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:

"Sec. 751. The supreme court, and the circuit and district courts, shall have power to issue writs of *habeas corpus*."

"Sec. 753. The writ of *habeas corpus* shall in no case extend to a prisoner in jail, unless when he is in custody under or by color of the authority of the United States, or is committed for trial before some court thereof, or is in custody for an act done or omitted in pursuance of the law of the United States, or of an order, process, or decree of a court or judge thereof, *or is in custody in violation of the constitution, or of a law or treaty of the United States*, or being a subject or citizen of a foreign state," etc.

The words italicized above, namely, "or is in custody in violation of the constitution, or of a law or treaty of the United States," confer the only power under which, in this case, jurisdiction can be exercised by the circuit court.

It is quite clear that if the Missouri statute is justly obnoxious to either of the four objections first named, it is void, and the person held for violating that statute is in custody in violation of the constitution of the United States; and the power and duty of this court to discharge him are unquestionable.

We proceed to inquire if the law is so objectionable.

1. As to the effect of the patent. The patent is introduced in evidence, and proof is offered to show that the article sold by the prisoner, and for which sale he is prosecuted, is the article specified in Mege's patent, and that the prisoner has such authority as the patent confers to sell it. The validity of the patent is not disputed. Has the prisoner, then, a right to sell the article thus patented, notwithstanding the statute of Missouri which forbids such sale? The constitution, (art. 1, § 8, cl. 8,) gives congress power "to promote the progress of science and useful arts by securing, for a limited time, to authors and inventors, the *exclusive right* to their respective writings and discoveries;" and the act of congress which is designed to give effect to this clause declares that in every case where a patent is issued under it, the patentee shall have the *exclusive right to make, use, and sell* the subject-matter of his patent, whatever it may be.

It is to be observed that no constitutional or statutory provision of the United States was, or ever has been, necessary to the right of any person to make an invention, discovery, or machine, or to use it when made, or to sell it to some one else. Such right has always existed, and would exist now if all patent laws were repealed. It is a right which may be called a natural right, and which, so far as it may be regulated by law, belongs to ordinary municipal legislation; and it is unaffected by anything in the constitution or patent laws of the United States.

The sole object and purpose of the laws which constitute the patent and copyright system is to give to the author and the inventor a monopoly of what he has written or discovered, that no one else shall make or use or sell his writings or his invention without his permission; and what is granted to him is the exclusive right; not the abstract right, but the right in him to the exclusion of everybody else.

For illustration, an author who had written or printed a book always had the right to do so, and to make and sell as many copies as he pleased; and he can do this though he takes out no copyright for his work. But if he wishes to have the benefit of the exclusive right to do this, he can get it by securing a copyright under the act of congress. All that he obtains, then, by this copyright, all that he asks for or needs, and all it was designed to confer on him, is to make the right which he had already in common with everybody else, an exclusive right in him—a monopoly in which no one can share without his permission.

But let us suppose that the book which he has thus copyrighted is an obscene and immoral book, which, by the law of the state in which it is published, may be seized and destroyed, and for that reason; does this statute, which forbids any one else but him to print or publish it, authorize him to do so? Can he violate the law because no one else can do it? Does the copyright confer on him a monopoly of vice, and an immunity from crime? Suppose a discovery of a cheap mode of producing intoxicating liquor, in regard to which the inventor obtains a patent for the product; does this authorize him to defy the entire system of state legislation for the suppression of the use of such drinks? The answer is that the purposes of the patent law and of the constitutional provision are answered when the patentee is protected against competition in the use of his invention by others; and when the law prevents others from infringing on his exclusive right to make, use, or sell, its object is accomplished. This proposition is fully supported by the supreme court in the case of *Patterson* v. *Kentucky*, 97 U. S. 501. That case also cites with approval the following language from the opinion of the supreme court of Ohio in the case of *Jordan* v. *Overseers of Dayton*, 4 Ohio, 295:

"The sole operation of the statute [the patent law] is to enable him [the inventor] to prevent others from using the product of his labors, except with his consent. But his own right of using is not enlarged or affected. There remains in him, as in every other citizen, the power to manage his property or give direction to his laborers at his pleasure, subject only to the paramount claims of society, which require that his enjoyment 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."

The principle is reaffirmed in *Webber* v. *Virginia*, 103 U. S. 344.

2. Does the Missouri statute impair the obligation of any contract? The only one to which we are referred as affected by it is the contract found in the patent between the United States and the patentee. Some reference is made to a contract between the *public* and the patentee. We know of no such contract in a case like this, except such as may be found to exist between the parties to it, namely, the United States on one side and the patentee on the other. If we

concede such a contract to exist, it can extend no further than the right granted to the patentee under the patent laws. We have already shown that this is not the original or absolute right to make, to use, and to sell, which is a right not dependent on the patent, but the right to be protected against the manufacture, use, or sale of this product by others without his permission. When the state of Missouri shall pass a law that everybody may manufacture, use, and sell oleomargarine, it will probably impair the obligation of the Mege patent. If it does not, it will certainly authorize the infringement of his right under the patent, and will be void for that reason. It will be, then, immaterial whether it impairs the obligation of his contract or not.

3. We are unable to see that it is a regulation of commerce among the several states. If it can be called a regulation of commerce at all, it is limited to the internal commerce of the state of Missouri. Being a criminal statute, there is no pretense that it can have any operation outside the boundary of the state. The person who manufactures or sells the article outside of the state is not liable to the penalties of law. The statute does not forbid its importation or exportation, the bringing of it into the state, or carrying it out of the state; nor is its use in the state forbidden to those who choose to use it even for food. It is only forbidden to manufacture it or to sell it for food, to take the place of butter for that purpose. For all other purposes it may be made and sold in the state, and for that purpose, or any other, it may be imported or exported without violating the law. If it could be seen that the law was directed by way of discrimination against the product of a sister state, while no such prohibition existed against the same product in Missouri, or was intended to prevent buying and selling between the states, or importation and exportation, whereby the citizens or the productions of a neighboring state were placed in a worse position in regard to that article than the citizens or the productions of Missouri, the argument would not be without force. Such is the doctrine laid down by the supreme court of the United States in *Woodruff* v. *Parham*, 8 Wall. 123; and in *Hinson* v. *Lott*, Id. 148; and *The State Freight Tax Case*, 15 Wall. 232; *U. S.* v. *Dewitt*, 9 Wall. 41.

4. We are next to inquire whether the statute deprives the owner of this product of his property, within the meaning of the clause of the fourteenth amendment which says: "Nor shall any state deprive any person of life, liberty, or property without due process of law." The statute does not, in direct terms, authorize the seizure or taking of any property, not even that whose manufacture is forbidden. The party is not, in fact, deprived of this property by the statute, or by any proceeding which it authorizes. The personal punishment, by fine and imprisonment, which the statute imposes, must be inflicted according to the law of Missouri, which allows a trial by jury, with all the other forms which from time immemorial