

expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished; and, that being so, an indictment that charges the offense in the language of the statute is sufficient. *U. S. v. Carll*, 105 U. S. 611. Turning to the indictment, it is seen that it charges that the defendants, at a certain designated time, did willfully, unlawfully, wrongfully, and knowingly deposit and cause to be deposited in the United States post-office at the city of Los Angeles, to be conveyed and delivered by United States mail, a certain newspaper, (describing it,) which said newspaper then and there contained a list of prizes awarded at the drawing of a certain lottery, (describing it;) the defendants then and there well knowing that the said newspaper then and there by them deposited and caused to be deposited, to be conveyed and delivered by the said mail, contained such list of prizes awarded at the drawing of such lottery, and then and there concerned a lottery, and then and there to be unmaillable matter. The newspaper described in the first count of the indictment, and alleged to have been so deposited and caused to be deposited, to be so conveyed and delivered, is therein alleged to have been addressed to "John Wolfskill, Santa Monica." Similar offenses are alleged in the second, third, and fourth counts of the indictment, except that in the second the newspaper therein charged to have been by the defendants deposited and caused to be deposited, to be conveyed and delivered by the United States mail, is alleged to have been addressed "Outlook X;" in the third, to have been addressed "F. R. Ellis;" and in the fourth, "Santa Monica." The address goes only to the point of the identification of the paper alleged to have been deposited and caused to be deposited, and to indicate to whom or where it is to be conveyed and delivered. The gist of the offense consists in the depositing or causing to be deposited, to be conveyed or delivered by the mail, any newspaper containing or relating to the prohibited matter. Nor is it good ground of objection to the indictment that it does not allege the payment of postage upon the papers in question. The statute does not make prepayment of postage an element of the offense defined. The indictment is, in my opinion, sufficient, and the demurrer is therefore overruled.

UNITED STATES v. EQE.¹

(District Court, E. D. Pennsylvania. February 25, 1892.)

FALSE ENTRIES IN STATEMENT—NATIONAL BANKS—EVIDENCE.

False entries in a statement, made by a book-keeper at the request of the bank examiner, purporting to give the balances due depositors, which statement it was the duty of the examiner to make, and not of the book-keeper, will not sustain an indictment for making "false entries in * * * a statement of the association," under Rev. St. 5209.

¹Reported by Mark Wilks Collet, Esq., of the Philadelphia bar

At Law.

Indictment under Rev. St. 5209, of Charles R. Ege, book-keeper of the Keystone National Bank of Philadelphia, the charge being that he had made entries in a statement prepared by him at the request and for the use of the bank examiner. The statement contained three kinds of misstatements—*First*, accounts appearing in the individual ledger were omitted in balance-sheet; *second*, checks were improperly deducted; *third*, balances were entered at less amounts than were actually to the credit of the depositors,—all tending to make the liability of the bank to the depositors less. The evidence showed that Ege had been requested to make the statement by the examiner on the ground of the illness of the examiner's assistant, and that it was the custom of the examiner to make such a statement personally, and it was no part of the duty of the bank's book-keeper to do it. Verdict directed for defendant.

W. W. Carr, Asst. U. S. Atty., and *John R. Read*, U. S. Atty.

John M. Strong, *Hampton L. Carson*, and *Richard P. White*, for defendant.

BUTLER, District Judge, (*charging jury, orally.*) I am decided in the opinion that it would be unjust to hold that congress, in fixing the responsibility of bank officers, intended to cover such an act as was performed by this defendant, at the expense of the examiner. The statute defines explicitly the duties of such officers; the books which the clerks should keep; the statements and reports they shall make; and requires faithfulness and honesty in the discharge of these duties, making the officers responsible criminally, and subjecting them to severe penalties for failure. I consider it clear that a proper construction of the statute will not permit the defendant to be held responsible under it for the services he rendered the examiner. His act in complying with the examiner's request was voluntary; as an officer of the bank, he was not required to perform it. Even if this view was open to question, the defendant should have the benefit of the doubt; but in my judgment there is no room for doubt. The statute is highly penal, and should therefore receive a strict construction. The defendant is therefore entitled to an acquittal. While it is not before us for consideration, the explanation made by his counsel—that the defendant wrote the statement in question without seeing the books from which it purported to be made, the items and figures being read out to him by another officer of the bank, who is now suffering for his crimes—is doubtless worthy of credit.

SCRIBNER *et al.* v. HENRY G. ALLEN Co.SAME v. FUNK *et al.*

(Circuit Court, S. D. New York. March 16, 1892.)

1. COPYRIGHT—FICTITIOUS BUSINESS NAME—INFRINGEMENT.

One who does business under a conventional or fictitious partnership name may obtain a valid copyright under that name, and may sue to restrain an infringement thereof without averring the filing of the certificate required by the New York statutes.

2. SAME—PLEADING.

A bill for infringement of a copyright, which avers that two copies of the book were deposited in the librarian's office at Washington within 10 days after publication, is sufficient, without alleging that the book was published within a reasonable time after the deposit of the copy of the title.

In Equity. Suits for infringement of copyright. On demurrer to the bills. Overruled.

Rowland Cox, for plaintiffs.

James A. Whitney, for defendants.

SHIPMAN, District Judge. These are demurrers to the plaintiff's bills in equity to restrain the alleged infringement of a copyright. The matters demurred to are the same in each bill, and the demurrers are, *mutatis mutandis*, identical. Each bill alleges that the authors of a book entitled "Scribner's Statistical Atlas of the United States" assigned all their right, title, and interest therein, before publication and before depositing a printed title thereof with the proper officer, to Charles Scribner, who then constituted and was the sole member of the firm of Charles Scribner's Sons, who, being such sole member, did the various acts required to copyright the book in the name of Charles Scribner's Sons. Subsequently Arthur H. Scribner became a member of said firm, which has continued to publish said book. The main ground of the demurrer is that no valid copyright exists, because Charles Scribner was engaged in business under a fictitious name, that no lawful justification for the use of said name is alleged, and that he should have caused the copyright to be taken in his individual name. It appears from the bill that the assignee and owner was, for a time, doing business under the name of Charles Scribner's Sons, and during this period he bought the right to obtain a copyright upon the book which he apparently proposed to publish, and did thereafter publish, in said business. At common law, individuals are permitted to "carry on business under any name or style which they may choose to adopt," (*Manham v. Sharpe*, 17 C. B., N. S., 442;) and, "if persons trade or carry on business under a name, style, or firm, whatever may be done by them under that name is as valid as if real names had been used," (1 Lindl. Partn., Ewell's Ed., 208.) In some of the states of this country, the use of a conventional or fictitious firm name is regulated or controlled by codes or statutes. I do not know whether the New York statutes in regard to the filing of certificates