

mestic wines. Relator's case would be a very different one if he had been indicted, tried, and convicted for importing and selling foreign wines, or the wines from other states, in the state of Georgia, or if that even had been his real offense, though not shown by the indictment.

Nor do I think it can be fairly said that the relator has been deprived of his liberty without due process of law in violation of the fourteenth amendment of the constitution of the United States. He has been indicted by a grand jury for an offense punishable by the letter of the acts on the statute-books; tried by a jury, with all the forms which from time immemorial have been held to be "due process of law;" his case has been heard in the supreme court of his state, and been rejected at the supreme court of the United States as not involving any federal question, and should be considered as finally decided. See *Cooley*, Const. Lim. (1st Ed.) 355; *Hurtado v. California*, 110 U. S. 537, 4 Sup. Ct. Rep. 111, 292. It is probably true that not every legislative enactment is "due process of law," but where an alleged statute does not conflict with any provision of the federal constitution, and, if void at all, is only void because of the application of general principles of legislative construction, and where under such a statute a person is indicted by a grand jury and regularly tried, convicted, and sentenced, with full opportunity to make all his defenses, in a state court, which, of course, decides upon the validity of the statute under which it proceeds, I am of the opinion that he has had "due process of law," and particularly that no case is thereby made to authorize a federal court to interfere and release the convict on the ground that he is in custody in violation of the constitution of the United States. To interfere in such a case would be an assumption of appellate jurisdiction by the circuit courts in criminal cases in the state courts in which no distinctive, if any, federal question is involved.

The writ of *habeas corpus* in this case will be discharged, and the relator remanded to the custody of the sheriff of Fulton county, Ga., with costs.

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UNITED STATES *v.* POLITE *et al.*

(District Court, D. South Carolina. May 15, 1888.)

INDICTMENT AND INFORMATION—FILING INFORMATION—SUFFICIENCY.

An information set out that it was issued on the oath of the office of the district attorney, but the information was not sworn to. Accompanying the information were the papers of the commissioner who held the preliminary examination, showing that the accused had been arrested on a warrant issued upon affidavits, and stating the necessary facts upon knowledge, and that at the hearing the evidence against the accused was taken under oath. *Held*, on motion to quash, that the information was good.

Information under Rev. St. U. S. § 5399, for impeding a witness. On motion to quash.

*T. E. Miller*, for the motion.

*C. M. Farman, Asst. Dist. Atty., contra.*

SIMONTON, J. The defendants are before the court on an information filed by the district attorney for violating section 5399, Rev. St., impeding a witness. Accompanying the information are the papers of the commissioner who held the preliminary examination, including the sworn testimony of the witnesses taken in the presence of the accused. The information sets out that it is on the oath of office of the district attorney; but it is not sworn to. The defendants' motion is based upon the absence of an affidavit to the information. It is true that informations must be based upon affidavits which show probable cause arising from facts within the knowledge of the parties making them, and that mere belief is not sufficient. *U. S. v. Tureaud*, 20 Fed. Rep. 621. In the case at bar, the defendants were arrested on a warrant issued upon an affidavit stating facts on knowledge. They were brought before the commissioner, a committing magistrate. The evidence against them was taken on oath. Thus all the requirements of the law were fulfilled. BRADLEY, J., in *Instructions to Commissioners*, 3 Woods, 502. Upon this sworn testimony the information was filed. The motion to quash is refused.

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UNITED STATES v. GRUVER.

(*District Court, D. South Carolina. May 16, 1888.*)

**POST-OFFICE—STEALING FROM THE MAILS.**

The only offense punishable under section 5467, Rev. St. U. S., is "the stealing or taking" by a postal employe of the articles enumerated in this section from the mail intrusted to him, which mail has been embezzled, secreted, or destroyed by him.

(*Syllabus by the Court.*)

**At Law.**

James L. Gruver was indicted for offenses committed in violation of Rev. St. U. S. §§ 3891, 5467. Defendant demurred. Demurrer sustained.

*L. F. Youmans*, U. S. Dist. Atty., for the United States.

*G. L. Buist*, for defendant.

SIMONTON, J. The defendant, a letter carrier in Charleston, was indicted under two counts: One for violating section 3891, Rev. St.; the other for violating section 5467, Rev. St. The count upon section 5467 is in these words:

"And the jury aforesaid, upon their oaths aforesaid, do further present that James L. Gruver, late of Charleston county, state of South Carolina, on the 2d day of April, in the year of our Lord one thousand eight hundred and eighty-eight, at Charleston county, in the state of South Carolina, in said district, and within the jurisdiction of this court, being employed in the postal