

publication proposed to be deposited in the post office for transmission? If the matter offered for mailing is in itself obscene, lewd, or lascivious, then the postal authorities are forbidden to receive it. It is nonmailable, and its character in this respect cannot be changed by placing it in a cover, wrapper, or envelope, or by sealing it as first-class matter. I am aware that there is not unanimity in the rulings upon this question. In *U. S. v. Wilson*, 58 Fed. 768, Judge Morrow held that the amendment of September 26, 1888, did not, in this respect make any change in the statute as it was when it was construed by the supreme court in *U. S. v. Chase*, 135 U. S. 255, 10 Sup. Ct. 756, wherein it was held that a sealed and addressed letter is not a "writing," within the meaning of the act of July 12, 1876. In *U. S. v. Andrews*, 58 Fed. 861, Judge Ross takes the contrary view, and, in my opinion, clearly shows that the amendment of September 26, 1888, was intended to place obscene, lewd, or lascivious letters among the class of nonmailable matter, not by reason of what might be upon the envelope or wrapper thereof, but by reason of the character of the letter itself. This being the proper construction of the second section of the act of 1888, it follows that the indictment charges an offense against the defendant, in that it charges him with knowingly depositing in the named post office an obscene letter, for the purpose of having the same transported and delivered through the mail to the person to whom the letter is addressed.

It is further urged in support of the demurrer that the indictment is faulty in that it is not averred that the defendant had knowledge of the contents of the letter or envelope by him placed in the post office. The indictment follows the language of the statute, and charges that the defendant did knowingly deposit in the named post office an obscene letter, and the point made is that it is not averred that defendant knew the character of the letter, the same being contained in an envelope. In *U. S. v. Clark*, 37 Fed. 106, the same question was passed upon by Mr. Justice Brewer, then circuit judge for this circuit, it being therein held that an indictment charging the defendant with knowingly depositing in the post office, for mailing and delivery, a certain lewd and obscene picture, was sufficient, as it would be held that the word "knowingly" qualifies the full act charged to be done, and is not limited to the mere act of depositing in the post office. Following this ruling, it must be held that the indictment in the present case is sufficient in this particular, and the demurrer is therefore overruled.

ZIMMERMAN v. UNITED STATES.

(Circuit Court, S. D. New York. April 18, 1894.)

CUSTOMS DUTIES—CLASSIFICATION—COTTON BRAIDS.

Braids composed of 95 per cent. of cotton and 5 per cent. of other materials, commercially known as belonging to the class of "cotton braids," though bought and sold under the specific names of "cotton hat

braids," "cotton fancy braids," "cotton straw braids," etc., and used in the manufacture of hats, held to be dutiable at 35 cents per pound, under paragraph 354 of the tariff act of October 1, 1890, and not at 20 per cent. ad valorem, under section 4 of said act, as a nonenumerated manufactured article, nor at 40 per cent. ad valorem, under paragraph 355, as a manufacture of cotton not specially provided for, nor at 40 per cent. ad valorem, under paragraph 354, as "cotton gimps, galloons, webbing, goring, suspenders and braces," nor free of duty, under paragraph 518 of the free list of said act, as claimed by the importer.

(Syllabus by the Court.)

Application by John Zimmerman, importer, for a review of a decision of United States general appraisers concerning certain importations of braids made by him in 1890 and 1891, affirming the decision of the collector at the port of New York.

The importations were classified for duty by the collector under the provisions for "cotton cords, braids, boot, shoe, and corset lacings," contained in paragraph 354, schedule I, Act 1890 (26 Stat. 593). The importer protested, as stated in the syllabus.

Hess, Townsend & McClelland, for importer.
Henry C. Platt, U. S. Atty.

TOWNSEND, District Judge (orally). It appears that, while the braids are exclusively used for making hats, yet they are cotton braids in fact, and are generally and commercially known as "cotton braids," although they are also known as "cotton hat braids," and a certain pattern is known as the "Belgrade pattern." It seems to me that the construction contended for by the importer would nullify the operation of the statute (paragraph 518), by admitting braids suitable for making hats, irrespective of their composition,—whether of wire, paper, leather, or whalebone, for example,—and that therefore, this construction could not have been intended by congress; and a further suggestion in support of this view seems to be afforded by the limiting clause (in paragraph 518), in which all "similar manufactures" are limited as to the material of which they are composed. I can see no reason why, if the limitation is applied to the general term "similar manufactures," it should not also be applied to the braid, especially in view of the fact already suggested,—that the other view admits of other materials, such as have been mentioned. The construction contended for by the government seems to be further in harmony with the intention of congress as manifested by other acts, and in accordance with the construction applied by the courts in similar cases. I therefore think that the decision of the board of general appraisers should be affirmed. Decision affirmed.

UNION SWITCH & SIGNAL CO. v. JOHNSON RAILROAD SIGNAL CO.

(Circuit Court of Appeals, Third Circuit. May 24, 1894.)

No. 18.

1. AUTHORITY OF AGENT TO SELL PATENT—INTERPRETATION OF POWER OF ATTORNEY.

A power of attorney which, in consideration of a prescribed royalty, appoints the donee sole agent in the United States "for the purpose of working and developing the business of said patents," with power to "negotiate the sale of the said patents upon terms to be agreed upon," does not give the agent power to grant an exclusive license, which would transfer substantially the entire interest in the patent; but it does authorize him to grant nonexclusive licenses to manufacture and sell.

2. ASSIGNMENT OF PATENT—INTERPRETATION OF CONTRACT.

A contract which purports to convey, for a prescribed royalty, the sole and exclusive right and license to make, use, and sell in the United States the improvements covered by a patent for the full term thereof, is in substance a virtual if not an actual sale. 59 Fed. 20, affirmed.

3. UNAUTHORIZED SALE BY AGENT—RATIFICATION.

The sale, by an agent who had authority to grant nonexclusive licenses only, of an exclusive license transferring in substance the entire patent, may be held good as a nonexclusive license, when the licensees have been misled by the ambiguous language used by the principal in conferring power on the agent, and especially when the principal has long recognized them as licensees, although, in so doing, he was unaware that their license purported to be exclusive.

4. POWER OF ATTORNEY—CONTRACT IN ATTORNEY'S NAME—VALIDITY.

It seems that when a contract which may be made by parol is put in writing, merely for convenience and certainty of proof, as in the case of a nonexclusive license to make and sell under a patent, the fact that the writing purports to be made under a power of attorney, but is executed by the attorney in his own name, will not render the contract void.

Appeal from the Circuit Court of the United States for the Western District of Pennsylvania.

This was a bill by the Johnson Railroad Signal Company against the Union Switch & Signal Company, for infringement of letters patent No. 241,246, issued to Frederick Cheeswright, for "improvements in electric railroad signal apparatus." Cheeswright, by a power of attorney, which is set out in the opinion, constituted one Yeomans his attorney in fact in the matter of the patent, and defendant claims under a conveyance by Yeomans, dated March 21, 1882. Plaintiff claims title to the same patent under a power of attorney from Cheeswright to Henry Bezer, dated October 31, 1889, and an absolute assignment of the patent from the latter. The case was heard in the circuit court on a motion for leave to file a cross bill, and for an order for substituted service (43 Fed. 331). Afterwards, a motion by the cross complainant for an order for an injunction was denied (51 Fed. 85). A decree was finally rendered for complainant (59 Fed. 20). Defendant appealed.

George H. Christy and S. Schoyer, Jr., for appellants.

George W. Miller and Wm. R. Blair, for appellees.

Before DALLAS, Circuit Judge, and BUTLER and GREEN, District Judges.