

register as another. The whole scheme disclosed by the proof is a cunning trick to attract the cupidity and ignorance of men.

A great menace to the civilization not only of the United States, but of the world, is the growing tendency to gamble or engage in lottery. Two hundred years ago their promoters were characterized in the statutes of England as rogues. No prospect is so attractive as that which is wrapped up in the mysteries of a chance. To the winner comes some money, many congratulations, wide advertisement throughout the newspapers, and the propensity to go in again. To the losers, one hundredfold in number, come stripped homes, impoverished wives and children, lost opportunities of building up a competence legitimately, and, in too many instances, the temptation to go in again upon means that are obtained from an employer or cestui que trust, first by a supposed borrowing, then by intentional theft, forgery, and embezzlement. The rainbow of hope lures and lures until its chaser falls over the precipice into suicide or the penitentiary.

The mails of the United States are intended for legitimate business or friendly communication, and are defiled by the dissemination and promotion of such a scheme as the evidence in this case admittedly discloses.

If you believe, beyond a reasonable doubt, that these defendants deposited the printed matter submitted to you in the mails, as charged in the indictment, and that the scheme which it promoted was of the nature and character sworn to indisputably here by the witnesses, then it is your duty to return a verdict of guilty.

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#### UNITED STATES v. ARMSTRONG.

(District Court, S. D. California. January 25, 1894.)

##### 1. OBSTRUCTING AND INFLUENCING JUSTICE—INDICTMENT.

It is not sufficient to charge an endeavor to influence and obstruct justice in a federal court, by means of a threatening letter, in the general language of Rev. St. § 5404.

##### 2. SAME.

An averment that defendant procured the arrest "within this district" of his wife, who was living separate and apart from him, for the purpose of procuring from her "a dissolution of the bonds of matrimony existing between them, through such arrest," is insufficient, in that it fails to show that the arrest was under process issued out of a federal court.

At Law. Indictment of D. F. Armstrong for endeavoring to obstruct and influence the administration of justice. On demurrer to the indictment. Sustained.

George J. Denis, U. S. Atty.

Frank P. Flint, for defendant.

ROSS, District Judge. "In an indictment upon a statute, it is not sufficient to set forth the offense in the words of the statute, unless those words, of themselves, fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements

necessary to constitute the offense intended to be punished." U. S. v. Carll, 105 U. S. 612. The present indictment is based upon section 5404 of the Revised Statutes, which reads:

"Every person who, corruptly, or by threats or force, or by threatening letters, or any threatening communications, endeavors to influence, intimidate, or impede any grand or petit juror of any court of the United States in the discharge of his duty, or who corruptly, or by threats or force, or by threatening letters, or any threatening communications, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice therein, shall be punishable by a fine of not more than one thousand dollars, or by imprisonment not more than one year, or by both such fine and imprisonment."

The indictment contains two counts, the first of which charges that the defendant, at a certain time and place within this judicial district, did corruptly, and by threats and force, and by a certain threatening letter written by him to one Clara Armstrong, who was at the time his wife, but living separate and apart from him, endeavor to influence, obstruct, and impede the due administration of justice in the circuit court of the United States for the ninth circuit, southern district of California.

The second count charges that the defendant, at the same time and place, did corruptly, willfully, unlawfully, and feloniously endeavor to influence, obstruct, and impede the due administration of justice in the circuit court of the United States, ninth circuit, southern district of California, in the following manner, to wit:

"He, the said D. F. Armstrong, did procure the arrest within said district of one Clara Armstrong upon a complaint sworn to by him, the said D. F. Armstrong, against the said Clara Armstrong, she, the said Clara Armstrong, being then and there the wife of the said D. F. Armstrong, but was then and there living separate and apart from him, for the purpose and with the intent of procuring from the said Clara Armstrong a dissolution of the bonds of matrimony existing between them, through such complaint and arrest."

It is essential to the sufficiency of an indictment that the acts charged be, if proved, sufficient to support a conviction of the offense alleged. In neither count of the indictment is it alleged what proceeding in the circuit court of the United States for the ninth circuit, southern district of California, the defendant endeavored to influence, obstruct, or impede, nor, indeed, that there was any proceeding there pending to be influenced, obstructed, or impeded, nor that there was any proceeding pending there at all. The threatening letter that the defendant is by the first count charged with having written to his wife is not set out or so described as to be capable of identification, and the sole act charged by the second count against him is that he procured the arrest within this district of his wife, who was at the time living separate and apart from him, for the purpose and with the intent of procuring from her "a dissolution of the bonds of matrimony existing between them through such complaint and arrest." It by no means necessarily follows from the alleged fact that defendant procured the arrest of his wife within this judicial district that such arrest was made under process issued out of a court of the United States.

The object of the indictment is, as said by the supreme court in *U. S. v. Cruikshank*, 92 U. S. 542:

"First, to furnish the accused with such a description of the charge against him as will enable him to make his defense, and avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and, second, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had."

The indictment in the present case does not answer either of these requirements.

Demurrer sustained.

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UNITED STATES v. KENWORTHY et al.

(District Court, E. D. Pennsylvania. January 2, 1894.)

No. 3.

CUSTOMS DUTIES—APPRAISERS—VALUATION.

Under the tariff act of 1883 the appraisers were limited to determining the "market value" at the place from which the importation was made, and could not add thereto any commissions, or consider the cost of the particular goods, except as a means of determining market value.

At Law. Action against Kenworthy & Bro. to recover duties. New trial granted.

Ellery P. Ingham, for the United States.

Leonard Myers, for defendants.

BUTLER, District Judge. In 1884 the defendants imported a cargo of wool from Glasgow, and paid duty thereon according to the entry. The appraiser raised the value, placed the wool in a higher class and increased the duty accordingly. The defendants thereupon complained and demanded a "merchant appraisalment." The collector selected an experienced merchant, who with the appraiser re-examined the question. The merchant sustained the entry, finding the wool to be below 12 cents in value, as entered, while the appraiser placed it materially higher—subjecting it to an increased rate of duty. On report of this disagreement the collector adopted the appraiser's valuation. The importers appealed to the secretary of the treasury, who affirmed the collector's action.

While the law governing the subject is made intricate by the terms of the various sections of the several statutes applicable, it is nevertheless well settled by the decisions of the courts. The action of the collector when unappealed from, or affirmed, is final in so far as he has confined himself to a discharge of his proper duties under the statutes. When his acts are unlawful, or improper, they are not binding. On suit by the importers to recover improper exactions, or by the government to recover unpaid assessments (after appeal to the secretary) he may show that the action of the customs officers was unlawful or improper, that the importation was improperly classified, etc. The valuation when made in conformity with law is final. The subject has been so fully discussed in the several