

and set for trial on the same day, separate actions for damages growing out of the same accident. The case of Foster Simpkins was first reached and taken up and tried (61 Fed. 999), and the case of Charles Simpkins was, by agreement of counsel, made dependent upon the result of the Foster Simpkins case, and was adjusted between them without trial. It appears, both from the statement on behalf of defendant and the affidavit of the witness Foster Simpkins, that he attended upon court looking after his own case, and was a material witness therein, and testified as such in the case. It would be no ground of exclusion of the witness fees in another case pending in the same court and at the same time that he himself had a suit pending therein, as he might well intrust the management of his case to his counsel without his presence, and if, in this case, the witness Foster Simpkins had stated in his affidavit that he would not otherwise have attended upon the court but in response to the subpoena as a witness in the Charles Simpkins case, his fees therein should be allowed him. But when it is made to appear, as it does in this case, that he would have attended upon court in his own case with or without having been subpoenaed as a witness in the Charles Simpkins case, the foundation and title to witness fees disappear, for the theory of the law in the taxation of witness fees is that the witness has withdrawn himself from his usual and ordinary avocation and business, and given his time to the attendance before the court in the case in which he is called. Allied as the two cases were, the one in favor of the father and the other the son, and growing out of the same transaction, it would be an imposition upon the common defendant for each of them to have themselves subpoenaed as witnesses, the one for the other, and claim their fees while attending upon the court as interested parties and witnesses in their own case.

For this reason the motion is sustained.

UNITED STATES v. LING.

(District Court, D. Connecticut. June 22, 1894.)

No. 1,028.

POST OFFICE—INDECENT LETTERS—INDICTMENT.

Rev. St. § 3893 (1 Supp. Rev. St. p. 621), provides that "every obscene, lewd or lascivious book, pamphlet, picture, paper, letter, writing, print or other publication of an indecent character, * * * whether sealed as first-class matter or not, is hereby declared to be non mailable matter." *Held*, that a private letter in a sealed envelope is within the prohibition of this statute if it is of an indecent character.

At Law. Indictment against Willie Ling for mailing an indecent letter.

Geo. P. McLean, U. S. Atty.

Gross, Hyde & Shipman, for defendant.

TOWNSEND, District Judge. Demurrer to an indictment for mailing an indecent letter, under section 3893, Rev. St. (1 Supp. Rev. St. p. 621), which reads as follows:

"Every obscene, lewd or lascivious book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character, * * * whether sealed as first-class matter or not, are hereby declared to be non-mailable matter; * * * And any person who shall knowingly deposit, or cause to be deposited for mailing or delivery, anything declared by this section to be non-mailable, * * * shall, for each and every offense, be fined."

Counsel for the accused claims that a private letter in a sealed envelope is not within the prohibition of the statute, and cites *U. S. v. Warner*, 59 Fed. 355, and *U. S. v. Jarvis*, Id. 357. The decisions in *U. S. v. Clark*, 43 Fed. 574, and *U. S. v. Wilson*, 58 Fed. 769, also sustain this view. The contrary is held in *Re Wahll*, 42 Fed. 822; *U. S. v. Martin*, 50 Fed. 918; and *U. S. v. Andrews*, 58 Fed. 861. The statute in question differs from the former statute in the insertion of the word "letter" between the words "paper" and "writing." An examination of the statute, and consideration of its history and of the foregoing opinions and of the decisions of the supreme court of the United States upon the questions involved herein, and especially of *U. S. v. Chase*, 135 U. S. 255, 10 Sup. Ct. 756, have satisfied me that congress intended, and that the rules of interpretation prescribed in such cases demand, that this statute be so construed as to embrace private sealed letters. No other reason is suggested for the insertion of the word "letter," which has a meaning in itself, distinct from the word "writing;" and the proviso "that nothing in this act shall authorize any person to open any letter or sealed matter of the first class, not addressed to himself," forcibly suggests both the protection of the privacy of the mails and the prohibition of their use for the transmission of obscene matter. The demurrer is overruled.

EDISON ELECTRIC LIGHT CO. et al. v. PACKARD ELECTRIC CO. et al.

(Circuit Court, N. D. Ohio, E. D. September 6, 1893.)

No. 5,141.

1. PATENTS—ACTIONS FOR INFRINGEMENT—PREVIOUS DECISIONS AS TO VALIDITY. Adjudications establishing the validity of a patent, after protracted litigation, although not controlling a circuit court in another circuit, authorize it to find the patent valid in a suit for infringement involving the same questions of fact and law.
2. EQUITY PRACTICE—PLEADINGS AS EVIDENCE—ASSIGNMENT OF PATENT. Averments, in a bill for infringement of a patent, that proper and valid assignments of the patent were made, are sufficient proof of title by assignment, where answer under oath is waived, and no affidavits denying the alleged transfer are offered.
3. PATENTS—INJUNCTION AGAINST INFRINGEMENT — OFFICERS AND AGENTS OF NONRESIDENT CORPORATION. Officers, agents, and stockholders of a corporation, made defendants and served with process in a suit for infringement of a patent by them while acting for the corporation, may be restrained from such infringement, although the corporation is not a party, and is not within the jurisdiction of the court.

This was a suit by the Edison Electric Light Company and another against the Packard Electric Company, James Ward Packard, and William D. Packard, for infringement of letters patent.