

*Philadelphia*, 3 Wall. 731. There is a long series of cases decided by the supreme court, and cited in *U. S. v. Keokuk & H. Bridge Co.*, 45 Fed. Rep., at page 180, sustaining the general proposition as above stated. But the question to be here decided is whether congress could delegate, as it has undertaken to do, its authority in the premises to the secretary of war. My conclusion is that it could not. The reasons for this conclusion are so well and so fully set forth by Judge SHIRAS in *U. S. v. Keokuk & H. Bridge Co.*, cited above, that it is sufficient to refer to that case, and to express, as I do, my concurrence in the reasoning and conclusions of the opinion therein.

The verdict against the defendants will be set aside, and the judgment of the court will be that sections 4 and 5 of the river and harbor act of September 19, 1890, upon which the information is based, are unconstitutional, and that the defendants go hence without day.

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UNITED STATES *v.* GAYLORD.

(District Court, S. D. Illinois. January, 1893.)

1. **MAILS—OBSCENE MATTER—SEALED ENVELOPE.**

Since Rev. St. § 3893, relating to mailing nonmailable matter, was amended by the insertion of the word "writing," all writings, whether inclosed under a sealed envelope or not, signed or unsigned, that are of an obscene, lewd, or lascivious character, are nonmailable matter, and covered by the statute.

2. **SAME—PUBLICATION OF WRITING.**

Inclosing an obscene, lewd, or lascivious writing in a sealed envelope, and mailing it to another, constitutes a publication of the writing, within the meaning of the statute.

At Law.

This was an indictment under section 3893, Rev. St. U. S., for mailing obscene writings. There were three counts, each charging defendant with "depositing in the mail of the United States, for mailing and delivery, a certain obscene, lewd, and lascivious writing, purporting to be a letter," etc., "which said writing is so lewd, lascivious, and obscene that the same would be offensive to the court here, and improper to be placed upon the records thereof, which said writing then and there was inclosed in a letter envelope, said letter being then and there addressed," etc. A motion was made to quash the indictment on the ground that the obscene, lewd, and lascivious expressions were not set forth in the indictment, which motion was overruled by the court. Defendant thereupon entered a plea of "Guilty," and moved for arrest of judgment—*First*, on the ground that the statute did not include private communications which were sent under cover of a seal, such as letters, etc., but was intended to embrace only such matter as was classed under the head of publications, such as circulars, etc., which were sent subject to the scrutiny of postmasters, and to be detained by them in case of their being determined to be nonmailable matter; and, *second*,

that the sending of such letters did not constitute a publication of the writings therein inclosed.

*James A. Connolly*, U. S. Dist. Atty., and *Edward Roe*, Asst. U. S. Atty., for the United States.

*John M. Palmer* and *James C. Robinson*, for defendant.

TREAT, District Judge, (*orally*.) Since this statute has been amended by the insertion of the word "writing," I am of opinion that all writings, whether inclosed under a sealed envelope or not, signed or unsigned, that are of an obscene, lewd, or lascivious character, are non-mailable matter, and covered by the statute. As to the question raised regarding what constitutes a publication, I shall hold that to inclose an obscene, lewd, or lascivious writing in a sealed envelope and mail it to another is a publication of that writing, and would place it within the power of the party receiving the letter to institute a prosecution for the offense.

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*Ex parte* GEISLER.

(Circuit Court, N. D. Texas. June, 1883.)

COUNTERFEITING—JURISDICTION OF STATE COURTS.

The judiciary act of 1789, § 11, provides for the exclusive cognizance by the United States courts of all offenses against the laws of the United States, unless such laws otherwise direct. Act Cong. 1825, § 20, (Rev. St. U. S. § 5457,) and section 26, (Rev. St. U. S. § 5323,) providing for the punishment of the counterfeiting of coin, declare that "nothing in this act shall be construed to deprive the courts of the individual states of jurisdiction of the laws of the several states over offenses made punishable by this act." *Held*, that the state courts have power to punish counterfeiting under the state statutes.

Petition by Adam J. Geisler for Writ of *Habeas Corpus*.

Article 463, Pen. Code Tex., declares:

"If any person, with intent to defraud, shall pass, or offer to pass, as true, or bring into this state, or have in his possession, with intent to pass as true, any counterfeit coin, knowing the same to be counterfeit, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years."

The petitioner was indicted in the district court of Grayson county, Tex., for a violation of this article of the state law, was tried and convicted, and sentenced by the court, in pursuance of the verdict of the jury, to imprisonment in the state penitentiary for the term of two years. He now seeks discharge from imprisonment, on the ground that the court by which he was tried and sentenced had no jurisdiction of the offense with which he was charged, and of which he was convicted.

*S. W. Miner*, for petitioner.

WOODS, Circuit Justice. The ground upon which the jurisdiction of the state court is denied is that the offense charged was an offense cog-