

UNITED STATES *v.* SMITH.

*Circuit Court, D. Kentucky.*

1882.

CRIMINAL LAW—MAILING INDECENT MATTER.

The term “indecent” in section 3893 of the Revised Statutes, in connection with the offence defined in said section of mailing any book, letter, envelope, postal card, etc., containing any indecent, etc., delineations, epithets, etc., either written or printed, taken with the history of the legislation upon the subject, means immodest, impure; and language which is coarse or unbecoming, or even profane, is not within the inhibition of the act.

Criminal Information.

*Geo. M. Thomas, U. S. Atty., for the United States.*

*Barret & Brown, for defendant.*

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BARR, D. J. The information in this case alleges that the defendant, Smith, did knowingly deposit, for mailing and delivery in the mails of the United States, “a certain postal card, upon which indecent and obscene epithets, terms, and language” were written, to-wit:

“Oct. 19, 1881.

“DR. SIR: Your P. C. this date rec'd & in reply having had one business transaction with you which fully developed you to me as a d—n scoundrel and rascal, I beg that all transactions in a business manner cease between us & that no further business relations ever to exist.

“Respectfully

F. A. SMITH.”

This was directed to “F. M. Laswell, Esq., Glasgow, Kenty.”

The defendant admits writing, and depositing in the mail, this postal card, and the question arises whether this is an offence within the meaning of an act approved July 12, 1876, amending section 3893 of

the Revised Statutes, providing a penalty for mailing obscene books, etc. That law enacts that section 3893 of the Revised Statutes shall be and is hereby amended so as to read as follows:

“Every obscene, lewd, or lascivious book, pamphlet, picture, paper, writing, print, or other publication of any indecent character, and every article or thing designed or intended for the prevention of conception or procuring of abortion, and every article or thing intended or adapted for any indecent or immoral use, and every written or printed card, circular, book, pamphlet, advertisement, or notice of any kind, giving information, directly or indirectly where or how or of whom, or by what means, any of the hereinbefore mentioned matters, articles, or things may be obtained or made, and every letter upon the envelope of which, or postal card upon which, indecent, lewd, obscene, or lascivious delineations, epithets, terms, or language may be written or printed, are hereby declared to be non-mailable matter, and shall not be conveyed in the mails, nor delivered from any post-office, nor by any letter carrier: and any person who shall knowingly deposit, or cause to be deposited, for mailing or delivery, any thing declared by this section to be non-mailable matter, \* \* \* shall be deemed guilty of a misdemeanor, and shall for each and every offence be fined not less than one hundred nor more than five thousand dollars, or imprisoned at hard labor not less than one year nor more than ten years, or both, at the discretion of the court. Supp. Rev. St. 229.

The language of this postal card is not obscene, but it is insisted that it is indecent within the meaning of this law. A brief review of the legislation of congress upon this subject will aid in coming to a correct conclusion as to the meaning of the word “indecent” as used in this act. The first act upon this subject was approved March 3, 1865, and in that act the language was “no obscene books, etc., \* \* \* or other publication

of a vulgar and indecent character.” The next act was approved June 8, 1872, and provided that “no obscene 665 book, etc., \* \* \* or other publication of a vulgar or indecent character, or any letter, upon the envelope of which, or postal card upon which, scurrilous epithets may have been written or printed or disloyal devices printed or engraved, shall be carried in the mail.” The next act was March 3, 1873, and that provided, “no obscene, lewd, or lascivious book, etc., \* \* \* or other publication of an indecent character, \* \* \* nor any written or printed card, circular, \* \* \* upon which scurrilous epithets may be, \* \* \* shall be carried in the mails,” etc. The title of this act is “An act for the suppression of trade in and circulation of obscene literature and articles of immoral use.” Section 3893 of the Revised Statutes provided that postal cards upon which “indecent or scurrilous epithets are written or printed should be non-mailable.”

It will be noticed, from this review of the legislation of congress, that the act of 1873 omitted the words “disloyal devices,” which was in the act of 1872, but retained the word “scurrilous,” which was used in the Revised Statutes; but that the act of 1876 omitted the word “scurrilous,” and the law is now substantially as originally enacted in 1865. It is quite clear that the purpose of the act of 1865 was to prevent the mails from being used to circulate obscene literature pictures, etc., and prevent their use for immoral purposes, such as would give information in regard to abortions, etc.

The connection in which the word “indecent” is used, taken with the history of the legislation upon the subject, leads me to the conclusion that it means immodest, impure, and that language which is coarse or unbecoming, or even profane, is not within the inhibition of this act. This construction harmonizes with the other provisions of the act, and a broader definition of the word “indecent” would lead us

beyond its spirit, and into an uncertain and boundless field of construction.

The information should be quashed.

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