

charged, and in averring the intent with which the act was committed, and I think that you must be satisfied that the removal of the brandy was "willful" before you find the defendant guilty.

The district attorney insisted that the words "unlawfully and willfully" are the words ordinarily found in the precedents, and, for the sake of conformity, ought to be used in an indictment of this kind, and, in their signification, are equivalent to "unlawfully and on purpose," and are only intended to aver that an unlawful act was done "intentionally." The district attorney asked me to charge you that there is no evidence that the defendant was constrained by any one, or by circumstances, to remove the brandy from the distillery to the smoke-house, and therefore he did the removing purposely. I decline to give the charge requested, and I leave the evidence of the facts and circumstances surrounding the transaction to be considered by you.

As to the signification of the word "willfully," when used in a statute creating a criminal offense, our state supreme court, in a recent case, (*State v. Whitener*, 93 N. C. 592,) gives a definition of the word substantially like one that is approved by the supreme court of the United States. "The word 'willfully,' in the ordinary sense in which it is used in statutes, means not merely 'voluntarily,' but with a bad purpose." *Felton v. U. S.*, 96 U. S. 699.

The defendant in his testimony said that he has been a duly-authorized brandy distiller for nearly 20 years, and that he was advised by a collector of the district, many years ago, that the government did not require him to pay more taxes than those assessed on the registered capacity of his distillery; and that he had acted on this instruction with the knowledge of the revenue officers. It was the duty of the defendant to render an account and pay taxes on all the liquors that he manufactured, and his failure to perform such duty was not justified by the instructions received from the collector, as he acted without legal authority. Individuals, as well as courts, must take notice of the extent of authority conferred by law upon a person acting in an official capacity.

The defendant further testified that he placed the three barrels of brandy in the smoke-house, not with the object of concealing the same, but for the purpose of conveniently reaching them in case of leakage; that his designated place of deposit was small, and crowded with barrels and kegs; that he had often lost brandy from leakage; that the smoke-house was built of logs, and the cracks were open, and the building was only 11 feet distant from the designated place of deposit; and was not adapted for concealment. As a distiller of brandy the defendant was exempted from many of the strict regulations imposed by law on distillers of grain. He was allowed to select his place of deposit, and, when designated, it was under his keeping.

You can consider the testimony of the defendant, together with the evidence as to his conduct and declarations at the time the brandy

was seized by the revenue agent, and all the other facts and circumstances testified to by the government witnesses. If you are satisfied that the barrels of brandy were placed in the smoke-house with the honest purpose of preventing waste from leakage, and not with the intent of defrauding the government, then you would be justified in finding that the act of removal was not *willful*. In making the inquiry as to the object and purpose of the defendant, you should consider the evidence of his good character, and give it such weight as you think it entitled to under the circumstances of the case. If you believe from the evidence that he placed the three barrels of brandy in the smoke-house with the intent of defrauding the government of revenue, then you will find him guilty. But if you are of opinion, after considering all the facts and circumstances surrounding the transaction, that he had no such willful purpose, or you have a reasonable doubt about the matter, then your verdict should be "Not guilty."

The jury, after a short deliberation, returned a verdict of "Not guilty," and the defendant was discharged.

NOTE BY THE JUDGE.

On the day after the trial of this case the district attorney called my attention to the case of *State v. Simpson*, 73 N. C. 269, as an authority sustaining the views which he presented in his argument as to the propriety and necessity of using the words "unlawfully and willfully" in the indictment, and as to the legal signification of such words. Upon these points the case fully sustains his views, and is adverse to my charge to the jury. I think, however, that the case sustains the opinion which I expressed as to the nature, force, and effect of statutes creating offenses, upon the question of criminal intent. The indictment in that case was founded upon a state statute, which in general terms made certain acts a misdemeanor, without saying that such acts must be unlawfully and willfully done to constitute the offense. The indictment in describing the offense used the general words of the statute, and it was held to be defective, because it did not allege that the act was done "unlawfully and willfully." The court says, in substance, that it is apparent, from the nature of things, and the dictates of common sense and natural justice, that the general words of the statute are too broad, and go beyond the meaning of the law-makers; and must be qualified in construction by the use of the words "unlawfully and willfully," or by words of equivalent import. "In our case the indictment does not contain such words as ought to have been used in the statute, if the legislators had correctly expressed therein their precise meaning; and it was necessary for the indictment to aid the want of accuracy by adding the words necessary to express the meaning of the statute, and to qualify the general words used."

Since delivering my charge to the jury in this case, a few days ago, I have carefully considered the section (3296) of the Revised Statutes upon which the indictment was founded, in connection with other sections of the internal revenue laws, and in the light of the common law, and feel that I was justified in inferring that it was the intention of congress to create a criminal offense by such section only when the forbidden act was done with a *willful* purpose to defraud the government of revenue, and such purpose is

an essential element of the offense. The regulations and requirements of the internal revenue laws are very strict and positive, and constitute a complicated system of duties and arrangements, which cannot be easily and accurately comprehended by persons of ordinary intelligence and experience, and mistakes will often be made by persons who undertake to carry on business in conformity with such laws. The penalties and punishments for non-compliance with such laws are very severe, and I cannot suppose that congress intended that a jury should convict any person whom they believed to be innocent of any criminal purpose in doing a forbidden act, and of whose guilt there was any reasonable doubt. Congress has the power to change the principles of the common law by a statute, but I believe that when a material departure from long-established principles of justice is intended, such change will be made in plain and unmistakable words; and a court of justice is not warranted in inferring such intentions from the perhaps inadvertent or accidental omission in a statute of a word or words which at the common law are material in the description of a crime, and which are ordinarily used in statutes creating criminal offenses.

CARTE v. EVANS and others.

(Circuit Court, D. Massachusetts. June 21, 1886.)

1. COPYRIGHT—TRANSFER—RIGHTS OF ALIEN ASSIGNEE—INFRINGEMENT.

Where a piano-forte arrangement of the orchestral score of an opera was made by a United States citizen, with the consent of the non-resident foreign composers of the opera, and then transferred by him to a fellow-citizen, who procured a copyright, which he assigned to a non-resident foreigner, acting as agent of the original composers of the opera, *held*, that there was nothing of evasion or violation of law, and that the assignee was entitled to the protection of the court against infringers.

2. SAME—VALIDITY—REGISTRATION—TITLE OF BOOK.

If the published title of a book is sufficient to identify it with substantial certainty with the registered copyright, the copyright will not be forfeited on account of slight variations between the two.

In Equity.

Causten Browne, for complainant.

Prentiss Cummings, for defendants.

NELSON, J. This case was heard in February last, but the decision has been delayed to enable the parties to complete certain proofs which were found to be necessary for its proper determination, and it is only recently that it has been in a condition to be finally disposed of. The suit is a bill in equity for an injunction to restrain the infringement by the defendants of the plaintiff's copyright in an arrangement or adaptation for the piano-forte of the orchestral score of an opera called "The Mikado, or The Town of Titipu." It appeared that William S. Gilbert and Sir Arthur Sullivan, both British subjects resident in London, were the authors and composers of a comic opera entitled "The Mikado, or The Town of Titipu," the words of the opera