

At most, the purpose of the defendants was to deprive the United States of the possession of this land for an indefinite time, or until a purchaser of the location was found. But the charge in the indictment is that the defendants conspired to defraud the United States of its title to the land, or the "dominion" over it, which is the same thing; and, although Ryan had taken the land in good faith for his own exclusive use and benefit, he might, at any time before the expiration of the eight years and the making of his final proof, have abandoned it generally, or in favor of some particular person for a valuable consideration, without violating any law. I do not wish to palliate the acts of the defendants, or apologize for their conduct; but they are not, in my judgment, guilty of the crime charged in the indictment.

The oath of the applicant was thought by congress sufficient to prevent one man being used by another to appropriate the possession of the public land for any purpose, either temporary or permanent. If it is found insufficient for that purpose, congress must be appealed to for further legislation in the premises. The remedy already provided for this case is a prosecution for perjury and subornation of perjury; and the proof that would support the indictment in this case would support it in the other.

Other points were made on the argument, but it is unnecessary to consider them. I may add, however, that the doing of some act in pursuance of the conspiracy is an ingredient of the crime defined by section 5440 of the Revised Statutes, and that fact must be duly alleged. The first count does not contain any such allegation. But such act need not be in itself criminal, or amount to a crime, as contended by counsel for the demurrer. And where, as in this case, the statute prescribes the oath which the applicant must take, it is sufficient to aver in the indictment that the party took the oath required in such cases by law. The very words of the affidavit being prescribed by law, the court will take notice of them, and so must the defendants.

The demurrer to the indictment is sustained; but, as it appears, on the facts stated therein, that the defendant Thompson has committed the crime of subornation of perjury, he will be held over to await the action of the next grand jury in that respect.

UNITED STATES v. THOMPSON and another.

(Circuit Court, D. Oregon. November 22, 1886.)

Indictment for Conspiracy to Defraud the United States.

DEADY, J. This case is similar to the foregoing one in all respects, except that the land in question is the S. W. $\frac{1}{4}$ of section 23, in township 1 N., range 20 E. of the same meridian. The defendant Thompson demurred to the indictment, and the same was argued and submitted with the demurrer in the foregoing case.

The demurrer is sustained, and the defendant held to answer as above.

BIDDLE and another v. HARTRANFT, Collector.¹

(Circuit Court, E. D. Pennsylvania. 1886.)

CUSTOMS DUTIES—NON-ENUMERATED ARTICLE—ACT OF CONGRESS OF MARCH 3, 1883.

The jury found that bichromate of soda, a non-enumerated article under the act of March 3, 1883, bears a similitude, in the use to which it may be applied, to bichromate of potash, an enumerated article in said act. *Held*, that bichromate of soda was subject to the same rate of duty that that act imposes upon bichromate of potash.

This was an action brought by the plaintiffs to recover money alleged to have been illegally exacted as customs duties upon a quantity of bichromate of soda, imported into the port of Philadelphia by the plaintiffs. Bichromate of soda is a non-enumerated article under the act of congress of March 3, 1883. It was classified as being subject to the same rate of duty as bichromate of potash, and that duty was exacted accordingly. Plaintiffs contended that bichromate of soda should have been classified as a chemical salt, under Schedule A of section 2502 of said act. The case was tried October 5, 1885, before McKENNAN and BUTLER, JJ., and a jury, when the jury found, in a special verdict, *inter alia*, as follows: "That bichromate of soda is a non-enumerated article under the act of March 3, 1883, which bears a similitude in the use to which it may be applied to bichromate of potash, an article enumerated in said act."

Edward F. Hoffman, for plaintiffs.

John K. Valentine, U. S. Dist. Atty., for the defendant, cited *Arthur v. Fox*, 108 U. S. 125; S. C. 2 Sup. Ct. Rep. 371; *Stuart v. Maxwell*, 16 How. 162.

McKENNAN, J. The jury in this case have found that bichromate of soda is a non-enumerated article in the act of congress, and that it bears a similitude to bichromate of potash. It is evident, from a reading of the act, that it was not necessary for the jury to find the first fact.

It has been argued by the counsel for the plaintiffs that bichromate of soda is an enumerated article, when considered in the light of what he calls the residuary clause of the act of congress; but this view is entirely erroneous, for the reason that this residuary clause refers to previous portions of the same act, and to other acts of congress which contain an enumeration of articles, and impose specific duties upon them.

The only question to be decided in the case is, does the similitude clause of the act contain a provision imposing a tax upon bichromate of soda? In the opinion of the court, the decision of the supreme court in the cases cited in the argument settles this question beyond

¹Reported by C. Berkeley Taylor, Esq., of the Philadelphia bar.