

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.

In re DIDFIRRI et al.

(Circuit Court, S. D. New York. ———.)

IMMIGRATION—CONTRACT LABOR—HABEAS CORPUS TO REVIEW COMMISSIONER'S DECISION.
On preliminary inquiry by the inspection officers, certain immigrants stated that their passage was paid for them, and that they came under an engagement to work on a railroad in Ohio for 7 francs a day; but on a subsequent special inquiry they retracted these statements. *Held*, that there was competent evidence tending to show that they had come in violation of the restriction act, and the court had no jurisdiction to review by *habeas corpus* the commissioner's decision ordering them to be taken back.

Application for Writ of *Habeas Corpus*.

The relators, 36 immigrants, arriving at the port of New York, were prevented from landing by the acting commissioner of immigration. Upon their arrival they stated, in response to the inquiries of the inspection officers, that their passage was paid for them, and that they had been engaged in Italy to work on a railroad in Ohio for a compensation of seven francs a day. Subsequently, upon a special inquiry, they retracted these statements. The commissioner of immigration having directed the master of the ship to take them back, they obtained a writ of *habeas corpus* to review his action.

LACOMBE, Circuit Judge, (*orally*.) It appears in this case that upon the arrival of these immigrants the inspection officers made inquiries of them touching the circumstances under which they had come to this country. In reply to these questions, answers were given, which were reduced to writing in the form of affidavits, were translated to the immigrants, and were by them sworn to. These statements of the immigrants were certainly competent evidence for the commissioner of immigration to take into consideration in determining whether or not they should be permitted to land. They make out a case which would warrant the finding that their transportation to this country was paid for with the money of another, and that they came under an agreement, made previous to their emigration, to perform labor in the United States. Subsequently a special inquiry into their several cases was conducted by the commissioner of immigration, and the testimony taken on that inquiry contradicts their statements upon preliminary examination. In this respect these cases differ from that of *In re Feinknopf*, 47 Fed. Rep. 447, in which Judge BENEDICT filed the opinion referred to on the argument. In that case there was no evidence whatever, either in the preliminary examination or the special inquiry, tending to show that the immigrant was within one of the prohibited classes. Here, however, there is evidence which, standing alone, would fairly warrant the conclusion that these immigrants have come here in violation of the statute. That being so, it is not the part of the court to look any further to see if there is any additional evidence contradicting that, and to weigh all