

In each judicial district there is a United States attorney, appointed by the president, to represent the interests of the government in the prosecution of parties charged with the commission of public offenses against the laws of the United States. The United States attorney for this district will therefore appear before you, and present the accusations which the government may desire to have considered by you. He will point out to you the laws, other than those I have mentioned, which the government deems to have been violated, and will subpoena for your examination such witnesses as he may consider important, and also such other witnesses as you may direct. To constitute a legal grand jury, at least 16 of your number must be present; and not less than 12 must concur to authorize you to find an indictment or make a presentment; a majority will not be sufficient. In your investigations, you will receive only legal evidence, to the exclusion of mere reports, suspicions, and hearsay evidence. Subject to this qualification, you will receive all the evidence presented which may throw light upon the matter or matters under consideration, whether it tend to establish the innocence or guilt of the accused. And more: if, in the course of your inquiries, you have reason to believe that there is other evidence not presented to you within your reach, which would qualify or explain away the charge under investigation, it will be your duty to order such evidence to be produced. Formerly it was held that an indictment might be found if evidence were produced sufficient to render the truth of the charge probable. But a different and a more just and merciful rule now prevails. To justify the finding of an indictment, you must be convinced, so far as the evidence before you goes, that the accused is guilty. In other words, you ought not to find an indictment unless, in your judgment, the evidence before you, unexplained and uncontradicted, would warrant a conviction by a petit jury. You will regulate the time of your sessions to accommodate the convenience of yourselves and the district attorney, but you will not adjourn for a period of more than four days without the permission of the court. In the progress of your examinations, should questions arise concerning which you may desire further instructions from the court, you may come into court for that purpose, and the law will be further explained to you with respect to such questions.

MAGNON v. UNITED STATES.

(Circuit Court, S. D. New York. January 2, 1895.)

CUSTOMS DUTIES—ACT OCT. 1, 1890—LIVE SNAKES—TOOLS OF TRADE.

Certain trained snakes, imported by a professional snake charmer, held to be free of duty under paragraph 686, under the provision therein for "implements, instruments and tools of trade, occupation or employment," and not dutiable as "live animals" under paragraph 251, as classified by the collector.

This was an application by the snake charmer Magnon, importer of certain trained snakes, for a review of the decision of the board

of general appraisers sustaining the decision of the collector of the port of New York as to the rate of duty on said snakes.

Comstock & Brown, for importer.

Wallace Macfarlane, U. S. Atty., and Henry C. Platt, Asst. U. S. Atty.

WHEELER, District Judge. The importer in this case is a snake charmer, and imported 28 trained snakes, in her actual possession, and used by her in exhibitions of her skill in that profession, and which were not for sale. A duty was assessed upon them as animals. She claims they are free under paragraph 686 of the tariff act of 1890, which exempts "professional books, implements, instruments, and tools of trade, occupation or employment," under such circumstances. A suggestion is made in argument that these words do not include animate things. One definition of "instrument" is: "One who, or that which, is made a means, or caused to serve a purpose." Webst. Dict. "Instrument" 4. These snakes are clearly "instruments" within this definition. They are instruments with which she practices her profession, and are her professional instruments. As such, she seems to have been entitled to have them come with her, duty free. Decision of board reversed.

SCHWARZWALDER et al. v. NEW YORK FILTER CO.

(Circuit Court of Appeals, Second Circuit. January 9, 1895.)

1. PATENTS—EFFECT OF DISCLAIMER ON QUESTION OF NOVELTY.

Where a disclaimer has been filed by the patentee as a result of litigation, the validity of the patent, as regards the question of novelty, is to be tested, not by its original terms and scope, but by what remains after the disclaimer, in the same manner as if the matter disclaimed had never been a part of the patent. *Dunbar v. Myers*, 94 U. S. 194, followed.

2. SAME—OPERATION OF DISCLAIMER.

The disclaimer of matter which is not a part of the description, but is merely a recital designed to enlarge the scope of the patent, operates merely to expunge from the claim what otherwise would, by force of the recital, be incorporated into it constructively.

3. SAME—CONSTRUCTION OF CLAIM—PURIFYING WATER—EQUIVALENT COAGULANTS.

In a patent for a process of purifying water, a claim which covers the use of coagulants "such as perchloride or persulphate of iron" includes the use of alum, which is a recognized equivalent.

4. SAME—NOVELTY AND INFRINGEMENT.

The Hyatt patent, No. 293,740, for a method of purifying water, consisting in the simultaneous application of a coagulant and a process of filtration, the coagulant being mixed with the water at the time of its introduction into the filtering apparatus, and while it is flowing continuously through the filter bed, thus dispensing with settling tanks, *held* valid, and infringed.

Appeal from the Circuit Court of the United States for the Southern District of New York.

This was a suit by the New York Filter Company against Henry Schwarzwald, August Finck, and the O. H. Jewell Filter Com-