

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-

nizable under the authority of the United States, and that the courts of the United States have exclusive jurisdiction thereof. The judiciary act of 1789, § 11, (1 St. p. 78,) provides that the circuit courts shall have exclusive cognizance of all crimes and offenses cognizable under the authority of the United States, except when this act otherwise provides or the laws of the United States shall otherwise direct. The petition for *habeas corpus* is based on this section. After the passage of the act of 1789, to-wit, on March 3, 1825, an act was passed entitled "An act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes." 4 St. p. 115. The twentieth section of this act declared it to be an offense to pass, utter, publish, or sell, or attempt to pass, utter, publish, or sell, as true, any false, forged, or counterfeited coin, in the resemblance or similitude of the gold or silver coin which had been or might hereafter be coined at the mint of the United States. This section, with a slight amendment incorporated therein by the acts of February 12, 1873, (17 St. p. 434,) and the act of January 16, 1877, (19 St. p. 223,) is still in force, and constitutes section 5457 of the United States Revised Statutes. The twenty-sixth and last section of the act of 1825 declared:

"Nothing in this act contained 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."

This section is still in force, and appears, in substance, as section 5328 of the United States Revised Statutes. Conceding what is unquestionably well settled, that congress may exclude the jurisdiction of the courts of the states from offenses within the power of congress to punish,—*Houston v. Moore*, 5 Wheat. 1; *The Moses Taylor*, 4 Wall. 411; *Martin v. Hunter*, 1 Wheat. 304; *Com. v. Fuller*, 8 Metc. (Mass.) 313,—it appears, in respect to the offense of which the petitioner stands convicted, not only that congress has not excluded, but on the contrary has expressly reserved and recognized, the jurisdiction of the state courts. The district court of Grayson county had therefore jurisdiction to try and sentence the petitioner for the offense with which he was charged, and whereof he was convicted, and his imprisonment under such sentence is lawful. The petition for the writ of *habeas corpus* must therefore be denied.

## UNITED STATES v. MULHOLLAND.

(District Court, D. Kentucky. April 21, 1892.)

**1. POST OFFICES—LARCENY FROM MAILS—EVIDENCE—HEARSAY.**

Evidence of an admission of the theft of a registered letter, made by a person since deceased, is not admissible upon the trial of a postmaster for the embezzlement of such letter, as it is not such a declaration against interest as admits of the introduction of hearsay evidence.

**2. SAME—EVIDENCE—RE MOTENESS.**

Evidence is not admissible in such a case that the declarant was caught in the act of stealing money from the post office nearly six months after the letter had been stolen, especially as it was not shown that he could have had access to such letter in the course of his official duties or otherwise.

**3. NEW TRIAL—NEWLY-DISCOVERED EVIDENCE—EX PARTE AFFIDAVITS.**

*Ex parte* affidavits, upon motion for a new trial, made by witnesses for the state, containing statements more favorable to the defendant than the testimony given at the trial, will not sustain a motion for such new trial.

**At Law.**

At the November term, 1891, in the district court of the United States for the district of Kentucky, the grand jury returned an indictment against defendant, as follows:

*“United States of America, District of Kentucky—set.:* In the district court of the United States for the sixth judicial circuit and district of Kentucky, held at Paducah, November term, in the year of our Lord eighteen hundred and ninety-one. *First Count.* The grand jurors of the United States of America, impaneled and sworn, and charged to inquire in and for the district of Kentucky, on their oath present that Hugh Mulholland, late of the district aforesaid, on the seventeenth day of July, in the year of our Lord eighteen hundred and ninety-one, in the district aforesaid, being then and there employed in a department of the postal service of the United States, to wit, as postmaster at Paducah, Kentucky, feloniously did secrete and embezzle a certain letter, which had then and there come into the possession of the said Hugh Mulholland, and which said letter was intended to be conveyed by mail of the United States, and was then and there addressed to M. A. Sills & Son, Model, Tennessee, and which said letter then and there contained articles of value, to wit, two hundred and eighty-seven and twenty-nine hundredths dollars, consisting of United States treasury notes and national bank notes, and of the value of \$287.29, and a further description of which said letter and its contents is to the jurors aforesaid unknown; against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided. Section 5467, Rev. St. par. 1. *Second Count.* And the grand jurors aforesaid, upon their oath aforesaid, do further present that the said Hugh Mulholland on the seventeenth day of July, in the year of our Lord eighteen hundred and ninety-one, in the district aforesaid, being then and there employed in a department of the postal service of the United States, to wit, as postmaster at Paducah, Kentucky, feloniously did steal and take certain articles of value, to wit, treasury notes of the United States and national bank notes, amounting in the aggregate to, and of the value of, two hundred and eighty-seven dollars, out of a certain letter then and there addressed to M. A. Sills & Son, Model, Tennessee, which said letter had then and there come into his possession in the regular course of his official duties, and which said letter was then and there intended to be conveyed by mail of the United States, and which said letter was not delivered to the party to whom it was directed, and a further description of which