflect injuriously upon the character or conduct of another." The evidence introduced on the part of the government at the trial of the case showed that the defendant caused to be deposited in the post-office at Centreville, Mich., for mailing and delivery, a large number of four-page printed circulars, about the size of a sheet of note paper, upon all four pages of which was printed matter,—being an account of certain dealings between defendant and another; that these circulars, as deposited for mailing, had no separate wrapper or cover over them, but were folded twice into oblong shape, and the postage stamps placed upon the circulars themselves. Upon the outside pages of the circulars, as so folded and mailed, was language claimed to be "calculated by its terms * * * and obviously intended to reflect injuriously upon the character and conduct of another."

Defendant's counsel moved the court (SEVERENS, J.) to direct a verdict of not guilty, for the reason that the objectionable language was not upon the outside cover or wrapper of the matter mailed, there being no such cover or wrapper; and that, consequently, the case was not within the statute referred to. The motion was granted, and the jury directed accordingly, the court holding that this section of the statute applies only to matter exhibited upon an inclosing wrapper or cover, and not to matter which is contained in the body of the thing mailed; that, the statute being one constituting a criminal offense, it cannot be extended by construction to cases where there is no wrapper or cover at all, even though such cases may be within the reason and policy of the enactment.

UNITED STATES v. STAPLES.

(District Court, W. D. Michigan, S. D. December 2, 1890.)

1. USING MAILS TO FRAUD—EVIDENCE.

An indictment under Rev. St. U. S. § 5430, for using the mails with the intent to defraud, charged that defendant sent circulars through the mails, stating that he had a certain kind of seed wheat which he would furnish at a certain price per bushel, and that, in accordance with a previously formed intention to defraud every one sending him money, he kept the money sent by various persons to purchase such wheat, and sent them no wheat whatever. *Held* that, in order to convict, it must be shown that defendant intended to defraud every person sending him money during the time alleged.

2. SAME.

The second count of the indictment charged that defendant, in furtherance of a scheme to defraud the public, sent circulars through the mails, stating that he had blueberry plants to sell; and that he intended giving no plants of any value for the money received. The evidence tended to show that defendant shipped wild huckleberry plants, which he gathered in the woods, while his advertisement described what would be understood as a cultivated plant, and conveyed the idea that he was engaged in its culture. It also appeared that many of the plants had been set out by purchasers, but failed to live. *Held*, that the jury should consider whether it was represented by the circular that defendant had a place where he grew the plants, or had the means of procuring them, or whether it was implied that they were wild plants, or were such as were raised by people in the business.

3. SAME.

The jury may also consider whether it was defendant's practice to transact business with people at a long distance, and, if they find that fact, may consider it as a circumstance in the case.

4. SAME—EXAGGERATING VALUE OF GOODS.

The practice of exaggerating the value of goods offered for sale is not criminal if restricted within reasonable bounds, and is not done with fraudulent intent.

5. SAME—FRAUDING NEWSPAPERS.

One who, through the mails, induces newspaper publishers to insert advertisements in their papers on a promise to pay the bills therefor when rendered, if he has no intention of so doing, is guilty of using the mails for the purpose of defrauding.

6. SAME.

In such case the jury may consider the fact that defendant failed to reply to the letters of such publishers, requesting payment of their bills.

At Law.

Defendant was indicted for carrying on, through the mails, various schemes to defraud, in violation of section 5480, Rev. St. The indictment set forth three distinct schemes and offenses. The first count charged defendant with advertising in divers newspapers throughout the United States and by means of circulars sent through the mails, that he had for sale a certain high grade of wheat, which he would furnish for a certain price per bushel; that he was sent various sums of money by different persons, but, in accordance with a previously formed intention to defraud every one sending him money, he appropriated the money without sending any wheat whatever. The second count charged like extensive advertising of "blueberry" plants, and that defendant intended giving no plants of any value for the money received. The third count charged defendant with inducing divers newspaper publishers throughout the United States to publish his various advertisements, intending never to compensate them therefor. Each count charged the mailing of particular letters in executing the respective schemes to defraud. The evidence adduced in connection with the first count tended to show that in particular instances occurring during the period set up in the indict-