

In re MITCHELL et al.

(District Court, E. D. Wisconsin. June 25, 1894.)

CONSTITUTIONAL LAW — INTERSTATE COMMERCE — LICENSE TAX ON TRAVELING SALESMEN.

A state statute imposing a license tax upon persons traveling from place to place for the sale of goods, "at retail or to consumers," by sample or otherwise (Rev. St. Wis. § 1570), is void as an interference with interstate commerce in so far as it applies to agents soliciting orders by sample for goods which belong to a resident of another state, and which are at the time outside of the state, and are proper articles of commerce.

Applications by B. J. Mitchell, W. W. McClure, C. E. Devendorf, and Harry Birkell for writs of habeas corpus.

Clarence H. Childs, for petitioners.

Henry Fitzgibbon, for respondent.

SEAMAN, District Judge. These several petitioners are imprisoned in Winnebago county upon convictions in justice court for alleged violation of section 1570 of the Revised Statutes of Wisconsin, and amendments thereof, which provide that no person who is not licensed by payment of a fee prescribed by a subsequent section shall travel from place to place within the state for sale of goods "at retail or to consumers," by sample or otherwise, with numerous exceptions of permanent traders and other classes, not including any under which the petitioners can claim exemption. They were all in the employ of W. A. Edwards, a dealer in various articles of merchandise, residing and having his place of business at Minneapolis, Minn., and all were soliciting orders for sale of the employer's goods for future deliveries, and having only samples with them. It is undisputed and conceded that the goods which they respectively offered for sale were at Minneapolis, and not in Wisconsin, and were legitimate and proper articles of commerce. No orders were in fact taken, and no sales or deliveries were actually made.

The aid of this court is invoked on the ground that the arrest and imprisonment in each case violates well-settled rights of interstate commerce, of which the power to regulate is expressly reserved to congress by the United States constitution. Upon the state of facts here presented, it is clear that the petitioners were in the exercise of "interstate commerce," as defined by the supreme court in numerous decisions, and they were not infringing any law of the United States. The only justification for their imprisonment is asserted under the state statute entitled "Of Peddlers" (chapter 67, Rev. St., as amended by chapter 510, Laws Wis. 1889; section 1570, Sanb. & B. Ann. St.). It is unnecessary to determine whether the terms of this statute would intend the imposition of a license fee in these cases; but it is sufficient that the attempted enforcement is against a clear exercise of interstate commerce, and an interference therewith which is "repugnant to that clause of the constitution of the United States which declares that congress shall have power to regulate commerce among the several states." *Robbins v. Taxing Dist.*, 120 U. S. 489, 7 Sup. Ct. 592. The decisions of the supreme court are

numerous and conclusive to this point, and are well summarized in the opinion of Mr. Justice Brewer, handed down April 30, 1894, in *Brennan v. City of Titusville*, 14 Sup. Ct. 829. For their protection in this constitutional right the petitioners are entitled, respectively, to the writ, and it will be granted.

RUDOLPH et al. v. WILLIAMS et al.

(Circuit Court, S. D. New York. December 6, 1893.)

PATENTS—WHO ENTITLED—PRIORITY OF INVENTION.

In a suit to obtain a patent under Rev. St. § 4915, the evidence was substantially the same as that in interference proceedings in the patent office between the parties, in which priority of invention had been awarded to defendant; his testimony, substantially corroborated, being sufficient to discharge the burden of proof resting on him therein, while complainant's testimony to his prior conception of the invention was uncorroborated, and its credibility impaired by circumstances, and as to reduction of the invention to practice, on which the parties directly contradicted each other, complainant was supported only by indefinite and unreliable testimony of others. *Held*, that the bill must be dismissed on the weight of evidence.

This was a suit by Henry Rudolph and others against Benjamin A. Williams, George N. Williams, and others, to obtain an adjudication that complainants were entitled to a patent.

The bill in this action was filed under section 4915 of the Revised Statutes, which, so far as applicable to the present controversy, reads as follows:

"Whenever a patent on application is refused, either by the commissioner of patents or by the supreme court of the District of Columbia upon appeal from the commissioner, the applicant may have remedy by bill in equity; and the court having cognizance thereof, on notice to adverse parties and other due proceedings had, may adjudge that such applicant is entitled, according to law, to receive a patent for his invention, as specified in his claim, or for any part thereof, as the facts in the case may appear."

The question involved is purely one of fact. It is whether Henry Rudolph or George N. Williams, Jr., is the inventor of the "method of feeding the reciprocating saw blade of a stone-sawing machine, which consists in imparting to said saw blade, during its reciprocating movements, a forward or feeding movement during both its backward and forward strokes; said feeding movement corresponding in extent or rate to the speed at which the saw blade is moving, forward or back, at all times, substantially as set forth." The matter in controversy was the subject of interference proceedings between these parties. The examiner of interferences awarded priority of invention to Rudolph. His opinion was reversed by the examiners in chief, and their decision awarding priority to Williams was affirmed by the commissioner.

The opinion of the commissioner of patents on appeal from the decision of the examiners in chief in the interference proceedings was as follows:

Mitchell, Commissioner. The issue in controversy is as follows: "The herein described method of feeding the reciprocating saw blade of a stone-sawing machine, which consists in imparting to said saw blade, during its reciprocating movements, a forward or feeding movement during both its backward and forward strokes, said feeding movement corresponding in extent or rate to the speed at which the saw blade is moving forward or back, at all times, substantially as set forth."