

In re McALLISTER.

(Circuit Court, D. Maryland. June 11, 1892.)

1. OLEOMARGARINE—INTERSTATE COMMERCE—ORIGINAL PACKAGES.

Code Md. art. 27, § 90, providing that no person shall have oleomargarine in his possession with intent to sell the same, or shall offer the same for sale, is, as to original packages, an interference with interstate commerce, and therefore unconstitutional.

2. SAME—BREAKING OF PACKAGE—REMOVING LID FOR INSPECTION.

Removing the lid of an original package of oleomargarine, so that a prospective buyer may examine its contents, is not such a breaking of the package as will destroy its original character.

At Law. Petition by Charles E. McAllister for writ of *habeas corpus*. Petitioner had been convicted in a Maryland court of the offense of selling oleomargarine, and the judgment was affirmed in the state supreme court. See 20 Atl. Rep. 148. Writ granted, and petitioner discharged.

Thomas G. Hayes, for petitioner.

John P. Poe, Atty. Gen., and James Hews, for the State.

BOND, Circuit Judge. The petitioner has been arrested and indicted by the proper authorities of the city of Baltimore, and is now in jail, his bail having surrendered him. The indictment is for a violation of Code Pub. Gen. Laws Md. art. 27, §§ 88-91, inclusive, relating to the sale of oleomargarine.¹ It contains three counts. The first charges that petitioner did sell to one Simon N. Miller, as an article of food, 10 pounds of an article manufactured out of an oleaginous substance designed to take the place of butter. The second count charges that petitioner offered to sell to Simon N. Miller 10 pounds of the manufactured article, and the third count charges that he had in his possession, with intent to sell the same, a certain compound, so manufactured, out of an oleaginous substance other than pure milk or cream. There is little dispute about the facts material to the decision of this question, which resolves itself into this: Whether or not a party living in the state can order from another state a package of oleomargarine, and sell it in the original package to a citizen of Baltimore. The proof shows that there was but one sale by petitioner,—that of 10 pounds to Miller. The package in question was manufactured in Chicago by Braun & Fitts. It had all the internal revenue stamps and brands on it to show that the act of congress had by them been complied with. There is some dispute as to whether McAllister was acting as the agent of some one else or on his own responsibility. It seems to us this makes but little, if any, difference. The proof is that he received the package from Braun & Fitts, of Chicago, had it in his possession, and sold it to Miller. It appears from the evidence that Pope & Janney, dealers in but-

¹ Code Md. art. 27, § 90, provides, with respect to oleomargarine, that no person "shall have the same in his possession with intent to sell the same, or shall sell or offer the same for sale."

ter in Baltimore, procured Miller and another to go to McAllister's place of business, and seek to purchase butter, apparently thinking that he would sell them oleomargarine for butter. When asked by Miller if he had butter for sale, he replied he had not, but he had oleomargarine, which he was asked to show. This he did. Miller then asked to have 2 pounds of the article sold to him, but McAllister replied that he could not sell less than 10 pounds in the original package. The two emissaries of Pope & Janney then left, but, after consultation, returned, and desired to look at the oleomargarine. McAllister removed the lid of the tub, Miller tasted it, and purchased the 10 pounds, package and all. Having, as they thought, successfully played the role of that unadmired person who did all he could "to increase the trespass of Israel," McAllister, upon their testimony, was indicted as stated.

That a person may import an article from a foreign country or one of the states of the Union, and sell it in the condition in which it was imported, is not to be disputed now, after a long line of decisions by the supreme court, running as far back as Chief Justice MARSHALL's day. A state may regulate the sale and storage of articles dangerous to the health of the citizen, but it cannot prohibit the importation. The statute under which McAllister is indicted makes no allusion to the fact that it has a hygienic purpose, and it does not regulate the sale of oleomargarine, but prohibits its possession altogether in the hands of the importer. It is argued that the taking the lid from the tub containing this oleomargarine was a breaking of the package so as to destroy its original character. This in no sense did it do. The goods had in no way become commingled with his property or the general property of the state. *Low v. Austin*, 13 Wall. 29. Any one calling for oleomargarine with an honest purpose would have purchased this package as an original one, even if he knew it had had its lid lifted off once to see whether or not it held another substance than it purported to hold. The laws of the United States recognize oleomargarine as a merchantable article. Being such, while a state may perhaps regulate its sale, it cannot prohibit its importation. The statute in question does this, and is unconstitutional, and in this respect void. The petitioner is discharged.

APPLETON MANUF'G CO. v. STARR MANUF'G CO. *et al.*

(Circuit Court, N. D. Illinois. July 23, 1892.)

PATENTS FOR INVENTIONS—PATENTABILITY—CORN HUSKER.

Letters patent No. 290,571, issued December 18, 1883, to S. B. Goddard, for an improvement in the method of reducing corn in the stalk and separating the kernels, consisting of a cutter with feed rollers in front, a beater or thresher, a revolving screen or separator, and a shaking screen under it, all mounted in one frame, and so geared that the parts are driven by a single band wheel, are void, since it consists of old and well-known devices, not so combined as to form a single machine.

In Equity. Bill by the Appleton Manufacturing Company against the Starr Manufacturing Company, Delos Dunton, and H. G. Sawyer, to restrain infringement of a patent.

Offield, Towle & Lenthicum, for complainant.

Raymond & Veeder, for defendants.

GRESHAM, Circuit Judge. This suit is brought for alleged infringement of letters patent No. 290,571, granted to S. B. Goddard, December 18, 1883, for certain new and useful improvements in the method of reducing corn in the stalk and separating the kernels. The complainant is the assignee of the patent. The invention is thus described in the specifications:

"My invention has relation to a new and useful method of reducing and separating corn from the stalk, husk, and cob; and the object is to take the stalk corn and so treat it at one operation that the grains will be separated from the cob, and at the same time the stalk, husk, and cob are cut up or comminuted and ready for use as stock food,—ensilage; or in this fine condition it may be plowed into the soil as a fertilizer without any further treatment; and to these ends the novelty consists in the method hereinafter described, and particularly set forth in the claims. In carrying out my invention the result is accomplished by means of the devices shown in the accompanying drawings; but I do not wish to be understood as limiting myself to the means shown, as any mechanism which will produce the same result may be used. * * * It will thus be seen that the machine may be placed in the field, and the stalks of corn, being first cut down a few inches from the ground, may then be fed in suitable bunches to the feed rollers, C, C, and cutters which cut the stalks, ears, and husks into small pieces, and, as above stated, this cutting operation removed the greater portion of the grain from the cob, and the remaining adhering grains are entirely removed by the thrashing action of the cylinders, H, H, and the mass then passes into the revolving screen, I, where the corn and chaff or dirt pass through said screen, and fall into the shaker, L, while the stalks, husks, and cobs pass out the lower end upon the incline, K, thence to the ground. The grain, corn, and chaff in falling into the shaker, L, is continually agitated, which sifts the chaff through the bottom, leaving the corn clean and clear, to be discharged through the opening, N."

The mechanism described for carrying out the process consists of a cutter with feed rollers in front, a beater or thresher, a revolving screen or separator, and a shaking screen under it, all mounted in one frame, and so connected or geared that the parts are driven by a single band wheel. The two claims read: