

been made by the defendant, and no such bond having been given by him, the presumption is that the officer obeyed the directions of the writ. It appears by the testimony of witnesses that the goods replevied were of such character that they could not be removed to the domicile of the plaintiff company without being first packed in crates or boxes; that several persons were sent from New York by or on behalf of the plaintiff, under the direction of a man named McElligott, to prepare the goods for shipment, and that they, with the assent of the marshal and Mr. French, the person whom he had left in charge of the property, packed the same in cases; that said McElligott ordered a car to be placed on the railroad switch to receive the goods when packed, and that with the knowledge of the marshal and Mr. French they were removed from the premises where they had been seized by the marshal, and placed in said railroad car; that with the like knowledge of the marshal and Mr. French said McElligott obtained from the agent of the railroad company a shipping receipt for said goods, and a bill of lading for the same; that the goods were shipped to Detroit, Mich., "A McGlincey. Notify Animarium Company"; that French, the keeper, had knowledge of such shipment, and acquiesced therein; that after it was made the said French left the locality where the goods were, and went to Dover, expecting, as he himself says, that he would meet the car at Port Oram, en route for its destination. When he learned that the car was detained by the sheriff's attachment, he notified the marshal, and both he and the marshal demanded of the agent of the railroad company that it should be forwarded in accordance with the orders of McElligott, thereby ratifying his act. It is in evidence that McElligott said to more than one person that he was the agent of the Animarium Company for the packing and shipping of the property. McElligott, though present at the time of the taking of plaintiff's testimony, was not called as a witness to deny this statement. We know that it is true that he was sent to pack them, and that with the permission of the marshal he did ship them. The statements of the marshal and Mr. French that they made no delivery to the plaintiff, in view of the facts set forth, have but little weight. I am of opinion that at the time the sheriff of Morris county levied his attachment on June 3d the possession of the property had passed from the marshal with his consent, and the goods and chattels were no longer in the custody of the court. It therefore follows that the sheriff was not guilty of any contempt of the authority of this court in the execution of his writ. The rule to show cause will be discharged.

In re CHRISTIAN.

(Circuit Court, W. D. Arkansas. June 15, 1897.)

1. CRIMINAL LAW—INVALIDITY OF SENTENCE—OMISSION OF "HARD LABOR.

In the courts of the United States the rule is that a judgment in a criminal case must conform strictly to the statute, and that any variation from its provisions, either in the character or extent of the punishment inflicted, renders the judgment void.

1. SAME—HABEAS CORPUS—EXTENT OF RELIEF GRANTED.

Petitioner was indicted and convicted under section 5392 of the Revised Statutes of the United States, which imposed as a penalty fine and imprisonment at hard labor. He was sentenced to pay a fine and be imprisoned in the House of Correction at Detroit, Mich. (a penitentiary), but "hard labor" was omitted in the sentence and judgment. On habeas corpus the defendant was released, but without prejudice to the right of the United States to take lawful measures to have him resented on the verdict against him.

Winchester & Martin and John Neal, for petitioner.
W. J. Horton, for the United States.

ROGERS, District Judge. W. S. Christian filed his petition in the Ft. Smith division of the circuit court of the United States for the Western district of Arkansas for a writ of habeas corpus. He alleges that at the May term, 1897, of the United States court for the Central district of the Indian Territory, sitting at Antlers, he was indicted and convicted of the crime of perjury, and was sentenced by the court "to be imprisoned in the Detroit House of Correction, at Detroit, Michigan, and to pay a fine of one dollar and costs of this action." He alleges that his term of imprisonment began on the 29th day of May, 1897, and that he has ever since been confined in the United States jail at Antlers, Ind. T., and that he is now in custody of J. P. Grady, United States marshal for said district, under a commitment, and is within the jurisdiction of the United States court for the Western district of Arkansas. The writ issued and was served on Grady in said last-named district. Grady responded, and filed his answer, in which he alleges that he holds the said Christian in his custody as United States marshal for the Central district of the Indian Territory under and by virtue of a mittimus issued out of and from said court at the May term, 1897, thereof, and makes a copy of the mittimus an exhibit to his answer, and alleges that he does not hold him otherwise. No question is made as to the regularity of the mittimus, except that part of it which recites the judgment of the court which sentenced the said Christian "to be imprisoned in the House of Correction situated at Detroit, Michigan, for the term and period of three years, and that he pay the United States of America a fine of one dollar, together with all costs in and about this prosecution laid out and expended, and that they have execution thereupon." It further appears from the mittimus that the said Christian was committed to the custody of the said marshal, who was commanded to receive and safely keep and convey the body of the said Christian to said House of Correction without delay, and deliver him to the custody of the keeper of the said jail, who shall receive and safely keep him in execution of the sentence. On the trial it was shown that petitioner had paid the fine of one dollar which was imposed by the judgment. Grady, the marshal, was served with the writ of habeas corpus issued by this court in the Western district of Arkansas, while en route to Detroit, Mich., with the petitioner.

It is contended—First, that the judgment and sentence under which the petitioner is held is illegal and void; second, that the commitment under which petitioner is held is illegal and void; third, that the court was without jurisdiction to impose the particular sentence