

No. 2287

SUPREME JUDICIAL COURT

FOR THE COMMONWEALTH.

Rescript, Middlesex County.

Commonwealth

vs.

Henning Jacobson

Copy

COMMONWEALTH OF MASSACHUSETTS.

SUPREME JUDICIAL COURT FOR THE COMMONWEALTH, }

AT BOSTON, *April 2*, 1903. }

IN THE CASE OF

Commonwealth

vs.

Henning Jacobson

pending in the *Superior* Court for the County
of *Middlesex*

ORDERED, that the clerk of said court in said county make the following
entry under said case in the docket of said court; viz.,—

Exemption overruled.

BY THE COURT,

Henry A. Clapp, CLERK.

April 2, 1903.

OVER.

BRIEF STATEMENT OF THE GROUNDS AND REASONS OF THE DECISION

The statute is constitutional,

The evidence excluded was immaterial.

Copy,

Attest,

Henry A. Clapp, Clerk.

The Chief Justice

2287

COMMONWEALTH

vs.

HENNING JACOBSON.

Middlesex County.

Defendant's Exceptions.

COMMONWEALTH OF MASSACHUSETTS.
SUPERIOR COURT,

MIDDLESEX, SS.

FEBRUARY SITTING, 1903.

COMMONWEALTH

vs.

HENNING JACOBSON.

DEFENDANT'S EXCEPTIONS.

Complaint under section 137 of R. L., chapter 75, brought to this court by appeal from the Third District Court of Eastern Middlesex, where the defendant pleaded not guilty, and on trial was found guilty and sentenced to pay a fine of five dollars.

A copy of the complaint is hereto annexed, marked "A," and made a part of this bill of exceptions; and a copy of the record of proceedings may be referred to.

In this court, the defendant being arraigned, pleaded not guilty, and was set to the bar to be tried.

The government put in evidence the record of a vote of the Board of Health of the City of Cambridge, passed February 27, 1902, a copy whereof is hereto annexed, marked "B," and made part hereof; also, the record of a vote of the Board of Health passed March 19, 1902, a copy of which, so far as material, is hereto annexed, marked "C," and made part hereof; also, evidence tending to show that E. Edwin

Spencer, then the chairman of said Board of Health, on or about the fifteenth day of March, 1902, called upon the defendant and informed him that if he refused to be vaccinated he would incur the penalty of five dollars provided by the vaccination law, and would be prosecuted therefor, and then and there offered to vaccinate defendant without any expense to him; but that the defendant then and there absolutely refused to be vaccinated.

This was all the evidence offered by the prosecution.

The defendant then offered to prove and show, by competent evidence, the following facts:

1. That vaccination, as usually performed, is an operation that quite often causes or results in a serious and permanent injury to the health of the person vaccinated.
2. Also, that it is an operation which occasionally causes and results in the death of the vaccinated person.
3. That among the diseases that are caused, or often result from vaccination, are eczema, salt rheum, erysipelas, syphilis, some forms of scrofula, paralysis, consumption, tetanus, and various forms of blood poisoning, including septicaemia and pyæmia, and some forms of insanity — all loathsome and dangerous diseases, to be dreaded and feared.
4. That it is impossible to tell in any particular case, what the results of vaccination will be, whether or not it will cause serious injury to the health, or result in the death of the vaccinated person.
5. That, as a rule, vaccination of a person results in a sickness more or less prolonged and serious, which renders the person vaccinated incapable of performing his usual duties and labors, whether physical or mental, for a longer or shorter time — sometimes incapacitating him for a period of several weeks, or even months — and this in cases where there is an ultimate complete recovery from the effects of the vaccination itself.

6. That it is a fact that quite often a person's blood is in such a condition of impurity, that it is not prudent or safe to vaccinate him while in that condition, and that it cannot be done at such a time without a risk or danger to his health or life.

7. Also, that there is no practical test by which it can be determined with any degree of certainty, when a person's blood is in such a condition of impurity as to render vaccination at such a time necessarily unsafe or dangerous.

8. That the so-called virus, or vaccine matter, or points, that is used for the purpose of vaccination, as manufactured and sold for use, quite often is impure and in a condition unfit and dangerous to be so used, and that there is no known practical test that can be resorted to by the ordinarily skillful and experienced practising physician, to determine whether or not the vaccine matter that is to be used, is pure and suitable to be used, or is by reason of its impurity, necessarily a source of danger if used at all.

9. That vaccination consists in inoculating the human system with a specific disease, known as cowpox, by means of the insertion into the human body — by incision and absorption — of various kinds of virus, commonly known as matter or pus, generally obtained from cowpox sores upon the bodies of calves (sometimes other animals) which have been infected with this disease for the purpose of generating this virus, pus or matter.

10. That numerous evil and dangerous effects are commonly produced upon human beings who are thus inoculated, by causing diseased conditions and diseases, including tetanus, or lockjaw, ulcers, boils, eczema, erysipelas, abscesses, various forms of blood-poisoning, including septicæmia and pyæmia, and consumption, paralysis and syphilis.

11. That the nature of cowpox itself is not analagous to smallpox, but to greatpox, or syphilis, whence the syphilitic nature of the sores and symptoms of the sores produced.

12. That vaccination does not prevent the spread or contagion of smallpox; that the claim in behalf of vaccination that it is the only effectual or reliable safeguard or protection against smallpox, has never been demonstrated, for the reason that sanitation, isolation and disinfection have for a long time been developed and used to such an extent in connection with vaccination that it is impossible to ascribe the restrictive results accruing from the joint use of all these agencies to vaccination alone, and that in fact all the beneficial results in combating smallpox are fairly attributable to the other agencies above mentioned, and in no part to vaccination; that on the contrary, vaccination is a positive means of disseminating and spreading smallpox in the community.

13. That this defendant refused to submit to vaccination for the reason that he had, when a child, been caused great and extreme suffering, for a long period, by a disease produced by his vaccination at that time.

14. That he had witnessed a similar result of vaccination in the case of his own son, and had personally known a great number of other instances of the same kind, and that his said refusal was prompted by his knowledge of the danger and his dread of the terrible consequences of vaccination.

But the court ruled that each and all of the facts so offered to be proved by defendant were immaterial, and excluded each and all of them, and all of the evidence thus offered.

No further evidence was offered in the case.

Thereupon, the defendant asked the court to rule and instruct the jury as follows:

"That section 137 of chapter 75 of the Revised Laws is unconstitutional and void, and the refusal by defendant to comply with the requirements of the Board of Health here in evidence, constituted no offence, because:

"1. Said section is in derogation of the rights secured to the defend-

ant by the preamble to the Constitution of the United States, and tends to subvert and defeat the purposes of said Constitution, as there declared.

"2. Said section violates and infringes the rights secured to the defendant by Article V. of the Amendments of the Constitution of the United States; and especially the last clause of said Article V., which reads as follows: 'Nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation.'

"3. Said section is in derogation of the rights secured to the defendant by Article XIV. of the Amendments of the Constitution of the United States, and especially the last three clauses of section 1 of said Article XIV., as follows: 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the usual protection of the laws.'

"4. Said section is repugnant to the spirit of the Constitution of the United States.

"5. Said section, and the several provisions thereof, are repugnant and contrary to the Constitution of this Commonwealth, and especially to the provisions of Article I. of Part the First of said Constitution.

"6. Said section, and the several provisions thereof, are repugnant and contrary to the Constitution of this Commonwealth, and in derogation of the rights of this defendant secured to him by Article IV. of chapter 1 of Part the Second of said Constitution, and especially of that part of it which reads as follows: 'Art. IV. And further, full power and authority are hereby given and granted to the said General Court, from time to time to make, obtain and establish, all manner of wholesome and reasonable orders, laws, statutes and ordinances, directions and instructions, either with penalties or without; so as the same

be not repugnant or contrary to this Constitution, as they shall judge to be for the good and welfare of this Commonwealth, and for the government or ordering thereof, and of the subjects of the same.'

"7. Said section, and the several provisions thereof, are repugnant and contrary to the Constitution of this Commonwealth, and especially to the provisions of Article X. of Part the First of said Constitution.

"8. Said section, and the several provisions thereof, are repugnant and contrary to the Constitution of this Commonwealth, and especially to the provisions of Article XIV. of Part the First of said Constitution.

"9. Said section, and the several provisions thereof, are wholly repugnant and contrary to the Constitution of this Commonwealth, and to the spirit of said Constitution.

"10. That the regulation or order adopted by the Board of Health, under which this prosecution is brought, is, by its terms, unreasonable, and therefore void; and creates no offence of which the defendant is or can be guilty.

"11. That said regulation or order is more especially unreasonable in this, that it requires and compels the vaccination or re-vaccination of all the inhabitants of Cambridge, without any exceptions or limitations in respect of any of them."

And the defendant requested the court, upon the foregoing evidence, to order and direct the jury to return a verdict of not guilty.

But the court refused to give any of the rulings or instructions requested, and refused to order or direct a verdict of not guilty, and ruled and instructed the jury in substance that if they believed the evidence introduced by the government, and were satisfied thereby beyond a reasonable doubt that the defendant was guilty of the offence charged in the complaint, they would be warranted in finding a verdict of guilty.

The jury found and returned a verdict of guilty.

To all and singular the foregoing rulings and instructions, to the

exclusion of the said evidence offered in behalf of the defendant, including each and all of the several offers of proof above enumerated and set forth, and to the refusal of the court to order and direct a verdict of not guilty, the defendant duly excepted, and now prays that his said exceptions may be allowed.

By his Attorney, J. W. PICKERING.

Filed March 2, 1903.

March 2, 1903. Allowed.

WILLIAM CUSHING WAIT, J.S.C.

"A."

COMMONWEALTH OF MASSACHUSETTS.

Middlesex, to wit:

To the Third District Court of Eastern Middlesex, holden at Cambridge for the transaction of Criminal Business, within the County of Middlesex,

E. Edwin Spencer of Cambridge in said County, in behalf of the Commonwealth of Massachusetts, on the seventeenth day of July, in the year of our Lord one thousand nine hundred and two, on oath complains that the Board of Health of the City of Cambridge in said County, being of the opinion that it was necessary for the public health and safety, did require the vaccination and re-vaccination of all the inhabitants thereof who had not been successfully vaccinated since the first day of March, in the year of our Lord one thousand eight hundred and ninety-seven, and did provide them with the means of free vaccination, and that Henning Jacobson, being over twenty-one years of age and not under guardianship, did refuse and neglect to comply with such requirement.

E. EDWIN SPENCER.

Middlesex, ss. Received and sworn to, on said day, before said court.

HERBERT J. SPLAINE,
Assistant Clerk.

"B."

CAMBRIDGE, February 27, 1902.

Special Meeting of the Board of Health held this day at 12 M. Present the full Board.

Voted to pass the following regulation regarding vaccination, viz. :

Whereas, smallpox has been prevalent to some extent in the city of Cambridge and still continues to increase; and whereas, it is necessary for the speedy extermination of the disease, that all persons not protected by vaccination should be vaccinated; and whereas, in the opinion of the Board, the public health and safety require the vaccination or re-vaccination of all the inhabitants of Cambridge; be it Ordered that all the inhabitants of the city who have not been successfully vaccinated since March 1, 1897, be vaccinated or re-vaccinated.

The Board then adjourned.

A true record.

Attest: JAMES B. SOPER, Clerk.

6

"C."

CAMBRIDGE, March 19, 1902.

MEETING OF THE BOARD OF HEALTH.

Voted :

Whereas, the following physicians, to wit: Felix McGirr have been employed by the Chairman of this Board in the name of the Board of Health, to enforce the vaccination of persons

dwelling in this city in accordance with the vote passed by this Board at its special meeting held February 27, it is hereby voted that the action of the Chairman be and is hereby ratified, and that the said persons be and are constituted agents of this Board for the purpose of vaccination from the dates of their engagement, to wit:— Felix McGirr March 6, 1902, until otherwise ordered, and

Voted, that their compensation for services rendered be fixed at \$2.00 per hour while occupied with vaccinating.

A true record,

Attest: JAMES B. SOPER, Clerk.

1903. February 27, Verdict, guilty.

The foregoing are true copies.

Attest,

 Clerk.