

UNITED STATES *v.* CHESMAN.¹*Circuit Court, E. D. Missouri.*

March 30, 1881.

INDICTMENT FOR MAILING AN OBSCENE AND INDECENT PUBLICATION.

An illustrated pamphlet, purporting to be a work on the subject of the treatment of spermatorrhœa and impotency, and consisting partially of extracts from standard books upon medicine and surgery, but of an indecent and obscene character, and intended for general circulation, *held*, to come within the provisions of section 3893 of the Revised Statutes.

Indictment for depositing in the mail a publication of an obscene and indecent character. The indictment describes the publication as “a pamphlet entitled Prof. Harris’ New Discovery for the Radical Cure of Spermatorrhœa and Impotency, with the Anatomy and Physiology of the Generative Organs, Illustrated; and the Science of a Radical Cure.’ By his ‘new departure’ in the treatment of those troubles, viz., local absorption at the seat of the disease,”—which said publication is so indecent that the same would be offensive to the court here, and improper to be placed on the records thereof.

William H. Bliss, for the United States.

Dyer, Lee & Ellis, for defendant.

MCCRARY, J. In this case, by agreement, counsel have submitted to the court the question whether the publications complained of come within the provisions of section 3893 of the Revised Statutes, which prohibits the mailing in any post-office of any publication of an obscene or indecent character. We have considered this question after a full oral argument by counsel, and we are clearly of the opinion that the publications referred to in the indictment and information do fall within the provisions of this section of the statute. They are clearly both obscene and

indecent, and, in our opinion, within the meaning of the statute. It is not necessary, perhaps, to say more, but I may remark that it has been insisted by counsel for the defendant, with great earnestness, that the publications in question are, in their character, medical, and that the matters complained of are, to a large extent, extracts from standard medical works. It may be, and probably is, true that much of the offensive matter is taken from books upon medicine and surgery, which would be proper 498 enough for the general use of members and students of the profession. There are many things contained in the standard works upon these subjects which, if printed in pamphlet form and spread broadcast among the community, being sent through the mail to persons of all classes, including boys and girls, would be highly indecent and obscene. I am not prepared to say, and it is not necessary now to decide, whether these medical books could be sent through the mails without a violation of the Statute. The publications before us are not medical. It is manifest from an examination of them that they are intended to be circulated generally among the people. We decide at present nothing more than they come within the provisions of the statute, and that when deposited in the post-office, directed to any actual person, the law is violated, without regard to the character of the person to whom they are directed. This, perhaps, may be shown by way of mitigation or aggravation of the offense, but not in justification.

See, generally, *U. S. v. Kaltmeyer*, 16 FED. REP. 760, and *Bates v. U. S.* 10 FED. REP. 92, and note.

¹ Reported by Benj. F. Rex, Esq., of the St. Louis bar.

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