years past,—Act March 2, 1861, c. 68, § 13, (12 U. S. St. 178;) Act July 14, 1862, c. 163, § 9, (Id. 543;) Act June 30, 1864, c. 171, § 5, (13 U. S. St. 202;) Act March 2, 1867, c. 197, § 1, (14 U. S. 559;) Schedule L of section 2504, Rev. St.; Act March 3, 1883, Schedule K, (22 U. S. St. 488,)—and always in connection with provisions for carpets or carpetings, and for articles of a similar nature, and, like them, used on floors. "Traveling rugs" are generally used for wrapping about the legs or the body of a person when traveling, and as coverings for lounges or beds, and for throwing over the body of a person when lying on a lounge or bed. "Traveling rugs" have never been provided for *eo nomine* in any tariff act, and, according to the evidence in this case, have been known to trade and commerce of this country only for the past 15 years. In view of the history of the legislation of congress concerning "rugs," as evidenced by the different tariff acts from 1861 to 1883, both inclusive, and of the evident intention with which it has used the word "rugs" in paragraph 378, in Schedule K of the tariff act of 1883, I am constrained to direct a verdict for the defendant.

In re CARRIER *et al.*

(*District Court, D. New Jersey.* October 29, 1891.)

BANKRUPTCY—PROCEEDINGS TO REALIZE ESTATE—OBJECTION TO JURISDICTION.

Where an assignee in bankruptcy applies for a rule against persons claiming lots by purchase from the bankrupt, to show cause why they should not be turned out of possession and restrained from interfering with a sale by the assignee, and they appear before the register and defend on the merits, and then fail to except to his report, on which the rule is made absolute, it is too late for them thereafter to seek to have the proceedings set aside as void for want of jurisdiction in the court as a court of bankruptcy.

In Bankruptcy.

This was a petition by A. J. and J. L. Long to set aside certain orders in bankruptcy proceedings against Carrier & Baum. The opinions of the court on former questions arising in the same proceedings are reported in 46 Fed. Rep. 850 and 47 Fed. Rep. 438.

James Fitzsimmons, for petitioners.

L. B. D. Reese, for assignee.

REED, J. A petition was filed December 31, 1889, by L. B. Duff, assignee of Carrier & Baum, setting forth that at the time of the filing of the petition in bankruptcy A. F Baum was the owner of certain lots in the borough of Freeport, Armstrong county, Pa., and reciting at length of title by which said Baum held the lots. The petition further averred that the said lots, title to which it was claimed had passed to the petitioner as assignee, were held by one Ingersoll, who had been put into the building on the lots by Baum for the purpose of taking care of it, and that Ingersoll had agreed, after some legal proceedings

had been taken against him, to surrender possession to petitioner whenever desired. That in 1889, some 15 years after the adjudication of said Baum as a bankrupt, an attempt was made by petitioner, under an order of court, to sell the property, and on the 28th day of December, 1889, at the time the lots were exposed to sale, a notice was read by Ingersoll, as attorney for A. J. Long and J. L. Long, claiming to have purchased the property from A. F. Baum, Robert Campbell, and Margaret Baum, and stating that bidders would take no title. The petition charges that, after the order of sale had been obtained, Baum made a pretended sale to the Longs, who put a small quantity of lumber on the lots, in order to claim colorable possession thereof, and, together with Baum, procured Ingersoll to give said notice, in order to affect the bidding and deter purchasers. That the possession claimed by Longs is without color of title. That Robert Campbell has no interest in said lots, and that such acts, upon which possession is claimed to rest, took place within three months, and were fraudulent and collusive, and designed to prevent the property from coming into the hands of the assignee. The petition prays a rule upon Baum, Ingersoll, and A. J. and J. L. Long, to show cause why they should not vacate said property, and why an order should not be made restraining them from interfering with the possession of the property and the sale thereof by the assignee. To this petition an answer was filed January 11, 1890, by J. L. Long, A. J. Long, and A. F. Baum, generally denying the allegations of the petition; the Longs in their answer claiming title partially through Robert Campbell. They also say—

"That they respectfully object to being turned out of possession of the same in this way. That they are ready to defend their title to the said property in any regular judicial proceeding of the usual character, and submit their title cannot or should not be adjudged by this hasty remedy. They also submit to the court, with the utmost respect, that said assignee of Carrier & Baum has no right or title to the said property, or any power over the same."

George G. Ingersoll filed an answer, stating that he never interfered with the sale of the property, except by serving the notice for the Longs and for Baum and his wife, and alleging that he was in possession under a lease from Baum to Mrs. Ingersoll, the wife of the respondent. On April 3, 1891, the matter was referred to A. Y. Smith, Esq., register in bankruptcy, for examination and report. The testimony returned with his report shows that counsel for the respondents were present at the several hearings, and defense was made upon questions of fact and the merits. The register's report was filed August 24, 1891, and confirmed *nisi*. No exceptions having been filed, an order was made on September 4, 1891, confirming the report absolutely, and ordering the respondents to forthwith vacate the property, and containing a clause enjoining the respondents from taking or holding possession of the real estate, and from interfering with the possession of the assignee, or the sale by him of the property. No attention having been paid to this order, upon October 4, 1891, a petition was presented by the assignee, and a rule granted on the respondents to show cause why an attachment

should not issue against them, and why the United States marshal should not be directed to remove respondents from the property. This rule was returnable October 17, 1891, but at the request of the counsel for respondents was extended until October 24, 1891, at which time the rule was continued as to the attachment, but made absolute as to the direction to the marshal. On October 27, 1891, a petition was presented on behalf of the Longs, praying that all the above-recited orders be vacated and set aside as null and void, for want of jurisdiction in the court, as a court of bankruptcy, to make the same. Counsel for the assignee opposed the application, upon the ground that the lots were part of the bankrupt's estate, and in the possession of the assignee, (Ingersoll having recognized his right to possession, and agreed to hold under him,) until that possession was disturbed by the wrongful acts of the respondents; that, therefore, the proceeding by petition and rule to show cause was proper, and within the power of the court as a court of bankruptcy.

It is, however, unnecessary to pass upon that question, for the respondents appeared voluntarily, answered upon the merits, and went in to the hearing before the register, and have thereby waived any question as to the form of the proceeding. The case of *Stickney* v. *Wilt*, 23 Wall. 150, in my judgment, rules this case. There a petition had been presented by the assignee, a rule to show cause was not granted, but the parties appeared and answered, and an order was made after hearing, sustaining the petition, and decreeing relief, as prayed in the petition. The supreme court said:

"Rights of property were claimed in these lands by the appellee, and the suit in this case was commenced in the district court, contesting that claim, which is plainly a subject-matter cognizable under that provision. [Rev. St. § 4979.] Nor is it any argument against that theory that the first pleading in the district court is in form a petition, as suits at law and in equity, in many jurisdictions, are commenced in that form of pleading. Beyond all doubt, the petition contains every requisite of a good bill in equity, whether the pleading is tested by the statement of the cause of action, or by the charging part of the bill, or by the prayer for relief; and, if it be suggested that it contains no prayer for process, the answer to the objection is a plain one, to-wit, that three of the parties respondent appeared, and waived the issuing and service of process, and that the appellee voluntarily appeared and filed an answer."

A proceeding, similar in form to that in the present case, was sustained in the *Case of Anderson*, 23 Fed. Rep. 482.

I am unable to see how the petitioners have suffered any injury by the mode of proceeding followed in this case. They have had a full opportunity to be heard on the merits, and permitted the register's report to be filed and confirmed without objection, and did not even pursue to argument the suggestion in their answer as to the form of proceeding, even if the most favorable construction be put upon that portion of their answer, and it be considered as an objection to the proceeding. It is too late to inquire into the merits of the register's findings and report. The petition must be refused; and it is so ordered.

In re NICHOLS.

(*Circuit Court, W. D. Pennsylvania.* November 6, 1891.)

1. CONSTITUTIONAL LAW—INTERSTATE COMMERCE—BOOK CANVASSER'S LICENSE—HABEAS CORPUS.
An ordinance of the city of Titusville, Pa., requiring the payment of a license fee from all persons soliciting orders for goods, books, etc., is void as a regulation of interstate commerce, in so far as it is applied to an agent soliciting orders for books, to be filled on the approval of his principal in New York, notwithstanding that the books are sent from a storehouse in Pittsburgh, which is kept replenished from the main office in New York; and, when such agent is imprisoned for a violation of the ordinance, he is entitled to be released by the federal circuit court on a writ of *habeas corpus*.
2. SAME—POLICE POWER.
The ordinance cannot be upheld on the ground that it is a police regulation designed to protect the inhabitants from the unwarrantable intrusions of such canvassers, since by paying the fee the business may be carried on without restraint.

At Law.

Petition by Charles D. Nichols for a writ of *habeas corpus* to release him from imprisonment for violating an ordinance of the city of Titusville, Pa., by canvassing for books without a license. Prisoner discharged.

Joseph R. McQuaide, for petitioner.

George A. Chase, for the city of Titusville.

REED, J. The petition of Charles D. Nichols states that he is a citizen of the state of New York, and is the agent and employe of P. T. Collier, a citizen of the state of New York; that his business, as such employe and agent, is that of soliciting orders for the sale of books and periodicals published by said Collier in the city of New York, where all orders for books and periodicals taken by the petitioner for his employer are sent to be filled, and the goods are subsequently delivered by said Collier on such terms and conditions as meet his approval; that on October 3, 1891, while engaged in the business of soliciting orders for the sale of books and periodicals in the manner aforesaid in the city of Titusville, in the state of Pennsylvania, he was arrested upon a charge of violation of an ordinance of that city, requiring the payment of a license fee for the privilege of pursuing his business, as aforesaid, in the city, and, after a hearing, was sentenced to pay a fine of $78 and costs, and in default of payment was imprisoned. At the hearing upon the petition the facts developed were substantially as stated in the petition, except that it appeared that Mr. Collier, the employer, had a branch office or store-room in the city of Pittsburgh, from which he sent out the books which were needed to fill the orders taken by the canvassers. As needed to replenish the stock in the branch office in Pittsburgh, Mr. Collier shipped books from time to time from his main office or store-house in New York city. The ordinance in question provides—

"That all persons canvassing or soliciting within said city orders for goods, books, paintings, wares, or merchandise of any kind, or persons delivering such articles under orders so obtained or solicited, shall be required to procure

from the mayor a license to transact said business, and shall pay to the said treasurer therefor the following terms, according to the time for which said license shall be granted, viz.: For one day, one dollar and fifty cents; for one week, five dollars; for three months, ten dollars; and for one year, twenty-five dollars: provided, that the provisions of this ordinance shall not apply to persons selling by sample to manufacturers or licensed merchants or dealers residing or doing business in said city."

By a supplement the ordinance was amended in an immaterial matter relating to the amount of the license fee for one year.

In *Robbins* v. *Taxing Dist.*, 120 U. S. 489, 7 Sup. Ct. Rep. 592, the statute of Tennessee in question provided that all drummers, and all persons not having a regular licensed house of business in the taxing district of Shelby county, offering for sale, or selling, goods by sample, should pay a certain sum per week or per month for such privilege. The supreme court held that, so far as applied to persons soliciting the sale of goods on behalf of individuals or firms doing business in another state, it was a regulation of commerce among the states, and violated the provisions of the constitution of the United States, which grants to congress the power to make such regulations.

In the case of *Leloup* v. *Port of Mobile*, 127 U. S. 640, 8 Sup. Ct. Rep. 1380, the supreme court say:

"In our opinion, such a construction of the constitution leads to the conclusion that no state has the right to lay a tax on interstate commerce in any form, whether by way of duties laid on the transportation of the subjects of that commerce, or the receipts derived from the transportation, or on the occupation or business of carrying it on; and the reason is that such taxation is a burden on that commerce, and amounts to a regulation of it, which belongs solely to congress."

In the case of *Asher* v. *Texas*, 128 U. S. 129, 1 Sup. Ct. Rep. 1, a statute of the state of Texas provided that there should be collected from every commercial traveler, drummer, salesman, or solicitor of trade, by sample or otherwise, an annual occupation tax of $35. Asher, the plaintiff in error, was arrested for failure to pay the tax, and it appeared that he was employed as a drummer, or solicitor of trade by sample, by a citizen of Louisiana, engaged in business in the latter state. The supreme court held the statute unconstitutional, as imposing a burden upon interstate commerce by way of taxing an occupation directly concerned therein, and reaffirmed the principles laid down in the case of *Robbins* v. *Taxing Dist.*

In the case of *Stoutenburgh* v. *Hennick*, 129 U. S. 141, 9 Sup. Ct. Rep. 256, a similar statute, enacted by the legislative assembly of the District of Columbia, was held to be a regulation of interstate commerce, so far as applicable to persons soliciting the sale of goods on behalf of individuals or firms doing business outside of the district, and hence unconstitutional.

So in the case of *Pullman's Palace-Car Co.* v. *Pennsylvania*, 141 U. S. 18, 11 Sup. Ct. Rep. 879, the court say:

"Much reliance has been placed by the plaintiff in error upon the cases in which this court has decided that citizens or corporations of one state cannot

be taxed by another state for a license or privilege to carry on interstate or foreign commerce within its limits. But in each of those cases the tax was not upon the property employed in the business, but upon the right to carry on the business at all, and was therefore held to impose a direct burden upon the commerce itself."

In the *Case of White*, 43 Fed. Rep. 913, a case identical with the present case in its facts, and in this court, Judge ACHESON discharged the petitioner, as held in custody under an ordinance which was unconstitutional, as a regulation affecting interstate commerce. Similar orders were made in the case of *Ex parte Stockton*, 33 Fed. Rep. 95, by the district court for the eastern district of Texas; by the district court of Minnesota, in the *Case of Kimmel*, 41 Fed. Rep. 775; and by the circuit court for the eastern district of North Carolina, in the *Case of Spain*, 47 Fed. Rep. 208.

It was argued by the counsel for the city that the ordinance in question in this case was a proper police regulation for the protection of its citizens, and to add to their comfort, "by preventing the intrusive domiciliary visitations of canvassers and peddlers, who go from house to house in relentless personal pursuit of purchasers." But, conceding (what is extremely doubtful, if, indeed not denied by the case of *Leisy* v. *Hardin*, 135 U. S. 100, 10 Sup. Ct. Rep. 681) that a state or municipality may regulate the manner in which citizens of other states may prosecute their business by selling goods and merchandise not hurtful in themselves, still the ordinance does not purport to be such a regulation. It is solely for the purpose of raising revenue. Any person paying the prescribed license fee may, during the period covered by his license, freely transact business in the city, even to the extent of "intrusive domiciliary visits" to the unfortunate inhabitants.

It is impossible to distinguish the facts in this case from those in *Robbins* v. *Taxing Dist.*, *Asher* v. *Texas*, and *Stoutenburgh* v. *Hennick*, *supra*, and, that being so, the authority of those cases is such that there can be no discussion of the principles involved. The ordinance, therefore, being void as to the petitioner, and he being in custody in violation of the constitution of the United States, the petitioner is entitled to his discharge, and it is ordered that the petitioner be, and he is hereby, discharged; the respondent to pay the costs.

In re TYERMAN.

(*Circuit Court, W. D. Pennsylvania.* November 6, 1891.)

CONSTITUTIONAL LAW—INTERSTATE COMMERCE—BOOK CANVASSER'S LICENSE.

An ordinance of the city of Titusville, Pa., requiring the payment of a license fee from all persons soliciting orders for books, etc., and from persons delivering books under orders so obtained, is void as a regulation of interstate commerce, in so far as applied to one delivering books sold by an agent, to be delivered, on the approval of his principal in New York, from a store-house in Pittsburgh, which is kept replenished by shipments from the principal office in New York.

At Law.

Petition by William Tyerman for a writ of *habeas corpus* to release him from his imprisonment for violating an ordinance of the city of Titusville, Pa., by delivering books sold by a book canvasser. Prisoner discharged.

Joseph R. McQuaide, for petitioner.

Geo. A. Chase, for City of Titusville.

REED, J. The facts in this case are similar to those appearing in the *Case of Nichols*, 48 Fed. Rep. 164, (November term, 1891,) except that this petitioner was employed by P. F. Collier, a citizen of the state of New York, and doing business in the city of New York, to deliver the books sold by Mr. Nichols, and to collect the price therefor. These books are sent to him from Mr. Collier's branch store-room or office in the city of Pittsburgh, and while he was engaged in such employment he was arrested for failure to obtain the license required by the ordinance of the city of Titusville, and is now in custody for failure to pay a fine imposed under the provisions of such ordinance. For the reasons set forth in the opinion in the *Nichols Case*, he must also be discharged. There is no difference in principle between the two cases, this petitioner being engaged in completing the sales made by Mr. Nichols, and therefore engaged in interstate commerce. The precise question was decided in favor of the petitioner in the *Case of Spain*, 47 Fed. Rep. 208, Judge BOND saying: "The right to sell implies the obligation and the right to deliver. It is as much interstate commerce to do the one as the other." And it is ordered that the petitioner be, and he is hereby, discharged; the respondents to pay the costs.