

Railroad Company. The admitted facts in the case are that on the morning of 19th December, 1892, Mr. Waring, postal clerk, was in his postal car at the depot of the Northeastern Railroad in Charleston. After assorting his mail, and while resting, he discovered the defendant concealing himself in a dark corner of the car. As soon as he discovered him, he sprung up and seized him by the collar. That defendant said at once, "I am Bradford, and in the service." Waring denying that he was in the service, defendant then said, "I have been discharged, but I am trying to steal a ride to Florence." Waring had an officer called, by whom defendant was arrested. In order to convict the defendant under this act, it must appear that he had formed an intent to defraud either the United States or the Northeastern Railroad Company; and that, to carry out this intent,—that is to say, as the means of consummating his intent,—he falsely pretended to be an employe of the United States. If it was his intent to defraud the United States, it must be shown by evidence that he falsely pretended to be such an employe to some agent of the government, in order, under this false personation, to consummate his intent. If his intent were to defraud the railroad company, then he must have represented falsely to some agent of the railroad company that he was an employe of the United States. These essential elements are wanting in this case. The jury must find the defendant not guilty

UNITED STATES v. HURSHMAN.

(District Court, D. Washington, S. D. November 16, 1892.)

INDIANS—SALES OF LIQUOR.

Rev. St. § 2139, provides that every person who disposes of spirituous liquors to any Indian "under the charge of any Indian superintendent or agent * * * shall be punished. * * *" *Held*, that an Indian of the Nez Perces tribe, a soldier in the United States army, is within the meaning of the statute.

At Law. Charles Hurshman was accused of the offense of unlawfully disposing of spirituous liquor to an Indian, under Rev. St. § 2139, and held to answer therefor by a United States commissioner. The grand jury, being uncertain as to whether or not the facts shown by the testimony of the witnesses for the government brought the case within the statute, made a special presentment of the case. The court, being of the opinion that the presentment contained all the requisites of an indictment, caused the defendant to be arraigned, and required him to plead thereto, which he did, first by a demurrer, and afterwards by a plea of not guilty. Demurrer overruled. Trial, and verdict of not guilty.

Patrick Henry Winston, U. S. Atty.
H. S. Blandford, for defendant.

HANFORD District Judge. Although the defendant has been acquitted, and this particular case is no longer of importance, the question upon the demurrer is new, and merits a concise and precise

statement and decision in writing. The presentment charged the defendant with having disposed of spirituous liquor to one James Williams, an Indian of the Nez Perces tribe, who was at the time a regular enlisted soldier in the United States army, on duty with his regiment at Ft. Walla Walla. Section 2139, Rev. St., upon which the prosecution is founded, reads as follows:

"Sec. 2139. No ardent spirits shall be introduced, under any pretense, into the Indian country. Every person who sells, exchanges, gives, barter, or disposes of any spirituous liquors or wine to any Indian under the charge of any Indian superintendent or agent * * * shall be punishable. * * *"

The sufficiency of the presentment is questioned on the ground that it does not allege that the Indian to whom the liquor was furnished was at the time under charge of an Indian superintendent or agent of the United States, and it is assumed that the contrary appears by the statement that said Indian was at said time a regularly enlisted soldier of the United States army, on duty with his regiment. I hold that the words "under the charge of any Indian superintendent or agent," were intentionally put into the statute by congress, and must be given force and effect as expressive of the legislative will. I have repeatedly decided that it is not a crime, under this statute, to dispose of spirituous liquor to British Columbia Indians, or Indians upon whom the rights, privileges, and immunities of citizenship have been conferred by the laws of the United States; and it is my opinion now that the statute under consideration is not applicable to any case of selling or disposing of liquor to an Indian not at the time subject to the general authority and supervision given by the laws of the United States to the officers of Indian affairs. I also concede that, consistently with the maintenance of military discipline, there can be no control by officers of the department of the interior of soldiers while on duty, or during their terms of enlistment. But, when an Indian enlists in the military service, the officers of Indian affairs are only partially relieved of their charge concerning him, and but temporarily deprived of power to control his person. While he is in the army said officers continue to be charged with the duty of caring for his family and property and interests as a member of his tribe, and upon his discharge from the army their right to control him will be fully restored. I consider that the principle applicable to the case of an Indian who, by absenting himself from his home for pleasure or profit, temporarily places himself beyond the physical power of his superintendent or agent, should be applied to this case. Neither the Indians themselves, the officers of the army who induce them to enlist, or officers of the interior department who consent to it, have any power to change the laws; and no act of either, affecting for the time being the actual situation of an Indian, can change his status from that of a ward of the nation.

That the Indian named in the presentment is under charge of an Indian superintendent or agent is a legal conclusion from the fact of his being a Indian of the Nez Perces tribe. The facts being stated, the presentment is a sufficient pleading, although it does not state the legal conclusion.

BLAIR CAMERA CO. v. ROBEY et al.
(Circuit Court, D. Massachusetts. January 19, 1893.)

No. 2,741.

PATENTS FOR INVENTIONS—ANTICIPATION—PHOTOGRAPH CAMERAS.

The third claim of letters patent No. 159,537, issued February 9, 1875, to Stewart L. Bergstresser for a camera having a plate holder closed on all sides except the one where the picture is inserted, is void because of anticipation by letters patent No. 116,771, issued July 4, 1871, to John and Jacob Stork.

In Equity. Suit by the Blair Camera Company against William H. Robey and others for infringement of a patent. Bill dismissed.

John L. S. Roberts, for complainant.
Edwin H. Brown, for defendants.

CARPENTER, District Judge. This is a bill in equity to enjoin an alleged infringement of the third claim of letters patent No. 159,537, granted February 9, 1875, to Stewart L. Bergstresser, as follows: "(3) A plate holder closed on all sides except the one where the picture is inserted, substantially as set forth." In the plate holder shown in the patent the photographic plate is inserted through the front, and the holder has no other opening through which light could come to the sensitized plate. A plate holder exactly similar, in this regard, is shown in the letters patent No. 116,771, granted July 4, 1871, to John Stork and Jacob Stork, in which there is no opening except that through which the plate is inserted. The complainant points out that in the Stork holder the plate is drawn into the box by means of a plunger or handle passing through a hole in the back of the box, and that light may be admitted around this plunger; but the drawing annexed to the patent here in suit also shows a handle for operating a flexible shutter, which handle passes through a slot in the back of the box, and around which light may be admitted. It is thus evident that such an opening is not excluded by the words "closed on all sides." The structure described in the third claim of the Bergstresser patent is therefore fully shown in the Stork patent. The claim is invalid, for want of novelty, and the bill must be dismissed.

PACIFIC CABLE RY. CO. v. BUTTE CITY ST. RY. CO.

(Circuit Court, D. Montana. December 5, 1892.)

No. 17.

PATENTS FOR INVENTIONS—VALIDITY—INVENTION.

Claims 2 and 3 of letters patent No. 203,249, issued May 7, 1878, to T. H. Day for a rope tramway and apparatus, are void for want of patentable invention in the conduit or tube covered thereby.

In Equity. Suit by the Pacific Cable Railway Company against the Butte City Street Railway Company for infringement of a patent. Bill dismissed.

Wm. F. Booth and Dixon & Drennen, for complainant.
Geo. H. Knight, F. T. McBride, and Geo. Haldorn, for defendant.
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