of the court might be in his favor and a new trial granted, and he be thereby saved the expense and delay of his writ of error or appeal, to correct that of which he felt aggrieved in the judgment or decree.

Sections 691, 692, Rev. St., provide for the re-examination by the supreme court of *final* judgments and decrees of the circuit courts, or of the district courts acting as circuit courts. From these sections it will be seen that only final judgments or decrees can be reviewed by the supreme court.

Volumes have been written defining what are *final* judgments and decrees, and the definitions given have not always been clear or in harmony with each other. This is especially true of decrees in equity. It would seem that there should be little difficulty in defining what is a final judgment in an action at law, since in these cases, when a trial is concluded and a verdict rendered, the law itself determines what the judgment shall be, in any given case. The proper judgment, upon a verdict, follows as a matter of law, and is entered as of course, unless stayed by the interposition of the court. And this is the question which is decisive of this motion: Was this judgment, entered November 11, 1882, final for the purposes of review, within the meaning of the statute, pending the motion for a new trial made and entertained by the court? It may be conceded that it was final in form and character, and that it settled the issues raised by the pleadings. But was it, so long as it remained wholly subject to the control and future order of the court, final *in effect?* It might become final for all purposes by lapse of time; by the expiration of the term of court at which it was rendered, no order having been made by the court continuing its power over it; or by the failure of the defendant to avail himself of his writ of error within the time limited therefor. But in this case, where the defendant, within the proper time, filed his notice of motion for a new trial, which motion the court entertained, and stayed execution upon the judgment pending the motion, can it be said that the judgment, so suspended, and liable to be vacated, was final? While thus suspended, the judgment had no force or vitality, beyond the fact that, by law, it became a lien upon the realty of the defendant within the district from date of entry and docketing. It is difficult to conceive of a judgment as final and conclusive, for all purposes, when we concede that it is subject to be vacated, set at naught, and the controversy opened for readjudication.

While I find no decisions of the supreme court touching the point as to when a judgment becomes final for the purposes of review, pending a motion for a new trial, yet there are numerous decisions of that court, in reference to decrees in equity, and when they become final, where motions or petitions have been filed, and entertained, for opening or modifying those decrees. In *Brockett* v. *Brockett*, 2 How. 240, the court decided that where a motion was made to open a decree for certain purposes, and entertained by the court, that the decree was suspended, pending the decision of the court upon the

motion; that the decree, though final, did not take effect until the dicision of the court upon the motion; and that the time within which an appeal must be taken commenced from the date of the order of the court upon the motion, and not from the passing of the final decree. In this case the decree was not in any manner modified, the motion therefor having been denied.

This decision was rendered in 1844, and has been repeatedly affirmed in subsequent cases. In 14 How. 1, the court, referring to this decision in 2 How. 240, says:

"In that case, before any appeal was taken, a petition was filed to open the decree for certain purposes, and the court referred it to a commissioner to examine and report on the matters stated in the petition. Upon his report the court refused to open the decree, and the party thereupon appealed from this refusal, as well as the original decree, and gave bond with sufficient security to prosecute the appeal. The bond was given within ten days after the refusal of the motion, but was more than a month after the original decree. And the court held that this appeal was well taken; not because an appeal will lie from the refusal of a motion to open a decree and grant a rehearing, but because the court regarded the original decree as suspended by the action of the court on the motion, and that it was not effectual and final until the motion was overruled."

(At that time parties were limited to 10 instead of 60 days, as now prevails, within which to perfect appeals, etc.)

In *Railroad Co.* v. *Bradleys*, 7 Wall. 575, this same question, as to when a final decree becomes such for the purposes of an appeal, is discussed. In that case final decree was rendered February 6, 1869. Between that date and the fifteenth of the same month various motions were made in reference to the decree, by different parties interested therein. The court says:

"We do not think it necessary to consider the effect of either of these proceedings, for on the sixth of March, and, as we understand, during the term at which the decree was rendered, a motion to rescind was made, in behalf of the complainants, and was heard and decided. There is no doubt that during the term the decree was at all times subject to be rescinded or modified upon motion, and could not, therefore, be regarded as absolutely final until the end of the term. It became final, in this case, when the motion to rescind had been heard and denied. This took place on the thirteenth of March, and on the twentieth an appeal was prayed in open court, and on the twenty-third the bond of appeal was approved and filed. We think this was in time, and the motion for *supersedeas* must be allowed."

It is contended by plaintiff's counsel that there is an essential difference in the rule as to when a judgment at law and a decree in equity become final for the purposes of review, where a motion for a new trial has been made in the one case, or a petition or motion for a rehearing or modification of the decree in the other. If there is such difference, I regret that it was not more clearly demonstrated upon the argument of this motion, and that I am unable to distinguish that difference. I perceive no reason why any distinction should or can be made. If a motion to modify or rescind a decree suspends that

decree until the decision of that motion, and the decree becomes "effectual and final" only from the date of such decision, it is difficult to see why the same rule shall not obtain in judgments at law, where a motion for a new trial has been made and entertained by the court. The reasons that apply in the one case have equal force in the other. In each the defendant seeks to relieve himself from the effect of a decree or judgment at which he feels aggrieved.

The power of a court over a decree is no greater than is that power over a judgment. Either may, in proper cases, be wholly vacated and set aside: It would seem an inconsistent, unequal administration of justice which should give to a party appealing from a decree a more liberal rule, a longer time within which to effect his appeal and save all of his rights thereunder, than is given to a party in an action at law, seeking virtually the same relief, by his writ of error.

Section 1012 of the Revised Statutes provides that "appeals from circuit courts * * * shall be subject to the same rules, regulations, and restrictions as are or may be prescribed in law cases of writs of error."

Now, the supreme court has given us the rule which shall prevail in reference to when decrees shall become "effectual and final," for the purposes of an appeal. Giving, then, section 1012, Rev. St., effect, we are forced to the conclusion that in judgments at law, where a motion has been duly made for a new trial, and entertained by the court, the judgment is suspended, for the purposes of a writ of error, pending the decision upon the motion, and that it does not become effectual and final, for the purposes of review, until the motion is overruled. This must be so if "the same rules, regulations, and restrictions" are to apply to appeals and to writs of error. 14 How. 1; 7 Wall. 578. It follows, therefore, in this case, that the judgment entered November 11, 1882, did not become "effectual and final" for the purposes of review until the fifth of February, 1883, when the motion for a new trial was denied. This being so, the defendant may serve and lodge his writ of error, serve his citation, and give the security within 60 days, Sundays exclusive, from February 5, 1883. And as, in this case, the writ of error may be a *supersedeas*, execution should not have issued upon the judgment for 10 days from February 5, 1883. Having been issued on the eighth of February, it was, therefore, prematurely issued, and should be recalled.

In *Rutherford* v. *Penn. Mut. F. Ins. Co.* 1 FED. REP. 456, in the eighth circuit, MCCRARY, J., it is distinctly held that "a writ of error will operate as a *supersedeas* if duly served within sixty days, Sundays exclusive, after a motion for a new trial has been overruled." *In re Kerosene Oil Co.* 6 Blatchf. 523, seems also to be in point, though the case is somewhat obscurely reported. See, also, *Telegraph Co.* v. *Eyser*, 19 Wall. 419, 428, as to a liberal rather than narrow construction of the act of congress of June 1, 1872, in reference to appeals.

A correct decision upon the points involved in this motion is very important to the parties interested in this case; it is not less important as establishing a rule of practice in similar cases where motions for new trials have been made and denied.

The motion of defendant is granted.

In re BROSNAHAN, Jr.[1]

(*Circuit Court, W. D. Missouri, W. D.* June, 1883.)

1. HABEAS CORPUS—POWER OF FEDERAL COURTS—STATE CRIMINAL STATUTE.
   The circuit court of the United States may issue the writ of *habeas corpus* upon the application of any person who is imprisoned in violation of the constitution, or of any law or treaty of the United States; and if a person be imprisoned under a state statute which is in conflict with either, that court has power to discharge him.
2. STATE STATUTE HELD NOT IN VIOLATION OF THE CONSTITUTION OF THE UNITED STATES.
   The statute of Missouri providing for the punishment by fine and imprisonment of any person who shall manufacture, "out of any oleaginous substance, or any compounds of the same, other than that produced from unadulterated milk, or cream from the same, any article designed to take the place of butter or cheese produced from pure unadulterated milk, or cream of the same," or who shall sell or offer for sale the same as an article of food, is not in violation of any provision of the constitution of the United States.
3. PATENT LAWS—RIGHTS OF PATENTEE.
   The sole object and purpose of the patent laws is to give to the inventor a monopoly of what he has discovered. What is granted to him is the exclusive right, not the abstract right; but the right in him to the exclusion of everybody else. He is not authorized by the patent laws to manufacture and sell the patented article in violation of the laws of the state. His enjoyment of the right may be modified by the exigencies of the community to which he belongs, and regulated by laws which render it subservient to the general welfare, if held subject to state control.
4. PATENT—IN WHAT SENSE A CONTRACT.
   A patent is a contract only as between the parties to it, namely, the United States on one side and the patentee on the other, and the rights conferred thereby can extend no further than the right granted to the patentee under the patent laws.
5. REGULATION OF COMMERCE.
   The statute above mentioned is not a regulation of commerce among the several states.
6. DEPRIVATION OF LIBERTY OR PROPERTY — FOURTEENTH AMENDMENT TO THE CONSTITUTION.
   The statute above named does not deprive any person of liberty or property without due process of law, within the meaning of the fourteenth amendment to the constitution.
7. HABEAS CORPUS—JURISDICTION.
   The federal courts have no jurisdiction to discharge a prisoner held under a state statute, upon the ground that such statute is in violation of the constitution of the state, or in excess of the powers which the people of the state have conferred on their legislature. If it does not violate the federal constitution, the question is for the state courts.

[1] From the Colorado Law Reporter.

On Writ of *Habeas Corpus.*

MILLER, Justice. The prisoner in this case is brought before us by virtue of a writ of *habeas corpus* issued under the authority of this court, and directed to John W. Rucker, in whose custody the petitioner stated himself to be. To this writ Mr. Rucker, at the time of producing the body of his prisoner, makes return that he holds him in custody by virtue of a precept to him directed as constable by A. W. Allen, a justice of the peace of Jackson county, Missouri, and he annexes a copy of the *mittimus* as a part of his return. From this it appears that a criminal proceeding had been instituted against Brosnahan for a violation of the statute of Missouri concerning the sale of oleomargarine, and that on being arrested and brought before the justice of the peace the latter had set the hearing or trial at some future day, several months off, and had fixed a reasonable sum as bail for the prisoner's appearance at that time. The prisoner refused to give bail, whereupon the magistrate made the order committing him to custody. The present writ of *habeas corpus* was thereupon sued out.

As the courts of the United States are of limited jurisdiction, and, in ordinary cases, can have no control of the courts or judicial officers of the states while engaged in enforcing their criminal laws, the counsel representing Rucker on behalf of the state deny the jurisdiction of this court in the case.

For the prisoner the jurisdiction is asserted on the following grounds:

First, that the statute of Missouri is void, because the article, oleomargarine, the sale of which it forbids in Missouri, is made and sold under a patent of the United States issued to Hyppolyte Mege, December 30, 1873, for a new and useful discovery under the patent laws on that subject; *second*, it is void because it impairs the obligation of the contract evidenced by that patent; *third*, it is void because it is a regulation of commerce among the several states; *fourth*, because it deprives a man of his property without due process of law, (section 1, art. 14, of the Amendments to the Constitution of the United States;) *fifth*, because it is without any authority in the constitution of the state of Missouri, and is outside of any legislative power whatever.

The statute thus assailed is in the following words:

"An act to prevent the manufacture and sale of oleaginous substances, or compounds of the same, in imitation of the pure dairy product.

"Section 1. Whoever manufactures, out of any oleaginous substances, or any compounds of the same, other than that produced from unadulterated milk, or cream from the same, any article designed to take the place of butter or cheese produced from pure, unadulterated milk, or cream of the same, or whoever shall sell or offer for sale the same as an article of food, shall, on conviction thereof, be confined in the county jail not exceeding one year, or fined not exceeding $1,000, or both." Approved March 24, 1881.

The acts of congress concerning the writ of *habeas corpus* have been brought together in chapter 13 of the Revised Statutes, and are included in sections 751–766.

That which relates to the jurisdiction of the circuit courts is found in sections 751 and 753: