

110; *Newcomb v. Boston, etc.*, R. 115 Mass. 230; *Merchants' Bank v. U. R. Co.* 69 N. Y. 373; 1 Am. Lead. Cas. (4th Ed.) 323; 1 Smith, Lead. Cas. (7th Ed.) 816; Id. 1147, 1227; Hutch. Car. §§ 720, 737; 2 Daniell, Neg. Inst. c. 54.

Demurrer overruled.

NOTE. The writer of this opinion cannot resist an impulse of affectionate remembrance, and begs the privilege of adding here a word of admiration for the thorough, careful, and able work of his deceased friend, Robert Hutchinson, the author of the treatise on "Carriers," above referred to, who died in the great plague of yellow fever that desolated Memphis in 1878. Often—very often—while he was engaged in the preparation of that book, have we labored together in the late hours of the night in the library where the writer at this moment works alone beside the silent but enduring monument his dead friend has left.

ALABAMA GOLD LIFE INS. CO. v. GIRARDY.

(Circuit Court, D. Louisiana. 1881.)

1. STATE COURT—PROCESS.

A state court cannot reach funds which have been made by an officer of a federal court on execution.

Rule on marshal to pay over moneys collected on execution.

PARDEE, C. J. In this case the marshal, on execution, has made the sum of \$1,880.16 for the plaintiffs. To a rule directing him to pay over or show cause, he answers that the funds in his hands have been attached under process from the civil district court of the parish of Orleans, in a suit brought by *W. H. Finnegan v. The Alabama Gold Life Ins. Co.* The answer is not sufficient. The funds are in the custody of this court, and are not subject to the control or process of the state court. See case of *Ellis v. Wooldridge*, 2 Wood, 667.

The only doubt I have about making the rule absolute is whether, as a matter of comity, this court should not wait until the attachment is discharged in the state court, as it undoubtedly will be on suggestion of the facts, before disposing of the proceeds in the hands of the marshal.

But considering the absolute illegality of the pretended seizure, and that a delay may be taken as waiving the undoubted jurisdiction of this court in the premises, and repudiating any desire or intention of forestalling the action of the state court or of prejudicing its jurisdiction, I deem it my duty to make the rule absolute; and it is so ordered.

UNITED STATES v. VOORHEES.

(Circuit Court, D. New Jersey. 1881.)

1. NATIONAL BANK—INTENT TO DEFRAUD—STATUTES—CONSTRUCTION—PUNCTUATION.

Under section 5209 of the Revised Statutes of the United States, an intent to defraud the association, or other company or person, is an essential element of the crime in every case. The words, "with intent in either case to injure or defraud," etc., apply as well to embezzlement, etc., of the funds, as to the making false entries in the books.

The punctuation of a statute is not made to be relied on, and must be disregarded if it requires a construction which is repugnant to a sense of justice.

This was a motion to quash the indictment found against the defendant, as president of the First National Bank of Hackensack, under section 5209 of the Revised Statutes. The first count charges that the defendant did embezzle, abstract, and wilfully misapply certain funds and credits of the bank of the value of \$5,000.

The second is in the same form, except that it specifies the particular stocks abstracted. Neither count alleges any intent.

It was moved to quash the first count because it was too general in its terms, and both counts because no intent is alleged. The section is as follows:

"Sec. 5209. Every president, director, cashier, teller, clerk, or agent of any association, who embezzles, abstracts, or wilfully misapplies any of the moneys, funds, or credits of the association; or who, without authority from the directors, issues or puts in circulation any of the notes of the association; or who, without such authority, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment, or decree; or who makes any false entry in any book, report, or statement to the association, with intent, in either case, to injure or defraud the association or any other company, body politic or corporate, or any individual person, or to deceive any officer of the association, or any agent appointed to examine the affairs of any such association; and every person who with like intent aids or abets any officer, clerk, or agent in any violation of this section,—shall be deemed guilty of a misdemeanor, and shall be imprisoned not less than five years nor more than ten."

Joseph D. Bedle, for the motion.

A. Q. Keasbey, U. S. Atty., *contra*.

MCKENNAN, C. J., announced the opinion of the court. He said that as to the first count the object of more specific allegations was to give the defendant full and fair information as to the charge, and to be a bar against another prosecution. It has been usual in this district to hold indictments like this, in the words of the statute, to