

offenses as not felonies. See the case of *U. S. v. Wynn*, 9 FED. REP. 886, and the various authorities cited at the close of the opinion. It is unnecessary to review those authorities, or to enter into any extended discussion of the question, but it is sufficient to express simply a concurrence with the views expressed therein.

Finally, it is insisted that the court erred in the admission of 38 letters which are not mentioned in the indictment, and which the defendant was not charged therein with having taken and carried away. I think this testimony was competent. There was testimony tending to show that a straight package of letters from the west to Louisville passed through St. Louis,—a package which, by the well-understood rules and regulations of the post-office, was not to be disturbed at St. Louis, but forwarded in the condition it was received; that this package was opened by defendant, and out of it seven letters mentioned in the indictment taken. Now, these 38 letters were admitted as part of the straight package. It was competent to show that such a straight package was received, and to show what its contents were, and that is all what was done by the introduction of these 38 letters. Of course, such testimony tended strongly to show the intent of the defendant, for when the entire package should have been forwarded, his taking out seven letters and sending the others forward points strongly to an unlawful and criminal intent. It tends to show that here was no inadvertence or mistake on his part, and as such was admissible.

These are the material questions presented, and in them I see no error. Therefore the judgment will be affirmed and the same sentence imposed.

UNITED STATES v. MADISON.

(District Court, D. California. August 6, 1884.)

PERJURY—TIMBER CULTURE ACT—OATH—WHO CAN ADMINISTER.

To make a party liable to prosecution for perjury in a United States court, it does not matter that the oath taken by him when endeavoring to benefit by the "timber culture act" was taken before an officer authorized by a state, rather than one authorized by the United States to administer oaths.

Opinion Overruling Demurrer to Indictment.

S. G. Hilborn, U. S. Atty., and *Carroll Cook*, Asst. U. S. Atty., for the United States.

W. W. Morrow, for defendant.

HOFFMAN, J. It is not to be disputed that to constitute perjury or false swearing under the laws of the United States it must appear that the officer administering the oath was authorized to administer it by the laws of the United States of America. *U. S. v. Curtis*, 107 U. S. 671; S. C. 2 Sup. Ct. Rep. 507.

The section of the Revised Statutes (section 5292) under which this indictment in drawn, denounces in substance a false oath taken "before a competent tribunal, officer, or person," etc. The officer, tribunal, or person here referred to is an officer, tribunal, or person competent *under the laws of the United States* to administer the oath alleged to be false.

By the second section of the act of June 14, 1878, it is provided that the "person applying for the benefit of this act shall * * * make affidavit before the register or the receiver, or the clerk of *some court of record*, or officer *authorized* to administer oaths in the district where the land is situated." It is evident that the courts of record referred to include state courts of record as well as the United States courts. If the latter alone had been intended it would have been so stated. If the clerks of the United States courts were the only clerks of courts of record intended to be authorized to administer the oath, the expression "clerk of *some court of record*" is singularly inapt; and the object of the act, which is to encourage the growth of timber on the western prairies, would be to a considerable extent defeated, if the applicant is obliged, in the absence of the register and the receiver, to resort to the clerk of the circuit or of the district court, whose office may be remote from the district where the entry is to be made. If, then, as I cannot doubt, congress intended the affidavit to be made before the clerk of any court of record, the same policy demanded that the "officer authorized to administer oaths in the district where the land is situated should be an officer so authorized either by the state law or by the United States law." The words, "in the district where the land is situated," clearly point to a local officer residing or exercising his functions in the district, and who might be applied to without unnecessary expense or inconvenience.

If this be the true construction of the law, it follows that congress, by authorizing the affidavit to be taken before such officer, has rendered him "*competent*" to administer it as fully as the register or receiver, and the affidavit, if false, falls within the terms of the section under which the indictment is drawn.

It is not denied that the notary public, by whom the oath in this case was administered, was an officer authorized by the laws of this state to administer oaths in the district where the land is situated.

The demurrer must be overruled.

HOWE MACHINE Co. and others v. NATIONAL NEEDLE Co.

SAME v. WHITTEN and others.

Circuit Court, D. Massachusetts. September 30, 1884.)

1. PATENTS FOR INVENTIONS—ANTICIPATION—APPLICATION OF OLD MACHINE—SIMILAR SUBJECT.

The application of an old process or machine to a similar or analogous subject, with no change in the manner of application, and no result substantially distinct in nature, will not sustain a patent, even if the new form has not been before contemplated.

2. SAME—PATENT No. 23,957—SPRING LATHE—MURDOCK LATHE.

Patent No. 23,957, granted to Charles and Andrew Spring, May 10, 1859, for an improvement in lathes for turning irregular forms, held anticipated by the Murdock lathe, and invalid.

In Equity.

Geo. S. Boutwell and Geo. E. Betton, for complainants.

A. L. Soule and J. E. Abbott, for defendants.

Before GRAY and NELSON, JJ.

NELSON, J. These suits are bills in equity for the infringement of patent No. 23,957, granted to Charles and Andrew Spring, May 10, 1859, for an improvement in lathes for turning irregular forms. The invention, as described in the specification, is a new combination designed for turning such articles as are to be brought to a point, or are to be finished or turned at one end, and therefore cannot conveniently be held to be operated upon otherwise than by the opposite end. It consists (1) of a griping-chuck, by which the article is held by one end so as to present the other end free to be operated upon; (2) a rest preceding the cutting tool, to afford support to the article in the operation of turning; (3) a cutting tool; and (4) a guide-cam, or its equivalent, which modifies the movement of the cutting tool. The chuck may be of any of the well-known forms of griping or holding chucks, which hold the article to be turned fast by one end. The material to be turned must be cylindrical and straight. In the drawings annexed, the guide-cam is of a form suitable for turning awls or machine needles, and the plaintiffs contend that their machine, as patented, was intended to be and is a lathe for turning sewing-machine needles or awls. The claim is for "the combination of a griping-chuck, by which an article can be so held by one end as to present the other free to be operated upon, with a rest preceding the cutting tool, when it is combined with a guide-cam or its equivalent, which modifies the movement of the cutting tool, all operating together for the purpose set forth."

The defendants have proved, by testimony which we cannot doubt, that as long ago as the year 1845, and perhaps still earlier, a machine was in use in the shop of William Murdock, in Winchendon, Massachusetts, which contained all the elements and the precise