UNITED STATES RAILROAD ADMINISTRATION

W. G. McADOO, DIRECTOR GENERAL

BULLETIN NO. 1

FEDERAL STATUTES AND DECISIONS

AS TO

THEFTS FROM RAILROADS

WITH EXCERPTS FROM KINDRED STATUTES

ACT APPROVED FEBRUARY 13, 1913 (37 STAT. 670), SECTION 11 OF ACT APPROVED MARCH 21, 1918, ACT APPROVED AUGUST 10, 1917 (Priority Act), AND ACT APPROVED APRIL 20, 1918 (Sabotage Act).

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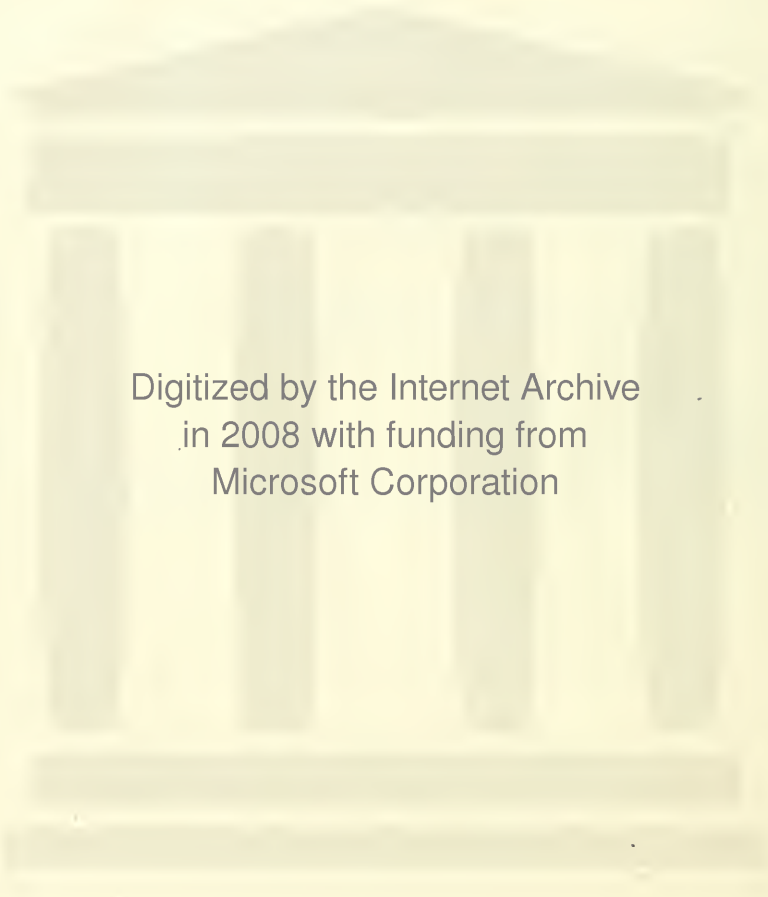

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FEDERAL STATUTES AND DECISIONS AS TO THEFTS FROM RAILROADS.

37 STAT., 670.

AN ACT To punish the unlawful breaking of seals of railroad cars containing interstate or foreign shipments, the unlawful entering of such cars, the stealing of freight and express packages or baggage or articles in process of transportation in interstate shipment, and the felonious asportation of such freight or express packages or baggage or articles therefrom into another district of the United States, and the felonious possession or reception of the same.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whoever shall unlawfully break the seal of any railroad car containing interstate or foreign shipments of freight or express, or shall enter any such car with intent, in either case, to commit larceny therein; or whoever shall steal or unlawfully take, carry away, or conceal, or by fraud or deception obtain from any railroad car, station house, platform, depot, steamboat, vessel, or wharf, with intent to convert to his own use any goods or chattles moving as, or which are a part of or which constitute an interstate or foreign shipment of freight or express, or shall buy, or receive, or have in his possession any such goods or chattels, knowing the same to have been stolen; or whoever shall steal or shall unlawfully take, carry away, or by fraud or deception obtain, with intent to convert to his own use, any baggage which shall have come into the possession of any common carrier for transportation from one State or Territory or the District of Columbia to another State or Territory or the District of Columbia, or to a foreign country, or from a foreign country to any State or Territory or the District of Columbia, or shall break into, steal, take, carry away, or conceal any of the contents of such baggage, or shall buy, receive, or have in his possession any such baggage or any article therefrom of whatsoever nature, knowing the same to have been stolen, shall in each case be fined not more than five thousand dollars or imprisoned not more than ten years, or both, and prosecutions therefor may be instituted in any district wherein the crime shall have been committed. The carrying or transporting of any such freight, express, baggage, goods, or chattels from one State or Terri-

tory or the District of Columbia into another State or Territory or the District of Columbia, knowing the same to have been stolen, shall constitute a separate offense and subject the offender to the penalties above described for unlawful taking, and prosecutions therefor may be instituted in any district into which such freight, express, baggage, goods, or chattels shall have been removed or into which they shall have been brought by such offender.

SEC. 2. That nothing in this act shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof; and a judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts.

Approved, February 13, 1913.

SECTION 11 OF THE ACT OF MARCH 21, 1918.

SEC. 11. That every person or corporation, whether carrier or shipper, or any receiver, trustee, lessee, agent, or person acting for or employed by a carrier or shipper, or other person, who shall knowingly violate or fail to observe any of the provisions of this Act, or shall knowingly interfere with or impede the possession, use, operation, or control of any railroad property, railroad, or transportation system hitherto or hereafter taken over by the President, or shall knowingly violate any of the provisions of any order or regulation made in pursuance of this Act, shall be guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not more than $5,000, or, if a person, by imprisonment for not more than two years, or both. Each independent transaction constituting a violation of, or a failure to observe, any of the provisions of this Act, or any order entered in pursuance hereof, shall constitute a separate offense. For the taking or conversion to his own use or the embezzlement of money or property derived from or used in connection with the possession, use, or operation of said railroads or transportation systems, the criminal statutes of the United States, as well as the criminal statutes of the various States where applicable, shall apply to all officers, agents and employees engaged in said railroad and transportation service, while the same is under Federal control, to the same extent as to persons employed in the regular service of the United States. Prosecutions for violations of this Act or of any order entered hereunder shall be in the district courts of the United States, under the direction of the Attorney General, in accordance with the procedure for the collection and imposing of fines and penalties now existing in said courts.

Act Approved August 10, 1917 (Priority Act).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section one of the act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, be further amended by adding thereto the following:

"That on and after the approval of this Act any person or persons who shall, during the war in which the United States is now engaged, knowingly and willfully, by physical force or intimidation by threats of physical force obstruct or retard, or aid in obstructing or retarding, the orderly conduct or movement in the United States of interstate or foreign commerce, or the orderly make-up or movement or disposition of any train, or the movement or disposition of any locomotive, car, or other vehicle on any railroad or elsewhere in the United States engaged in interstate or foreign commerce shall be deemed guilty of a misdemeanor, and for every such offense shall be punishable by a fine of not exceeding $100 or by imprisonment for not exceeding six months, or by both such fine and imprisonment; and the President of the United States is hereby authorized, whenever in his judgment the public interest requires, to employ the armed forces of the United States to prevent any such obstruction or retardation of the passage of the mail, or of the orderly conduct or movement of interstate or foreign commerce in any part of the United States, or of any train, locomotive, car, or other vehicle upon any railroad or elsewhere in the United States engaged in interstate or foreign commerce: *Provided*, That nothing in this section shall be construed to repeal, modify, or affect either section six or section twenty of an Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October fifteenth, nineteen hundred and fourteen. * * *."

Law Against Sabotage.

AN ACT To punish the willful injury or destruction of war material, or of war premises or utilities used in connection with war material, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the words "war material," as used herein, shall include arms, armament, ammunition, live stock, stores of clothing, food, foodstuffs, or fuel; and shall also include supplies, munitions, and all other articles of whatever description, and any part or ingredient thereof, intended for, adapted to, or suitable for the use of the United States, or any associate nation, in connection with the conduct of the war.

The words "war premises," as used herein, shall include all buildings, grounds, mines, or other places wherein such war material is being produced, manufactured, repaired, stored, mined, extracted, distributed, loaded, unloaded, or transported, together with all machinery and appliances therein contained; and all forts, arsenals, navy yards, camps, prisons, or other military or naval stations of the United States, or any associate nation.

The words "war utilities," as used herein, shall include all railroads, railways, electric lines, roads of whatever description, railroad or railway fixture, canal, lock, dam, wharf, pier, dock, bridge, building, structure, engine, machine, mechanical contrivance, car, vehicle, boat, or aircraft, or any other means of transportation whatsoever, whereon or whereby such war material or any troops of the United States, or of any associate nation, are being, or may be, transported either within the limits of the United States or upon the high seas; and all dams, reservoirs, aqueducts, water and gas mains and pipes, structures and buildings, whereby or in connection with which water or gas is being furnished, or may be furnished, to any war premises or to the military or naval forces of the United States, or any associate nation, and all electric light and power, steam or pneumatic power, telephone and telegraph plants, poles, wires, and fixtures and wireless stations, and the buildings connected with the maintenance and operation thereof used to supply water, light, heat, power, or facilities of communication to any war premises or to the military or naval forces of the United States, or any associate nation.

The words "United States" shall include the Canal Zone and all territory and waters, continental and insular, subject to the jurisdiction of the United States.

The words "associate nation," as used in this act, shall be deemed to mean any nation at war with any nation with which the United States is at war.

SEC. 2. That when the United States is at war, whoever, with intent to injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war, or whoever, with reason to believe that his act may injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war, shall willfully injure or destroy, or shall attempt to so injure or destroy, any war material, war premises, or war utilities, as herein defined, shall, upon conviction thereof, be fined not more than $10,000 or imprisoned not more than thirty years, or both.

SEC. 3. That, when the United States is at war, whoever, with intent to injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war, or whoever, with reason to believe that his act may injure, interfere with,

or obstruct the United States or any associate nation in preparing for or carrying on the war, shall willfully make or cause to be made in a defective manner, or attempt to make or cause to be made in a defective manner, any war material, as herein defined, or any tool, implement, machine, utensil, or receptacle used or employed in making, producing, manufacturing, or repairing any such war material, as herein defined, shall, upon conviction thereof, be fined not more than $10,000 or imprisoned not more than thirty years, or both.

Approved, April 20, 1918.

[The foregoing seems to come within the scope of the activities of the property-protection section only so far as the act relates to willful injury, interference with, or obstruction to railroads, engines, cars, and the like, to the extent, and under the conditions that the act is applicable thereto.]

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COURT DECISIONS.

[Under the act of Congress February 13, 1913. 37 Stat., 670.]

Circuit Court of Appeals, Eighth Circuit.

W. H. MORRIS v. UNITED STATES.

Before ADAMS and CARLAND, *Circuit Judges*, and TRIEBER, *District Judge*.

[229 Fed. Rep. 516.]

OPINION OF THE COURT.

TRIEBER, *District Judge*, delivered the opinion of the court:

The defendants were indicted, charged with violations of the act of Congress of February 13, 1913 (37 Stat., 670). There were three counts in the indictment; but, as the defendants were only convicted on the first and second counts, the third need not be considered.

The first count charges the defendants with entering a car, in the Western District of Oklahoma, belonging to the Atchison, Topeka & Santa Fe Railway Co. (giving a description of the numbers and letters on the car), containing a shipment of shoes consigned by the W. L. Douglas Shoe Co., at Brockton, Mass., to the Boot & Shoe Hospital, at Los Angeles, Cal., while en route between these two points, with the intent to commit larceny therein, the shipment being an interstate shipment. The second count charges the crime of larceny from the same car.

(1) The sufficiency of the indictment is attacked upon several grounds. It is claimed that the act is unconstitutional, as Congress possesses no police power; that being reserved to the States. While it is true that the States reserved the police power to themselves, it is now equally well settled that as to those powers, which are expressly granted to Congress by the National Constitution, it possesses a power analogous to that of the police power. *In re Debs*, 158 U. S., 564, 15 Sup. Ct. 900, 39 L. ed. 1092; *Camfield* v. *United States*, 167 U. S., 518, 17 Sup. Ct., 864, 42 L. ed. 260; *Hoke* v. *United States*, 227 U. S., 308-323, 33 Sup. Ct., 281, 57 L. ed., 523, 43 L. R. A. (N. S.), 906, Ann. Cas. 1913-E, 905; *United States* v. *Shauver* (D. C.), 214 Fed., 154. In *Hoke* v. *United States*, Mr. Justice McKenna, delivering

the unanimous opinion of the court, after reviewing the former decisions of the court, said:

> The principle established by the cases is a simple one, when rid of confusing and distracting considerations, that Congress has power over transportation "among the several States," that the power is complete in itself, and that Congress, as an incident to it, may adopt, not only means necessary, but convenient, to its exercise, and the means may have the quality of police regulations.

By the commerce clause Congress has the power to regulate all interstate commerce, and consequently to protect it from destruction or depreciation, the same power which it possesses under that clause of the Constitution which grants it the power to establish the Post Office Department. Nor does it matter that the same offense, breaking into a railroad car for the purpose of committing larceny therein, and the larceny itself, may be punished under the laws of the State where the offense is committed, as it is now well settled that certain acts may be in violation of both State and National penal codes, and may be prosecuted in either of these courts. *Houston* v. *Moore*, 5 Wheat., 1, 5 L. ed., 19; *Fox* v. *Ohio*, 5 How., 410, 12 L. ed., 213; *United States* v. *Marigold*, 9 How., 560, 13 L. ed., 257; *United States* v. *Arjona*, 120 U. S., 479, 7 Sup. Ct., 628, 30 L. ed., 728; *Cross* v. *North Carolina*, 132 U. S., 131, 10 Sup. Ct., 47, 33 L. ed., 287. There is no reason for doubting the constitutionality of the act.

The sufficiency of the indictment is also attacked upon a number of grounds. It is claimed that neither of the counts is specific enough.

(2) In the first count the indictment follows the language of the statute and describes specifically the car which was broken into, that it was the property of the Atchison, Topeka & Santa Fe Railway Co.; that it contained an interstate shipment from the State of Massachusetts to the State of California; gives the name of the consignor in Massachusetts and the consignee in California; and that the breaking into the car was with the intent to commit larceny therein.

(3) The second count also follows the language of the statute, charging that it was an interstate shipment, as charged in the first count, describes the property stolen, and, in fact, describes the larceny with all the particularity required by the common law. It charges all the facts necessary to enable the defendants to prepare for their defense and to plead former jeopardy in case they are again indicted for these offenses after an acquittal or conviction on this indictment. This is all that is necessary. *Potter* v. *United States*, 155 U. S., 438, 15 Sup. Ct., 144, 39 L. ed., 214; *Jolly* v. *United States*, 107 U. S., 402, 18 Sup. Ct., 624, 42 L. ed., 1085; *Considine* v. *United States*, 112 Fed., 342, 50 C. C. A., 272; *Bowers* v. *United States*, 148 Fed., 379, 78 C. C. A., 193; *Thompson* v. *United States*, 202 Fed., 401, 120 C. C. A., 575, 47 L. R. A. (N. S.), 206; *Breese* v. *United States*, 226 U. S., 1, 33 Sup. Ct., 1, 57 L. ed., 97. The tendency of most of the

courts at this day, and especially the Supreme Court of the United States, is to disregard technicalities which can in no way be prejudicial.

(4) It is also claimed that the indictment is defective, as it fails to allege that the railway company, the owner of the car, was an incorporated company. In view of section 1025, Revised Statutes (Comp. St. 1913, sec. 1691), this is unnecessary, as we are unable to see how that omission can have any tendency to the prejudice of the defendant. *Caha* v. *United States*, 152 U. S., 211–221, 14 Sup. Ct., 513, 38 L. ed., 415; *Frisbie* v. *United States*, 157 U. S., 161–164–168, 15 Sup. Ct., 586, 39 L. ed., 657; *Connors* v. *United States*, 158 U. S., 408–411, 15 Sup. Ct., 951, 39 L. ed., 1033; *New York Central Railroad Company* v. *United States*, 212 U. S., 481–497, 29 Sup. Ct., 304, 53 L. ed., 613; *Clement* v. *United States*, 149 Fed., 305, 79 C. C. A., 243, decided by this court, and in which certiorari was denied.

Under similar statutes of many States it has been held that it is unnecessary to charge in the indictment that the company, whose house was broken into, or whose property stolen, was an incorporated corporation. *Burke* v. *State*, 34 Ohio St., 79; *People* v. *Rogers*, 81 Cal., 209, 22 Pac., 592; *Fisher* v. *State*, 40 N. J. Law, 169; *State* v. *Simas*, 25 Nev., 432, 62 Pac., 242.

(5) It is next claimed that there can be no conviction on both counts. But this has been adversely decided in *Morgan* v. *Devine*, 237 U. S., 632, 35 Sup. Ct., 712, 59 L. ed., 1153. Besides, the sentences on both counts are the same and concurrent.

* * * * * * *

(7) The learned counsel for the defendants strenuously insist that there was not sufficient evidence to warrant the finding that the crime, if committed by the defendants, was committed in the Western District of Oklahoma. The evidence shows that after the train had left the town of Kiowa, in the State of Kansas, which is about one mile north of the Oklahoma line, two men, whom he did not recognize then, as he was too far from them, were sitting at the head end of the train, and that some time after that the defendant Morris appeared with the shoes. When Morris appeared with the shoes the train had proceeded at least 14 miles in the Western District of Oklahoma. Even if it be conceded that the evidence was not sufficient to establish, beyond a reasonable doubt, the breaking into the car in the Western District of Oklahoma, it certainly was sufficient to justify the verdict of guilty on the second count, that of larceny, for that offense is a continuous offense, and although committed in one district, if the stolen property is brought into another district, with the intent there to feloniously convert the stolen property, the guilty party may be tried in either district. *Perara* v. *United States*, 221 Fed., 213, 136 C. C. A., 623, decided by this court.

(8) As before stated, as the punishment imposed on both counts is the same and runs concurrently, it can work no prejudice to the defendants, even if there was no evidence to warrant the verdict of guilty on the first count, the evidence clearly warranting a conviction on the second count.

(9) There was no error in the charge to the jury. It was as favorable as the law permits. Possession of property recently stolen, if unexplained, in connection with other evidence, showing the presence of the defendant at the time and place where the theft was committed, justifies a finding of guilty. *United States* v. *Jones*, (C. C.), 31 Fed., 718; *Wiley* v. *State*, 92 Ark., 586, 124 S. W., 249.

(10) Nor was it error to refuse to give the instructions asked on behalf of the defendants as to the effect of their good reputation in the community in which they had lived, as the court covered this phase of the case even more favorably to the defendants than was asked by their instruction. The court charged the jury on that point:

> Testimony has been introduced here for the purpose of showing the good reputation of the defendants in the community in which they have lived. That testimony is competent for your consideration. In the light of it you should view all the evidence in the case in determining the guilt or innocence of the defendants, and whether you are convinced of the defendants' guilt beyond a reasonable doubt, or entertain such a reasonable doubt of their guilt. But you are instructed, if after you have considered all the evidence, including that which has been introduced here upon the subject of their reputation, you are satisfied beyond a reasonable doubt that the defendants are guilty, then it will be your duty to convict them, notwithstanding the evidence upon the subject of their reputation.

Edgington v. *United States*, 164 U. S., 361, which counsel for these defendants rely on, does not sustain their contention. * * *

The judgment is affirmed.

Circuit Court of Appeals, First Circuit.

FRIEDMAN v. UNITED STATES.

Before PUTNAM and DODGE, *Circuit Judges*, and BROWN, *District Judge*.

[233 Fed. Rep. 429.]

OPINION OF THE COURT.

PUTNAM, *Circuit Judge*, delivered the opinion of the court:

This indictment was laid under the act of February 13, 1913, 37 Stat., 670, c. 50 (U. S. Comp. St. 1913, secs. 8603, 8604), charging the defendant with unlawfully receiving and concealing certain brasses stolen from a box car at Springfield while constituting a part of a shipment from Concord, N. H., to Springfield, Mass. The

merchandise belonged to the Boston & Maine Railroad and was a part of its cars being forwarded to the repair shops of the railroad corporation.

(1) Claim is made that, as this material was carried without compensation, and was all the time the property of the Boston & Maine Railroad, it was not within the statute. However, as it was being transported as freight it was within the letter of the statute, and we know of no reason which takes it out of it. The same words are often used in many different senses, but this word is appropriate for the application made of it here.

(2) Once in interstate commerce we think the goods transported as freight retained the character thus acquired and were under the protection of the act, like mail matter, until they reached their ultimate destination.

(3, 4) The plaintiff in error fails to satisfy us that the act, thus understood, violates any constitutional provision. Whoever receives stolen goods, knowing them to be stolen, takes the risk, in our opinion, of their having been stolen during transportation in interstate commerce and of their being thus within the protection of the act.

The plaintiff in error also fails to satisfy us that there was prejudicial error in any of the exclusions of testimony to which he excepted.

The judgment of the District Court is affirmed.

Circuit Court of Appeals, Sixth Circuit.

KASLE v. UNITED STATES.

Before WARRINGTON and DENISON, *Circuit Judges*, and HOLLISTER, *District Judge*.

[233 Fed. Rep. 878.]

OPINION OF THE COURT.

WARRINGTON, *Circuit Judge*, delivered the opinion of the court:

Kasle was convicted and sentenced under an indictment charging him with unlawfully and feloniously having in his possession certain goods and chattels, knowing them to have been stolen from a railroad freight station while in course of shipment in interstate commerce. A motion to quash the indictment was overruled. At the close of the evidence offered by the Government, the defendant moved that the evidence be withdrawn and a verdict directed in his favor, and the motion was denied. Again, at the close of all the evidence defendant renewed his motion for a directed verdict on the ground that there was no evidence to sustain the allegations of any of the counts of the

indictment, which was granted as to the first count and overruled as to the second and third counts. Aside from the ruling upon the first count, exception was reserved and error assigned upon each of the rulings mentioned; and some twenty additional assignments are presented upon exceptions reserved in the course of the trial concerning rulings in admitting and rejecting testimony and certain instructions contained in the charge to the jury. Defendant prosecutes error.

1. The motion to quash the indictment is based on six grounds, the first four of which are, in substance, that at the time the goods and chattels are alleged to have been in defendant's possession it does not appear in any of the counts (*a*) that defendant knew they had been stolen, taken, or carried away from interstate commerce, (*b*) that they were interstate commerce or a part thereof, (*c*) that they retained their character as an interstate shipment of freight, (*d*) that they had not lost their character as part of interstate commerce; and the two remaining grounds are (*e*) that the indictment and the counts respectively do not with sufficient certainty describe the offense charged so as fairly to inform defendant of its nature and of what he would be called upon to meet, and (*f*) that the indictment and counts do not state facts sufficient to constitute an offense against the United States.

(1) The indictment is based on an act of Congress passed February 13, 1913 (37 Stat., 670). The applicable portion of this statute is as follows:

* * * Whoever shall steal or unlawfully take, carry away, or conceal, or by fraud or deception, obtain from any railroad car, station house, platform, depot, steamboat, vessel, or wharf, with intent to convert to his own use any goods or chattels moving as or which are a part of or which constitute an interstate or foreign shipment of freight or express, or shall buy, or receive, or have in his possession any such goods or chattels, knowing the same to have been stolen, * * * shall in each case be fined not more than $5,000 or imprisoned not more than ten years, or both.

The indictment contains three counts; but as count 1 was in effect eliminated, as stated, it is necessary to consider only counts 2 and 3. Except as to dates of the offenses charged, the kinds and the points of origin and destination of the goods and chattels involved (the second count describing 10 pigs of tin, comprising about 1,119 pounds, and the third, 2 barrels of scrap brass), the two counts remaining are alike; the second count is printed in the margin.

(Footnote.) (*Count II.* And the grand jurors aforesaid upon their oath aforesaid, do further present and find that the said Sam Kasle, heretofore, to wit, on or about the 7th day of September, in the year of our Lord one thousand nine hundred and thirteen, at the city of Toledo, Lucas County, Ohio, in the division and district aforesaid, and within the jurisdiction of this court, unlawfully and feloniously did knowingly have in his possession certain goods and chattels, to wit, ten pigs of tin, consisting of about eleven hundred and nineteen

pounds of tin, which said goods and chattels had theretofore, to wit, on or about the 7th day of September, 1913, been a part of an interstate shipment of freight in course of shipment in interstate commerce, and had been unlawfully and feloniously stolen, taken, and carried away from a certain railroad station house at Toledo, in the county of Lucas, Ohio, known and described as the New York Central Terminal Freight Station, at Toledo aforesaid, while said goods and chattels were so in course of shipment in interstate commerce from the Pope Metals Company, at New York, in the State of New York, to the Union Steel Screen Company, at Albion, in the State of Michigan, he, the said Sam Kasle, at the time and place aforesaid, when, as aforesaid, he so unlawfully and feloniously had the said goods and chattels in his possession, well knowing the same to have been stolen—contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.)

Comparison of the allegations of the count with the first four grounds stated in the motion to quash will show these grounds to be without merit, since defendant was charged with knowingly, and so unlawfully and feloniously, having in his possession distinct goods and chattels which had been stolen, taken, and carried away from a named railroad station in Toledo, Ohio, while in course of shipment in interstate commerce between points named in the counts. It is true, as the first ground of the motion to quash states, that it is not charged that at the times the goods and chattels are alleged to have been in his possession defendant knew they had been stolen from interstate commerce.

(2) As we interpret the statute such an allegation is not necessary. One who knowingly receives stolen chattels must do so at the peril of their having been stolen while in course of interstate transportation; indeed, it is not perceived why the thief should escape conviction under this statute just because he did not know the points of origin and destination. Manifestly, both the receiver and the thief are chargeable with knowledge of the act of Congress forbidding this particular theft, quite as certainly as they are of a state statute prohibiting theft generally. The status of the articles, in the sense of being interstate or intrastate in character, can not in the nature of things affect the fact either of the stealing or receiving alleged; and the statute, whether Federal or state, is at bottom aimed against stealing or receiving. The most, then, that can be said of the object of allegation, as well as proof, touching the interstate character of the articles is to show the existence of the condition which brought the subject within the Federal power and jurisdiction.

(3–6) The last two grounds of the motion to quash, however, present some difficulties. Ownership of the goods and chattels described in counts 2 and 3 is not in terms laid in any particular person or company, either by absolute or qualified title, at the times the articles were severally alleged to have been "feloniously stolen, taken, and carried away from a certain railroad station house * * * known

and described as the New York Central Terminal Freight Station." Neither the name of the owner of the station nor any excuse for its omission is to be found in the counts. Presumably the owner of the station held an interest in the goods and chattels which was sufficient for all purposes of the indictment. The rule is that specific ownership must be alleged and proved, but a special property, such as that of a bailee, carrier, or the like, in goods stolen, is sufficient for purposes of an indictment, say, for larceny (2 East's P. C., 652; 1 Wharton Crim. Law, sec. 932; Wharton American Crim. Law, pp. 657, 658; *Darter* v. *Commonwealth*, 5 S. W., 48, 9 Ky. Law Rep., 277, 278; *Commonwealth* v. *Finn*, 108 Mass., 466, 468; *Commonwealth* v. *Rubin*, 165 Mass., 453, 454, 43 N. E., 200; *Allen* v. *State*, 131 Ala., 159, 165, 32 South., 318); and in this respect there is no difference in principle between the offense of larceny and that of receiving stolen goods (3 Bishop's New Crim. Procedure, sec. 982); indeed, in his treatment of the subject of indictments for receiving stolen goods, Mr. Bishop says: "The owner's name is essential in identification; hence to be stated if known" (*Id.*, sec. 983; *State* v. *McAloon*, 10 Me., 133, 135; *State* v. *Polland*, 53 Me., 124, 125; *Miller* v. *People*, 13 Colo., 166, 167, 21 Pac., 1025; *Brothers* v. *State*, 22 Texas App., 447, 462, 3 S. W., 737; *Zweig* v. *State* (1913) 74 Tex. Cr. R., 306, 171 S. W., 747, 749); and the rule so laid down by Bishop is in effect recognized in *Kirby* v. *United States*, 174 U. S., 47, 61, 19 Sup. Ct., 574, 43 L. ed., 809, where contention that the indictment was defective because it did not allege ownership by the United States of the stolen articles at the time they were alleged to have been feloniously received by the accused was denied, but the reason given was that the indictment alleged the articles to be "the property of the United States." The present counts 2 and 3 do, however, name the consignees of the goods and chattels in question, the name stated in the second being Union Steel Screen Co., and in the third Koblitz, Kohn & Co.; and ordinarily this would be sufficient for all purposes of identification of the articles in dispute and so of the indictment, since delivery to a common carrier is delivery to the consignee in the absence of agreement to the contrary, even though the carrier is not designated by the consignee. *Commonwealth* v. *Sullivan*, 104 Mass., 552, 554. But here again objection is urged, and for the reason that the consignee's names are indefinite in that they may be either corporations, joint-stock associations, or partnerships. An objection of this character, certainly as respects the present second count, was recently disallowed in *Morris* v. *United States* (229 Fed., 516, 520, —— C. C. A., ——, and citations (C. C. A., 8)), when the court was considering an indictment based on the statute involved in the instant case and a failure to allege therein that the railway company, owning

the car from which the property was stolen, was an incorporated company. We agree with the ruling there made, that in view of section 1025, Rev. Stat., such an allegation was unnecessary, since as the court said (229 Fed., 520, —— C. C. A., ——):

"We are unable to see how that omission can have any tendency to the prejudice of the defendant." And see ruling of court in *Burke* v. *State of Ohio*, 34 Ohio St., 79, Syl. 1, and opinion of the late Judge Okey, 81, 82.

Furthermore, since the consignee named in the third count, Koblitz, Kohn & Co., is seemingly a partnership, and since ownership of the property described is not laid in the name of any person purporting to be a partner, it may be well to look further into the statute itself. While such objections as we have been considering might be avoided, and ought to be, through careful preparation of indictments, still it is plain enough that the act of Congress here involved was not intended to require strict observance of either all the rules of the common law upon the subject of certainty in criminal pleading or those growing out of distinct statutes which were intended to change and modify many of such rules. It is to be observed, too, that the relevancy or not of decisions, which in large measure are controlled by local statutes, is to be tested by comparison of those statutes with the particular statute in issue. The act now in question is designed to protect articles while in course of interstate shipment. When the articles of freight now in dispute are considered in connection with their points of origin and destination and the "railroad station house," as such points and station are described in the counts, it is clear that for purposes of the indictment the freight articles are to be treated as having been "in course of shipment in interstate commerce" at the times they are alleged to have been stolen; and it is equally clear that when defendant was required to meet the allegations charging him with having possession of the articles his opportunities for identifying them were quite as available as they would have been if title to the articles, and also to the station, had been laid in the name of the owner of the station. The station was the natural place for the custody and control of such articles until the movement toward their fixed destinations should actually be resumed; and the charge made in the indictment that the goods were "stolen, taken, and carried away" from this station may be said to have followed the language of the statute. A statute and an indictment somewhat similar to the statute and indictment here involved were under consideration in *United States* v. *Coombs*, 37 U. S. (12 Pet.), 72, 9 L. ed., 1004. It is true, however, that the court was there called upon to determine only a question of jurisdiction which arose under the indictment; the act forbade any person to (37 U. S. (12 Pet.), 74, 9 L. ed., 1004)—

plunder, steal, or destroy any money, goods, merchandise, or other effects from, or belonging to, any ship or vessel, * * * which shall be in distress, or which shall be wrecked, lost, stranded, or cast away, upon the sea, or upon any reef, shoal, bank, or rocks of the sea, or in any place within the admiralty or maritime jurisdiction of the United States.

Although the question of ownership, with which we are now concerned, did not arise in that case, it is noteworthy that the indictment is there stated (37 U. S. (12 Pet.), 74, 9 L. ed., 1004) to have charged that the merchandise stolen "belonged to the ship *Bristol*, the said ship then being in distress," etc. (*Id.*) It hardly is to be inferred that absolute title to such merchandise was in the owner of the ship, though the merchandise might well have been in the custody and control of the ship for purposes of transportation; and since no question concerning the form of the indictment was certified it is to be presumed that the allegation that the merchandise "belonged" to the ship was open to such an interpretation as this and also was regarded as sufficient to identify the stolen articles and so to sustain the indictment. We are led to believe upon the whole that wherever the place of custody and control of articles of interstate freight alleged to have been stolen therefrom falls within the language of the statute and is permanent in character and adapted and generally used for such custody and control, like a railroad station, it is not essential to the validity of an indictment similar in object to the present one that ownership in either the place or the articles be distinctly alleged (*State* v. *Casavant*, 64 Vt., 405, 407, 23 Atl., 636); and this is for a stronger reason than can be ascribed even to a distinctive though stranded ship like the *Bristol*. These views will not of course be interpreted to apply to a movable place of custody, such as a freight car, from which goods claimed to have been stolen and subsequently feloniously received in possession are made the subjects of indictment. The necessity for applying the rule of identification in that kind of a case may be conceded, for the reason that a place of custody described only as a freight car would imply no such distinct identity as does a freight terminal station in a city; but plainly that reason can have no application here. It was necessary, it is true, that the elements of the offense charged should be stated with such particularity as fairly to apprise defendant of what he must meet, and in the event of conviction or acquittal to enable him to plead the indictment in bar of any subsequent prosecution for the same offense; and these requirements we think were sufficiently met (*Armour Packing Co.* v. *United States*, 209 U. S., 56, 83, 28 Sup. Ct., 428, 52 L. ed., 681; *Cochran and Sayre* v. *United States*, 157 U. S., 286, 290, 15 Sup. Ct., 628, 39 L. ed., 704; *Grand Rapids & I. Ry. Co.* v. *United States*, 212 Fed., 577, 583, 129 C. C. A., 113, and citations (C. C. A., 6)); the motion to quash the indictment was therefore rightly denied.

(7, 8) 2. The assignment concerning denial of defendant's motion to direct a verdict at the close of the Government's evidence is not available, since the alleged error was waived by the introduction of evidence for defendant (*Sandals* v. *United States*, 213 Fed., 569, 573, 130 (C. C. A., 149); *Tucker* v. *United States*, 224 Fed., 833, 837, 140 C. C. A., 279 (C. C. A. 6)); but such waiver did not affect the right of defendant to have the sufficiency in law of the entire evidence considered upon the motion to direct made at the close of all the testimony (*Tucker* v. *United States*, *supra*, 224 Fed., 837, 140 C. C. A., 279). Our consideration of all the evidence, however, satisfies us that the last motion to direct was rightly overruled as to the second and third counts. In reaching this conclusion we are not unmindful of the contention that defendant was charged with knowingly receiving stolen property, and that the evidence tended at most to show only that he received embezzled property. This is a misapprehension of the relation borne to the property in dispute by the tallymen, who appear to have had more or less to do with its alleged theft. They were to "check freight in and out of cars," rather than to take it into their possession and control; they were not intrusted with the property in the sense that their acts of taking and disposing of it for their individual benefit amounted to embezzlement; such a taking, if it occurred, was simply larcenous. *State* v. *C. B. Smith*, 250 Mo., 350, 367, 157 S. W., 319. The decision in that case is sufficient to point the distinction which renders the decisions of the same court, relied on by defendant, inapplicable (*State* v. *Gennusa*, 258 Mo., 273, 274, 167 S. W., 439; *State* v. *George*, 263 Mo., 686, 173 S. W., 1077, 1078); for in the latter cases the property in question was intentionally committed to teamsters for purposes of transportation and specific delivery, and after possession was taken the conversion was committed in the course of executing the duty.

(9) 3. We come next to the errors assigned respecting the charge of the court. The first instruction to which exception was reserved dealt with the question whether the goods and chattels "were articles in interstate transportation and were stolen," and also with the circumstances which might be considered in determining that question. The court stated that both the pig tin and the brass seemed to have been subjects of interstate transportation, and that the jury might "use the circumstances surrounding these shipments and any other circumstances that give to you (the jury) the right to indulge in reasonable inferences that men use under like circumstances to determine" the fact or not of theft. The exception mentioned concerned this latter portion. It is true that this instruction affected defendant in the sense that he could not be rightfully convicted of knowingly receiving stolen goods that were not shown to have been stolen, yet in

our view of the evidence the instruction could not have prejudiced the defendant. Following that subject it was said:

If you determine that you can identify as stolen two barrels of brass or any portion of the shipment of brass referred to in the exhibits in question, or the pig tin referred to in the exhibits in question, if that identification satisfies you beyond a reasonable doubt, then, of course, logically, your next inquiry is whether either or both of those classes of articles, on one count or the other, came into the possession of the defendant Sam Kasle. You must carry the identification, of course, to him. * * *

Then, if you find, beyond a reasonable doubt, either this brass or this tin in Sam Kasle's possession, you must proceed then to determine whether he had possession of either or both of those classes of articles, knowing that they were stolen.

I may say to you, in the first place, that the law is that the possession of stolen property imputes knowledge in the possessor that it was and is stolen, unless the possessor explains his possession in such a way as to free his mind (as to free him?) from that presumption.

The law also is that one who acquires possession of stolen property under conditions and circumstances which would put a reasonable man who was honest upon inquiry as to the character of that property, is deemed to have just such knowledge of the character of the property as would come to him had he made the reasonable inquiries as to the source of the property which would occur to an honest man of average intelligence under the circumstances in which he got it; that one who takes into his possession personal property is chargeable with the duty of giving attention to those circumstances attending his reception of the property which in your judgment should have been deemed by him at the time to be suspicious and suggestive that the title of him who was transferring it was open to question.

As we understand these portions of the charge, the jury was in substance instructed to find: (*a*) Whether the goods and chattels in issue were articles of interstate transportation; (*b*) whether they were stolen while in course of such transportation; (*c*) whether defendant came into possession of them; and, if these findings were in the affirmative, then to find (*d*) whether defendant received the articles knowing them to have been stolen. Later it was said of the statute:

This law makes one of the essential elements of the offense possession with knowledge.

If error was committed in respect to the ultimate issue of fact, it was not in defining it but in stating the tests to which the jury might resort in resolving the issue one way or the other. One of the tests was in effect that a person who receives property, which in fact is stolen property, under circumstances which would put a reasonable and honest man upon inquiry, is chargeable with such knowledge in that behalf as would have come to him had he made such reasonable inquiries, touching the source of the property, as would have occurred "to an honest man of average intelligence." Another test was that one receiving personal property is chargeable with the

particular effect of "those circumstances attending his reception of the property," which, in the judgment of the jury, "should have been deemed by him at the time to be suspicious and suggestive that the title" of the transferor "was open to question."

Plainly such tests as these of guilty knowledge on the part of the accused subjected him to a standard of conduct and of capacity to detect crime, which the jury might conclude to be the standard of reasonable and honest men of average intelligence when acting under circumstances like those which might be found to have existed here. The effect of such tests was to charge the accused with guilty knowledge or not upon what the jury might find would have induced belief in the mind of a man such as they were told to consider, rather than the belief that was actually created in the mind of the accused; or, at least, the accused might be condemned even if his only fault consisted in being less cautious or suspicious than honest men of average intelligence are of the acts of others. The result of the rule of the charge would be to convict a man, not because guilty, but because stupid. The issue was whether the accused had knowledge—not whether some other person would have obtained knowledge—that the goods had been stolen. The circumstances must have had that effect upon the mind of the accused, to constitute knowledge in him. The issue must be determined upon the individual test of the accused. It may well be that the tests stated in the charge are proper enough to fix civil liability for the acts or omissions of a defendant, but hardly to fasten upon him an intent to commit a felony. There is some conflict in the decisions upon this subject, but we think the tests of the charge are opposed to the clear weight of authority; this may be fairly illustrated by the following: *State* v. *Alpert*, 88 Vt., 191, 204, 92 Atl., 32; *Peterson* v. *United States*, 213 Fed., 920, 922, 923, 130 C. C. A., 398 (C. C. A., 9); *State* v. *Rountree*, 80 S. C., 387, 391, 61 S. E., 1072, 22 L. R. A. (N. S.), 833; *State* v. *Daniels*, 80 S. C., 368, 371, 61 S. E., 1073; *State* v. *Goldman*, 65 N. J. Law, 395, 397, 47 Atl., 641; *Cohn* v. *People*, 197 Ill., 482, 485, 64 N. E., 306; *Robinson* v. *State*, 84 Ind., 452, 456; *State* v. *Denny*, 17 N. D., 519, 525, 117 N. W., 869; *Forrester* v. *State*, 69 Tex. Cr. R., 62, 152 S. W., 1041, 1042; *Pickering* v. *United States*, 2 Okl. Cr., 197, 101 Pac., 123, 124; *Drummond* v. *State*, 103 Miss., 221, 224, 60 South., 138.

(10) It is not meant to say, however, that conviction can not be established upon circumstantial evidence. While there was direct testimony and specific denial of guilty knowledge on defendant's part, yet there were in addition circumstances of more or less tendency to show as well as to refute such knowledge; the relevancy of such circumstances, when not too remote, can not of course be rightly denied; but, apart from instructions as to whether the property was

in fact stolen, no difficulty is perceived in applying the circumstances directly to the accused with a view of testing the question of notice or knowledge on his part, at the times he received the goods and chattels, that they had been stolen (if in fact they were stolen).

(11) Another feature complained of in the charge is, as already shown, that the law is stated to be:

> That the possession of stolen property imputes knowledge in the possessor that it was and is stolen, unless the possessor explains his possession in such a way as to free his mind (as to free him?) from that presumption.

We gather from the context that this portion of the charge was intended to be applied only in case it should first be found, as already stated, that the articles in issue—the tin and the brass, or either—had been stolen while in course of interstate transportation, and that either or both had come into defendant's possession; but in that event the jury was to approach the ultimate question subject to a presumption that defendant received the articles with knowledge that they had been stolen. This question was of course vital to the defendant. He was not charged with the theft; the only tendency of the proofs in that behalf is that the theft was committed by others; and these acts, if committed, constituted larceny. The charges that defendant had the articles in his possession with knowledge of the theft do not in terms allege that such possession was taken in aid of the larceny, hence each charge made against defendant was for an offense distinct from the antecedent larceny. The instant case therefore differs from a case where, for instance, the statute so defines the act of receiving stolen property and that of stealing it as in effect to make the two offenses the same in character. Under a statute of that kind the receipt may amount to larceny, as well as the theft; and so the same presumption arising from recent possession that would be applicable to the thief might also be to the receiver. Thus in *Martin* v. *State*, 104 Ala., 71, 78, 16 South., 82, under an indictment for both larceny and knowingly receiving, it was "held that recent possession of stolen goods imposes on the possessor the onus of explaining the possession," etc.; but, as we understand, the case arose under a statute in which it is provided:

> Any person who buys, receives, conceals, or aids in concealing any personal property whatever, knowing that it has been stolen, and not having the intent to restore it to the owner, must, on conviction, be punished as if he had stolen it. (2 Crim. Code Ala., 1896, sec. 5054, p. 369.)

To the same effect is *Jenkins* v. *State*, 62 Wis., 49, 21 N. W., 232, and also the statute (2 Sanborn & Berryman Ann. Stat., Wis., sec. 4417); moreover, the decisions mostly relied on there relate to cases of larceny (62 Wis., 57, 58, but see p. 61, 21 N. W., 232); *State* v. *Record*, 151 N. C., 695, 697, 65 S. E., 1010, 25 L. R. A. (N. S.),

561, 19 Ann. Cas., 527, and 2 Pell's Revisal of 1908 (N. C.), sec. 3507; and *Reg.* v. *Langmead* (1864) 10 L. T. (N. S.), 350, 351, and 101 Stat. (24 and 25 Vict. 1861), 361, secs. 91, 92; and also 2 Archbold's Crim. Pr. & Pl., 1422. The statute last referred to (and which apparently governed Langmead's case) provided that a person receiving stolen property, "knowing the same to have been feloniously stolen," should be guilty of a felony and might be "indicted and convicted either as an accessory after the fact or for a substantive felony," etc., and also provided that an indictment might contain a charge of "feloniously stealing any property," and also one or more counts for "feloniously receiving the same or any part or parts thereof, knowing the same to have been stolen," etc.; Langmead was indicted and tried on two counts, one for stealing and the other for receiving, and was found guilty of feloniously receiving; Pollock, C. B., said (p. 351):

> The distinction between the presumption as to felonious receiving and stealing is not a matter of law. No doubt, upon the evidence, no other person than the prisoner appears distinctly to enter into the transaction, and all that appears is that the prisoner was found very recently in possession of the stolen sheep. That prima facie is evidence of stealing rather than of receiving, but in no case can it be said to be exclusively such, unless the party is found so recently in possession of stolen property, and under such circumstances as to exclude the probability of receiving; as where a party is stopped coming out of a room with a gold watch which has been taken from the room; but if he has left the room so long as to render it probable that he may have received it from some one else, then it may be evidence either of stealing or of feloniously receiving.

These decisions and the statutes affecting them are enough to illustrate the distinction already mentioned between cases of that character and the instant case. If those decisions can not be so distinguished we are unable to follow them, but must rather adopt the rule of the cases hereafter cited. We can not think that the last-quoted portion of the charge here is sustainable under either count 2 or count 3 of the present indictment. The charge is broad and unqualified; it states as matter of law "that the possession of stolen property imputes knowledge in the possessor that it was and is stolen"; and the defendant is at once put upon his proofs to free himself of that presumption. It might be that the circumstances shown to have attended the possession of property involved in a given case, not to say the case in hand, would, if unexplained by defendant, naturally lead the jury to believe that he received the property with knowledge that it had been stolen; but to impute such knowledge as matter of law is a different proposition. The effect of this, as it seems to us, was to impose the burden upon defendant to prove his innocence in case the jury should find the goods had in fact been stolen. Defendant's possession, say, of the tin, was practically ad-

mitted; and, if it was once found that this tin was in fact stolen, the effect of the charge was to treat such admission, coupled with such finding, as sufficient to impute "knowledge in the possessor that it was and is stolen" property; and this was calculated to prejudice the rights of the accused. In *Durant* v. *People*, 13 Mich., 351, Durant was charged with receiving stolen goods, "knowing the same to have been feloniously stolen," etc.; and, upon a ruling of the court below excluding testimony tending to show possession but without guilty knowledge, Christiancy, J., speaking for a unanimous court, said (13 Mich., 352):

> The defendant was not charged with larceny of the goods, and her possession could not be used as evidence tending to show that she had stolen them. Her possession must be regarded as innocent, unless shown to have been received with knowledge that they were stolen, or under circumstances which would satisfy the jury that she believed them to be stolen. Possession itself, without evidence tending to show such guilty knowledge, could have no tendency to establish her guilt. She did not, in fact, undertake to deny the possession, but admitting it, claimed she had come to the possession innocently, without notice that the goods were stolen. In the aspect the case had assumed when this question was proposed to the witness, guilty knowledge was practically the only question in dispute. But independent of the particular aspect the case had assumed upon the evidence, we think, in all prosecutions for this offense, it must upon principle be competent alike both for the prosecution and the defense to show what were the actual circumstances, the arrangement or understanding under which the goods were received by the defendant, whether the effect shall be to establish guilt or innocence. This is the res gestæ, the very essence of the inquiry.

See *State* v. *Richmond*, 186 Mo., 71, 82, 85, 84 S. W., 880; *State* v. *Weinberg*, 245 Mo., 564, 571, 150 S. W., 1069; *People* v. *Weisenberger*, 73 App. Div., 428, 429, 77 N. Y. Supp., 71; *People* v. *Wilson*, 151 N. Y., 403, 406, 45 N. E., 862; *State* v. *Freedman* (Del. Ct. of Gen. Sess.), 3 Pennewill, 403, 405, 53 Atl., 356; *State* v. *Janks*, 26 Idaho, 567, 577, 578, 144 Pac., 779; *Castleberry* v. *State*, 35 Tex. Cr. R., 382, 383, 33 S. W., 875, 60 Am. St. Rep., 53; *Territory* v. *Claypool & Lucas*, 11 N. M., 568, 577, 71 Pac., 463; *Slater* v. *United States*, 1 Okl. Cr., 275, 98 Pac., 110, 113; *Cooper* v. *State*, 29 Tex. App., 8, 19, 13 S. W., 1011, 25 Am. St. Rep., 712; 2 Wharton's Crim. Ev. (10th Ed.), sec. 760.

We conclude that the errors pointed out in the charge were prejudicial; and an order will accordingly be entered reversing the judgment and remanding the case for new trial.

FORMS OF INDICTMENT.

In *Heard* v. *United States*, and *Dunn* v. *Same*, 228 Fed., 503 (8 C. C. A.), a case was presented for review in which Heard was convicted of stealing from a railroad car certain packages of money, being interstate shipments by express (act Feb. 13, 1913, chap. 50,

37 Stat., 670), and Dunn of *aiding and abetting* him, and BOTH OF A CONSPIRACY with the express messenger TO COMMIT THE THEFTS (act Mar. 4, 1909, chap. 321, Penal Code, sec. 37, 35 Stat., 1096). The conviction in these cases was reversed upon questions of law not affecting the interpretation or application of the statutes referred to.

In the Transcript of Record of the Dunn and Heard cases just referred to, the forms of indictment used are as follows:

In the District Court of the United States, within and for the district and division aforesaid, at the term thereof, A. D.

The grand jurors of the United States, impaneled, sworn and charged at the term aforesaid, of the court aforesaid, on their oath present, that heretofore, to wit: on the —— day of ———, A. D. ——, one ——— ———, late of said district and division, on the line of the ———, a common carrier, between the cities of ———, in the county of ———, and ———, in the county of ———, in the district and division aforesaid, and within the jurisdiction of this court, did then and there knowingly, willfully, unlawfully, and feloniously take, steal, and carry away from a certain ——— car, said car being numbered ———, and being then and there a part of a train of cars engaged in interstate commerce, three certain sealed envelopes and packages, in the custody and possession of the United States Express Company, and described as follows: one envelope and package consigned by the ticket agent of the said ——— Company, at ———, in the district and division aforesaid, and addressed to the Merchants Laclede National Bank of St. Louis, in the State of ———, said envelope and package then and there containing money in the sum of five hundred and forty-eight dollars and fifty cents ($548.50), lawful money of the United States, money and property of the ——— Company, a more particular description of which said money is to these grand jurors unknown; also one package and envelope consigned by the freight agent of the said ——— Company, at said ———, addressed to the ——— Bank of ———, in the State of ———, said envelope and package then and there containing money in the sum of three hundred and twenty-four dollars ($324) lawful money of the United States, money and property of the ——— Company, a more particular description of which said money is to these grand jurors unknown; also one package and envelope, consigned by the ———, of ———, at ———, in the district and division aforesaid, addressed to ———, of ———, at ———, in the State of ———, said envelope and package then and there containing money in the sum of three hundred and twelve dollars and nineteen cents ($312.19), lawful money of the United States, money and property of the ——— Company, a more particular description of which said money is to these grand jurors unknown; said packages and envelopes above described, and each of them, then and there being and constituting interstate shipments of express, as above described; and so the said defendant did then and there take, steal, and carry away from and out of the combination mail and express car aforesaid, the envelopes and packages constituting the interstate shipments of express as aforesaid, money and property of the said railway and express company aforesaid, with intent then and there on the part of him the, the said ———, to convert the same to his own use and benefit; and the grand jurors aforesaid, on their oath aforesaid, do further present, that heretofore, to wit, on the first day of ———, A. D. ——, one ——— at ———, in the district and division aforesaid, and within the jurisdiction of this court, before the felony and crime aforesaid, was committed, in the manner and form as aforesaid, did then and

there knowingly, willfully, unlawfully and feloniously counsel, aid, abet, and procure, the said ———, to do and commit the said felony and crime in manner and form as aforesaid, and the grand jurors aforesaid, on their oath aforesaid, do further present, that ———, at ———, in the district and division aforesaid, and within the jurisdiction of this court, before the said felony and crime was committed in the manner and form as aforesaid, to wit: on and after the —— day of ———, A. D. ——, at said ———, in the district and division aforesaid, then and there well knowing the said ———, to have done and committed the felony and crime in the manner and form as aforesaid, then and there did feloniously receive, harbor, and maintain him the said ———, and did then and there knowingly, willfully, unlawfully, and feloniously conceal the commission of the said felony committed in the manner and form as aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

SECOND COUNT.

[Section 37 of the Revised Criminal Code of the United States.]

And the grand jurors aforesaid, on their oath aforesaid, do further present that heretofore, to wit, on the —— day of ———, A. D. ——, one ——— and one ———, in the first count of this indictment mentioned, at ———, in the district and division in the first count hereof mentioned, and within the jurisdiction of this court, did then and there commit the crime of conspiracy, and did amongst themselves, and with one ———, combine, conspire, confederate, and agree together to take, steal, and carry away from and out of the combination mail and express car in the first count of this indictment mentioned and described, the envelopes and packages mentioned and described in the first count hereof; and the said ——— and the said ——— afterwards, to wit, on the —— day of ———, A. D. ——, within the district and division aforesaid, and within the jurisdiction of this court, and at and between the points in the first count hereof mentioned, in pursuance of and in accordance with the said unlawful conspiracy, combination, confederacy, and agreement amongst themselves, had as aforesaid, did then and there knowingly, willfully, unlawfully, and feloniously steal, take, and carry away from and out of the combination mail and express car in the first count of this indictment mentioned and described, with intent then and there to convert to his own use and benefit and to the use and benefit of each of them the three (3) envelopes and packages in the first count hereof mentioned and described, each of the said envelopes and packages then and there being interstate shipments of express, as in said first count mentioned and described, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

In the case of *Greenburg et al.* v. *United States*, now pending on writ of error in the United States Circuit Court of Appeals for the Seventh Circuit, No. 2563, the following were forms followed in the indictment:

The grand jurors of the United States, impaneled, sworn charged at the term aforesaid, of the court aforesaid, on their oaths present that ——— and ——— and each of them, on, to wit: the —— day of ———, in the year of our Lord one thousand nine hundred and ———, in the county of ———, in the State [Breaking seal.]

of ———, in the —— District aforesaid, and within the jurisdiction of said court, did unlawfully and feloniously break the seal of a certain railroad car then and there bearing the name and number to wit: ——— which said car then and there contained an interstate shipment of freight, to wit: a large quantity of ——— then and there consigned and in transit from ———, in the State of ——— to ———, and ——— in the State of ——— and ——— and ———, in the State of ———, and ——— in the State of ———, which said railroad car was then and there in the possession of the ——— Company, a corporation and common carrier then and there being, with the unlawful and felonious intent then and there in them the said ——— and ——— and each of them, to then and there commit larceny in said car, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

[Unlawfully entering car.] And the grand jurors aforesaid, upon their oaths aforesaid, do further present that ——— and ———, and each of them, on, to wit: the ——— day of ———, in the year of our Lord one thousand nine hundred and ———, in the county of ———, in the State of ———, in the —— District aforesaid and within the jurisdiction of said court, did unlawfully and feloniously enter a certain car then and there bearing the name and number, to wit: ———, which said car then and there contained an interstate shipment of freight, to wit: a large quantity of ———, then and there consigned and in transit from ———, in the State of ——— to ———, and ———, in the State of ———, and ——— and ———, in the State of ———, and ——— in the State of ———, and which said railroad car was then and there in the possession of the ——— Company, a corporation and common carrier then and there being, with the unlawful and felonious intent then and there in them the said ———, and ———, and each of them, to then and there commit larceny in said car, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

[Larceny from car.] And the grand jurors aforesaid, upon their oaths aforesaid, do further present that ——— and ———, and each of them on to wit: the ——— day of ———, in the year of our Lord one thousand nine hundred and ———, in the County of ——, in the State of ———, in the ——— district aforesaid, and within the jurisdiction of said court, did unlawfully and feloniously take, steal, and carry away from a certain railroad car then and there bearing the name and number, to wit: ——— a large quantity of ——— to wit: ——— cases of ———, then and there of the value of, to wit: ——— dollars per case, and then and there contained in said railroad car, with the unlawful and felonious intent then and there in them the said ——— and ———, and each of them, to convert to their own use the said ———, which said ——— then and there constituted a part of an interstate shipment of freight then and there consigned and in transit from ———, in the State of ——— to ——— and ——— in the State of ———, and ——— and ———, in the State of ———, and ——— in the State of ———, which said railroad car and the said ——— were then and there in the possession of the ——— Company, a corporation and common carrier, then and there

being, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

[Unlawfully having possession of property stolen from car.]

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that ———, and ———, and each of them, on, to wit: the ——— day of ———, in the year of our Lord one thousand nine hundred and ———, in the County of ———, in the State of ———, in the ——— district aforesaid and within the jurisdiction of said court, did unlawfully and feloniously have in their possession a large quantity of ———, to wit: ——— cases of ———, then and there of the value of, to wit: ——— dollars, which said ——— had lately theretofore been unlawfully and feloniously stolen, taken, and carried away from a certain railroad car in the county of ———, in the State of ———, aforesaid, and which said railroad car then and there bore the name and number to wit: ——— which said ——— then and there constituted a part of an interstate shipment of freight then and there consigned and in transit from ———, in the State of ———, to ——— and ———, in the State of ———, and ——— and ———, in the State of ———, and ———, in the State of ———, and which said ——— and railroad car, at the time the said ——— were stolen as aforesaid, were then and there in the possession of the ——— Company, a corporation and common carrier then and there being, they the said ———, and ———, and each of them, then and there at the time of so having the said ——— in their possession as aforesaid, then and there well knowing the said ——— to have been stolen as aforesaid, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

In the case of *United States* v. *Heyne*, United States District Court, Northern District of Illinois, Eastern Division, there was a conviction of the defendant under section 60 of the Criminal Code. This section is as follows:

Whoever shall willfully or maliciously injure or destroy any of the works, property, or material of any telegraph, telephone, or cable line, or system, operated or controlled by the United States, whether constructed, or in process of construction, or shall willfully or maliciously interfere in any way with the working or use of any such line, or system, or shall willfully or maliciously obstruct, hinder, or delay the transmission of any communication over any such line, or system, shall be fined not more than $1,000, or imprisoned not more than three years, or both.

The form of indictment is as follows:

In the District Court of the United States of America for the Northern District of Illinois, Eastern Division. Of the March Term, in the year 1918.

NORTHERN DISTRICT OF ILLINOIS.

Eastern Division, set:

The grand jurors for the United States of America, impaneled and sworn in the District Court of the United States, for the Eastern Division of the Northern District of Illinois, and inquiring for that division and district, upon their oath present that on, to wit, the twenty-sixth day of December, in the year nineteen hundred and seventeen, the President of the United States of America, through the Secretary of War for said United States of America, did issue and cause to be issued a certain proclamation, under and by virtue of the authority so

to do, granted in and by the act of Congress approved on the twenty-ninth day of August, in the year nineteen hundred and sixteen, entitled "An act making appropriations for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," whereby the President of the United States of America, through the Secretary of War for the said United States of America, did take possession and assume control, at twelve o'clock noon on the twenty-eighth day of December, in the year nineteen hundred and seventeen, of each and every system of transportation and the appurtenances thereof located wholly or in part within the boundaries of the continental United States, and consisting of railroads, and owned or controlled systems of coastwise and inland transportation engaged in general transportation, whether operated by steam or by electric power, including all terminals, terminal companies and terminal associations, sleeping and parlor cars, private cars and private car lines, elevators, warehouses, telegraph and telephone lines, and all other equipment and appurtenances commonly used upon or operated as a part of such rail or combined rail and water systems of transportation.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that the Illinois Central Railroad Company, a corporation common carrier organized and existing under and by virtue of the laws of the State of Illinois, was, on, to wit, the twenty-eighth day of December, in the year nineteen hundred and seventeen, the owner of a system of transportation and the appurtenances thereof, including telegraph and telephone lines, located wholly within the boundaries of the continental United States, and that on, to wit, the said twenty-eighth day of December, in the year nineteen hundred and seventeen, the possession and control of the said system of transportation and the appurtenances thereof, including telegraph and telephone lines, were transferred from the said Illinois Central Railroad Company, a corporation common carrier as aforesaid, to the President of the United States of America through the Secretary of War for said United States of America.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that on, to wit, the second day of February, in the year nineteen hundred and eighteen, at Chicago, in the State of Illinois, and in the division and district aforesaid, one Herman A. Heyne did then and there unlawfully, willfully, and maliciously injure certain property, to wit, a large number of telegraph wires then and there located upon the premises of the said Illinois Central Railroad Company situated in and about Kedzie Avenue and the right of way of the said Illinois Central Railroad Company, in the said city of Chicago, by cutting and severing the said telegraph wires, which said telegraph wires then and there constituted part of a system of telegraph then and there operated and controlled by the United States of America as aforesaid; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

2. And the grand jurors aforesaid, upon their oath aforesaid, do further present that on, to wit, the twenty-sixth day of December, in the year nineteen hundred and seventeen, the President of the United States of America, through the Secretary of War for said United States of America, did issue and cause to be issued a certain proclamation, the nature and character of which said proclamation as set forth in said first count, is hereby incorporated and made a part of this count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that the said Illinois Central Railroad Company, a corporation common carrier organized and existing under and by virtue of the laws of the State of Illinois, was, on, to wit, the twenty-eighth day of December, in the year nineteen hundred and seventeen, the owner of a system of transportation and the

appurtenances thereof, including telegraph and telephone lines, located wholly within the boundaries of the continental United States, and that on, to wit, the said twenty-eighth day of December, in the year nineteen hundred and seventeen, the possession and control of the said system of transportation and the appurtenances thereof, including telegraph and telephone lines, were transferred from the said Illinois Central Railroad Company, a corporation common carrier as aforesaid, to the President of the United States of America through the Secretary of War for said United States of America.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that on, to wit, the second day of February, in the year nineteen hundred and eighteen, at Chicago, in the State of Illinois, and in the division and district aforesaid, one Herman A. Heyne did then and there unlawfully, willfully, and maliciously interfere with the working and use of certain telegraph lines, to wit, a large number of telegraph wires then and there located upon the premises of the said Illinois Central Railroad Company situated in and about Kedzie Avenue and the right of way of the said Illinois Central Railroad Company, in the said city of Chicago, by cutting and severing the said telegraph lines, which said telegraph lines then and there constituted part of a system of telegraph then and there operated and controlled by the United States of America as aforesaid; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

3. And the grand jurors aforesaid, upon their oath aforesaid, do further present that on, to wit, the twenty-sixth day of December, in the year nineteen hundred and seventeen, the President of the United States of America, through the Secretary of War for said United States of America, did issue and cause to be issued a certain proclamation, the nature and character of which said proclamation as set forth in said first count is hereby incorporated and made a part of this count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that the said Illinois Central Railroad Company, a corporation common carrier organized and existing under and by virtue of the laws of the State of Illinois, was, on, to wit, the twenty-eighth day of December, in the year nineteen hundred and seventeen, the owner of a system of transportation and the appurtenances thereof, including telegraph and telephone lines, located wholly within the boundaries of the continental United States, and that on, to wit, the said twenty-eighth day of December, in the year nineteen hundred and seventeen, the possession and control of the said system of transportation and the appurtenances thereof, including telegraph and telephone lines, were transferred from the said Illinois Central Railroad Company, a corporation common carrier as aforesaid, to the President of the United States of America through the Secretary of War for said United States of America.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that on, to wit, the second day of February, in the year nineteen hundred and eighteen, at Chicago in the State of Illinois, and in the division and district aforesaid, one Herman A. Heyne did then and there unlawfully, willfully and maliciously obstruct, hinder and delay the transmission of communications over certain telegraph lines located upon the premises of the said Illinois Central Railroad Company situated in and about Kedzie Avenue and the right of way of the said Illinois Central Railroad Company, in the said city of Chicago, by cutting and severing said telegraph lines, which said telegraph lines then and there constituted part of a system of telegraph then and there operated and controlled by the United States of America as aforesaid; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

_____,
United States Attorney.

UC SOUTHERN REGIONAL LIBRARY FACILITY

DIRECTOR GENERAL OF RAILROADS.

INTERSTATE COMMERCE BUILDING,
Washington, March 26, 1918.

CIRCULAR No. 14.

To all railroad officials and employees:

A Section for the Protection of Railroad Property and property of shippers in transit has been established in the Division of Law by the Director General to enforce rigorously the Federal Law against theft from cars, stations, sidings, and wharves, and to take all necessary measures in cooperation with carriers to prevent loss from this cause, which in past years has been enormous.

Philip J. Doherty is hereby appointed Manager of such Section.

Full cooperation with this Section is required from all officers and employees of the railroads, and special agents or secret service men employed by the carriers are especially required to cooperate with this Section, both in preventing and investigating theft, making arrests, or prosecuting offenders, and railroad attorneys and all other officials are required to give all possible aid.

Anyone having knowledge of any such offense should report the same to the nearest railroad official or to this Section, in order that indictment of the guilty parties may be had under the Federal Law, which carries a maximum penalty of ten years' imprisonment.

Communications should be addressed to Philip J. Doherty, Manager, Section for Protection of Railroad Property, United States Railroad Administration, Washington, D. C.

Officers and employees must understand that all property being transported by the railroads is in the custody of the United States and they owe an especial duty to guard and protect the same and to report promptly any person who tampers therewith; and the United States looks to the officers and employees to do their duty in this behalf.

W. G. MCADOO,
Director General of Railroads.

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