## UNITED STATES v. HUILSMAN.

(District Court, E. D. Missouri, E. D. May 8, 1899.)

OFFENSES AGAINST POSTAL LAWS—OPENING OF LETTER—WHAT CONSTITUTES DELIVERY.

After a letter has been delivered by the postal authorities to the person in whose care it is addressed, it is no longer in the custody of the United States, nor subject to its jurisdiction; and the opening and destruction of such letter, or the abstraction of its contents, after it has been so delivered, though readdressed to be forwarded, but before it has been again deposited in the mail, is not an offense, under Rev. St. § 3892.

This was an indictment under section 3892, Rev. St. U. S. Plea, not guilty.

A jury having been impaneled and sworn, counsel for defendant stated that they would agree with the United States attorney that the facts in the case were as follows: A letter directed to Miss H., "care Superintendent City Hospital, St. Louis, Mo.," was in due course of mail received by the superintendent, at his office in the City Hospital. This superintendent was authorized to receive the mail of patients for ultimate delivery to them. Miss H. had been discharged from the hospital when the letter reached there, and had left her new address with the superintendent. The latter erased the address from the envelope, wrote on it the new address of Miss H., and delivered the letter, so readdressed, to the defendant, who was a messenger boy in the hospital service, with directions to him to put it in the street letter box. Defendant took the letter, opened it, took out some money and stamps which were in it, and destroyed the letter and envelope; of course, not depositing either in the letter box.

Counsel for defendant, on this state of facts, agreed to by the district attorney, submitted that there was no offense cognizable under United States law or under the constitution; citing U. S. v. Safford, 66 Fed. 942, and U. S. v. Lee, 90 Fed. 256, and cases therein referred to.

The United States attorney read opinion from the assistant attorney general for the post-office department, relying mainly on case of U. S. v. Hall, 98 U. S. 343, in support of the indictment and the prosecution.

E. A. Rozier, U. S. Atty.

Geo. D. Reynolds and Jos. P. Vastine, for defendant.

ADAMS, District Judge (orally). This is not a new question with me. I had occasion lately, while holding court in the Western district, to examine the law very carefully. I then held that section 3892, Rev. St., did not, when properly construed, contemplate such a case as this, and, if it did, it was doubtful if the power of congress, under the constitution, would permit such legislation. Congress has full power, under the constitution, to regulate the carrying of the mail, and to protect all mail matter as long as it is in the custody of the postal authorities. When the postal authorities have fully discharged their duties, by delivery of the letter to the person to whom or in whose care it was addressed, they have fully discharged their functions, and in my opinion have gone as far as congress has authorized them to go. Whatever offense the defendant has committed, if any, in this case, is one which may be cognizable under state law, but is not under the United States law. The jury will return a verdict of "Not guilty." That being done, the defendant will be discharged.

Verdict accordingly. Defendant discharged.

## In re ANDERSON et al.

(Circuit Court, W. D. North Carolina. May 20, 1899.)

1. FEDERAL COURTS—HABEAS CORPUS — PERSONS IN CUSTODY OF STATE AUTHORITIES.

It is a general rule that a person held in custody by the authorities of a state, charged with an offense, will not be discharged on a writ of habeas corpus by a federal court before his trial, but will be left to submit his defense to the state courts, and, if denied any rights under the federal constitution or laws, to pursue his remedy by direct proceedings in error to the supreme court of the United States; and it is only in exceptional cases that a federal court will exercise its discretionary power to interfere in the first instance.[1]

2. SAME.

Where, however, the act for which a person is held in custody by state authorities is one which was done or omitted in pursuance of a law of the United States, or of an order, process, or decree of a court or judge thereof, as where it was done as an officer of the United States in the execution of a process of a federal court of competent jurisdiction, and the officer acted within his jurisdiction and the scope of his process, he is entitled to federal protection, and will be discharged on a writ of habeas corpus.

3. UNITED STATES MARSHALS—EXECUTING PROCESS OUTSIDE OF DISTRICT.

Rev. St. § 788, providing that marshals and their deputies shall have in each state the same powers in executing the laws of the United States as sheriffs and their deputies may have by law in executing the laws thereof, refers only to the district in which the marshal is appointed, and gives him no authority to act as an officer outside of such district.

4. SAME.

A marshal who attempts to execute a process outside of his own district and in another state, although it is one relating to real estate, and the court in his district has assumed to exercise jurisdiction to determine rights therein, and in going upon the land he follows the command of his writ, acts as a trespasser, and the writ affords him no protection.

5. FEDERAL COURTS — HABEAS CORPUS — ARREST OF UNITED STATES MARSHAL BY AUTHORITIES OF ANOTHER STATE.

Petitioners for a writ of habeas corpus in a federal court, a deputy United States marshal of the Eastern district of Tennessee and his assistants, were arrested by the authorities of North Carolina, charged with the commission of an assault and other trespasses in that state. On the hearing it was shown that the acts charged against petitioners were committed while executing a writ of possession awarded by the United States circuit court in the Northern division of the Eastern district of Tennessee upon a decree entered in that court; that petitioners arrested the defendant found in possession of the land, and held him in custody for two days, while they removed his effects to a distance from the land, and dismantled his house; also, that the land was situated in the state of North Carolina. There was also evidence tending to show other acts of petitioners not warranted by the process under which they assumed to act. *Held*, that upon such showing they would not be discharged.

This was a hearing on the application of Murphy L. Anderson, William N. Barr, and George W. Metcalf for a writ of habeas corpus.

Will D. Wright, U. S. Atty., A. E. Holton, U. S. Atty., P. E. H. McCroskey, and Jones & Jones, for petitioners.

F. P. Axley, Ben Posey, J. H. Dillard, and Merrimon & Merrimon, for respondent.

[1] For jurisdiction of federal courts on habeas corpus, see note to In re Huse, 25 C. C. A. 4.