

carve an exception out of the enacting clause, and therefore I must read the enacting clause as including wearing apparel among the articles made wholly or in part of lace. I think the question is a close one, yet I cannot arrive at any other conclusion, giving to the proviso in section 373 what I deem to be its due force and effect. The decision of the board of appraisers should be reversed. So ordered.

UNITED STATES *v.* ADLER *et al.*

(District Court, S. D. Iowa, C. D. March 3, 1892.)

1. PENSIONS—FRAUDULENT PRESENTATION OF CLAIM—INDICTMENT.

An indictment under Rev. St. § 4748, for knowingly procuring the presentation of a false affidavit concerning a claim for pension, is sufficient if it alleges the presentation of an affidavit with a signature known to be false and forged. It need not allege that the pension claim was false.

2. SAME.

The indictment charged that defendants on a certain day, "at the county of Wapello, in the southern district of Iowa, did then and there present to the commissioner of pensions at Washington, in the District of Columbia," etc. At its close it charged: "And that at the time and place aforesaid, that is to say, on * * * at the county of Wapello, state of Iowa, the said * * * did then and there present and cause to be presented to the commissioner of pensions aforesaid," etc. *Held*, construing the parts of the indictment together, that it charged the presentation of the false affidavit at Wapello county, Iowa, and not at Washington, D. C.

At Law. On demurrer to indictment. Overruled.

Lewis Miles, Dist. Atty., for the United States.

J. F. Lacey and *M. J. Williams*, for defendant Adler.

Before *SHIRAS* and *WOOLSON*, District Judges.

WOOLSON, District Judge. The indictment herein charges that on the 8th day of July, A. D. 1890, defendant—

"At the county of Wapello, in the southern district of Iowa, did then and there cause to be presented and present to the commissioner of pensions at Washington, in the District of Columbia, a certain false, forged, and counterfeited affidavit, in writing, which said false, forged, and counterfeited affidavit is in writing, and is in words and figures as follows, [here follows an affidavit, being a declaration for an invalid pension (in the ordinary form) for Daniel Boone, and purporting to be signed by Daniel Boone as affiant;] that said false, forged, and counterfeit affidavit is false, in this: that is to say, that the said false, forged, and counterfeited affidavit was never signed by Daniel Boone, but that in truth and in fact the same was signed by said George S. Boone, and that said George S. Boone signed the name Daniel Boone to said false and forged affidavit, which said false, forged, and counterfeited affidavit has marked thereon the receiving mark of the pension office of the United States, of date July 11, 1890; that at and long prior to the signing of the name Daniel Boone to said false and forged affidavit the said Daniel Boone, whose name was purported to be signed to said false and forged affidavit, had been deceased, and that at the time and place aforesaid, that is to say, on the 8th day of July, A. D. 1890, at the county of Wapello, state of Iowa, the

said George S. Boone and the said S. E. Adler did then and there present and caused to be presented to the commissioner aforesaid, with the intent then and there, on the part of them, the said George S. Boone and the said S. E. Adler, then and there well knowing that the name Daniel Boone, signed to said false and forged affidavit, was forged and false; and that the name Daniel Boone had been signed thereto by the said George S. Boone, contrary to the form of the statutes," etc.

To this indictment defendant Adler demurs, under assignments which may be summarized as follows: (1) The affidavit is charged to have been presented at Washington, D. C., and without the jurisdiction of this court; (2) the acts charged constitute no crime; (3) the pension claim which the affidavit was filed to support is not charged to have been false; (4) it is not averred that the commissioner of pensions has authority to allow the claim; (5) it is not charged that defendant knew the claim to be false.

The indictment appears to have been drawn under section 4746, Rev. St. This section provides that—

"Every person who knowingly, * * * in any wise, procures the * * * presentation of any false or fraudulent affidavit concerning any claim for pension, * * * shall be punished," etc.

Counsel for defendant appear to have considered the indictment as drawn under section 5438. An examination of the two sections will readily make apparent the distinctions between them. By the terms of section 4746 the offense therein designated consists of a very few essentials, and may be summed up in the words, "knowingly procuring the presentation of a false affidavit concerning a claim for pension." The indictment sets out the affidavit which it charges to be false. It charges this affidavit to have been "in support and in declaration of a pension for one Daniel Boone." It also charges said affidavit to be false, and expressly alleges the same was false because of the false and forged signature thereto; that said Adler did "cause to be presented and present" said affidavit, said defendant Adler "then and there well knowing that the name Daniel Boone, signed to said false and forged affidavit, was forged and false;" and the time and place of the commission of the offense are also stated. Thus the ingredients essential to the offense under section 4746 are charged in the indictment, and the 2d, 4th, and 5th assignments of demurrer are not well taken. This section does not require that the pension claim must be false, concerning which the false affidavit is presented, and the 3d assignment is not well taken.

The remaining assignment contests the jurisdiction of this court, because, as claimed, the indictment charges the affidavit to have been presented to the commissioner of pensions at Washington, D. C., and therefore the court at Washington alone has jurisdiction over the crime charged. The phraseology of the indictment is peculiar on the point under consideration. Its language is, "on the 8th day of July, 1890, at the county of Wapello, in the southern district of Iowa, did then and there cause to be presented and present to the commissioner of pensions at Washington, in the District of Columbia," etc. The claim is that

the words, "at Washington, in the District of Columbia," relate to and fix the presentation as named in the indictment. The district attorney contends that these words are merely *descriptio personæ* with reference to the commissioner, and that the plain meaning and manifest construction of the place of presentation, as stated in the indictment, is, "at the county of Wapello, in the southern district of Iowa, did then and there present," etc. In construing the indictment upon this point, all its different parts relating to place of presentation should be considered. We find that towards its close the indictment contains the statement:

"And that at the time and place aforesaid, that is to say, on the 8th day of July, A. D. 1890, at the county of Wapello, state of Iowa, the said * * * S. E. Adler did then and there present and cause to be presented to the commissioner of pensions aforesaid. * * *"

Section 1025, Rev. St., provides that—

"No indictment shall be deemed insufficient by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of defendant."

In *U. S. v. Waddell*, 112 U. S. 76, 5 Sup. Ct. Rep. 35, Justice MILLER states the rule as to the precision with which the indictment must advise defendant of the crime charged, to be that of "reasonable precision." In *U. S. v. Britton*, 107 U. S. 655, 2 Sup. Ct. Rep. 512, Justice WOODS says it is sufficient if the indictment gives defendant clear notice of the charge he is called on to defend. A more extended statement on this point is found in *U. S. v. Fero*, 18 Fed. Rep. 905, where the court announces that—

"Certainty to a common intent is sufficient. Such certainty is attained when enough is alleged to clearly apprise the accused of the identical crime with which he is charged, so that he may prepare to meet the accusation."

Taking the entire indictment into consideration, we think there can be no doubt in the ordinary mind that the place of presentation of the false affidavit is charged to be at Wapello county, Iowa, and that the contention of the district attorney is in harmony with the indictment, considered in all its parts. Certainly this construction cannot tend to the prejudice of the defendant, at least as to the form in which the indictment advises him of the facts which are charged, as constituting the offense which he is called to meet. The evidence which may be offered on the trial as to the fact of presentation to the commissioner "at Wapello county, Iowa," may bring before the court, in another form, the question of presentation. We are now considering the indictment as admitted, by the demurrer, in all its essential and well-pleaded allegations; and, as we find the assignments of the demurrer to be not well taken, it follows that the demurrer, in its entirety, must be overruled; and it is so ordered.

SHIRAS, District Judge, concurs.

UNITED STATES *v.* ADLER *et al.*

(District Court, S. D. Iowa, C. D. March 5, 1892.)

1. CONSPIRACY—INDICTMENT.

An indictment under Rev. St. U. S. § 5440, must charge three things: (1) A conspiracy; (2) either to commit some offense against the United States, or to defraud the United States; (3) the doing of some act to effect the object of the conspiracy.

2. SAME.

An indictment under that section is sufficient when it charges that defendants conspired together to fraudulently obtain a pension for one of them in the name of a dead soldier, and that they knowingly caused to be made and presented to the commissioner of pensions a false affidavit in support of a claim for such pension,—an act made criminal by Rev. St. U. S. § 4746.

At Law. Prosecution of S. E. Adler and George S. Boone for a conspiracy to commit an offense against the United States, and to defraud the United States. On demurrer to the indictment. Overruled.

Lewis Miles, Dist. Atty., for the United States.

John F. Lacey and *M. J. Williams*, for defendant Adler.

Before SHIRAS and WOOLSON, District Judges.

WOOLSON, District Judge. The indictment herein appears to be drawn under section 5440, Rev. St., and is voluminous. It charges that defendants, "at the county of Wapello, in the southern district of Iowa, on the 8th day of July, 1890, did willfully, unlawfully, corruptly, and feloniously conspire, confederate, and agree together and with each other to defraud the United States out of sums of money, the exact amount of which is to the grand jurors unknown," and that in pursuance of said conspiracy, and to effectuate and carry out the same, on said 8th day of July, 1890, and at said county of Wapello, said defendants, knowing that one Daniel Boone, at said date deceased, had in his life-time been in the volunteer service of the government, in the late civil war, and had been honorably discharged therefrom, (which said discharge said defendants then had in their possession,) said defendants made and caused to be made application to the commissioner of pensions for a pension for said George S. Boone, in the name of said Daniel Boone, and caused to be procured and presented to said commissioner, and in support of said claim for pension, a false and fraudulent affidavit, (which is exhibited with the indictment;) that the signature to said affidavit is false and forged, and was forged thereto by said George S. Boone; and that, at the time said affidavit was so presented to said commissioner, said defendants well knew said signature to be false and forged. Defendant Adler filed a demurrer containing a large number of assignments, which for convenience may be summarized as follows: (1) The indictment charges no crime. No crime is charged as the object of the conspiracy. (2) No act is charged as having been committed in furtherance of the conspiracy.

Under section 5440, three essentials must be charged: (1) A conspiracy; (2) the design of which is either to commit some offense against the United States or to defraud the United States; and (3) the doing of some

act to effect the object of the conspiracy. And, if the indictment sufficiently charges these three matters, it charges a crime, under this section. The demurrer makes no attack on that portion of the indictment charging a conspiracy. Its assignments are restricted to the second and third essentials named above. Does the indictment charge that the design of the conspiracy was to commit any crime against the United States? Upon the argument, counsel did not disagree that a conspiracy to commit any offense which by the statute is made an offense against the United States, is punishable under section 5440, provided the overt act followed. Section 4746, Rev. St., declares:

"Every person who knowingly or willfully, in any wise, procures the making or presentation of any false or fraudulent affidavit concerning any claim for pension, shall be punished," etc.

Turning to the indictment, we find it charged:

"The said S. E. Adler and the said George S. Boone being then and there at the county of Wapello, state of Iowa, aforesaid, on said 8th day of July, A. D. 1890, did corruptly, unlawfully, and feloniously conspire and agree together to make an application to the commissioner of pensions for a pension for him, the said George S. Boone, in the name of him, the said Daniel Boone, and to falsely, fraudulently, and feloniously obtain a pension for him, the said George S. Boone, in the name of him, the said Daniel Boone; and that to effectuate said corrupt, unlawful, and felonious conspiracy, and in pursuance of said conspiracy, did then and there, at the county of Wapello, in the state of Iowa, on the 8th day of July, A. D. 1890, make and cause to be made a false, forged, and fraudulent affidavit, in writing, and did then and there, at the time and place last aforesaid, cause and procure to be transmitted and presented to the commissioner of pensions, as true, the aforesaid false, forged, and counterfeit affidavit, in support of a claim for a pension for him, the said George S. Boone, under act of congress of June 27, A. D. 1890; * * * and that, at the time and place said defendants presented said false affidavit to the commissioner of pensions, said S. E. Adler and said George S. Boone well knew that the signature to said affidavit was false and forged."

Here are distinctly charged all the elements essential to the offense for whose punishment section 4746 provides, as above stated, viz.: (1) Knowingly (2) procuring the presentation of a false affidavit (3) concerning a claim for pension; and thus the indictment charges the second essential under section 5440.

The remaining essential relates to the "act done to effect the object of the conspiracy." The conspiracy, as charged, was "to defraud the United States out of money" by the acts which the indictment alleges; that is, this conspiracy ("to defraud the United States out of sums of money") was to be accomplished, as the same is charged, as follows: "To make an application to the commissioner of pensions for a pension for him, the said George S. Boone, in the name of him, the said Daniel Boone, and to falsely, fraudulently, corruptly, and feloniously obtain a pension for him, the said George S. Boone, in the name of him, the said Daniel Boone,"—the indictment having previously charged that said Daniel Boone was dead, and that said defendants had obtained possession of his honorable discharge. Thus the particular act done to effect the object of the conspiracy may be said to be that the defendants

knowingly presented a false affidavit in support of the claim for a pension. This affidavit, which is expressly charged to be false and fraudulent, and whose false and fraudulent character was at the time well known to the defendants, was by defendants presented at Wapello county, Iowa, on July 8, 1890, to the commissioner of pensions, in support of the pension claim of George S. Boone; and the money to be paid upon said pension by the government was the money of which the defendants conspired to defraud the United States. Or, stating the indictment in another form, defendants (1) conspired (2) to defraud the United States out of money through a fraudulent claim for pension, by them to be made to the commissioner of pensions for his allowance, and (3) knowingly presented to said commissioner a false affidavit in support of and concerning said pension claim.

Under the statutes and authorities with reference to the clearness and detail, with which an indictment must charge the offense, (section 1025, Rev. St.; *U. S. v. Waddell*, 112 U. S. 76, 5 Sup. Ct. Rep. 35; *U. S. v. Britton*, 107 U. S. 655, 2 Sup. Ct. Rep. 512,) we find this indictment sufficient. If any complaint could be justly urged, such complaint would rather be that the indictment is so unnecessarily diffuse and minute as that its clearness of statement is thereby impaired. As the indictment charges a statutory offense, and as it also "clearly apprises defendants of the identical crime with which they are charged, so that they may prepare to meet the accusation," (*U. S. v. Fero*, 18 Fed. Rep. 905,) the demurrer must be overruled; and it is so ordered.

SHIRAS, District Judge, concurs.

STILWELL & BIERCE MANUF'G CO. v. BROWN *et al.*

(Circuit Court, S. D. Ohio, W. D. March 12, 1892.)

1. PATENTS FOR INVENTIONS—NOVELTY AND USEFULNESS—FEED-WATER PURIFIERS.

Letters patent No. 274,048, issued March 18, 1893, to Edwin R. Stilwell, covers a live-steam heater or feed-water purifier, connected with the boiler by steam-pipes, and having a series of pans vertically arranged above the filter, and a space or chamber above the pans, and water inlet, connected to the steam-dome by a pipe, so as to discharge the gases from the top of the purifier directly into the boiler.

Held, that the gas-discharge pipe was both a novel and useful feature, and such an advance over letters patent No. 66,993, issued July 23, 1887, to the same inventor, as well as over all other prior inventions, as to sustain the validity of the patent.

2. SAME—INFRINGEMENT.

The patent is infringed by a heater which uses the gas-discharge pipe connected to the top of the heater, notwithstanding that at the other end it is connected with the steam-pipe of the feed-pump, instead of with the dome of the boiler.

In Equity. Suit by the Stilwell & Bierce Manufacturing Company against S. N. Brown & Co. for infringement of a patent. Decree for injunction and an accounting.