

WAINER ET AL. v. UNITED STATES.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
SEVENTH CIRCUIT.

No. 51. Argued October 12, 1936.—Decided November 9, 1936.

1. Federal statutes taxing the carrying on of the wholesale liquor business and imposing penalties for so doing without the payment of the tax were not in direct conflict with the National Prohibition Act and were reenacted by the Act of November 23, 1921,—the "Willis-Campbell Act." P. 93.
2. Such a tax is not a licensing of the liquor business, but is an excise upon the doing of it, whether lawfully or unlawfully. *Id.* 82 F. (2d) 305, affirmed.

CERTIORARI, 298 U. S. 652, to review the affirmance of a sentence for dealing in liquor without having paid the special tax.

Mr. John E. Dougherty, with whom *Messrs. Harry C. Heyl* and *Irwin S. Rubelle* were on the brief, for petitioners.

Mr. Gordon Dean argued the cause, and *Solicitor General Reed*, *Assistant Attorney General McMahon*, and *Mr. Mahlon D. Kiefer* filed a brief, for the United States.

MR. JUSTICE ROBERTS delivered the opinion of the Court.

The petitioners were convicted and sentenced in the District Court under an indictment, the second count of which charged them with conducting the business of wholesale liquor dealers without having paid the special tax imposed by the federal revenue laws. The judgment was affirmed by the Circuit Court of Appeals.¹ Certiorari was granted limited to the question whether the statute

¹ 82 F. (2d) 305.

upon which the second count of the indictment was based was repealed by the National Prohibition Act² and has not been reënacted.

Many of the existing revenue acts imposing taxes in respect of manufacture and sale of intoxicating liquors were superseded by the National Prohibition Act.³ The effect of § 5 of the Willis-Campbell Act⁴ was to reënact all such laws in existence when national prohibition became effective, save such as were in direct conflict with any provision of the National Prohibition Act or the Willis-Campbell Act.⁵ The statutes taxing the business of conducting a wholesale liquor business and imposing the penalties for so doing without the payment of the tax⁶ were not in direct conflict with the prohibition act and were, therefore, reënacted.⁷ The difficulty of paying the excise upon the privilege of carrying on a business which is prohibited does not preclude the prescription of sanctions for non-payment.⁸ Petitioners insist it is a contradiction in terms to say the laws of the United States at the same time prohibit and license an occupation. The contention is based on misconception of the nature of the exaction. The United States has not licensed the liquor business but, as is clearly within its power, has laid an

² Act of October 28, 1919, c. 85, 41 Stat. 305, U. S. C. Tit. 27, *passim*.

³ *United States v. Yuginovich*, 256 U. S. 450.

⁴ Nov. 23, 1921, c. 134, 42 Stat. 222, U. S. C. Tit. 27, § 3.

⁵ *United States v. Stafoff*, 260 U. S. 477.

⁶ R. S. 3242; U. S. C. Tit. 26, § 1397.

⁷ *United States v. Remus*, 260 U. S. 477, 479, 480. The decision to the contrary by the Circuit Court of Appeals for the Fifth Circuit in *Bailey v. United States*, 5 F. (2d) 437, was not followed by the same court in the later case of *Anderson v. United States*, 30 F. (2d) 485.

⁸ *United States v. One Ford Coupe*, 272 U. S. 321, 327.

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excise upon the doing of the business whether lawfully or unlawfully conducted.⁹

The judgment is

Affirmed.

MR. JUSTICE STONE took no part in the consideration or decision of this case.

ESSEX RAZOR BLADE CORP. *v.* GILLETTE
SAFETY RAZOR CO.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
THIRD CIRCUIT.

No. 21. Argued October 15, 16, 1936.—Decided November 9, 1936.

Patent No. 1,633,739, to Gaisman, Claims 1 and 2, for a safety-razor blade "having a non-circular opening substantially centrally disposed to retain the blade in shaving relation to a guard member, said blade having means spaced from said opening to coöperate with a clamping member to retain the latter in shaving relation to the blade independent of the guard member," *held* void for want of invention.

83 F. (2d) 541, reversed; 13 F. Supp. 505, affirmed.

CERTIORARI, 298 U. S. 649, to review the reversal of a decree dismissing a bill to enjoin alleged infringement of patent.

Mr. George E. Middleton, with whom *Mr. C. M. Palmer* was on the brief, for petitioner.

Mr. Henry R. Ashton, with whom *Mr. Charles Neave* was on the brief, for respondent.

MR. JUSTICE ROBERTS delivered the opinion of the Court.

The respondent makes and sells safety razors and blades. The petitioner makes and sells only blades. The

⁹ *United States v. Constantine*, 296 U. S. 287, 293.