

intent to injure and defraud the association. The rule on this subject has been stated as follows:

"The words 'with intent to injure and defraud' are words essential to the offense as charged, but do not enlarge the significance of the language, which avers the facts necessary to be proved in order to constitute the offense." Mass. Crim. Law, 624.

It may be proper to add, in regard to the point made that the indictment is defective because it fails to aver that the acts charged were done without the knowledge or assent of the directors of the association, that, in my opinion, such an averment is not essential in an indictment for the misapplication of the funds of a national bank. The statute does not make absence of authority from the directors an ingredient in the crime of misapplication. I conceive that a conversion of the funds of a national bank by its president may be a criminal misapplication of the funds of the bank, although done with the knowledge and assent of the directors of the bank. The president of a national bank is not the association, nor are the president and directors the association. They are only officers of the association. The moneys of the stockholders and of the depositors in the association are not the moneys of these officers, but of the association; and it has not yet been held that a national bank may be pillaged of such moneys by its president, with impunity, provided the act be done in pursuance of a conspiracy between the president and the directors, or a majority of them.

The motion to quash must be granted.

GREEN v. ROGERS et al.

(Circuit Court, D. Colorado. June 3, 1893.)

No. 2,647.

CONSPIRACY—PLEADING.

Before persons can be held to answer in the federal courts for conspiracy, they must be charged with combining and conspiring to effect a purpose expressly forbidden by some statute of the United States, or with doing some act in furthering the conspiracy, which is expressly forbidden by a law of the United States; and where a petition claims damages for an alleged conspiracy to disbar plaintiff from practicing law in the state courts because he has filed a bill in a federal court charging defendants with misconduct and corruption in certain litigation pending in a state court, no cause of action is made out.

At Law. Action by Thomas A. Green against Samuel H. Elbert, William E. Beck, Joseph C. Helm, M. A. Rogers, L. P. Marsh, and J. Jay Joslin to recover damages for a conspiracy to disbar him from practicing law in the state courts. Heard on demurrer to the petition. Demurrer sustained, and case dismissed.

T. A. Green, per se.

J. M. Washburn, for plaintiff.

L. P. Marsh, per se, and for Joslin.

Rogers & Starr and M. A. Rogers, for Rogers.
 Riddell, Starkweather & Dixon, for defendants Elbert, Beck, and Helm.

RINER, District Judge. This case is before the court upon a demurrer to the petition. Several questions were suggested at the argument, but it will only be necessary to notice the first question raised by the demurrer, viz.: "That this court has no jurisdiction to hear, try, or determine the matters alleged in the complaint." In this case jurisdiction does not exist on the ground of diverse citizenship. The citizenship of the parties is not alleged in the petition. Where jurisdiction is based on diverse citizenship, that fact must affirmatively appear in the petition. Hence, if jurisdiction exists, it must be because of the violation of some federal statute. The plaintiff attempts to charge a conspiracy in violation of the laws of the United States. The facts alleged show that he was disbarred by the supreme court of the state, and he alleges that the proceedings in the supreme court were based upon the fact that he had filed a bill in equity in the circuit court of the United States in which he charged the defendants with misconduct in certain litigation pending in the state court. It is unnecessary to review the facts at length.

The rule is well settled that before parties can be held liable in the federal courts for conspiracy they must be charged with combining and conspiring to effect a purpose expressly forbidden by some statute of the United States, or that the acts resorted to to accomplish the object of the conspiracy are acts expressly forbidden by a law of the United States. My own view is that the allegations of plaintiff's petition do not bring his case within this rule, and that this court is wholly without jurisdiction. The demurrer will be sustained, and the case dismissed.

In re JOHN RUSSELL CUTLERY CO.

(Circuit Court, D. Massachusetts, May 23, 1893.)

No. 3,654.

CUSTOMS DUTIES—CLASSIFICATION—MOTHER-OF-PEARL.

Mother-of-pearl, cut into slabs, and designed for use in the manufacture of knife handles, is dutiable at 40 per cent. ad valorem, under paragraph 462 of the tariff act of October 1, 1890, as a manufacture of "mother-of-pearl," and not at 10 per cent. ad valorem, under section 4 of said act, as a nonenumerated unmanufactured article.

Petition by the John Russell Cutlery Company for a review of the decision of the board of general appraisers affirming the action of the collector in classifying certain merchandise for duty. Affirmed.

Charles P. Searle, for petitioner.

Henry A. Wyman, Asst. U. S. Atty., for collector.