

were to be scanned with the same strictness as those of strangers dealing with each other at arm's length; that, when strangers deal with each other, they keep an account of it, either a note or a book entry; and that, when an agent acted for his principal, he kept a record of what he did; and that when a woman came into court, claiming that her husband had been acting as her agent, and that he owed her money, and could not show up any note or book accounts evidencing the debt, that such evidence was insufficient, as strangers did not do business in that way, and that her claim must fail."

It is manifest, upon the consideration of the case as presented to us at the former term, and as discussed in our opinion, then delivered, and from the consideration of the record now before us, that on the last trial the issues between the parties had been reduced to the single question of fact: Did A. Hinchman, in transferring all of his property to his wife in 1888, in good faith prefer her as a creditor, or were the transactions had for the purpose of withdrawing all of his property from the claims of his bona fide creditors? In considering this question, it was important to determine whether, in fact, he owed his wife a debt at the time, and, if so, what was the amount of that debt. If the proof was such as to satisfy the jury that the husband did not in fact owe a debt to the wife on account of dealings there had been between them, or if they were satisfied that he did not owe more than one-third of the amount he claimed to have owed and that she claimed he owed her, and that the adjustment made between them in 1888 was in the nature of an afterthought, and for the purpose of withdrawing his property from the claims of his bona fide creditors, the claim of the wife urged in this action would necessarily fail. It was the turning point in the case. It was not only the privilege, but it was the duty, of the trial judge to group the testimony, and focus it upon this vital issue. It was his duty to submit to the jury the issue of fact, and to have them fully understand that the determination of that issue was theirs, and not his. A careful examination of the charge complained of satisfies us that the judge did not go beyond his duty in the charge given. The law applicable to the issue was given as fully and as fairly as the claimant could ask; in fact, as fully as the claimant did ask. The power and right of the jury to pass upon the issue of fact were stated and restated with clearness and emphasis. The jury having found upon this issue against the claimant, the other questions presented on the trial below, and brought up by bill of exceptions for our review, become immaterial. We find no substantial error in the rulings of the circuit court at the last trial. The judgment of that court is therefore affirmed.

UNITED STATES v. MAYERS.

(District Court, W. D. Virginia. December 11, 1896.)

POSTMASTERS — UNDERPAYMENTS TO LETTER CARRIERS—EXPERIMENTAL FREE DELIVERY OFFICES—INDICTMENT.

A postmaster at an experimental free delivery office, designated by the postmaster general, pursuant to the joint resolution of October 1, 1890, is an officer of the United States, charged with the payment of an appropriation made by act of congress, within the meaning of Rev. St. § 5483, and is in-

dictable thereunder for paying to a letter carrier, employed in such experimental free delivery, less than the amount provided by law, and requiring them to give vouchers for a sum greater than that paid to them.

Indictment for Violating Section 5483, Rev. St. On demurrer to the indictment.

A. J. Montague, U. S. Atty.

R. T. Barton and Liggett & Strayer, for defendant.

PAUL, District Judge. This is an indictment charging the defendant with violating section 5483 of the Revised Statutes of the United States. The defendant demurs to the indictment, on the ground that the offense charged therein does not constitute an offense against the laws of the United States.

The first count in the indictment is as follows:

"The jurors of the United States of America, within and for the district and circuit aforesaid, on their oaths present that G. F. Mayers, late of Frederick county, in the district aforesaid, at said county, heretofore, to wit, on the — day of —, in the year of our Lord one thousand eight hundred and ninety-two, at the said Western district of Virginia, and within the jurisdiction of this court, the said G. F. Mayers being then and there an officer of the United States, to wit, postmaster at Stevens City, Virginia, charged with the payment of an appropriation made by an act of congress, to wit, an appropriation for the payment of letter carriers at experimental free delivery offices, did unlawfully pay to an employé of the United States, to wit, one Douglas K. Drake, and, to wit, one Edgar C. Cadwallader, who were then and there employés of the United States, to wit, letter carriers, a sum less than that provided by law, to wit, the sum of \$122.92, and required said employés to give vouchers for an amount greater than that actually paid to and received by them, to wit, the sum of \$306.17, against the peace of the said United States and their dignity, and against the form of the statute of the said United States in such case made and provided."

There are two other counts in the indictment, each to the same effect, charging in the second count that the defendant took from one Douglas K. Drake, an employé of the United States, a receipt for \$73.50, whereas he had paid to said Douglas K. Drake only the sum of \$31.25; and charging in the third count that said defendant had taken from one Edgar C. Cadwallader, an employé of the United States, a receipt for \$231.66, whereas he had paid only the sum of \$91.66 to said Edgar C. Cadwallader.

The first question to be determined is: Is the defendant, as postmaster, an officer, within the provisions of section 5483, charged with the payment of any of the appropriations made by an act of congress? Second. If he is such an officer, is there an offense charged in this indictment of which this court has jurisdiction?

As to the first question, section 3639 of the Revised Statutes of the United States provides as follows:

"Sec. 3639. The treasurer of the United States, all assistant treasurers, and those performing the duties of assistant treasurers, all collectors of customs, all surveyors of the customs, acting also as collectors, all receivers of public moneys at the several land offices, all postmasters, and all public officers of whatsoever character are required to keep safely, without loaning, using, depositing in banks, or exchanging for other funds than as specially allowed by law, all the public money collected by them, or otherwise at any time placed in their possession or custody, till the same is ordered, by the proper department or officer of the government, to be transferred or paid out; and when such or-

ders for transfer or payment are received, faithfully and promptly to make the same as directed, and to do and perform all other duties as fiscal agents of the government which may be imposed by any law, or by any regulation of the treasury department made in conformity to law. * * *

This section (3639) designates postmasters as one class of fiscal agents of the government, by whom public money may be collected, or into whose possession and custody it may otherwise be placed. It provides for the safe-keeping of the public money, and provides the mode for transferring or paying out the same, viz. by an order of the proper department or officer of the government, and, when such order for payment is received, to faithfully and promptly make the same as directed. They are further required "to do and perform all other duties as fiscal agents of the government which may be imposed by any law, or any regulation of the treasury department made in conformity with law."

Section 161 of the Revised Statutes provides as follows:

"Sec. 161. The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it."

Section 396 of the Revised Statutes prescribes what shall be the duty of the postmaster general, and, among other things, requires (seventh clause) him "to superintend the disposals of the moneys of the department," and (ninth clause) "to superintend generally the business of the department, and execute all laws relative to the postal service."

Section 3866 of the Revised Statutes requires the postmaster general to fix the salaries of letter carriers within certain limitations.

Under the regulations of the post-office department, letter carriers are paid by the postmasters at the offices at which they serve out of the postal funds. Postal Laws and Regulations, § 180.

The indictment alleges that the defendant was charged with the payment of an appropriation made by an act of congress, to wit, "an appropriation for the payment of letter carriers at experimental free delivery offices."

Under then-existing laws, letter carriers could not be appointed in cities of less than 10,000 population, or at any post office which produced a gross revenue for the preceding fiscal year of less than \$10,000. Act Jan. 3, 1887 (24 Stat. 355). But a joint resolution was passed by congress on October 1, 1890, providing for "experimental free delivery" at small offices. The resolution is as follows:

"Resolved by the senate and house of representatives of the United States of America in congress assembled, that the postmaster general be enabled to test at small towns and villages the practicability and expense of extending the free delivery system to offices of the third and fourth classes, and other offices not now embraced within the free delivery, said test to be made on petition of the patrons, and in the discretion of the postmaster general, the sum of ten thousand dollars, which sum shall be taken from the amount appropriated for the free delivery service for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and shall be applied to the payment of carriers for one hour or two hours per day, as may be necessary for the convenience of the public and advantage of the postal service, said pay to be fixed

by the postmaster general at rates not exceeding the present maximum rates for pay of carriers."

The joint resolution of October 1, 1890, just quoted, clearly authorizes and empowers the postmaster general to employ letter carriers for this special, experimental free delivery service, and to fix the rates at which they should be paid so as not to exceed the maximum rates then being paid to letter carriers. It places these carriers, in their relation to the post-office department, as to their compensation, on the same footing as other carriers, and has made no change in existing laws or the postal regulations as to the manner in which they shall be paid; and, in the absence of any declaration on the part of congress to the contrary, it is to be presumed that they are subject to the same regulations and paid in the same manner as other carriers. The only difference the court sees between the two sets of letter carriers in this respect is that other letter carriers are paid by the postmaster at the offices at which they serve out of the postal funds, while the experimental free delivery carriers are to be paid by the postmaster at the post offices at which they serve out of the appropriation made by congress for the purpose.

The demurrer admits whatever is well alleged in the indictment. The charge in the indictment is in the language of the statute, and the indictment is therefore not defective in matter of form; and the court is of opinion that the defendant, being a postmaster, was an officer of the United States, within the meaning of the statute, and, as such, was charged with the payment of an appropriation made by an act of congress. The demurrer is overruled.

BACHE v. UNITED STATES.

(Circuit Court of Appeals, Second Circuit. May 27, 1897.)

CUSTOMS DUTIES—CLASSIFICATION—WINDOW GLASS.

Cylinder, crown, or common window glass, which has been either colored throughout when melted, or colored on the outside by flashing, is dutiable under paragraphs 112 and 118 of the tariff act of 1890, and not under paragraph 122, the former sections being probably more specific as applied to it, but, if not, the higher rate of duty being applicable under section 5. 77 Fed. 603, affirmed.

Appeal from the Circuit Court of the United States for the Southern District of New York.

This was an appeal from the decision of the circuit court affirming the decision of the board of general appraisers as to the classification of certain merchandise consisting of cylinder, crown, or common window glass, a part of which was colored throughout when melted, and the rest on the outside by flashing.

Charles Curie, David Ives Mackie, and W. Wickman Smith, for appellants.

Wallace Macfarlane and James T. Van Rensselaer, for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.