

two instruments set up constitute together but a single defense. A plea may consist of a variety of facts and circumstances. All that is required is that those facts and circumstances should give, as their result, one clear ground upon which the whole equity of the bill may be disposed of. Daniell, Ch. Pr. 607; Story, Eq. Pl. § 654; *Whitbread v. Brockhurst*, 1 Brown, Ch. 415; *Didier v. Davison*, 2 Sandf. Ch. 61.

The first plea in bar is sustained, and the bill dismissed.

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UNITED STATES *v.* DOHERTY.

(District Court, D. Massachusetts. April 10, 1885.)

1. FEDERAL ELECTIONS—INSPECTOR RECEIVING FRAUDULENT VOTE—REV. ST. § 5511—INDICTMENT.

In an indictment for aiding or assisting in the commission of the crime of illegal voting at an election for a representative in congress, it is not necessary to state the particular acts constituting the aid or assistance, as these are mere matter of evidence to make out the offense at the trial.

2. SAME—PLACE WHERE ELECTION HELD.

Where the indictment alleges that the offense was committed "at Boston, in said district of Massachusetts, at an election for a representative in the congress of the said United States for the Fourth congressional district of the commonwealth of Massachusetts, instituted and held in said Boston on said fourth day of November, in accordance with the laws of said commonwealth and with the laws of said United States," this is a sufficient averment that the election was held in the Fourth congressional district, which is a part of Boston.

3. SAME—VIOLATION OF OFFICIAL DUTY.

An indictment that charges that defendant, as inspector of elections, knowingly and willfully received the vote of a party named, knowing that he was not a resident of, or registered in, the voting precinct, sufficiently alleges a violation of duty on the part of the defendant as officer of elections.

Motion in Arrest of Judgment.

*W. K. Blodgett*, for the United States.

*E. L. Barney* and *Wm. B. Gale*, for defendant.

NELSON, J. This indictment originally contained eight counts. The first and fourth counts were disposed of before trial by the entry of a *nolle prosequi*. The defendant, having been found guilty on the remaining counts, now moves in arrest of judgment.

The second, third, fifth, and sixth counts are founded on section 5511, Rev. St., and charge the defendant with having aided one John F. Hayes to vote illegally for a representative in the congress of the United States for the Fourth congressional district of this commonwealth, at an election held in Boston on the fourth day of November last. In the seventh and eighth counts he is charged with having violated his duty as an inspector of elections in allowing and aiding Hayes to vote illegally at the same election.

The motion merely states in general terms that the indictment is

defective, uncertain, and insufficient, and that no crime is legally and formally set forth, without specifying any particular defect. I shall consider, therefore, only those objections made to it by counsel at the hearing.

One ground of objection, common to all the counts except the seventh, is that the indictment does not set forth the special means used in aiding the illegal acts of Hayes. But the rule is well settled that, in an indictment for aiding or assisting in the commission of a crime, it is not necessary to state the particular acts constituting the aid or assistance. These are matters of evidence to make out the offense at the trial, and it is not necessary to aver them in the indictment. *U. S. v. Gooding*, 12 Wheat. 460; *U. S. v. Simmons*, 96 U. S. 360.

Another objection common to all the counts is that it is not alleged that the election was held in the Fourth congressional district. The words of the indictment in each count are: "At Boston, in said district of Massachusetts, at an election for a representative in the congress of said United States for the Fourth congressional district of the commonwealth of Massachusetts, instituted and held in said Boston, on said fourth day of November, in accordance with the laws of said commonwealth, and with the laws of the said United States." This is a sufficient averment that the election was held in the Fourth congressional district, which is a part of Boston. The offense with which the defendant is charged is laid in Boston, in this judicial district, within the jurisdiction of this court.

The rule governing the courts of the United States in construing criminal indictments is that no indictment is to be deemed insufficient, nor the trial, judgment, or other proceeding thereon, be affected, by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant. Rev. St. § 1025. The court will take notice that the Fourth congressional district includes a part of Boston. St. 1882, c. 250. If this is a defect, which is by no means clear, it is one of form only, and is cured by the statute. It is impossible that the defendant can suffer prejudice from it. The same answer may be made to the objection to the sixth and seventh counts: that it is not alleged that the Fourth precinct of the Seventh ward of the city of Boston is within the Fourth congressional district. By the statute of the state above cited, of which the court is bound to take notice, the Seventh ward of Boston, which must of necessity include the Fourth precinct of that ward, is made part of the Fourth congressional district. To this may be added that if these counts should be adjudged defective for the reasons assigned, the verdict being general, the other counts are sufficient to sustain a judgment. *Clifton v. U. S.*, 4 How. 242, 250; *Snyder v. U. S.*, 112 U. S. 216; S. C. 5 Sup. Ct. Rep. 118.

Objection is made to the seventh count that it does not allege that the defendant violated any duty as inspector of elections; but it is charged in distinct terms that the defendant knowingly and willfully

received Hayes' vote knowing that he was not a resident of, or registered in, the voting precinct. This certainly was a violation of one of the plainest duties of an officer of elections.

Motion in arrest of judgment overruled.

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WESTERN UNION TEL. CO. *v.* BALTIMORE & O. TEL. CO.

(Circuit Court, S. D. New York. 1885.)

1. PATENTS FOR INVENTIONS—REISSUE—ENLARGING CLAIMS—MISTAKE—DILIGENCE.

A patent cannot be lawfully reissued for the mere purpose of enlarging a claim, unless there has been a clear mistake, inadvertently committed in the wording of the claim, and the application for reissue is made within a reasonable time.

2. SAME—QUESTION FOR COMMISSIONER OF PATENTS—REASONABLE TIME, QUESTION FOR COURT.

Whether there has been such an inadvertent mistake is, in general, a matter of fact for the commissioner to decide; but whether the application is made in reasonable time is matter of law which the court may determine by comparing the reissued patents with the original and, if necessary, with the records in the patent-office when presented for record.

3. SAME—WHAT IS REASONABLE TIME.

What is a reasonable time will depend upon the circumstances in each case, but as the patentee is charged with notice of what his patent contains, the court will hold him to reasonable diligence.

4. SAME—PRELIMINARY RELIEF—DOUBT AS TO VALIDITY OF REISSUE.

Where a reissue is obtained, not to correct a mistake, but to secure broad claims that will ostensibly cover more comprehensive rights than belong to the patentee, a preliminary injunction will not be granted to restrain infringement of a good claim, if the defendant has acted in the honest belief that the reissue was wholly void.

Motion for Preliminary Injunction.

*Edw. N. Dickerson, Saml. A. Duncan, and C. L. Buckingham, for complainants.*

*Frederic H. Betts, Grosvenor P. Lowrey, and J. E. H. Hyde, for defendants.*

WALLACE, J. The complainant moves for a preliminary injunction to restrain defendant from infringing the second claim of reissued letters patent No. 10,035, division C, granted to Joseph B. Stearns, assignor to complainant, for "duplex telegraph apparatus." The motion is resisted upon the ground that there was no patentable novelty in the alleged invention, and that the reissue is void because it includes that part of the invention which had been abandoned to the public by the delay on the part of the patentee in applying for a reissue. The original patent was granted to Stearns, May 14, 1872; it was reissued April 1, 1873, (No. 5,344,) and was again reissued in divisions A, B, and C, February 7, 1882.

No doubt whatever is entertained that Stearns was the first and