

UNITED STATES v. LEE.

(Circuit Court, N. D. Georgia. November 10, 1898.)

OFFENSES AGAINST POSTAL LAWS—INTERFERENCE WITH PACKAGE BEFORE DELIVERY—WHAT CONSTITUTES DELIVERY OF LETTER.

A letter directed to a person, "care Kimball House," when delivered by a postal carrier at the office of the Kimball House, is "delivered to the person to whom it was addressed," within the meaning of Rev. St. § 3892; and the duty of the postal authorities with respect to such letter having been fully performed, in accordance with the direction of the sender, a subsequent wrongful taking of such letter by another is not an offense under said section, nor one cognizable by the courts of the United States.

This is a prosecution under Rev. St. § 3892, for violation of the postal laws. Heard on demurrer to the indictment.

E. A. Angier, U. S. Atty.

F. A. Arnold, for defendant.

NEWMAN, District Judge. The indictment in this case, together with the admission of the United States attorney in open court, and the demurrer to the indictment, raise this question: Where a letter is directed to "L. B. Price, care Kimball House, Atlanta, Ga.," and the letter is delivered at the office of the Kimball House, is in the office of the hotel awaiting delivery to Price, and the letter is unlawfully, wrongfully, and fraudulently taken therefrom and secreted, is the person taking the same subject to indictment and punishment, under section 3892 of the Revised Statutes of the United States? If the letter in this case had been "delivered to the person to whom it was directed," the taking of the same, no matter how wrongful or unlawful the act, would clearly not be an offense within this statute. The only information or direction received by the postal authorities as to how and where a letter shall be delivered is from the sender. Where the sender directs the letter to the care of another person, it is, in effect, a direction that the letter shall be delivered to A. for B.; and, when the delivery is made by the post-office employés to A., it is delivered as the postal department is instructed to deliver it, and therefore, when handed to and received by A., it is a delivery to the person to whom it is addressed. The duty of the postal authorities is discharged when they comply with the instructions of the sender, and deliver the letter to the designated person or at the designated place. Where the duty of the post-office department ends, it would seem that its protection generally would end also.

It is said that some importance should be attached to the use of the word "person" as to the delivery of the letter, and that the Kimball House is not a person. The delivery of the letter to the Kimball House was its delivery to Price. Such were the directions of the sender,—that it should be delivered to the Kimball House for Price; and this was done. To my mind, if an offense has been committed in connection with this letter, it is a violation of the state law, and is not within federal cognizance, certainly not under the statute on which the indictment is based. The case of *U. S. v. McCready*, 11 Fed. 225, decided by Judge Hammond in the Western district of Tennessee, and

the case of *U. S. v. Safford*, 66 Fed. 942, decided by Judge Priest for the Eastern district of Missouri, are interesting cases in this connection. While in neither case are the facts exactly like the facts here, in both cases there is a discussion of most of the pertinent authorities which it is believed support the conclusion reached in this case. With the admission of the district attorney that the letter in this case had been delivered at the office of the Kimball House, and was there when stolen, I must hold that no case is made which would authorize a prosecution under section 3892, Rev. St.

UNITED STATES v. KENNEY.

(Circuit Court, D. Delaware. July 22, 1898.)

1. VIOLATIONS OF NATIONAL BANK LAWS—INTENT TO DEFRAUD.

An intent to injure or defraud a national bank within the meaning of section 5209 of the Revised Statutes of the United States does not necessarily involve malice or ill-will toward the bank. The law presumes that every sane person, who has attained the age of discretion, contemplates and intends the necessary or natural consequences of his own acts; and it is sufficient that the unlawful intent is such as, if carried into execution, will necessarily or naturally injure or defraud the bank.

2. SAME.

The indictment having charged that the defendant, with intent to injure and defraud a national bank, wilfully, unlawfully and fraudulently aided and abetted its paying teller to misapply its moneys, in violation of section 5209, by means of divers checks drawn by the defendant on the bank when he had no funds or insufficient funds on deposit to meet them, the defendant cannot be convicted unless he had a wrongful or illegal intent to injure or defraud the bank in drawing the checks or some one or more of them. Whether or not he had that intent is to be determined by the facts and circumstances and the surroundings at the time he drew the checks. If at that time he knew or had good reason to believe that they or any of them were to be fraudulently paid by the teller out of the funds of the bank, and not out of any funds to which the defendant could legitimately resort, he had the guilty intent; and although it may have been the intention of the defendant at the time he drew such checks finally to recompense or remedy the injury resulting from his act to the bank, such an intent to correct the wrong would not absolve him from guilt. Nor would the fact, if fact it be, that he hoped through successful operations in stocks or other property, or otherwise, to be placed in a position to restore to the bank moneys wilfully misapplied through his wrongful act be any answer to the charge of criminality. No man is permitted to aid or abet the wilful misapplication of the funds of a national bank because he hopes in the future to repair his wrong.

3. SAME—OVERDRAFTS—CONCEALMENT FROM BANK OFFICERS—COLLUSION WITH TELLER.

If there was a fraudulent scheme, understanding or agreement between the defendant and the paying teller that checks drawn by the defendant on the bank in favor of a firm of stock brokers, for the benefit and advantage of the defendant, were to be paid by the teller out of the funds of the bank when the defendant had no funds or only insufficient funds to his credit or was overdrawn in his account, and that such checks were not to be charged in the defendant's account, but were to be fraudulently concealed from the proper bank officials, until the defendant should make deposits sufficient to meet them, the defendant had a guilty intent to injure or defraud the bank. For such scheme, understanding or agreement, if carried out, involved a fraudulent and wilful misapplication of