

The member cannot be put in default until that notice be served upon him. If service be by mail, it must be properly addressed. It is essential, therefore, to the successful conduct of the business, and to accomplish the benevolent purpose of the association, that the secretary of the insurance department be accurately informed of the residence of each member, with a view to the proper service of notice of assessments, and their collection. The list required to be kept by the local secretary could perform no office, except as an aid to the defendant in its transactions with its members. In these respects the local secretary is in no sense the agent of the assured. The acts required are for the benefit of the assurer, not the assured, and are done by the authority of the company, not of the member. The imposition of such duties upon local secretaries constitutes them agents of the corporation, within the definition of the statute, for the purpose of service of process.

This defendant has taken out no license to do business within this state. It has appointed no attorney, as required by law, to accept service of process. It is doing business within the state unlawfully. It seeks to deprive a citizen of the state, claiming under contract made within the state, of that easy recourse to the judicial tribunals of the state which was designed to be secured to her by the law. The company insists that it may be called to account only in the courts of the state of Iowa with respect to contracts made with citizens of and within other states. As was said in *Railroad Co. v. Gallahue*, 12 Grat. 658:

"It would be a startling proposition if in all such cases citizens of Virginia and others should be denied all remedy in her courts for causes of action arising under contracts and acts entered into or done within her territory, and should be turned over to the courts and laws of a sister state to seek redress."

I am not inclined, by any strained or narrow construction of the beneficent statutes of the state, or of the regulations of the defendant, to adopt a rule working such grievous consequences. Without stopping to consider the validity of the service upon the grand secretary while temporarily within the state, I am of opinion that the service upon the secretary of the subordinate division of the order within the state must be sustained. The motion will be overruled.

UNITED STATES *v.* WARDELL *et al.*

(Circuit Court, E. D. New York. April 6, 1892.)

1. OFFENSES AGAINST ELECTION LAW—INDICTMENT—VAGUENESS.

An indictment under Rev. St. U. S. § 5522, for interfering with a deputy-marshal at a congressional election while "acting and performing the duties required of him, and which he was then and there authorized to perform by the laws of the United States," should be quashed for indefiniteness, although stated in the very words of the statute, since a statement of what duties he was performing is of the substance of the offense and material to its description.

2. SAME.

An indictment will be quashed only when it is very grossly bad.

At Law. Indictment of Sivil Wardell *et al.* for interfering with a United States deputy-marshal in the discharge of his duties at an election for congress. Indictment quashed.

Jesse Johnson, U. S. Atty.

A. H. Wilbur, for respondents.

WHEELER, District Judge. This cause has been heard upon a motion, allowed by discretion, to quash an indictment upon section 5522 of the Revised Statutes, for, at a poll of election for representatives in congress, molesting, interfering with, striking, beating, wounding, and rescuing a person from the lawful custody of a special deputy-marshal while "acting and performing the duties required of him, and which he was then and there authorized to perform by the laws of said United States," and by the provisions of title "The Elective Franchise of the Revised Statutes." Point is made as to how far such a motion will reach. In *The King v. Wheatley*, 1 W. Bl. 273, Lord MANSFIELD said: "If any distinction is made between quashing and arresting judgment, that of quashing is the strongest way; because the indictment must be very grossly bad to have the court quash it at once." *Rex v. Sarmon*, 1 Burrows, 516; *Rex v. Weston*, 1 Strange, 623; STORY, J., *U. S. v. Gooding*, 12 Wheat. 478; *State v. Stewart*, 59 Vt. 273, 9 Atl. Rep. 559. This statute is general, and makes the acts charged punishable only when done to a marshal, "in the performance of any duty required" of him, or which he "may be authorized to perform by a law of the United States." Being in the performance of some of these duties was of the substance of the offense, and very material to its description. Those prescribed in the title referred to, section 2022, as well as elsewhere, are many and various; that the special deputy-marshal was in any manner in the performance of any of them is not in any way alleged but in the words quoted. When an offense is specifically described in a statute an indictment in the words of the statute is sufficient; but, when the statute is more general than is allowable in an indictment, the description must be so much the more specific than the statute. *U. S. v. Carl*, 105 U. S. 611. In *U. S. v. Cruikshank*, 92 U. S. 542, on motion in arrest, the indictment, on the statute against conspiring to prevent or hinder the free exercise and enjoyment of any right or privilege granted or secured by the constitution or laws of the United States, charged an intent to hinder and prevent the free exercise and enjoyment of "every, each, all and singular," such rights. This was held not to be sufficient to charge any offense within the statute. That case seems to govern this. The generality of the allegation of the right or privilege hindered or prevented from there was the same as that of the duties being performed here. So was that of the scheme to defraud in *U. S. v. Hess*, 124 U. S. 483, 8 Sup. Ct. Rep. 571. As this indictment does not charge any offense, it would not only be bad on motion in arrest, but is so on this motion. It may as well be quashed before trial as to have judgment arrested on it after.

Motion granted.

DE LA VERGNE REFRIGERATING MACH. CO. v. FEATHERSTONE *et al.*

(Circuit Court, N. D. Illinois. February 29, 1892.)

1. PATENTS FOR INVENTIONS—VALIDITY—ISSUE OF PATENT TO DEAD MAN.

Under Rev. St. U. S. § 4896, which provides that, if an inventor dies before a patent is granted him, the right of applying for and obtaining a patent shall vest in his personal representatives, a patent issued to an inventor after his death, he having died after making application for such patent, is void.

2. SAME—ESTOPPEL IN PAIS.

Where a patent is void because granted to a dead man, representations that the patent is valid, made by a party interested in it, do not estop him from denying its validity, as against a person who does not claim title through him.

In Equity. On demurrer. Bill by the De la Vergne Refrigerating Machine Company against John Featherstone and others to restrain the alleged infringement of a patent. Defendants demur. Demurrer sustained.

Banning, Banning & Payson, for complainant.

Bond, Adams & Pickard, for defendants.

BLDGETT, District Judge. This case is now before the court on a general demurrer to the bill of complaint. The matters set forth in the bill necessary to be considered on this demurrer are that before the 24th of November, 1875, one James Boyle had invented the device covered by the patent, infringement of which is charged in this case, and on the said 24th day of November he filed his application for his patent, and appointed Alexander & Mason his attorneys to solicit and advocate his application; that on the 27th of said month of November, and before the allowance of his patent, the said James Boyle died intestate, leaving a widow, Theresa M. Boyle, and four children; that on December 2, 1875, Mrs. Boyle, the widow, entered into a contract with Thomas L. Rankin, whereby he agreed to complete an ice machine, which was in process of construction at the time of Mr. Boyle's death, and to press the application for a patent, and, in case a patent was obtained, to use his best efforts to introduce the machine, and share the profits with Mrs. Boyle until she should have received \$5,000, when she was to assign the patent and the machines then in use to Rankin; that, under direction of Rankin, Alexander & Mason, the solicitors appointed by Boyle, prosecuted the application for a patent, and, to overcome objections made by the examiner to the said specifications and claims made by Boyle, said solicitors on the 20th of December, 1875, amended the specifications and claims, as the same had been prepared by Boyle, and thereafter, and on the 21st day of March, 1876, the patent No. 175,020 was granted unto James Boyle, his heirs or assigns, for the said invention, for the period of 17 years from the last-mentioned date; that on the 9th day of March, 1876, said Thomas L. Rankin obtained temporary letters of administration on the estate of said James Boyle, and afterwards, and about the 5th day of July, 1876, Theresa M. Boyle, the widow of said James Boyle, was appointed administratrix of the estate