

De Wolf v. Harris, 4 Mason, 539, 540, Fed. Cas. No. 4,221; Harris v. De Wolf, 4 Pet. 147. Later statutes have simply repeated the original phraseology. Rev. St. § 3058. I have no doubt, therefore, that a mere consignee of goods, having no property interest in them, has no right to make a declaration as owner under section 5 of the customs administrative act, but must make the declaration as consignee, and in that declaration must state truly the name of the owner.

2. Disregarding the provision of section 1, therefore, as having no bearing upon the form of declaration required by section 5, there is no such ambiguity or uncertainty in the charge of the first three counts of the indictment as to require any further specification in order to give the defendant a sufficiently clear understanding of the nature and character of the offense charged. It is sufficient that the indictment avers that the defendant "willfully declared that he was the owner of the goods,—whereas in fact he was not the owner, as he then and there well knew." This declaration, and the import of it, are as direct and simple as in any ordinary averments of fact in indictments for perjury. See *U. S. v. Wood*, 14 Pet. 430. There may be peculiar circumstances in which the question whether a person was owner or was not the owner, might depend upon the determination of a question of law; but such a possibility surely does not affect the sufficiency of the ordinary forms of pleading. In any event, it would be necessary in order to convict, that the defendant should be found to have made the false claim of ownership knowingly. The indictment so charges; and of this fact the jury must be satisfied beyond reasonable doubt, or the defendant would be entitled to acquittal.

3. I do not think an intent to defraud the United States is any essential ingredient of the offense constituted by section 6. The object of that section is to secure truthful declarations on the entries of merchandise, according to the actual fact; and to secure this, section 6 provides that any person who shall knowingly make any false statements in such declarations in any material matter shall be punished. The intent or object of the accused in making such a false statement, is not, I think, material. The government is not required to prove the particular intent; nor can the defendant's motive or object be a justification. The first three counts should, therefore, be sustained.

4. The fourth count contains some additional averments; among others, that the defendant "did make entry of the said merchandise by means of a false and fraudulent declaration," etc. The declaration set forth in this count is, however, the same declaration as owner that is set up in the three preceding counts; and there is nowhere in the fourth count any specification of any falsity or false practice, or false paper, or false statement, other than in this same declaration, and the statement that the defendant was not the owner of the goods, precisely as in the preceding three counts. This is plainly covered by section 6. That section specifically provides the punishment for this particular class of false statements, and for no other class; and it provides a heavier punishment, i. e. at hard labor,

than is imposed by section 9 for frauds in general. In accordance with the decision in *U. S. v. Kuentsler*, 74 Fed. 220, it must be, therefore, considered that the specific provision of section 6 applies exclusively to false statements in declarations for entry, and that the indictment, therefore, cannot proceed under section 9 for that particular offense.

It is suggested for the government that section 9 provides a punishment for entering or attempting to enter goods by means of any fraudulent appliance, including a false declaration, etc.; while the offense under section 6 might be committed without any entry or attempt to enter the goods; and that as there was an entry in this case, the fourth count should stand. I do not think, however, that this construction can be given to section 6. On the contrary, I think no offense is complete under that section until the false declaration there referred to is filed or offered to be filed with the collector when making or attempting to make entry of the goods. Section 5 provides that whenever merchandise is entered, one of the following declarations * * * shall be filed with the collector of the port at the time of entry. Section 6 declares that any person who shall knowingly make "any false statement in the declarations provided for in the preceding section" shall be punished. The declarations "provided for" are declarations filed with the collector at the time of making entry; so that the presentment of the false declaration to the collector for the purpose of making entry of the goods, is in my judgment necessary to the completion of the offense. Section 9, therefore, contains no additional or different ingredient applicable to the facts of the present case, where the only falsity is in the statement made in the declaration; and as section 9 provides a lighter punishment, it cannot be deemed to include the specific cases covered by section 6. The fact, moreover, that the punishment under section 6 is at hard labor, while that under section 9 is not, confirms the conclusion that the offense under section 6 could not be deemed complete unless the false declaration was used, or sought to be made use of, in making entry of the goods. For that is the only use that can be made of the declaration; and it is not credible that it was intended to punish falsity in a declaration never used, or sought to be used at all, more severely than other frauds by which an unlawful entry is in fact accomplished.

The demurrer as to the fourth count is, therefore, sustained, and as to the first three counts, overruled.

MENASHA WOOD SPLIT PULLEY CO. et al. v. DODGE et al.

(Circuit Court of Appeals, Seventh Circuit. February 7, 1898.)

PATENTS—SEPARABLE PULLEYS.

The Dodge & Phillon patent, No. 260,462, for an improvement in separable pulleys, construed on appeal from an order granting a preliminary injunction, and *held*, that infringement was not so clear as to warrant the court below in granting such an injunction. 85 Fed. 971, affirmed on application for rehearing.

Appeal from the Circuit Court of the United States for the Eastern District of Wisconsin.

This was a suit in equity by William W. Dodge, Melville W. Mix, and the Dodge Manufacturing Company against the Menasha Wood Split Pulley Company and others, for alleged infringement of letters patent No. 260,462, issued July 4, 1882, to Wallace H. Dodge and George Phillon, for an improvement in separable pulleys. The circuit court entered an interlocutory order granting a preliminary injunction, and the defendants appealed. On November 29, 1897, this court filed an opinion reversing the order below. 85 Fed. 971. The cause is now heard on a petition by the appellants for a rehearing.

Wm. F. Vilas and J. C. Kerwin, for appellants.
Lysander Hill and John W. Hill, for appellees.

Before WOODS, JENKINS, and SHOWALTER, Circuit Judges.

SHOWALTER, Circuit Judge. Notwithstanding the earnest argument presented on this application, we still concur in the conclusion already announced. Since that argument is directed more especially against what was said in my individual opinion, I take this opportunity, entirely on my own account, of putting down certain impressions apparently not already made clear. The patentees say in their specification:

"Heretofore separable pulleys have been made in parts fitted and bolted together prior to being bored and turned, and therefore they were fitted to the shaft and secured thereon in ordinary way. Such pulleys are not interchangeable as to shafts of different diameters. Our improvement obviates—First, the old and imperfect mode of fastening the pulley in place on the shaft; and, second, renders the same pulley readily applicable to shafts of different diameters."

The invention of the patent seems to concern, not the operation of a pulley as such, but the construction of a separable pulley with reference to the method of putting it on the shaft and holding it there. The patentees say further:

"The parts of the bar, B, are so placed in the rim segments that they will not touch each other at the axis or hub of the wheel when the ring segments are placed in position [that is, as I understand, with the meeting ends in contact]. The clamping bolts, G, G, are then inserted with pieces of thin wood or veneering, I, between the parts of the bar, B, to prevent them from springing together under the action of the bolts while being turned in the lathe. The exterior rim segments, d, e, f, g, are then applied, and secured by glue, nails, or other suitable means, and cut transversely in line with the previous cut."