

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. § 5300, 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,

before W. D. Haynes, a notary public for Franklin county, in the state of Virginia, said affidavit being to the following effect, to wit:

"State of Virginia, County of Franklin—to wit:

"Before me, W. D. Haynes, a notary public in and for Franklin county, Virginia, personally appeared A. B. Law, and made oath that he registered a letter at Pen Hook, Va., on the 21st August, 1891, directed to G. H. T. Greer, Rocky Mount, Va., and that said letter contained eight hundred dollars in United States currency, as follows: three two hundred dollar notes, two fifty dollar notes, and five twenty dollar notes. A. B. LAW.

"Sworn to and subscribed before me this 28th day of September, 1891.

"W. D. HAYNES, N. P."

The defendant demurs to the indictment on the following grounds:

1. That the day of the alleged commission of the offense is left blank in the indictment, the time alleged being "the —— day of September, 1891." The court is of opinion that this objection to the indictment is well taken. The doctrine laid down in *Rhodes v. Com.*, 78 Va. 692, is that "in an indictment for perjury the day in which the perjury was committed must be truly laid," and this decision is sustained by the various authorities cited by counsel for the defendant.

2. A second objection to the indictment urged by counsel for the defendant is that the indictment should set out *in hæc verba* the affidavit made by the defendant on which the charge of perjury is based. This, the court thinks, is unnecessary. Section 5396 of the Revised Statutes of the United States provides as follows:

"Sec. 5396. In every presentment or indictment prosecuted against any person for perjury it shall be sufficient to set forth the substance of the offense charged upon the defendant, and by what court, and before whom the oath was taken, averring such court or person to have competent authority to administer the same, together with the proper averment to falsify the matter wherein the perjury is assigned, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding, either in law or equity, or any affidavit, deposition, or certificate, other than as hereinbefore stated, and without setting forth the commission or authority of the court or person before whom the perjury was committed."

3. The most important objection raised on the demurrer is that the notary public before whom the affidavit on which the indictment is based was taken had no authority to administer the oath to the defendant, and to take the affidavit which, it is alleged in the indictment, was falsely made, and in making which the defendant committed perjury. No principle in the criminal law is more clearly settled than that the false oath must be taken before a court, or an officer authorized to administer such oath. The most general power conferred by the statutes of the United States on a notary public to administer an oath is given by section 1778 of the Revised Statutes, which authorizes this officer to administer an oath in all cases in which, under the laws of the United States, a justice of the peace may do so. The statute is as follows:

"Sec. 1778. In all cases in which, under the laws of the United States, oaths or acknowledgments may now be taken or made before any justice of

the peace of any state or territory, or in the District of Columbia, they may hereafter be also taken or made by or before any notary public duly appointed in any state, district, or territory, or any of the commissioners of the circuit courts, and, when certified under the hand and official seal of such notary or commissioner, shall have the same force and effect as if taken or made by or before such justice of the peace."

This statute limits the authority of a notary public to administer an oath to the cases in which a justice of the peace has the same authority. A diligent and careful examination of the statutes of the United States, and the rules and regulations of the post office department, which by statute have the effect of law, (and he can derive his power from no other source,) fails to furnish us any authority for a justice of the peace to administer such an oath as that taken by the defendant in this case. We must therefore necessarily arrive at the conclusion that the notary public had no authority to take the affidavit in question, and that if it be false it cannot be the ground of a prosecution for perjury. The court thinks that even if the notary public had authority to take the affidavit on which this indictment is based, the said affidavit would be defective, because not certified under the hand and official seal of the notary public, as required by the statute. The view taken by the court that a notary public has no authority to administer an oath in an investigation as to the alleged loss of a registered letter, such as was being conducted in the matter of the case at bar, seems to have been held by the post office department. For in the postal laws and regulations (section 48) it has notified its officers and employes that, in accordance with the provisions of section 183 of the Revised Statutes of the United States, "any officer or clerk of any of the departments lawfully detailed to investigate frauds or attempts to defraud on the government, or any irregularity or misconduct of any officer or agent of the United States, shall have authority to administer an oath to any witness attending to testify or depose in the course of such investigation." The same section of the postal laws and regulations reiterates the provisions of section 298 of the Revised Statutes of the United States, that "any mayor of a city, justice of the peace, or judge of any court of record in the United States, may administer oaths in relation to the examination and settlement of accounts committed to the charge of the sixth auditor," but confers no power to administer an oath in case of an investigation such as was being conducted when the affidavit in question was taken. The post office inspector, if there was one present, doubtless had this power, but the notary had not. The demurrer must be sustained.

UNITED STATES v. MARTIN.

(District Court, W. D. Virginia. April 18, 1892.)

1. INDICTMENT—VALIDITY—PRIOR REFUSAL TO INDICT.

The fact that a grand jury has ignored an indictment is not a bar to the subsequent finding of a true bill for the same offense.

2. POST OFFICE—SEALED OBSCENE LETTER.

Under Rev. St. § 3893, as amended by Act Cong. 1888, 25 St. p. 496, an obscene letter, sealed or unsealed, is nonmailable, the provision that no person shall open any sealed matter not addressed to himself being a sufficient protection to private correspondence. *In re White*, 42 Fed. Rep. 822, followed.

3. SAME—OBSCENE LETTER DEFINED.

A letter from a man to an unmarried woman, proposing a clandestine trip to a neighboring town, to return the next morning, he to pay her expenses and five dollars besides, is an obscene letter within the meaning of the act making such matter nonmailable, although it contains no words which are of themselves obscene.

4. SAME.

"Obscene," within the meaning of the act, is that which is offensive to chastity and modesty. *U. S. v. Harmon*, 45 Fed. Rep. 414, followed.

At Law. Indictment of George W. Martin for mailing obscene letters in violation of Rev. St. § 3893. Heard on motion to quash and demur. Overruled.

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

Peatross & Harris, for defendant.

PAUL, District Judge. In this case the defendant moves to quash the indictment on the ground that it was found by a grand jury of this court at Lynchburg in March, 1892, after a grand jury of this court at a court held at Danville in November, 1891, had reported the indictment "not a true bill." I do not think this motion can be sustained either by the practice in Virginia or by the doctrine generally held by the American courts. The doctrine in this state and the other American states is that the ignoring of an indictment by one grand jury is no bar to a subsequent grand jury investigating the charge and finding an indictment for the same offense. "If a man be committed for a crime, and no bill be preferred against him, or if it be thrown out by the grand jury, so that he is discharged by proclamation, he is still liable to be indicted, though the sending up a second bill, after an *ignoramus*, is an extreme act of prerogative, subject to the revision of the court. * * *" Whart. Crim. Pl. & Pr. § 446. The defendant also demurs to the indictment on the following grounds: *First*, that the sending of an obscene, lewd, and lascivious letter under seal through the mail is not an offense under section 3893 of the Revised Statutes of the United States, as amended by the act of congress approved September 26, 1888, under which the indictment in this case was drawn; *second*, that the letters on which this indictment is based are not obscene, lewd, and lascivious within the meaning of the statute.

The court will consider these objections in the order in which they are made. Prior to the enactment by congress (September 26, 1888) of the amended act on this subject, the word "letter" was not embraced