

our debt." Mr. Emmons testifies that at the time of the consolidation Dr. Woods requested him not to mention this indebtedness to Mr. Wilson. This statement is also denied by Dr. Woods, but the fact remains that here was a note of \$38,000, the existence of which was not shown by the books of the First National Bank, or known to any of its directors. It was only known to the officers of the Bank of Commerce and Emmons. And the question now is, can the plaintiff, under all the circumstances of this case, compel the stockholders of this bank to go down in their pockets and raise the funds necessary to liquidate this indebtedness, for which the bank never received one cent of benefit? My own view is that it cannot. The transaction, so far as the First National Bank is concerned, was a loaning of its credit, and the indorsement an accommodation indorsement, which it had no right to give. In indorsing the name of the bank on the drafts Albright exceeded his authority as cashier, and in indorsing the name of the bank upon these notes Emmons, as president of the bank, was not acting within the general scope and sphere of his duties as president of the bank; that he had no authority, either express or implied, to make the indorsement, and the bank is not liable.

As to the third and fourth causes of action, plaintiff is entitled to recover the amount claimed, less the amount which it has collected upon the collateral held by it, after deducting the costs of collection.

A judgment will be entered in favor of the defendant upon the first and second causes of action, and in favor of the plaintiff upon the third and fourth causes of action, subject to the credit above mentioned. Each side will be allowed 60 days to prepare and present a bill of exceptions for allowance.

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UNITED STATES v. DELANY.

(Circuit Court, D. South Carolina. April 11, 1893.)

POST OFFICE—STEALING AND SECRETING LETTERS.

Rev. St. § 5467, defines and punishes two crimes against the United States: (1) Secreting, embezzling, and destroying letters containing anything of value; (2) stealing the contents of letters of the same character. U. S. v. Lacher, 10 Sup. Ct. Rep. 625, 134 U. S. 624, followed. U. S. v. Gruver, 35 Fed. Rep. 59, distinguished.

At Law. Indictment against St. Cyprian Delany for offenses against the postal laws. A verdict of guilty was rendered. Heard on motion in arrest of judgment. Denied.

S. J. Lee, for the motion.

B. A. Hagood and E. F. Cochran, Asst. U. S. Attys., opposed.

SIMONTON, District Judge. The defendant, a letter carrier in the service of the United States, was charged with violating section 5467, Rev. St. U. S., and was found guilty on 11 counts of the indictment under this section, charging him with secreting, em-

bezzling, and destroying the contents of certain letters which had come into his hands as such letter carrier, containing matter of value. He was also convicted, under section 3892, Rev. St. U. S., for unlawfully retaining, delaying, and opening a letter not containing an article of value. He now moves in arrest of judgment on the 11 counts above mentioned, because section 5467, Rev. St., by a casus omissus, has failed to provide a punishment for embezzling, secreting, and destroying a letter, and only punishes the felonious stealing of a letter with valuable contents.

This question was at one time disputed in the circuit and district courts of the United States. See *U. S. v. Long*, 10 Fed. Rep. 879; *U. S. v. Atkinson*, 34 Fed. Rep. 316; *U. S. v. Falkenhainer*, 21 Fed. Rep. 624; *U. S. v. Wight*, 38 Fed. Rep. 106. This section of the Revised Statutes was discussed in this court in *U. S. v. Gruver*, 35 Fed. Rep. 59, but in that case the indictment had omitted to charge that the defendant did steal or take the contents of the letter intrusted to him, and for that reason the motion in arrest of judgment was granted. All doubt, however, has been set at rest by the decision of the supreme court of the United States in *U. S. v. Lacher*, 134 U. S. 624, 10 Sup. Ct. Rep. 625, in which this precise question was made and discussed; and the court held that this section 5467 creates and punishes two classes of offenses,—one relating to the embezzlement of letters, and the other to the stealing of their contents,—and shows the difference between the offenses created and punished by sections 3891 and 5467. The first section creates and punishes the offense of unlawfully detaining, delaying, or opening a letter, and of secreting, embezzling, and destroying a letter, although it does not contain anything of value. The latter section (5467) creates and punishes the crime when such action relates to a letter containing an article of value, and the punishment is provided accordingly.

The motion in arrest of judgment is denied.

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In re SMITH, Surveyor of Customs.

(Circuit Court, S. D. Ohio, W. D. April 14, 1893.)

No. 4,488.

**CUSTOMS DUTIES—BAR BOTTLES—EVIDENCE.**

Hollow, translucent vessels, molded from glass, and etched with fluoric acid, representing female figures, the head separable from the body, and fitting closely on a narrow neck, so as to form a stopper, of the capacity of  $7\frac{1}{2}$  and  $18\frac{1}{4}$  fluid ounces, respectively, and used as bar bottles, are dutiable as "bottles," under Act Cong. Oct. 1, 1890, (Supp. Rev. St. U. S. [2d Ed.] p. 817.) par. 103, and not as "pressed glassware," under paragraph 105; nor are they dutiable under paragraph 106, which does not include "etched" glassware in its enumeration of ornamental glassware.

At Law. Appeal by the surveyor of customs from decision of the board of general appraisers. Affirmed.

John W. Herron, for appellant.

Wright & Wright, for appellee.