

constitutional provision in that regard, in the proper district in the state of Illinois from which this fraudulent matter was transmitted,—where it was placed in the post office.

It might not be out of place to say that this indictment, in charging the gist of the offense, says: "So devising and intending in and for executing such scheme and artifice to defraud, and for the obtaining of money under false pretenses, and attempting so to do, cause to be conveyed and delivered by mail, in the district aforesaid." Now, I think, there is grave room for doubt as to whether that language is sufficient to charge as a penal offense the placing of the mail in the post office. It would seem to me language more appropriately fitted to charge the second and third of the offenses contained in the lottery act; i. e. the sending, which is the second, and delivering, which is the third. But it is not necessary, as I think, for me to express a definite opinion upon that. It is hardly necessary to point out the distinction between the character of cases that we are dealing with and the case of an extradition by the governor of one state upon the requisition of the governor of another state in which the offense is committed. No doubt, where goods are obtained by fraudulent pretenses which are initiated in another state, and they produce their effect in the state in question, the matter might fall under the general doctrine that where an offense is committed in part in one state, and in part in another, the case may be prosecuted in either jurisdiction. But what we have to deal with is simply a federal statute, and not one relating to common-law offenses, or the practice growing out of state prosecutions, and the reclamation of fugitives from justice upon the demand of the governor of one state upon the governor of another.

For these reasons, I think, the order of removal must be denied, and the respondent discharged.

STATON V. UNITED STATES.

(Circuit Court of Appeals, Eighth Circuit. June 20, 1898.)

No. 1,035.

1. DEFAUDING UNITED STATES—FORGED AFFIDAVIT.

One presenting accounts to the government cannot be convicted under Rev. St. §§ 5418, 5479, for forging the name of a justice of the peace to the affidavit attached thereto, unless it be done to defraud the United States.

2. SAME—INDICTMENT.

An indictment charging that defendant forged the name of a justice of the peace to accounts presented by him to the government accounting officers, "with intent to defraud the United States," must be regarded as based on Rev. St. §§ 5418, 5479, and not on section 5421, which denounces the making, altering, forging, etc., of papers, for the purpose of "obtaining or receiving * * * from the United States or any of their officers or agents any sum of money."

In Error to the District Court of the United States for the Eastern District of Arkansas.

G. W. Murphy, for plaintiff in error.
Edward C. Stringer, U. S. Atty.

Before SANBORN and THAYER, Circuit Judges, and SHIRAS, District Judge.

THAYER, Circuit Judge. Ben B. Staton, the plaintiff in error, was indicted under an indictment containing two counts, in the district court of the United States for the Eastern district of Arkansas. The indictment on its face purported to have been framed on the provisions of sections 5418, 5421, and 5479 of the Revised Statutes of the United States. The first count of the indictment charged that said Staton, on July 3, 1894, in the Western division of the Eastern district of Arkansas, "did then and there willfully, unlawfully, willingly, falsely, and feloniously make and forge a certain affidavit and writing to his quarterly postal account and return for the quarter ending June 30, 1894, to the auditor for the post-office department, which said affidavit and writing is in words and figures as follows, to wit." The alleged forged affidavit was then set out in *hæc verba*, the same being an affidavit which purported to have been sworn to before "M. H. Stokes, J. P." and was in form and substance the usual affidavit which postmasters are required to affix or attach to their quarterly reports. The second count of the indictment charged the accused with the commission of a similar offense on October 2, 1894, in that he had attached to his quarterly return for the quarter ending September 30, 1894, a forged affidavit made before "M. H. Stokes, J. P." The second count, however, differed from the first count in that it further alleged that M. H. Stokes, justice of the peace, did not sign his name to said affidavit; that the name of the justice had been signed thereto by said Staton; and that the act was committed by the accused "with intent to defraud the United States, contrary to the form of the statute in such case made and provided." The first count of the indictment contained no allegations similar to those last aforesaid charging that the accused had signed the name of Stokes with an intent to defraud. On the trial of the indictment, the accused testified in his own favor, in substance, as follows: That while he did sign the name of "M. H. Stokes, J. P." to each of the quarterly reports of date June 30 and September 30, 1894, yet that the name of the justice was so signed by direction of said justice because the latter was busy at the time, and did not wish to take the trouble to affix his official signature to the reports; that the returns were in all respects true and correct; and that the defendant had no purpose or intent to defraud the United States or to obtain money or credit to which he was not entitled.

The defendant requested the trial court to charge the jury in his behalf as follows: "If the items embraced in the returns or accounts were correct, and contained no false entry or claim, and there was no intent on the part of the defendant to obtain from the government something that he was not entitled to in the way of money or credit, he is entitled to an acquittal." But the court declined to do so, and thereupon charged the jury to the contrary of such request, and in substance as follows: That, even if the accused did have authority from Stokes to sign the latter's name to the jurats which were attached to the affidavits to his quarterly reports, yet, as a person can-