

FISHER v. HANOVER NAT. BANK.

(Circuit Court of Appeals, Second Circuit. December 3, 1894.)

No. 10.

SET-OFF—MATURITY OF DEMANDS—FRACTIONS OF A DAY.

May 8, 1891, the H. Bank of New York was indebted to the S. Bank of Philadelphia for a balance of deposit of \$9,688.17, and held the S. Bank's demand note for \$25,000. On that day, about 11 a. m., the H. Bank telegraphed the S. Bank, demanding payment of the note. On the same day, between 11 and 12 o'clock, the bank examiner took possession of the S. Bank, and closed its doors. *Held*, that the court should not be astute to divide the day into fractions, to deprive the solvent debtor of a just defense, and that the note might be set off against the deposit balance in an action to recover the latter.

In Error to the Circuit Court of the United States for the Southern District of New York.

This was an action by Benjamin F. Fisher, as receiver of the Spring Garden National Bank, against the Hanover National Bank, to recover a balance of deposit. Judgment was rendered in the circuit court for the defendant. Plaintiff brings error.

Silas W. Pettit, for plaintiff in error.

Thos. S. Moore, for defendant in error.

Before LACOMBE and SHIPMAN, Circuit Judges.

LACOMBE, Circuit Judge. The Spring Garden National Bank of Philadelphia was taken possession of by the bank examiner, by direction of the comptroller of the currency, on May 8, 1891, it being then insolvent. The plaintiff in error was duly appointed its receiver. On May 8, 1891, the Hanover National Bank of New York was indebted to the Spring Garden Bank in the sum of \$9,688.17, balance of deposit account. At the same time the Hanover Bank held a note of the Spring Garden Bank originally for \$30,000, on which \$5,000 had been paid, and secured by a pledge of several promissory notes as collateral security. This action was brought to recover the deposit balance and the collaterals, or their proceeds. When the proofs were completed, however, all question as to the collaterals was eliminated from the case, and the only point left to be determined is whether the Hanover Bank was entitled to set off its claim upon the \$30,000 note against the receiver's claim for the deposit balance.

The note of the Spring Garden Bank was a demand note, and the evidence shows that "about 11 o'clock of May 8, 1891, or shortly after," the Hanover Bank telegraphed the Spring Garden Bank, calling the loan for immediate payment. The bank examiner took possession of the latter bank "some time between 11 and 12 o'clock on the 8th of May, 1891." On the day of the failure, therefore, the defendant bank owed the Spring Garden Bank the balance of deposits, and the Spring Garden Bank owed defendant bank the amount of the loan. There is no reason in justice or in equity why a court should be astute to divide the day into fractions, in order to deprive the solvent

debtor of a righteous defense. On May 8, 1891, both were debts presently due, and either was a proper set-off against the other. Judgment of the circuit court affirmed.

In re SHEFFIELD et al.

(Circuit Court, D. Kentucky. December 1, 1894.)

1. CONSTITUTIONAL LAW—TAXATION—PATENT RIGHTS.

The exclusive right to make, use, and vend an invention or discovery, granted by letters patent of the United States, cannot be taxed by a state.

2. SAME.

A statute of Kentucky declared that all itinerant persons, vending patent rights, should be deemed peddlers, and imposed a license tax upon peddlers, which, for vendors of patent rights, was double the amount required of others. *Held*, that this was a taxation of patent rights granted by the United States, and so unconstitutional and void.

This was a petition for a writ of habeas corpus by C. P. Sheffield and S. O. Edmunds, alleging that they were illegally restrained of their liberty by the jailer of Simpson county, Ky. The jailer made return to the writ that the petitioners were in his custody upon a surrender by their bail in a prosecution for selling patent rights without payment of license tax, in violation of a statute of Kentucky.

R. S. Brown, for relator.

G. T. Finn, for respondent.

BARR, District Judge. The material question which arises on the return of Davidson, jailer of Simpson county, is whether or not the statute of Kentucky which requires the payment of a license tax and the obtaining of a license from the county court of a county by peddlers before they can sell or offer for sale a patent right, or any territory covered by such patent right, which has been granted by the United States, is constitutional. It appears in this case the petitioners have paid a license tax and obtained a license from the county court of Simpson county to sell a patent article known as "Animal Releasing Devices" in said county. But they have not paid the license tax or obtained a license from said county court to sell or offer for sale the patent right itself or any part of the territory covered by said patent. The petitioners are being prosecuted for selling or offering for sale this patent right without having paid said license tax to thus sell and offer for sale said patent right. They gave bond for their appearance to the next term of the court, and have been surrendered by their bail to the jailer who had them in custody at the time of the service of the writ of habeas corpus, and who has produced them in the court with his return of the cause of their detention. The 4216th section of the Kentucky Statutes declares that "all itinerant persons vending lightning rods, patent rights or territory for the sale, use or manufacture of patent rights, * * * shall be deemed peddlers." Section 4219 declares that the county court of each county shall have exclusive jurisdiction to grant ped-