himself, using the precaution and care which his profession and employment imposed on him, was, notwithstanding, injured in consequence of the unfitness of the joist, he is entitled to recover, and the verdict should be for him. Though you may find from the evidence that the joist in question was not properly inspected, and was not fit to be used in the building of defendants, yet, if plaintiff contributed to his injury by imprudence or recklessness, without which the accident would not have happened, this constituted contributory negligence, and the plaintiff cannot recover, and the verdict should be for the defendant. Though you may find from the testimony that the superintendent or overseer ordering plaintiff to proceed to brace the joists was an unfit person for his position, this did not relieve the plaintiff from using the ordinary prudence and care heretofore spoken of.

There is no controversy about the safety of the structure erected by defendants as a whole, and therefore no mention has been made thereof in the instructions, though set up in plaintiff's declaration.

The rule of assessing damages, in case you find the issues for the plaintiff, is as follows: The difference between his former and his present ability to earn, including compensation for his past suffering.

(*Note of Case.*)

UNITED STATES v. SPINTZ.[1]

(*Circuit Court, S. D. Georgia, W. D.* October Term, 1883.)

1. JOINDER OF OFFENSES.
Counts in an indictment under sections 3922 and 3924 of the Revised Statutes may be properly joined, under section 1024, although the former be a misdemeanor and the latter a felony.

2. IDEM SONANS.
Spintz and Sprinz are not *idem sonans*.

Demurrer, Plea of misnomer.

S. A. Darnell, Dist. Atty., for the United States.

Hill & Harris, for defendant.

Before Hon. JAMES W. LOCKE, D. J., presiding by designation.

The defendant demurred to the indictment for misjoinder. The court overruled the demurrer, as stated in head-note 1. See *U. S.* v. *Wentworth*, 11 FED. REP. 52; *U. S.* v. *Malone*, 9 FED. REP. 900; *U. S.* v. *Stone*, 8 FED. REP. 252; *U. S.* v. *Ancarola*, 1 FED. REP. 677.

Defendant pleaded misnomer; that he was indicted as Joseph Spintz, and that his true name is Joseph Sprinz; and that he was known only by his true name. The district attorney demurred to the plea, but the demurrer was overruled, as stated in head-note 2. See Archb. Crim. Pl. & Pr. 82; *Lynes* v. *State*, 30 Amer. Dec. 557; 39 Amer. Dec. 457; 28 Amer. Rep. 439, note.

[1] Reported by W. B. Hill, Esq., of the Macon bar.

BRIGHTON *v.* WILSON.

(*Circuit Court, D. Rhode Island.* October 20, 1883.)

1. PATENTS FOR INVENTIONS—INFRINGEMENT.
   A comparison of the defendant's device with that made by the plaintiff under his letters patent No. 216,256, dated June 10, 1879, for an improvement in box-loops for harnesses, shows a substantial identity of construction; the change of construction in the article made by defendant being immaterial. The evidence discloses that the article made by the defendant differs essentially from that described in his patent No. 260,074, dated June 27, 1882, for an improvement in box-loop and blind for harnesses. Injunction granted.
2. SAME—IMMATERIAL CHANGES.
   It is well settled that immaterial changes, or the substitution of mechanical equivalents, will not relieve a party from the charge of infringement.

In Equity.

Warren R. Perce, for complainant.

Oscar Lapham, for defendant.

COLT, J. This motion for a preliminary injunction is founded upon an alleged infringement of letters patent No. 216,256, dated June 10, 1879, for an improvement in box-loops for harnesses. Difficulty has always been experienced in obtaining a box-loop in connection with a secure fastening of the blinder to the bridle. Stitching is here difficult and unsatisfactory. In this device there is a metallic frame or tube, covered with leather, which holds securely the cheek strap of the bridle, with a shank and flanges extending out upon one side. The box-loop having a narrow opening upon one side is slid over the flanges of this metallic frame. The blinder iron having two or more ears, each with a narrow slot upon the upper side, is inserted into openings made at or near the line where the metallic frame is bent up to form the shank and flanges. By means of a suitable pressure the flanges are bent down, and fasten the whole together. A key-shaped wedge of leather fills up the portion of the opening in the metallic frame left unoccupied when the blinder has been pushed up into place, as well as the narrow space between the box-loop and the frame below the blinder.

The first claim in the patent is for the frame with its shank and flanges, in combination with the box-loop and strap. The defendant seeks to avoid an infringement by cutting away portions of the flanges of the metallic frame, leaving several projecting clinching pieces or ears. He substitutes for the cut-away portions of the flanges a metal plate with clasps inside the box-loop. In this plate are slots which receive the ears of the metallic frame after they have passed through openings in the blinder iron. A comparison of the defendant's device with that made by the plaintiff, shows, we think, a substantial identity of construction. Both consist of a box-loop, combined with a metallic frame or tube. In the plaintiff's device the flanges of the metallic frame serve to hold together the frame and the box-loop, and