In re BOSTON BOOK CO.

(*Circuit Court, D. Massachusetts.* June 2, 1892.)

No. 3,556.

CUSTOMS DUTIES—BOOKS.

Under the tariff act of 1890, par. 512, books printed and bound more than 20 years ago are entitled to entry free, notwithstanding that they have been recently rebound.

At Law. Petition for review of a decision by the board of general appraisers.

The Boston Book Company ordered from London a secondhand set of Howell's State Trials, 34 volumes, which were published in successive volumes between the years 1809 and 1828. On arrival of the set (per steamship Scythia, April 13, 1891) the appraiser at the port of Boston found that, while printed more than 20 years ago, it had evidently been recently rebound, and the collector therefore assessed upon it (April 23d) a duty of 25 per cent. upon the value, (£16.10,) under the provision of the present tariff, which requires a book to have been "printed and bound" more than 20 years to be admitted free. This duty, amounting to $20.50, the Boston Book Company paid under protest on April 29, 1891, and the same day entered an appeal to the board of United States general appraisers against the imposition of this duty. On May 29, 1891, the board of United States general appraisers sustained the decision of the collector of the port of Boston, and so notified the appellant.

Augustus Russ, for petitioner.

Frank D. Allen, U. S. Atty., for collector.

PUTNAM, Circuit Judge. The treasury department twice ruled—the last time January 29, 1886—that under the tariff act of 1883 books printed more than 20 years, but imported in sheets, were not entitled to free entry. The attorney general, however, advised otherwise September 16, 1886, (18 Op. Attys. Gen. 461.) He reached this conclusion by making "bound or unbound" relate to the preceding word "books." It is my belief that the change in phraseology which appears in the act of October 1, 1890, par. 512, so far as it reaches the present case, should be construed as intended to remove this doubt, and to make certain that the general policy concerning this subject-matter was not extended as the opinion of the attorney general permitted. This was, perhaps, sought to be accomplished by striking out the comma after "unbound," for whatever such striking out might be worth, so as, perhaps, to make that word limit what followed it, and not what preceded. It was reached effectually and certainly by inserting "bound or" after the words "printed and." The present paragraph 512 is therefore to be construed distributively; the words "printed and bound" referring to whatever should be bound to complete it as an article of merchandize, and "printed" and "manufactured" to everything else. I discover no

evidence of any other change of legislative purpose so far as relates to printed books. By a literal construction of the present statute the petitioner's books seem entitled to free entry, because, having once been bound more than 20 years before importation, they comply with its precise terms, notwithstanding they may have been bound again. But it is not necessary to rely on the mere letter, as the considerations stated lead directly and naturally to a rational construction. *Church of Holy Trinity* v. *U.S.*, 143 U.S. 457, 463, 12 Sup. Ct. Rep. 511. Moreover, rebinding is not binding. The latter is new and original work; while, ordinarily, the former is repairing, and usually omits one or more of the recognized steps in the latter. If the United States claims that they all actually entered into the present case, it had the burden of showing this fact to the board of general appraisers. But, as it is apparent that these books were bound more than 20 years before importation as books of like character are usually bound before being offered for sale, I would regard them as entitled to free entry, even though it also appeared that, in consequence of accident or ordinary use, they had needed and received repairs in all respects equal in extent to new and original binding. I adopt the conclusions of the decision of the treasury department of March 2, 1891, (10,800) and hold that the books are entitled to free entry. The petitioner will prepare the proper order, and, if not agreed to, will submit it to the court for revision. For the present the order will be: Petitioner entitled to relief per order to be entered in compliance with the opinion of the court.

UNITED STATES *v.* LAW.

(*District Court, W. D. Virginia.* April 14, 1892.)

1. PERJURY—INDICTMENT—TIME.
   In an indictment for perjury, the day on which the perjury was committed must be truly laid, and to lay it on the "——— day of September, 1891," is insufficient.
2. SAME—AFFIDAVIT.
   In an indictment for perjury, in making an affidavit, it is unnecessary, under Rev. St. § 5396, to set out the affidavit *in hæc verba*.
3. SAME—AFFIDAVIT—AUTHORITY OF NOTARY.
   Rev. St. § 1778, authorizing notaries public to administer oaths in all cases in which justices of the peace have power to administer them, gives no power to administer an oath in an investigation by the post office department as to the alleged loss of a registered letter, for there is no statute giving justices such power, and hence no indictment for perjury can be based upon false statements in an affidavit made before a notary in such an investigation.

At Law. Indictment of A. B. Law for perjury. Demurrer to indictment sustained.

W. E. Craig, U. S. Atty.

Geo. C. Cabell, for defendant.

PAUL, District Judge. This is an indictment for perjury, based on an affidavit made by the defendant on the 21st day of August, 1891,