DECISIONS OF THE COURTS RELATING TO PATENTS.

Supreme Court of the United States.

WEBBER *vs.* VIRGINIA.

1. TAXATION — LICENSE — SALE OF MANUFACTURES — PATENT.—A State may require the taking out of a license for the sale of a manufactured article, and the fact that the article is produced under a patent will not defeat this power.

2. COMMERCE—TAXATION AGAINST NON-RESIDENT MANUFACTURER.—A tax upon the manufacturers of another State, while those of the State itself are free from such taxation, is invalid, since it discriminates against the rights of the non-resident manufacturer, and violates the constitutional provision vesting all commercial control in the Federal Government.

In error to the Supreme Court of Appeals of the State of Virginia.

In May, 1880, the plaintiff in error, J. T. Webber, was indicted in the County Court of Henrico County, in that State, for unlawful selling and offering for sale in that county to its citizens certain machines known as "Singer sewing machines," which were manufactured out of the State, without having first obtained a license for that purpose from the authorities of the county or having paid the tax imposed by law for that privilege. The indictment was founded upon the forty- the and forty-sixth sections of the revenue law of the State, which are as follows:

45. Any person who shall sell or offer for sale the manufactured articles or machines of other States or Territories, unless he be the owner thereof and taxed as a merchant, or take orders therefor on commission or otherwise, shall be deemed to be an agent for the sale of manufactured articles of other States and Territories, and shall not act as such without taking out a license therefor. No such person shall, under his license as such, sell or offer to sell, such articles through the agency of another, but a separate license shall be required from any agent or employe who may sell or offer to sell such articles for another. For any violation of this section the person offending shall pay a fine of not less than fifty dollars nor more than one hundred dollars for each offense.

46. The specific license tax upon an agent for the sale of any manufactured article or machine of other States or Territories shall be twenty-five dollars, and this tax shall give to any party licensed under this section the right to sell the same within the county or corporation in which he shall take out his license; and if he shall sell or offer to sell the same in any other of the counties or corporations of this State he shall pay an additional tax of ten dollars in each of the counties or corporations where he may sell or offer to sell the same. All persons, other than resident manufacturers or their agents selling articles manufactured in this State, shall pay the specific license tax imposed by this section. (Acts of Assembly, 1875 and 1876, p. 184, chap. 162, secs. 45, 46.)

To the indictment the accused pleaded "not guilty;" and on the trial it was proved that he had sold and offered to sell sewing machines in Henrico County, as charged, but that at the time he was acting as an agent or employe of the Singer Manufacturing Company, a corporation created under the laws of New Jersey; that this company had a place of business in Richmond, Virginia, where it was licensed as a resident merchant for the year beginning May 1, 1880, and had paid the required license tax and where it kept a stock of machines for sale; that the machines sold by the accused were the property of the company, and were manufactured by it out of the State and in accordance with specifications of a patent of the United States granted in 1879 to one W. C. Hicks, and by him transferred to the company. It also appeared that the accused had not taken out a license to sell the machines in Henrico County, and was not himself taxed as a merchant, and had not taken orders for the machines on commission or otherwise. On the trial his counsel requested the court to instruct the jury that if they believed the Singer Manufacturing Company had paid for a general merchant's license for the year beginning May 1, 1880, and received such license, or that the machines sold were constructed according to the specifications of the patent held by the company, and that the accused was acting in the sales made only as its employe, he was entitled to a verdict of acquittal. The court refused to give these instructions, and, at the request of the attorney for the Commonwealth, instructed the jury, in substance, that if they believed the accused had, at different times within the year previous to the indictment, sold or offered to sell in Henrico County to its citizens Singer sewing machines manufactured beyond the State, and at the time he was neither the manufacturer himself nor the owner of them, and was not taxed as a merchant in the county, and had not taken orders therefor on commission or otherwise, and had not obtained a license to sell the same in the county, and had not paid to the proper officer the tax imposed by law for selling the same in that county, they should find him guilty. The jury found the accused guilty, and he was sentenced to pay a fine of fifty dollars, besides costs. On appeal to the Circuit Court of the county this judgment was affirmed, and on further appeal to the Supreme Court of Appeals of the State the judgment of the Circuit Court was affirmed. To review the latter judgment the case is brought here on writ of error.

Field, J.:

In the County Court, where the accused was tried, the only defense presented by his instructions was that he was acting as the agent of the Singer Manufacturing Company, which had a license from the State as a resident merchant in Richmond to sell the machines, and also held a patent of the United States authorizing it to manufacture and sell them anywhere in the United States. To this defense the answer is obvious. The license being limited to the city of Richmond gave no authority to the company to sell the machines elsewhere, and of course gave none to its agent. Besides the question as to the extent of the territorial operation of the license depended upon the construction given by the Court of Appeals of the State to the statute, and its decision thereon is not open to review by us; and the right conferred by the patent laws of the United States to inventors to sell their inventions and discoveries does not take the tangible property, in which the invention or discovery may be exhibited or carried into effect, from the operation of the tax and license laws of the State. The combination of different materials so as to produce a new and valuable product or result, or to produce a well-known product or result more rapidly or better than before, which constitutes the invention or discovery, cannot be forbidden by the State, nor can the sale of the article or machine produced be restricted except as the production and sale of other articles for the manufacture of which no invention or discovery is patented or claimed may be forbidden or restricted.

The patent for a dynamite powder does not prevent the State from prescribing the conditions of its manufacture, storage, and sale, so as to protect the community from the danger of explosion. A patent for the manufacture and sale of a deadly poison does not lessen the right of the State to control its handling and use. The legislation respecting the articles which the State may adopt after the patents have expired it may equally adopt during their continuance. It is only the right to the invention or discovery—the incorporeal right—which the State cannot interfere with. Congress never intended that the patent laws should displace the police powers of the States, meaning by that term those powers by which the health, good order, peace, and general welfare of the community are promoted. Whatever rights are secured to inventors must be enjoyed in subordination to this general authority of the State over all property within its limits. These views find support in the language of this court in *Patterson vs. Kentucky* (97 U. S., 501; 7 Reporter, 353). In accordance with the views there expressed we can find no objection to the legislation of Virginia in requiring a license for the sale of the sewing machines by reason of the grant of letters patent for the invention. There is, however, an objection to its legislation arising from its discriminating provisions against non-resident merchants and their agents, and this is presented by the instructions given to the jury at the request of the attorney of the Commonwealth. The forty-fifth section of the revenue law declares "that any person who shall sell or offer for sale the manufactured articles or machines of other States or Territories, unless he be the owner thereof and taxed as a merchant, or take orders therefor, on commission or otherwise, shall be deemed to be an agent" for the sale of those articles, and shall not act as such without taking out a license therefor. A violation of this provision subjects the offender to a fine of not less than fifty dollars nor more than one hundred dollars for each offense. The forty-sixth section fixes the license tax of the agent for the sale of such articles at twenty-five dollars. The license only gives him a right to sell in the county or corporation for which it is issued. If he sells or offers to sell in other counties or corporations he must pay in each an additional tax of ten dollars. The section then declares that—

"All persons other than resident manufacturers or their agents selling articles manufactured in the State shall pay the specific license tax imposed by this section."

By these sections, read together, we have this result: The agent for the sale of articles manufactured in other States must first obtain a license to sell, for which he is required to pay a specific tax for each county in which he sells or offers to sell them, while the agent for the sale of articles manufactured in the State, if acting for the manufacturer, is not required to obtain a license or pay any license tax. Here there is a clear discrimination in favor of home manufacturers and against the manufacturers of other States. Sales by manufacturers are chiefly effected through agents. A tax upon their agents when thus engaged is therefore a tax upon them, and if this is made to depend upon the foreign character of the articles—that is, upon their having been manufactured without the State—it is to that extent a regulation of commerce in the articles between the States. It matters not whether the tax be laid directly upon the articles sold or in the form of license for their sale. If by reason of their foreign character the State can impose a tax upon them or upon the person through whom the sales are effected, the amount of the tax will be a matter resting in her discretion. She may place the tax at so high a figure as to exclude the introduction of the foreign article and prevent competition with the home product.

It was against legislation of this discriminating kind that the framers of the Constitution intended to guard when they vested in Congress the power to regulate commerce among the several States. In *Welton vs. Missouri* we expressed at length our views on the subject, and to our opinion we may refer for their statement. No one questions the general power of the State to require licenses for the various pursuits and occupations conducted within her limits and to fix their amount as she may choose, and no one on this bench—certainly not the writer of this opinion—would wish to limit or qualify it in any respect, except when its exercise may impinge upon the just authority of the Federal Government under the Constitution or the limitations prescribed by that instrument; but where a power is vested exclusively in that Government, and its exercise is essential to the perfect freedom of commercial intercourse between the several States, any interfering action by them must give way. This was stipulated in the indissoluble covenant by which we became one people.

In a recent case we had occasion to consider at some length the extent of the commercial power vested in Congress, and how far it is to be deemed exclusive of State authority. Referring to the great variety of subjects upon which Congress under that power can act, we said that—

"Some of them are national in their character and admit and require uniformity of regulation, affecting alike all the States. Others are local or are mere aids to commerce, and can only be properly regulated by provisions adapted to their special circumstances and localities. Of the former class may be mentioned all that portion of commerce with foreign countries or between the States which consists in the transportation, purchase, sale, and exchange of commodities.

Here there can, of necessity, be only one system or plan of regulations, and that Congress alone can prescribe. Its non-action in such cases with respect to any particular commodity or mode of transportation is a declaration of its purpose that the commerce in that commodity or by that means of transportation shall be free. There would otherwise be no security against conflicting regulations of different States, each discriminating in favor of its own products and citizens and against the products and citizens of other States."—(*County of Mobile vs. Kimball*, 102 U. S.)

Commerce among the States in any commodity can only be free when the commodity is exempted from all discriminating regulations and burdens imposed by local authority by reason of its foreign growth or manufacture.

Reversed and remanded.

A Large Electro-Magnet.

MM. Von Feilitzsch and W. Holtz have recently made, for the University of Greifswalde, an electro-magnet of enormous dimensions. The price of a bar of iron made in one single piece would have been too expensive, while, on the other hand, in a system formed of several pieces poles become developed at the contacts. The electro-magnet was, therefore, constructed of 28 plates of iron, 7 millimeters thick, bent into a horseshoe shape, and of a size such that their combination forms a cylinder 195 millimeters in diameter. These plates are varnished, in order to avoid the formation of extra currents; they are connected together by iron bands, and so arranged as to form a cylinder of uniform diameter. The total height is 125 centimeters, the distance between the poles 596 millimeters; the total weight 628 kilogrammes. The magnetizing helix is composed of 100 kilogrammes of plates of copper, forming 15 layers, insulated from one another by gutta percha.

Outside there are 175 kilogrammes of wire, 2 millimeters thick, forming 5 double layers of wire, and the extremities of the different parts of the circuit communicate with terminals fixed on insulated columns, which allow of any required connections being made. The poles are topped with two plates, 33 millimeters thick, which can be set at any required distance apart, and are capable of carrying various accessories. A movable plate, placed between the two branches, can be placed at any convenient height for the experiments. With this apparatus, excited by 50 small Grove cells, it was possible to melt in two minutes 40 grammes of Wood's metal by Foucault's experiment, and if the poles were set close, the resistance stopped the movement in spite of the tension of the driving band. It is very easy to show the rotation of the plane of polarization in heavy glass, when the latter is traversed by a ray of light, etc. In this apparatus, as has been pointed out, the bar of iron weighs 628 kilogrammes, and the wire 275 kilogrammes, while in the one constructed by Plücker, and which was the largest existing, the weights were only 84 and 35 kilogrammes respectively.—*Les Mondes.*

A Mountain Steamer.

Steam navigation among the mountain ranges of Colorado is one of the peculiarities of that wonderful region. A Denver paper says: "A sail over the placid and translucent waters of Twin Lakes will convince the traveler that Colorado affords some of the most beautiful aquatic scenery in nature. Twin Lakes are located three miles from Twin Lake station, Denver and South Park Division U. P. Railway, or 157 miles southwest of Denver, at the eastern base of the Sawache Range, at an elevation of 9,333 feet above the level of the sea. The lower lake covers 1,525 and the upper 475 acres, and they are united by a small, swift, clear stream, about half a mile in length, which winds through grassy meadows, studded with scattering shade trees, affording delightful picnic or camp grounds. On the north stands Mount Elbert, altitude 14,360 feet above the sea, or 5,027 feet above the lakes. Directly opposite (at the south side of the Lakes) are the Twin Peaks, also giants of the Rocky chain. The sheets are, therefore, thoroughly mountain-locked. The mountains last named are clothed with rare foliage and are full of game. The lakes abound in trout." The paper above quoted says the little steamer plying on Twin Lakes "has the distinguished honor of being nearer to Heaven than any other craft in the wide, wide world."