

New Jersey Court of Errors & Appeals

DESHLER,

ads.

ANDREW.

In error.

POINTS OF J. D. BEDLE, for Deshler.

This suit is not against The United States Dairy Co., but against Charles D. Deshler *individually*.

The notice complained of was signed by "C. D. Deshler, Secretary of The United States Dairy Co.," and shows on its face to have been given by *the company*.

The immediate occasion of its publication was the fact that The United States Dairy Co. had a lessee of the Mége patent in Cincinnati, being The Western Manufacturing Company, and also a lessee in Chicago The National Dairy Co.; that Andrew had published in The Cincinnati Gazette of January 24, 1880, and in The Cincinnati Commercial of March 8, 1880, two notices (see page 155-6) which disturbed The Western Manufacturing Company; that afterwards Andrew went directly from Cincinnati to Chicago in March, 1880, page 82, &c., he having been there before in January, 1880, and made the contract of February 3, 1880, with Ward, and was actually in Chicago about the time of the notice in question in this case, which notice was sent by Mr. Deshler as secretary, for publication in the Chicago papers, page 101-2. The notice was evidently published for the protection of the rights of The U. S. Dairy Company.

I.

The State Court has no jurisdiction in this case.

It is a suit for *slander of title* to an alleged patent right.

I admit that where the question of a patent is to be determined collaterally or incidentally, that the State Court may have jurisdiction; but where the patent is the *basis* of the suit, the United States Courts have exclusive jurisdiction.

Patents, speaking generally, are not subjects of ordinary common law jurisdiction in this country. They depend upon acts of Congress for their existence and peculiarly belong to federal jurisdiction.

The present acts of Congress are very explicit. Original jurisdiction is given to the United States Courts by sec. 629 of U. S. Revision, clause 9, "of all suits at law or in equity arising under the patent or copy right laws of the United States," and such jurisdiction is made *exclusive* by sec. 711 of Revision, clause 5, "of all cases arising under the patent right or copy right laws of the United States."

Previous to this latter clause there was no act of Congress *in terms*, making the jurisdiction exclusive.

The language of the act of 1836, Brightly, 732, sec. 48, was "all actions, suits, controversies and cases arising under any law of the United States granting or confirming to inventors the exclusive right to their inventions or discoveries shall be originally cognizable as well in equity as at law by the Circuit Courts of the United States," &c., yet under that provision the jurisdiction was held exclusive.

The same language was in the act of 1870, U. S. Statutes, vol. 16, p. 206, sec. 55.

3 Comstock, 9. Dudley v. Mayhew.

57 N. York, 119. Hovey v. Rubber Co.

- 47 N. York, 443. Middlebrook v. Broad-
bent.
3 McLean, 523. Brooks v. Stolley.
2 Halstead Chy. 600. Parkhurst v. Kins-
man.
6 C. E. Green, 211. Green v. Wilson.
Curtis on Patents, § 496.

Title is necessarily involved in this case just the same as it would be for slander of title for lands.

The plaintiff also in attempting to make out his case shows that the *actual nature of the controversy is concerning conflicting patents.*

There is no reason why our Courts should assume jurisdiction over this class of interests for the complicated questions which generally arise with reference to them, fittingly belong to the National tribunals.

II.

The only foundation upon which such a suit as this can be sustained, if at all, is in extending the doctrine of slander of title of real estate to patent rights. It has been extended to *goods*, but no further.

- 3 B. & S. 266-7. Young v. Macrae.
L. R. 4 Q. B. 734. Wren v. Wield.

I find no case which allows a recovery for slander to a patent right. It is a very important question whether patent rights should come within the same rule of law. The difficulty of dealing with the validity of such interests; their intangible nature and the uncertainty of such property; depending often upon extraneous questions of originality and complicated title, and the ease with which the public may be imposed upon by worthless rights, would seem to require in the interest of the public that the law should not be extended. The public interest is best subserved by leaving the parties to their ordinary actions and remedies for infringement.

Patent right frauds are too common to give the holders of patents the advantage of such a suit as this. Better say that this kind of a case is unknown to the common law, and that the doctrine of slander of title should not embrace it.

III.

There is no proof to justify a verdict that the publication was *malicious*.

The notice dissected is as follows :

1. That The United States Dairy Company are the sole owners of the patents of Mége for the *discovery and manufacture* of the butter-like product or oleomargarine, &c. [See that part particularly.]

2. The *company* cautions the public against manufacturing, vending or dealing in the same under authority of any one claiming to have *subsequent* patents, as they will render themselves liable to prosecution, &c.

3. That suits are pending in the United States Circuit Court against parties using the Andrew patent.

4. That a final injunction and decree *was* obtained against the said Andrew and his associates in the Circuit Court of the United States for the Southern District of New York, without giving particulars, *but referring to the record of said Court*.

5. The company gives this notice as cautionary to save innocent parties from the cost and litigation of any infringement of its patented rights, and to disable them from pleading ignorance when suits are brought.

6. The notice is signed with the name of Deshler as secretary of the company, but it is the notice of

the company. The notice was addressed, "To all whom it may concern."

The giving of cautionary notices by parties claiming rights under patents so that the innocent may not suffer, is usual, and commended in the law.

L. R. 4 Q. B. 734. *Wren v. Wield*.

Common fairness requires it in all cases where innocent parties may suffer, if not informed.

See 4 Burr. 2425. *Hargrave v. Le Breton*.

There is no charge or implication of *fraud* directly or indirectly in the notice.

The notice shows on its face that it was the notice of the company signed by the defendant as its secretary, and not as a stranger. It is presumed in the law that the notice was *bona fide*. It is of the nature of a privileged communication and could only be actionable, if at all, on proof of *malice* and want of probable cause.

See opinion of Chief Justice in the case on demurrer, 14 Vroom 16.

Add. on Torts, 809-10.

Wren v. Wield, supra.

Roscoe's N. P. Ev., 768.

Hargrave v. Le Breton, supra.

2 C. M. & R., 707. *Green v. Button*.

3 C. B., 831. *Pater v. Baker*.

In undertaking to prove malice, the fact that Deshler was merely the secretary is important at least as adding to the weight of the presumption of a want of malice. He was not necessarily bound to know all the facts stated in the notice. Usually, according to business, the secretary is but the scribe. He ordinarily acts under direction and information given from superior sources, and to hold him individually in damages, the proof should be clear that malice actually existed on his part.

No attempt was made to show that the defendant had any different relation to the company than that of secretary, or that he signed the notice otherwise than in the performance of such a duty as belonged to the position he held, or that he had any interest in the stock of the company or otherwise.

But let us see further how the plaintiff's case stands.

No attempt was made to disprove any part of the notice, except that part with reference to the injunction; hence, as stated by the Court below, the rest of it must be regarded as true. What difference then could an error between a preliminary and a final injunction make to the plaintiff, legally and honestly speaking, if the rest of the notice were true? [Read the notice in this light.] As the case stood, the mistake was purely *immaterial*.

To disprove that part with reference to the injunction, the plaintiff offered the record of a suit in the U. S. Circuit Court for the Southern District of New York, brought by The United States Dairy Company against Andrew and others, which includes a decree for injunction and an injunction, see p. 109-151.

The injunction on its face appears to be *final*, although from the record, lawyers can see that it should have been what is ordinarily called preliminary.

The suit was pending from November, 1874, to January, 1879. During all which time Andrew and his associates were enjoined.

Andrew in his answer set up his patent of 1874, (p. 125, l. 30,) which patent appears in Andrew's evidence (p. 93.)

Andrew it seems had at different times about six patents for the manufacture of oleomargarine and its products (see pages 45, 90, 92), and all of which were intended, as he claimed, to render the fat so as to produce a pure product free from the contamination of the membrane and fibre, and out of which pure butter could be made (see pages 90, 91, 93, 94.)

The object was the same—the difference only being in machinery (p. 90.)

By referring to the notice in question, it will be seen that the claim of The U. S. Dairy Company was of patents “for the *discovery and manufacture* of the butter-like product or oleomargarine, or fat rendered at temperatures that will produce a product free from disagreeable taste or odor, and of every derivation or product therefrom, or from animal fats, including the manufacture of butter, butterine, oleomargarine butter, and all butter made from the aforesaid product.”

The evidence of Ward is, that his conversation with Andrew was in reference to the exclusive right of all his patents, and that if he had bargained he would have expected that he was getting the right to manufacture the product, oleomargarine (pages 72, 74–5.)

The record offered by Andrew sets out the claim of The U. S. Dairy Company under the Mége patents and the patent itself (pages 114–119.) The existence of which patents is admitted in the answer of Andrew, although in his answer he controverts their validity.

The claim of The U. S. Dairy Company is for the *discovery and manufacture* of the butter-like product or oleomargarine, &c., or in other words, the process, the art by which it may be produced, the product, the particular character of the machinery being an indifferent matter. See the Mége patent (p. 114 and 119, and also the claim in the notice.)

I invite particular attention to the case of *Tilghman v. Proctor* on this subject, 12 Otto, 707, *as of the greatest importance.*

Any invention of machinery that would produce the results is an infringement if used without the consent of the owners of the patent who have patented the process or the art. The word process, does not refer to machinery but to the discovery of and

the principle by which the product may be obtained pure and sweet and from which pure butter may be made.

(See also the case of Cochran v. Desner, 4 Otto 781-7.

Explain this. (See p. 114, l. 35, &c.; also p. 115, l. 37; also p. 118, l. 39 and p. 119.)

Andrew's idea evidently was to get up different modes of machinery to facilitate the manufacture, losing sight of the great fact of the discovery and acting as though the patent of mere appliances, would give him the benefit of the process or art.

See specifications of Andrew p. 15, l. 29, p. 17, l. 18, p. 21, l. 40. Also his patent of 1874, p. 93, and any other one of his patents that may be in evidence.

The great genius of the discovery was in the fact that the fat of the animal could be so resolved artificially in analogy to the natural processes of nature as to produce a like product.

It is palpable that from the plaintiff's case, in the best view for him, there is a real controversy which goes to the bottom of his patents, and that when The United States Dairy Company published the notice, it was in the assertion of a *bona fide* claim of right under its patents as against Andrew.

With such a controversy and suits pending, which must be considered admitted as the case stands, how perfectly immaterial would an error be between a preliminary and a final injunction.

But I go further than the mere fact of controversy and insist that Andrew's patents are *an absolute infringement*. This is already shown in the preceding argument. If that is so, the mistake is of no account whatever, and in addition to that Andrew had *no right to negotiate with Ward on any basis that involved the right to manufacture the product and its derivations*.

The contract of February 3d, 1880, between Andrew and Ward, (p. 105-6) (which by the way is not the ground for special damage in this case,) was evidently made to grant the right to manufacture oleomargarine and to protect Ward against all expenses of any liti-

gation which challenged the right of Ward to such manufacture. The alleged negotiation with Ward as is clearly shown by the testimony, was also predicated upon the same idea, p. 74, l. 40, p. 75, also p. 68.

Remembering that a suit like this can not be sustained without proof of special damage, it is so clear that the proposition made by Ward, if not a fraud altogether, is a violation of the rights of The U. S. Dairy Company, that there is no foundation for the action at all. If however, we deal only with the fact that there existed a fair controversy, the mistake is not only *indifferent*, but from it alone the jury would have no right to draw the deduction of *bad faith*. At its worst, as the case stood, it was a natural error for any one to make, particularly if not skilled in the law, and which would not likely be detected by a person simply signing a notice as Secretary.

By carefully examining the case of *Wren v. Weild* (p. 736-7) and *Andrew v. Deshler* in the Supreme Court, there must be something in the proof that would justify a jury in finding "a mala fide and malicious attempt to injure the plaintiff by asserting a claim of right against his own knowledge that it was without foundation."

The case is completely destitute of any fact from which a jury could justly and legally find malice.

It cannot be said with fairness that the jury should have been allowed to speculate on such a matter.

In actions for malicious prosecution, probable cause is a question of law.

2d Greenleaf Ev., § 453.

And in this case the evidence is consistent alone with an error without malice.

But further. *There is no evidence to show that Deshler, the secretary, had any knowledge of the existence of the Andrew patent of April 10, 1877, upon which this case is founded.*

The plaintiff claims that it was actually surrendered April 14, 1880, less than a month after the notice complained of was published, and a reissue taken out April 14, 1880 (p. 24, 25, 27, 29, 41 and 82.)

The case rests only on the patent of 1877 (p. 95.)

By looking at page 90, an attempt was made to offer other patents, which were not admitted, and to amend. How then can it be said that there was any intention to slander this particular patent?

No testimony can be found in this case from which the deduction could be fairly drawn of a bad intent on the part of Deshler. The notice itself refers to the record, evidently showing that whoever drafted the notice for the company desired that persons should see the record. Andrew knew of the fact of the suit, the Court it was in, and where to go to find out about the injunction. He also had lawyers in his employ in New York. (See pages 87-8.) Practically speaking, any one about to negotiate for such rights as were claimed by Andrew would naturally want to know all about them, and could easily have informed himself with reference to the condition of the suit to which reference was made in the notice.

The fact is, Ward knew that The National Dairy Company in Chicago was operating under the Mège patent. It was a matter of common report. [See Ward's evidence, p. 76-7.]

Common fairness would have required Andrew to give Ward, if Ward was dealing in good faith, which is very doubtful, information of the nature of the controversy between him and The U. S. Dairy Company, and the simplest prudence on the part of Ward would have compelled him also, even without notice from Andrew, to look into the character of the controversy if he wanted to be just.

The only attempt to prove the inaccuracy of that part of the notice with reference to a final injunction is in producing the record in question, and assuming that the notice relates to that, it is so drawn as to give any legal adviser the means of ascertaining the facts.

The case rests upon a mere quibble, and is destitute of any improper spirit or design on the part of Deshler. There is nothing in the notice which *per sé* carries with it any implication even, of malice and is perfectly explainable, reasonably and naturally, on the idea of mistake.

It may also be well said that the injunction being on its face final, does not disprove the notice.

Deshler, as appears from this case, lives in New Brunswick. Andrew also lives in this State, and it looks as if the effort was to make Deshler a victim because he could be easily reached.

I invite particular attention to the remarks of the Court at the Circuit in granting the nonsuit, on the question of malice and untruth.

In January 1877 the United States Dairy Company consented that the suit against Andrew and others should be discontinued through their solicitors, and it was, accordingly. This was over four years after the suit was commenced, Andrew and his associates in the mean time resting under the injunction.

There is no proof that the Secretary knew of the discontinuance. Naturally he would not know it.

Neither does it appear why such consent was made. It was certainly a liberal act toward Andrew and perhaps not an improper one at that time, considering the fact that he and his associates submitted to the injunction for such a length of time as to justify the belief of a disposition on his part to do right. He however illy re-paid the kindness, for in January 1880, he again commenced to disregard the rights of The U. S. Dairy Company, and which necessitated further action on the part of that company.

Andrew also says that he abandoned the patent of 1874. What he means by that I do not exactly know. (See p. 94.) I judge from that that he so far ceased to operate under it that The United States Dairy Company were satisfied to discontinue the suit in question. He takes advantage of that however, and turns up in different shapes under other claims which depend for their use entirely upon a violation of the

Mége patents. None of his subsequent patents could give him a better standing than under his patent of 1874, and if that is an infringement, the mere use of machinery although under other patents could not give him the benefit of the discovery and the art.

IV.

I desire to present the point distinctly, apart from the considerations already referred to, that where the notice shows on its face that it came from The United States Dairy Company, and is given by the company as a caution and simply signed by the secretary, that in the absence of evidence to connect him with it otherwise, he is not individually responsible for any errors in it.

The knowledge of the subject matter of the notice properly belongs to and is obtained from other officials, and his signature as secretary is only to evidence the fact that it came from the company.

I do not now insist that this rule would apply to words in themselves charging fraud, or which would show personal malice, but in the absence thereof, I respectfully insist that the secretary is *privileged*.

(See *Hargrave v. Le Breton*, supra.)

This is an important question to officers of corporations who hold positions in subordination to others and who are chargeable with duties of a limited character.

But if the Court should come short of that in any way, then according to *Wren v. Weild*, p. 736, the plaintiff must show that the defendant did not so much as *fancy* he had a right to sign the notice he did, but knew that it was *utterly without ground of truth*.

It would be very hard law to hold a secretary to liability in such a case as this, and more particularly when the reference in the notice is not to the patent of 1877, and when there is no evidence that he knew of its existence.

We submit that the nonsuit was right.

NEW JERSEY, ss.

The State of New Jersey, to the Chief Justice and other Justices of our Supreme Court of Judicature, greeting :

For as much as in the record and proceedings, and also in giving of judgment in a certain ¹⁰
[L. S.] ¹⁰
plaint, which was in our Supreme Court of Judicature, before you, between William E. Andrew, plaintiff, and Charles D. Deshler, defendant, in a plea of trespass on the case, manifest error hath intervened, to the great damage of the said William E. Andrew, as it is said, we being willing that the error, if any there be, should, in due manner, be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be thereupon given and affirmed, then you distinctly and openly ²⁰
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send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon, for correcting that error, what of right, and, according to the law and custom of the State of New Jersey ought to be done.

Witness our Chancellor and President Judge of our ³⁰
said Court of Errors and Appeals, at Trenton aforesaid, the
day of March, in the year of our Lord one thousand eight hundred and eighty-two, &c.

HENRY C. KELSEY,
Clerk.

LINN & BABBITT,
Attorneys.

NEW JERSEY SUPREME COURT.

 WILLIAM E. ANDREW,

vs.

CHARLES D. DESHLER.

} In Case.

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 NEW JERSEY SUPREME COURT, of the
 26th day of May, 1880 Hudson } ss.
 County.

Charles D. Deshler, the defendant in this suit, was summoned to answer unto William E. Andrew, the plaintiff therein of a plea of trespass on the case, and thereon the said plaintiff, by Linn & Babbitt, his attorneys, complains :

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Ist. For that whereas the said plaintiff, before and at the time of the committing of the grievances by the said defendant hereinafter mentioned, was the owner of a certain patent, granted to him by letters patent of the United States of America, entitled "Improvement in Processes and Apparatus for Rendering Fats," which letters patent are numbered 189, 541, and bears date April tenth, eighteen hundred and seventy-seven, and entitled to all the rights and privileges granted and secured to him by law, and by said letters patent, a true copy of the specifications forming part of said letters patent is hereunto annexed, and the plaintiff prays they may be taken as a part of this declaration.

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And whereas, the said plaintiff, before and at the time of the committing of the grievances hereinafter mentioned, had contracted with Raferty & Williams, of the City of New York, in the State of New York, for the right to use his said improvement in Processes and Apparatus for Rendering Fats, mentioned and described in said specification of said letters patent, and secured to

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him by said letters patent, by which he was receiving and entitled to receive large gains and profits in the shape of license fees and royalties for the use of said improvement.

And whereas, the said plaintiff, before and at the time of the committing of the grievances hereinafter mentioned, was negotiating with D. Ward & Co., of the City of Chicago, in the State of Illinois, and with other parties for the right to use his said improvement, by 10 which he expected to, and could have received large additional gains and profits for the use thereof, and but for the grievances committed by said defendant as hereinafter mentioned, would have contracted with said D. Ward & Company, and with other parties for the use of said improvement, and would have received large gains and profits from the same. Yet, the said defendant, well knowing the premises, but contriving, and falsely and fraudulently intending to injure the said plaintiff, and to cause it to be suspected and believed 20 that his said letters patent were not valid and effectual, and that he had no rights or interests secured thereby, and to hinder and prevent the said plaintiff from selling or disposing of any interest in his said letters patent, or of contracting with said D. Ward & Company, or with other parties for the use of the same, and to hinder and prevent the said plaintiff from securing or receiving any royalties for the use of his said improvement secured to him by said letters patent, and to cause and procure the said plaintiff to sustain and be put to divers 30 great expenses in establishing the validity of his said letters patent, and to vex and harass, impoverish and wholly ruin the said plaintiff, heretofore, to wit: On the thirteenth day of March, in the year eighteen hundred and eighty, at the City of Chicago, in the State of Illinois, to wit: At Jersey City, in the County of Hudson aforesaid, wrongfully and injuriously, falsely and maliciously did publish and cause and procure to be published in a certain newspaper called "The Chicago Daily Tribune," published and circulating in said City 40

of Chicago, in the State of Illinois, and elsewhere, of and concerning the said plaintiff, and of and concerning his said letters patent, and his title and interest in the same, a certain false, malicious, and defamatory libel, in the words and figures following, that is to say :

“ To all whom it may concern :

The United States Dairy Company, the sole owners of the patents of Hyppolite Mege, Paris, for the United States, for the discovery and manufacture of the
 10 butter like product or Oleomargarine, or fat rendered at temperatures that will produce a product free from disagreeable taste or odor, and of every derivation or product therefrom, or from animal fats, including the manufacture of butter, butterine, Oleomargarine Butter, and all butter made from the aforesaid product.

Hereby caution the public against engaging in the manufacture of any of the aforesaid products, or in vending or otherwise dealing in the same, under the
 20 authority of any party or parties claiming to have subsequent patents for the above purposes, or any of them, as they will thereby render themselves liable to prosecution for infringement and damages. Suits are now pending in the United States Circuit Court, against parties using the Andrew Patent (meaning the said patent of said plaintiff.) A final injunction and decree, was obtained against the said Andrew (meaning the said plaintiff,) and his associates, in the Circuit Court of the United States, for the Southern District of New
 30 York, as may be seen by reference to the record of said Court.

The United States Dairy Company give this cautionary notice to save innocent parties from the cost and litigation that will follow upon their engaging in any act of infringement upon its patented rights, and also to disable them from pleading ignorance when suits are brought against them.

C. D. DESHLER,

Secretary of the United States Dairy Co.

New York, March 10, 1880.”

And the plaintiff saith the words and matter of said publication were used in a defamatory sense by said defendant, thereby intending to create the impression and belief that the letters patent thus as aforesaid granted to said plaintiff were not valid and did not secure to said plaintiff any right or title to the claims mentioned in the specification annexed thereto, and that suits were then pending in the United States Circuit Court against parties using the said patent of said plaintiff, and that a final injunction and decree had 10 been obtained against the said plaintiff and his associates in the Circuit Court of the United States for the Southern District of New York, restraining him and them from the use of the processes and apparatus for rendering fats mentioned and described in the specification forming a part of his said letters patent, and that said plaintiff was guilty of fraud and misrepresentation in inducing or attempting to induce parties to contract with him for the use of his said patented improvement. 20

By means of the committing of the said several grievances, by the said defendant as aforesaid, the said D. Ward & Company, and divers other citizens, who were anxious and willing to contract with the said plaintiff for the use of the said improvement in processes and apparatus for rendering fats mentioned and described in the specification forming part of his said letters patent, and to pay him large royalties and license fees therefor, and who were then and there about to become 30 the licensees of said plaintiff for the use of his said improvement in his said letters patent, and who would thereby have become the licensees or assignees of said plaintiff for the use of his said improvement in processes and apparatus for rendering fats mentioned and secured to him by said letters patent and forming part thereof, and would have paid him large royalties and license fees for the same, were then and there deterred and prevented from contracting with the said plaintiff for the use of his said improvement mentioned 40

in and secured to him by his letters patent, or from becoming the licensees or assignees of said plaintiff for the use of the same, or from paying the said plaintiff any royalties or fees on account thereof, and then and there and from thence hitherto have respectively wholly declined to contract with said plaintiff for the use of his said improvement, or to become his licensees or assignees for the purpose of using the same, or to pay to said plaintiff any royalties or fees on account of the same; and thereby the said plaintiff was then
 10 and there hindered and prevented from selling or disposing of any interest in his said improvement or in his said letters patent to said D. Ward & Company, either by licenses or assignments thereof, and hath thereby lost and been deprived of all the advantages and emoluments which he might and would have derived and acquired from the granting of licenses to use said improvement mentioned in said letters patent, or from the assignment of any interest therein to said D.
 20 Ward & Company or any other parties, and has been forced to pay, lay out and expend various large sums of money, amounting in the whole to a large sum of money, to wit: the sum of five hundred dollars, in and about, traveling from the City of Jersey City to the City of Chicago aforesaid, for the purpose of making said licenses or assignments of interest in his said letters patent, and expenses incidental thereto.

2d. And whereas, also the said defendant, afterwards, to wit: On the eighteenth day of March, in the year eighteen hundred and eighty, at the City of Chicago, to wit: At Jersey City, in the County of Hudson, aforesaid, well knowing the premises mentioned and set forth in the introductory part of the first count of the declaration above mentioned, and further contriving and falsely and fraudulently intending to injure the said plaintiff, and to cause it to be suspected and believed, that his said letters patent were not valid and effectual, and that he had no rights or interest secured
 40 thereby, and to hinder and prevent the said plaintiff

from selling and disposing of his said interest in said letters patent, or of contracting with other parties for the use of the same, and to hinder and prevent the said plaintiff from securing and receiving any royalties for the use of his said improvement secured to him by said letters patent, and to cause and procure the said plaintiff to sustain and be put to divers great expenses in establishing the validity of his said letters patent, and to vex, harass, impoverish, and wholly ruin the said plaintiff, heretofore, to wit : On the eighteenth day of 10
 of March, in the year eighteen hundred and eighty, at the City of Chicago, in the State of Illinois, to wit : At Jersey City, in the County of Hudson aforesaid, wrongfully, injuriously, falsely and maliciously published, and caused and procured to be published, in a certain newspaper called "The Chicago Times," published and circulated in said City of Chicago, in the State of Illinois and elsewhere, of and concerning the said plaintiff, and of and concerning his said letters patent, and his title and interest in the same, 20
 the same false, malicious and defamatory libel, mentioned and set forth in the first count of this declaration, in the words and figures in said count hereinbefore mentioned and set forth ; and the plaintiff saith that the words and matters of said publication last aforesaid, were used in a defamatory sense by said defendant, thereby intending to create the impression and belief, that the letters patent thus as aforesaid granted to said plaintiff were not valid, and did not secure to said plaintiff any right or title to the 30
 claims mentioned in the specification annexed thereto, and that suits were then pending in the United States Circuit Court, against parties using the said patent of said plaintiff, and that a final injunction and decree had been obtained against the said plaintiff and his associates, in the Circuit Court of the United States, for the Southern District of New York, restraining him and them from the use of the processes and apparatus for rendering fats, mentioned and described in the specifications forming part of his said letters patent. 40

3d. And whereas, also afterwards, to wit : On the twenty-second day of March, in the year eighteen hundred and eighty, at Chicago, to wit : At Jersey City, in the County of Hudson aforesaid, the said defendant, well-knowing the premises mentioned and set forth in the introductory part of the first count of said declaration above mentioned, and further contriving and falsely and fraudulently intending to injure the said plaintiff, and to cause it to be suspected and believed,

10 that his said letters patent were not valid and effectual and that he had no rights or interests secured thereby, and to hinder and prevent the said plaintiff from selling or disposing of any interest in his said letters patent, or of contracting with other parties for the use of the same, and to hinder and prevent the said plaintiff from securing or receiving any royalties for the use of his said improvement secured to him by his said letters patent, and to cause and procure the said plaintiff to sustain and be put to divers great expenses in sus-

20 taining his said letters patent, and to vex, harass and wholly ruin the said plaintiff, heretofore, to wit : On the twenty-second day of March, eighteen hundred and eighty, at the City of Chicago, in the State of Illinois, to wit : At Jersey City, in the County of Hudson aforesaid, wrongfully, injuriously, falsely, and maliciously published, and caused and procured to be published, in a certain newspaper called "The Daily Inter-Ocean," published and circulated in the said City of Chicago, in the State of Illinois, and elsewhere, of and concerning

30 the said plaintiff, and of and concerning his said letters patent, and his title and interest in the same, the same false, malicious and defamatory libel, mentioned and set forth in the first count of said declaration above mentioned, in the words and figures in the said first count set forth ; and the plaintiff saith that the words and matters of said publication last above mentioned, were used in a defamatory sense by said defendant thereby intending to create the impression and belief that the said letters patent as aforesaid, granted to

40 said plaintiff were not valid, and did not secure any

right or title to the claim mentioned in the specification annexed thereto, and that suits were then pending in the United States Circuit Court against parties using the said patent of said plaintiff, and that a final injunction and decree had been obtained against the said plaintiff and his associates, in the Circuit Court of the United States, for the Southern District of New York, restraining him and them, from the use of the processes and apparatus for rendering fats, mentioned and described in the specification forming part of the
10
said letters patent.

4th. And whereas, also, the said defendant afterwards, to wit: On the twenty-third day of March, eighteen hundred and eighty, at the City of Chicago, to wit: At Jersey City, in the county of Hudson aforesaid, well knowing the premises mentioned, and set forth in the introductory part of the first count of the declaration above mentioned, and further contriving, and falsely and fraudulently intending to injure the said
20
plaintiff, and to cause it to be suspected and believed that his said letters patent were not valid and effectual, and that he had no rights or interests secured thereby, and to hinder and prevent the said plaintiff from selling and disposing of his said interest in said letters patent, or of contracting with other parties for the use of the same, and to hinder and prevent the said plaintiff from securing and receiving any royalties for the use of his said improvement secured to him by said letters patent, and to cause and procure the said plain-
30
tiff to sustain and be put to divers great expenses in establishing the validity of his said letters patent, and to vex, harass, impoverish and wholly ruin the said plaintiff, heretofore, to wit: On the twenty-third day of March, in the year eighteen hundred and eighty, at the City of Chicago, in the State of Illinois, to wit: At Jersey City, in the County of Hudson aforesaid, wrongfully, injuriously, falsely and maliciously published, and caused to be published, in a certain newspaper called
40
"The Chicago Evening Journal," published and circu-

lated in said City of Chicago, in the State of Illinois, and elsewhere, of and concerning the said plaintiff, and of and concerning his said letters patent, and his title and interest in the same, the same false, malicious and defamatory libel, mentioned and set forth in the first count of this declaration, in the words and figures in said count, hereinbefore mentioned and set forth; and the plaintiff saith that the words and matters of said publication last aforesaid, were used in a defamatory
 10 sense by said defendant, thereby intending to create the impression and belief that the letters patent thus as aforesaid, granted to said plaintiff, were not valid, and did not secure to said plaintiff any right or title to the claims mentioned in the specification annexed thereto, and that suits were then pending in the United States Circuit Court against parties using the said patent of said plaintiff, and that a final injunction and decree had been obtained against the said plaintiff and his associates, in the Circuit Court of the United States
 20 for the Southern District of New York, restraining him and them from the use of the processes and apparatus for rendering fats, mentioned and described in the specification forming part of his said letters patent.

5th. And whereas also, the said defendant, afterwards, to wit: On the eighteenth day of March, in the year eighteen hundred and eighty, at the City of Cincinnati, in the State of Ohio, to wit: At Jersey City, in the County of Hudson aforesaid, well knowing the
 30 premises mentioned and set forth in the introductory part of the first count of the declaration above mentioned, and further contriving, and falsely and fraudulently intending to injure the said plaintiff, and to cause it to be suspected and believed that his said letters patent were not valid and effectual, and that he had no rights or interest secured thereby, and to hinder and prevent the said plaintiff from selling and disposing of his said letters patent, or of contracting with other parties for the use of the same, and to hinder and pre-
 40 vent the said plaintiff from securing and receiving any

royalties for the use of his said improvement, secured to him by said letters patent, and to cause and procure the said plaintiff to sustain, and be put to divers great expenses in establishing the validity of his said letters patent, and to vex, harass, impoverish and wholly ruin the said plaintiff, heretofore, to wit : On the first day of April, eighteen hundred and eighty, at the City of Cincinnati, in the State of Ohio, to wit : At Jersey City, in the County of Hudson aforesaid, wrongfully, injuriously, falsely and maliciously published, 10 and caused, and procured to be published, in a certain newspaper called "The Cincinnati Enquirer," published and circulated in said City of Cincinnati, in the State of Ohio, and elsewhere, of and concerning the said plaintiff, and of and concerning his said letters patent, and his title and interest in the same, the same false, malicious and defamatory libel, mentioned and set forth in the first count of said declaration above mentioned, in the words and figures in the first count set forth ; and the plaintiff saith that the words and 20 matters of said publication, last above mentioned, were used in a defamatory sense by said defendant, thereby intending to create the impression and belief that the said letters patent, as aforesaid, granted to said plaintiff, were not valid, and did not secure any right or title to the claims mentioned in the specifications annexed thereto, and that suits were then pending in the United States Circuit Court, against parties using the said patent of said plaintiff, and that a final injunction and decree had been obtained against the 30 said plaintiff and his associates, in the Circuit Court of the United States, for the Southern District of New York, restraining him and them from the use of the processes, and apparatus for rendering fats, mentioned and described in the specification forming part of the said letters patent.

6th. And whereas also, the said defendant, afterwards, to wit : On the first day of April, eighteen hundred and eighty, at the City of Cincinnati, to-wit : At 40

Jersey City, in the County of Hudson aforesaid, well knowing the premises mentioned and set forth in the introductory part of the first count of the declaration above mentioned ; and further contriving, and falsely, and fraudulently intending to injure the said plaintiff, and to cause it to be suspected and believed, that his said letters patent were not valid and effectual, and that he had no rights, or interest secured thereby, and to hinder and prevent the said plaintiff from selling and
 10 disposing of his said interest in the said letters patent, or of contracting with other parties for the use of the same, and to hinder and prevent the said plaintiff from securing and receiving any royalties for the use of his said improvement, secured to him by said letters patent, and to cause and procure the said plaintiff to sustain and be put to divers great expenses in establishing the validity of his said letters patent, and to vex, harass, impoverish, and wholly ruin the said plaintiff, heretofore, to wit : On the first day of April, in the year
 20 eighteen hundred and eighty, at the City of Cincinnati, in the State of Ohio, to-wit : At Jersey City, in the County of Hudson aforesaid, wrongfully, injuriously, falsely and maliciously published, and caused to be published, in a certain newspaper called "The Cincinnati Commercial," published and circulated in said City of Cincinnati, in the State of Ohio, and elsewhere, of and concerning the said plaintiff, and of and concerning his said letters patent, and his title and interest in the same, the same false, malicious, and defamatory libel,
 30 mentioned and set forth in the first count of this declaration, in the words and figures in said count hereinbefore mentioned and set forth ; and the plaintiff saith that the words and matters of said publication, last aforesaid, were used in a defamatory sense by said defendant, thereby intending to create the impression and belief that the letters patent, thus as aforesaid, to said plaintiff, were not valid and did not secure to said plaintiff any right or title to the claims mentioned in the specifications annexed thereto, and that suits were
 40 then pending in the United States Circuit Court against

parties using the said patent of said plaintiff, and that a final injunction and decree had been obtained against the said plaintiff and his associates in the Circuit Court of the United States, for the Southern District of New York, restraining him and them from the use of the processes and apparatus for rendering fats, mentioned and described in the specifications forming part of his said letters patent.

By means of the committing of the said several 10
grievances by the said defendant as aforesaid, as mentioned and set forth in the second, third, fourth, fifth and sixth counts of the above declaration, the said D. Ward & Company and divers other citizens, who were anxious and willing to contract with the said plaintiff for the use of the said improvement in processes, and apparatus for rendering fats, mentioned and described in the specifications forming part of his said letters patent, and to pay him large royalties and license fees there- 20
for, and who were then and there about to be and become the licensees of said plaintiff, for the use of his said improvement in his said letters patent, and who would thereby, have become the licensees or assignees of said plaintiff, for the use of his said improvement, in processes and apparatus for rendering fats, mentioned in, and secured to him by said letters patent, and forming part thereof, and would have had paid him large royalties and license fees for the same, were then and there deterred and prevented from contracting 30
with the said plaintiff, for the use of his said improvement, mentioned in, and secured to him by his letters patent, or from becoming the licensees or assignees of the said plaintiff for the use of the same, or from paying the said plaintiff any royalties, or license fees on account thereof, and then and there, from thence hitherto, have respectively wholly declined to contract with the said plaintiff, for the use of his said improvement, or to become his licensees or assignees for the purpose of using the same, or to pay to said plaintiff 40
any royalties or fees on account of the same; and

thereby the said plaintiff was then and there hindered and prevented from selling, or disposing of any interest in his said improvement, or in his said letters patent, either by licenses or assignments thereof, to said D. Ward & Company, or any other parties, and hath thereby lost and been deprived of the advantages and emoluments which he might and would have derived and acquired from the granting of licenses to use the said improvement mentioned in said letters patent, or
10 from the assignment of any interest therein, and has been forced to pay, lay out and expend various large sums of money, amounting in the whole to a large sum, to wit: The sum of one thousand dollars in and about, travelling from the City of Jersey City to the Cities of Chicago and Cincinnati aforesaid, for the purposes of making said licenses or assignments of interest in his said letters patent, and expenses incidental thereto.

Whereby, and by reason of the premises, the plain-
20 tiff saith that he has been injured, and sustained damages to the amount of fifty thousand dollars, and therefore he brings his suit, &c.

LINN & BABBITT,
Attorneys of Plaintiff.

Copy of specification referred to in foregoing declaration :

“ United States Patent Office,
WILLIAM E. ANDREW,
of New York City, N. Y.

*Improvement in Processes and Apparatus for
Rendering Fats.*

10

Specifications forming part of Letters Patent No. 189,541, dated April 10, 1877.

Application filed February 17, 1877.

To all whom it may concern :

Be it known, that I, William E. Andrew, of New York City, in the County of New York, and State of New York, have invented certain new and useful improvements in the process and apparatus for rendering fats, and I do hereby declare that the following is a full, clear and exact description thereof, which will enable others skilled in the art to which it appertains, to make and use the same, reference being had to the accompanying drawings, and to the letters of reference marked thereon, which form a part of this specification. 20

The nature of my invention relates to a process and apparatus for hashing, rendering and clarifying animal or other fats to obtain a pure oil to be used as an ingredient in the manufacture of artificial butter, and the object is to have the oil pure and odorless, and to have the entire operation a continuous process. 30

My invention consists

First—In a combination of a hasher, provided with worn knives, hopper and leader, with a rendering vessel, having a strainer whereby the hashed suet is fed automatically to the rendering vessel, is rendered, strained, and the oil product conveyed away as fast as rendered. 40

Second—In an open-bottomed jacketed kettle having inlets and outlets for steam and water to and from the chamber, formed by the walls thereof, having a cylindrical portion and an inclined portion, and having a perforated cylinder rigid with its bottom, so situated that it extends slightly over the heating chamber vertically from a distance of from fifteen inches to two feet. This vessel is cylindrical, and this portion has a steam inlet and a steam gauge. From this portion the
 10 walls incline downward to an orifice in the center of the bottom in a direct plane, and both the vertical side and inclined bottom are surrounded by the heating chamber.

Third—In a perforated cylinder extending from the bottom of the rendering vessel upward, its diameter being slightly greater than that of the orifice in the bottom which it surrounds, being situated in the rendering vessel rigid with its bottom, and attached thereto
 20 at a point which is over the heating chamber.

Fourth—In the combination with a rendering tank of revolving metallic brushes, having both vertical and horizontal teeth, whereby both the outer surface of the perforated cylinder, and the inner and lower surface of the tank, are simultaneously swept.

Fifth—In having the metal brushes hung differentially on the shaft so that one or more will sweep close to the perforated cylinder, and by its angle tend to
 30 throw the membrane outward, and one or more will sweep near the outer surface of the rendering chamber, and by its angle tend to throw the same back into the mass. The rigid arm upon which these brushes are hung is so constructed that the brush which sweeps the outer surface is upon the longer projection.

Sixth—In a method of dry rendering animal fat whereby a uniform heat may be retained by conveying the oil away as fast as rendered, preventing the clog-
 40 ging of the oil-escape orifice, and also preventing the

accumulation of non-conducting material, such as precipitated albuminous or gelatinous substance which forms as a coating upon the inner surface of the rendering vessel.

I provide a clarifying vessel consisting of a cylindrical portion, and an inverted conical portion, the whole being provided with inlets and outlets for water and steam, and also provided with a stop cock at the outlet at the bottom of the inverted conical portion. This 10 cylindrical portion, and inverted conical portion, are entirely surrounded by the heating chamber.

I provide an oil outlet at the base of the cylindrical portion of the clarifying vessel which makes a steam-tight joint through the heating chamber.

To obtain an odorless oil for various purposes, I select the finest of beeves fat, when it is fresh I place it in a meat hasher arranged above the rendering appa- 20 ratus, and as fast as the fat becomes hashed sufficiently fine, it is automatically led into the rendering vessel where it is subjected to heat, rendered, agitated, strained, conveyed away, clarified, the impurities removed, and the clear, pure oil obtained, the whole being one continuous, complete automatic process.

It has heretofore been claimed that a pure oil, free from animal odor or taste, rendered from animal fat, could only be obtained when the rendering was done 30 at a low temperature, say less than 125 degrees Fahrenheit, which is about the natural temperature at which fat will melt.

Observation and experience have convinced me that when fat is rendered at such low temperature, the time necessary to separate the oil from the membrane or animal tissue is much greater, and the oil being in contact with such membrane, tissue, albumen, &c., so much longer than in quick rendering at high tempera- 40

ture, the oil becomes impregnated with the animal odor and taste which are found in ordinary tallow, arising from the consequent animal decomposition. This is avoided by the fat being quickly rendered and immediately conveyed away from the heat and animal tissue in contradistinction to slow rendering and allowing it to remain in contact therewith a longer period of time.

- 10 To avoid these deleterious consequences, I have constructed and arranged my apparatus, and adopted a process by means of which I can obtain a pure, sweet, and odorless oil rendered from animal fat at high temperatures, my method being to obtain the rendered oil from the animal fat as fast as possible, *i. e.*, I hash the fat, and quickly render it, clarify it, and the pure oil is the product.

20 My apparatus consists substantially in a meat hasher, a leader therefrom, a rendering vessel, a conveyer therefrom, and a clarifying vessel with outlets therefrom, all arranged in the succession named, the leader connecting the hasher and rendering vessel, and the conveyer acting between the latter and the clarifying vessel.

30 I now construct my rendering apparatus of about six to seven feet in diameter, the cylindrical portion being about eighteen inches high, and I adapt it to stand a steam pressure of from seventy to one hundred pounds to the square inch.

40 The high temperature which I use in my process is obtained from steam, or superheated steam admitted into the jacket. The superheated steam is obtained by steam passing through a coil of pipe into the jacket of the rendering kettle, the coil being enclosed in a highly heated furnace situated near the rendering kettle, and when the pyrometer or thermometer attached to the kettle indicates a heat of about 300 degrees Fahrenheit, or upward, I commence the operation of hashing, and the fat is at once led into the rendering kettle, where it

immediately melts and the oil passes out through the conveyer into the clarifying vessel, showing a temperature as it runs off, from about 175 degrees to 220 degrees Fahrenheit, and not so susceptible to the action of decomposition, or chemical change, such as souring or turning rancid, as is the case with all oils rendered at low temperature, say at or below 125 degrees Fahrenheit, they not being sufficiently cooked to sustain the varied atmospheric changes.

To obviate these objectionable features in the rendering of oils as above mentioned, I have adopted the process and invented the apparatus for rendering oils at high temperature for the purpose of thoroughly and quickly cooking the oil, and immediately conveying it away from blood, membrane and other animal matter, thus necessarily achieving the desirable result of obtaining an oil pure, sweet and odorless which is capable of transportation to any climate without undergoing any appreciable change, and which oils rendered as above described, and clarified by my process, as described in my patent of February 1st, 1876, and numbered 172,942.

In the accompanying drawings, *Figure 1*, is a side elevation of the apparatus complete, *Figure 2*, is a part sectional elevation of the hasher and renderer, *Figure 3*, a top or plan view of the rendering vessel in part section to show the brushes in position when in operation, *Figure 4*, a plan view of the open bottom and framing which forms bearing for shaft, *Figure 5*, a perspective view of the metallic brushes, *Figure 6*, a sectional view of the swiveling joint of the conveyor, *Figure 7*, a vertical sectional view of the clarifier and its auxiliaries, and *Figure 8*, an elevation of the lower portion of clarifier, showing glass tube.

Referring to the drawings, *A A'*, represent the meat hasher provided with knives and worm upon a shaft operated by a pulley, *A* represents the leader which conveys the hashed suet to the rendering vessel.

B B', Represent cylindrical portion of the rendering vessel, and *C C'*, the inclined portion beneath. Beneath the walls *B C*, and the walls *B' C'*, is a heating chamber provided with steam inlet *B* and outlet *B² B¹* represents a steam gauge. From the outer periphery of the vessel to the orifice in the bottom, the portions *C C'* are in a direct plane.

D Represents the orifice in the bottom, *D'*, the hinged falling bottom, *D²*, the receiving chamber therein, *D'*,
10 the framing across the orifice *D* and *D* the outlet to the conveyer.

E Is the perforated cylinder rigid with the bottom of the rendering vessel and surrounding the orifice *D*, upon which a perforated cap may be placed if deemed necessary..

F Is the vertical revolving shaft journaled above in the cover, and below in the framing *D'*.

20 *F'* Is the rigid arm upon which is hung arms *F²* which furnish bearings for the brushes.

G Is the cover to the rendering vessel to confine the heat. It furnishes bearings for the revolving shaft and is provided with suitable manholes *G* adapted to be opened or closed at will.

H Is the metal brush with yielding teeth *H H'*. These brushes are hung upon suitable framing which
30 revolves with the shaft *F*. One of these brushes sweeps near the perforated cylinder, operating upon both the bottom of the rendering vessel and the outer surface of the perforated cylinder *E*. The other brush sweeps near the outer surface of the rendering vessel, and operates upon the bottom and sides thereof.

I Is a spring which is situated between the brush and its bearings to allow of more free and universal movement.

The inner brush is hung upon its bearing so that the inner portion is in front, and the tendency therefrom is to throw the membrane outward as well as to clean the perforated cylinder. The other brush is at an angle in opposite direction and has an opposite effect.

J Represents the conveying pipe from the rendering vessel to the clarifying vessel, and *J'* the swivel joint which allows the same to be turned at will.

K K Are the cylindrical walls of the clarifying vessel, and *K K'* the inclined walls of the same. Between these walls is a heating chamber provided with suitable inlets and outlets for steam and water. *K* is a cock at the lower end of the clarifying vessel.

10

L Represents the glass tube at the lower portion of the clarifying vessel above which a cock may be placed.

M Is an outlet for the oil at the base of the cylindrical portion of the clarifying vessel, and *M* its controlling cock.

20

N Is the hose through which the water is injected into the clarifying vessel. Any equivalent device which will atomize the water, and any chemically prepared water of sufficient gravity may be used without departing from the gist of my invention.

Through the glass tube *I* is discerned, the blood, membrane, and other impurities which have been precipitated with the water from the hose *N*. The impurities are drawn off through the cock *K* until the pure clarified oil appears.

30

Two or more clarifying vessels may be used.

This invention is an improvement on other patents granted to me for similar purposes in the United States.

I do not confine myself to any particular size in the construction of my apparatus, nor do I confine myself to any particular temperature above 170 degrees Fahrenheit in the process of rendering and treatment of fats, as different temperatures may be used without departing from the gist of my invention. Any reasonable temperature above 175 degrees Fahrenheit will accomplish the desired results by my process and apparatus.

10 I claim as my invention :—

1st. The combination of the meat hasher *A A'* with a rendering vessel having a heat radiating surface *B' C'* and a perforated cylinder *E* rigid therewith as specified.

2d. The combination of a jacketed rendering vessel *B B', C C'* having an orifice *D* with a perforated cylinder *E* rigid with a vessel and surrounding the orifice
20 and extending slightly upon the heating surface as herein specified.

3d. The perforated cylinder *E* in combination with and rigidly attached to the bottom of an open-bottomed rendering kettle as specified.

4th. The verical shaft *F* in combination with metallic brushes *H* having vertical and horizontal teeth in combination with the rendering tank and perforated cylinder as specified.
30

5th. The brushes *H* hung differentially in combination with the operating means *F F'* the rendering vessel and the perforation outlet as herein set forth.

6th. The process described of dry rendering animal fat, which consists in subjecting it to an extracting heat, conveying the oil away from the heat and tissue as fast as rendered, and, at the same time, preventing the clogging of the oil outlets, and the accumulation of
40 gluten or other non-conducting material as specified.

In testimony that I claim the foregoing as my own,
I affix my signature in presence of two witnesses.

WILLIAM E. ANDREW.

Witnesses :

PETER BROOKS,
GEO. H. BROOKS.

Plea—General Issue.

NEW JERSEY SUPREME COURT,

HUDSON CIRCUIT—DECEMBER TERM, 1881.

<p style="text-align: center;">WILLIAM E. ANDREW,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">CHARLES D. DESHLER.</p>	}	In Case.
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Before HON. M. M. KNAPP, Justice.

MR. LINN appearing for Plaintiff.

MESSRS. BEDLE and MUIRHEID appearing for Defendant.

On this December 20th, A. D. 1881, this cause was regularly moved for trial; whereupon a jury was empanelled, the plaintiff opened his case, and evidence was offered as follows:

(Plaintiff offers in evidence reissue of Letters Patent of the United States, issued to William E. Andrew, bearing date June 15, 1880, No. 9254, the original of which was numbered 189,541, and dated April 10, 1877; and the application for reissue, which was filed April 14, 1880; the original surrendered upon the reissue.)

MR. BEDLE. This is after the publication of this notice.

MR. LINN. I propose to offer the specifications annexed to the original of 1877.

MR. BEDLE. Do you propose to offer the patent of 1877?

MR. LINN. No, sir, that is surrendered.

MR. BEDLE. Then I object to this offer as irrelevant, if the patent of 1877 is not offered. I have a deeper objection than that though, but this is not the patent declared on in the case.

THE COURT. What is the specification referred to?

MR. LINN. It is a description of the thing itself; and this is a reissue for the purpose of amending the description in some particulars; it is the same patent.

THE COURT. I understand the objection to be that this does not show the right which you allege in your declaration, and that if your title of 1880 is slandered, you cannot set up your title of 1881 as the thing slandered.

MR. BEDLE. That is the objection. 10

MR. LINN. This which I offer in evidence now proves the title to the patent of 1877.

THE COURT. Is there any act of Congress which makes the reissue of a patent evidence of the recitals in it?

MR. LINN. There can be no better evidence than this which I offer.

THE COURT. Then you consider that as equivalent to offering the patent of 1877?

MR. LINN. Exactly. 20

MR. BEDLE. I understand this is an offer without being associated with an offer to produce the patent of 1877, which is declared upon in this case. That being so, it is entirely irrelevant.

MR. LINN. I will now read this reissue—(reads it.) I propose also to offer in evidence a correct copy of the drawings and specifications annexed to the original letters patent, which were a part of that, and which will show the difference. And in this way I propose to prove the title in William E. Andrew, on the 10th 30 of April, 1877, and on the 13th of March, 1880—when this slanderous article was published. The precise character of the original letters patent does not come in this controversy. It is not a conflict between patented rights. This is an action of slander.

THE COURT. The question now is as to your proof. You offer this to prove the existence of letters patent in 1877, and it only appears by the recitals in the deed which you produce here.

MR. LINN. If he had brought an action for the in- 40

fringement of that patent in 1877, and the reissue was afterwards granted, all he would have to do would be to amend the pleading to make it conform to that, and then show the reissue. This is plenary proof, made so by the law of the United States.

THE COURT. Do I understand that by express statute of the United States the recitals in this are made evidence of the existence of the previous patent?

MR. LINN. Yes, sir; and I offer to prove in connection with that the specifications annexed to the original letters patent—a correct copy of the specifications; and I offer to prove by parol that he had the original letters patent and surrendered them.

THE COURT. If it is merely a question of order I will not exclude it, but admit it, subject to the establishment of the original patent by such proof as you may produce.

MR. BEDLE. I desire to be understood distinctly on this point. This suit is brought on an alleged slander of his title of 1877, and there is no attempt made to prove such a patent only by inference. If such patent is in existence, they can procure certified copies of it. Cancellation of the patent does not destroy the record; the record is still in existence. This suit is for a slander of his title of 1877, and to prove that title he offers in evidence a reissue of a patent after the publication declared upon, and it is claimed that the recitals in the reissue prove the fact of the title of the patent, and what it was. I think it needs no argument to controvert that. On its face this purports to be an amended application or specification. Does counsel propose to prove a certified copy of the patent of 1877?

MR. LINN. No, I propose to prove nothing but just what I have stated.

MR. BEDLE. Then we object to the plaintiff's proving his title by parol.

THE COURT. For the present I shall overrule this offer to prove this patent issued after the alleged slander. I shall do it because of the order of proof, and

that will require the plaintiff to offer such proof as he may be advised as to the title to the original patent of 1877. As now advised, I do not regard the recitals in the subsequent patent as proof of a right to the original patent, other than in a general way. It is not such proof of the title as I think the plaintiff should be required to make under this declaration. This is merely in respect to the order of proof, because it seems to me after the title is proven, this may become relevant in another view of the case. 10

MR. BEDLE. Then that being out of the way, when this offer comes to be renewed, I have further objections to make.

MR. LINN. I renew my offer in this way. I offer in evidence these letters patent, reissue, to William E. Andrew, No. 9,254, bearing date June 15, 1880, in connection with a copy of the specifications annexed to the original patent, and upon which this reissue was granted, which original bears date April 10th, 1877, and numbered 189,541. And I offer to prove that this 20 is a true and correct copy of the specifications annexed to the original patent. I offer also to prove that upon the reissue bearing date June 15, 1880, being granted, Mr. Andrew surrendered the original letters patent, which were cancelled, and which he therefore has not and cannot produce.

MR. BEDLE. I understand the Court has ruled against this patent of 1880, on a matter of order, reserving for the present every other question that may be raised when the offer is renewed. 30

THE COURT. Yes.

MR. LINN. I made my offer in that shape in order that it might embrace the whole thing, and desire to have a ruling as to whether that will be a sufficient proof of the patent of 1877.

MR. BEDLE. Will counsel please state what proof he proposes to offer of the patent itself?

THE COURT. I understand the proof to be parol.

MR. LINN. Yes, as I have offered it.

MR. BEDLE. Not by copy, nor certified copy, nor examined copy?

MR. LINN. No, sir.

MR. BEDLE. Then I submit to the Court they must produce a copy or a certified copy, under the act of Congress; but if the Court should hold that it can be proven as a judgment of the Circuit Court of this county, then it must be by an examined or sworn copy of the record itself. We cannot be expected to depend
10 upon the uncertain recollections of witnesses as to what the record was. I refer to Section 4883 of the Revision of the Acts of Congress of 1878, and also Section 892.

THE COURT. I regard this not as a record, but as a deed; it is not a record that is being proven. The record is auxiliary to the grant. The record verifies the grant. I will admit evidence as to the absence of that paper.

MR. BEDLE. I have no doubt the original can be
20 produced.

William E. Andrew, the plaintiff, being sworn on his own behalf, testifies as follows:

Direct examination by MR. LINN:

Q. You are the plaintiff in this suit?

A. Yes, sir.

Q. Did you have a patent for improvement in the process of an apparatus for rendering fats, issued to
30 you by the United States?

(Question objected to; admitted; and exception allowed.)

A. I did.

Q. What was the date of it?

(Defendants object to giving the contents of that paper by parol.)

A. April 10, 1877.

40 Q. What has become of that?

A. It is surrendered to the United States Patent Office, Washington—surrendered for the purpose of reissuing and modifying the specifications.

Q. (Showing witness a paper.) Look at this paper. What is that?

A. This is a copy—(interrupted by objection.)

MR. BEDLE to MR. LINN. Have you exhausted your evidence on the fact of the loss?

MR. LINN. I do not propose to prove anything more about the loss than that it was surrendered to the United States Government and canceled, for the purpose of reissuing. 10

Q. By the COURT. When was it surrendered to the United States office?

A. I think it was some time either in March or April, 1880; I could tell if I may look at the reissue. (Reissue handed to witness and he looks at it.) The application for the reissue was filed April 14, 1880.

Q. Is that the reissue which you hold in your hand?

A. This is the reissue which I received for the original which I surrendered. 20

Q. What is the date of that reissue?

A. June 15, 1880.

Q. By the COURT. What became of the original patent which you say you had when it went out of your hands? Where did it go to—did you get it again?

A. No, sir, the Patent Office gave me this in place of it; this is considered the original patent, and it expires at the same time.

Q. By *MR. BEDLE.* What did you do with the original patent—did you mail it to Washington, or did you leave it there? 30

A. I left it there myself with the proper clerk for receiving those papers; I think it is the chief clerk that receives them.

MR. BEDLE. They do not show that that paper is lost, but they do show that it is in existence and that it is just where it ought to be. There is a vast difference between cancellation and destruction. It may be cancelled but yet it is in existence, and I would like to 40

be heard on the practice of the patent office and on the fact of the existence of that paper, and to show that papers thus surrendered to the office are kept on file and that copies of them can be had at any time.

THE COURT. Do you mean that the original can be produced?

MR. BEDLE. Yes, sir. This being a State Court we cannot reach them as we can state documents, but testimony can be taken by commission.

10 THE COURT. For the present I will allow the plaintiff to proceed, withholding ruling on the sufficiency of the proof.

Q. Were you the owner of this original patent which you afterwards surrendered to the United States for a reissue in March, 1880?

(Question objected to.)

Q. To whom was the original patent issued—the one spoken of?

20

(Question objected to on the ground that they cannot offer oral evidence of the contents of the patent. Counsel continuing—"But should the Court rule that they can, then I insist that it must be in the language of the patent.")

THE COURT. In the case of a deed the deed itself is the best evidence in law and must be produced, or its loss accounted for so as to satisfy the Court that it cannot be produced; that it is out of the power of the party to produce it. Then beyond that there is but one other degree of evidence, and that is secondary evidence. It may be a certified copy, an examined copy, and if neither exists in legal view parol testimony of the witness of the instrument is of as high a grade in its legal aspects as the certified copy. But there may be a very great difference in the character of that as to satisfying one of what it contains. A man is bound to satisfy a tribunal having the decision of the issue, as well by secondary evidence as he would by
30 primary, but that is a mere question of quality. Parol
40

testimony may be given, assuming that its loss is sufficiently established, to show the contents of the paper—it must be the contents.

(Defendants pray an exception to the ruling of the Court.)

Q. To whom was that original patent issued?

(Question objected to as not the proper way of giving the contents.) 10

THE COURT. What did the paper contain, is the question.

MR. BEDLE. If your Honor please, we object to that question.

Q. What did the paper contain?

(Question objected to; admitted; and exception allowed.)

A. It contained exactly the same drawings in every respect as this reissue; and it contained the same specifications and reading matter except a few changes which the United States allows to be made, nothing to change the character of the invention whatever. 20

(Defendant objects to the last part of the answer, and asks to have it overruled. The Court overrules the last part of the answer.)

Q. You have stated that this copy before you is an exact copy of the specifications annexed to the original letters patent? 30

A. So far as the drawings are concerned.

Q. Isn't that specification the exact copy annexed to the original letters patent?

(Objected to as leading)

Q. What specifications are these?

A. These are an exact copy of the original patent; this paper is an exact copy of the original patent of 40

April 10, 1877, in every respect—I mean those specifications.

Q. What did the original patent which you surrendered to the Patent Office contain in addition to that specification which you hold in your hands?

(Question objected to.)

A. It contained the grant of the letters patent to me, William E. Andrew, giving the date and the number of years for which it was issued, seventeen years, 10 from the 10th of April, 1877, signed and sealed by the Commissioner of Patents. It granted to me the exclusive right to use and vend within the United States the process and apparatus for rendering and treating animal fat—I think that is about the wording of it—issued to me for seventeen years from April 10, 1877; that is what it contained.

MR. LINN. That is all I have to ask this witness as to the contents of that paper.

20 *THE COURT.* Anything in cross-examination?

MR. BEDLE. We desire to reserve the right of cross-examination for the present if that is all the testimony there is on the subject. There is nothing now to show the contents of the paper. This is not the kind of testimony on the question of title to go to the jury, and I now move to overrule this testimony as being no evidence of title or of the contents of a patent.

(The Court denies the motion to overrule, and allows 30 the defendant an exception.)

Cross-examined by MR. BEDLE :

Q. What did you say the title of that paper was that you called a patent?

A. Process and apparatus for rendering fats.

Q. I understood you to say “process and apparatus for rendering animal fats”—now which was it?

A. “Animal fats.”

Q. Animal fats?

40 *A.* Yes, sir.

Q. Your declaration calls it "an improvement in the process and apparatus for rendering fats"—which is right?

A. Well, the best of my judgment is that the word was "animal fats"—no, I think not—I think it was just the word "fats."

Q. What makes you change your mind?

A. I think now in studying the thing over it was just the word "fats."

Q. You do not pretend to give the words of that patent, do you? 10

A. No; but I think that was the correct title.

Q. You do not pretend to give the words of the title, do you?

A. Yes, I do.

Q. Now do it?

A. A process and apparatus for rendering fats.

Q. An original process?

A. I think that that was the original title.

Q. Was the word "original" in the title? 20

A. No, sir.

Q. But it was for a process and apparatus, as I understand you?

A. I think it was.

Q. There was some writing, wasn't there, in the patent?

A. Yes, sir.

Q. And there was some printing?

A. Yes, sir.

Q. Can you undertake to give the words of the printing? 30

A. I would not attempt to give it all, no, sir.

Q. You might be mistaken if you did?

A. I say I would not attempt to give it all.

Q. Do you know by whom it was signed—the name?

A. Well, I don't know that I can really recall the name of the commissioner at that time.

Q. I ask you the name?

A. No, I don't think I will attempt to give you the name signed to it. 40

Q. Was it signed by more than one name, or two names?

A. It was signed by two names.

Q. Do you recollect either of them?

A. No, I don't know that I do.

Q. Where did you get the paper from—personally I mean?

A. I think they mailed it to me from the Patent Office.

10 *Q.* You got it by mail?

A. Yes, sir.

Q. And that same paper you took to Washington yourself personally, did you?

A. I most forget whether I went down to Washington with it or whether I sent it by mail.

Q. I understood you to say a while ago you gave it to the clerk in the office—is that so or not?

A. I think I went to Washington with it myself; I think I went there at the time it was reissued.

20 *Q.* Please state why you said you thought you sent it by mail?

A. Well, I am in the habit of sending a great many papers to Washington by mail.

Q. Can you say whether you sent it by mail or whether you delivered it in the office, so that we can rely on it now?

A. I think the specifications were written—[interrupted.]

30 *Q.* I ask you whether you can tell whether you sent the original patent by mail or whether you left it in the office at Washington by personal delivery?

A. I was in Washington at the time; I am pretty near positive of it, and that myself and counsel gave it to him; and I think I swore to the declaration in Washington.

Q. Have you any memory on that?

A. I think that is correct.

Q. You think you delivered that paper in Washington at that time?

40 *A.* I rather think I did; I wont say positive about it.

Q. Have you any memory of doing it one way or the other—that is what I want to get at?

A. I wont say positive whether I did or did not, so far as the delivering the paper to the Patent Office is concerned, but my impression is that I did deliver it there—that is, through my counsel.

Q. Delivered it through your counsel?

A. Certainly, I being present at the time—that is my impression now.

Q. Is your memory as to the contents of the patent 10 any better than your impression as to the delivery of this paper?

A. Yes, it is.

Q. Can you give any words that were written in that paper?

A. On the face of the paper?

Q. Yes.

A. Certainly I can.

Q. Give us any?

A. I can give the writing of my name, William E. 20 Andrew, and the title, and the date of it, and the time that it was issued for—seventeen years from the 10th day of April, 1877.

Q. Can you give anything else—I mean in the patent itself?

A. Granting me the exclusive right, &c.—I think that is in the printing, though.

Q. What do you mean by “&c.”?

A. The exclusive right.

Q. Can you give any single word of printing in that 30 paper?

A. I think I have given some of it.

Q. Can you give any of the printed words of the paper?

A. Generally when I received them I looked it over and saw my name on it, and the date of it, &c., and that is about the substance of it.

Q. You cannot say that you can give the words of any of the printed part of the paper?

A. I will not say that I can just now give the exact 40

words in writing and printing, because there was considerable of both.

Q. Was there anything said on the patent of 1877, of which you have spoken, of a reissue?

A. No, sir.

Q. What?

A. No, sir.

Q. Now be particular.

10 *A.* No, sir; I don't think there was anything in reference to reissue in it.

Q. What do you understand me to ask you?

A. If there was anything on that in reference to reissue?

Q. I do not mean reissue for the future—but was there anything on it to show that that was a reissue patent?

A. Of 1877?

Q. Yes, sir.

20 *A.* No, sir.

Q. You have never inquired for that paper since, have you, at the office?

A. I have not.

Q. And never sent for a certified copy?

A. No, sir.

Q. Never tried to see whether you could get the original?

A. No, sir.

30 *MR. BEDLE.* That is all the evidence as to the loss and the contents. Are you, Mr. Linn, through with all the evidence as to the loss and contents?

MR. LINN. Yes, sir.

MR. BEDLE. Now I move to overrule all the testimony on the grounds already stated, and also because there is no evidence to go to the jury of either the proof of loss or the destruction of the paper or of the contents; it is only the judgment of the witness as to the partial contents of the paper.

40 *MR. LINN.* I will be sworn myself as to what I know of the contents of the original letters patent which I had when I drew that declaration.

MR. BEDLE. I will examine this witness a little farther.

Q. I think you stated that the issue of 1880 was an amendment on the specifications of 1877?

A. The specifications are changed in some respects.

Q. I don't think you gave the respects in which they were changed, did you?

A. No, sir.

Q. By the COURT. I understood you to say that that paper contained a copy of the specifications annexed 10 to the patent of 1877.

MR. LINN. Yes, he did say that.

Q. What was this paper taken from?

A. That paper is just as I received it from the Patent Office a few weeks or two or three months ago—something of that sort; I have had a great many of them.

Q. You received others at the same time?

A. Yes.

Q. And that was a long time after the reissue of 1880? 20

A. Yes.

Q. This paper you received how long ago?

A. Several weeks ago—perhaps it might be months.

Q. Did you say two or three weeks, or two or three months, a moment ago?

A. I received several of those same kind.

Q. By the COURT. Do you remember when you received that particular paper?

A. I think that was sent to me perhaps a couple of months ago. 30

Q. Did you write for it?

A. Yes.

Q. You have never compared these with the patent at Washington, with the specifications at Washington?

A. That I surrendered?

Q. Did you ever compare this paper with the specifications at Washington?

A. No, I never did, not that; how could I if I didn't have it?

Q. By the COURT. Have you ever compared it with 40

any other paper which you had compared with the original?

MR. BEDLE. We object to that question.

The COURT. The witness will answer it, and defendant may have an exception.

A. I have in reference to the drawings, &c., when I receive them I generally look them over.

Q. By the COURT. Had you any paper in your possession which you had compared with the original specifications with which you have compared this?

(Same objection, ruling and exception.)

A. I have compared copies of the patents of which that is a copy with my original that is in Washington.

Q. Did you ever compare this paper with anything?

A. Yes, I have compared that paper with papers received previous to that.

Q. When did you do it?

20 A. At the time I received them.

Q. Where are the papers you compared it with?

A. They may be disposed of.

Q. Did you ever compare this particular paper with any other paper?

A. I have.

Q. When?

A. When I received it from Washington.

Q. In what way did you compare it?

A. I generally look them over.

30 Q. How?

A. I take them and lay them by their sides and look them over.

Q. Have you any memory of looking this particular paper over with any other paper?

A. Yes, I have a memory of examining all the papers I get from Washington, which include that,

Q. Have you any memory of comparing this paper?

40 A. I never have compared it in full, that is so far as

the reading matter is concerned ; I generally take the drawings.

Q. The reading matter you have not compared as I understand it ?

A. Not all through ?

Q. Please state your object in comparing the drawings ?

A. I generally look them over to see if one is the same as the other.

Q. The drawings differed, didn't they ? 10

A. I have had them differ.

Q. The drawings were different—those you compared, were they not ?

A. No, I don't think they were.

Q. Can you tell what drawings you compared this with ?

A. Yes, with similar drawings.

John Linn, being sworn on behalf of the plaintiff, 20
testifies as follows :

I have seen the original letters patent issued to Mr. Andrew under the date of April, 1877, for this improvement in process for rendering fats, and had them in my possession, and according to my recollection—and I think I am not mistaken—they are precisely in form as these letters patent for the reissue, with the exception of the statement of the reissue.

MR. BEDLE asks the Court to overrule what the witness may say when he undertakes to give the contents 30
of the patent of 1877, by comparison.

THE COURT. For the present I overrule that.

THE WITNESS. Then I will give the contents according to my recollection. The number of the patent was given as stated in writing, and the date, and it was to all to whom these presents shall come—I do not pretend to give the precise language—but as near as I can. It recited that whereas William E. Andrew had presented a petition and claimed to have invented certain improvements in rendering fats, and asking that a pat- 40

ent be granted to him for that, and recited that he had complied with the law in that respect; therefore these letters patent grant to William E. Andrew the exclusive right to the use of that improvement for the period of seventeen years from that date; and it was under the seal of the Patent Office, and witnessed by the Acting-Commissioner of Patents; and it stated also that the drawings and specifications, or that specifications were annexed to the letters patent, which formed
 10 part thereof. That was the substance of the letters patent as I recollect it. I thought they were here this morning; I thought I had them with me.

Cross-examined by MR. BEDLE:

Q. How long is it since you saw that paper?

A. I do not recollect.

Q. How many years ago?

A. I cannot tell you.

Q. Five years?

20 *A.* No, not five years; it is two or three years; it must have been—oh, I can't pretend to give the time.

Q. Have you any memory of the number of the patent?

A. No,

Q. Have you any memory of the date from the paper?

A. No; I could not have stated it had it not been mentioned here.

Q. Have you any memory as to whose signature was
 30 to the paper?

A. No.

Q. Do you remember whether there were two signatures or one?

A. My impression is there were two signatures.

Q. Have you any memory that any signature was to it—I mean the signature itself?

A. Yes, I have a very strong impression that there were two signatures to the paper, and yet these things usually being in that way, I may have got the impres-
 40 sion in some other way.

Q. Can you recollect what the patent was called in the patent—the paper?

A. According to my recollection it was called an improvement in the process for rendering fats.

Q. Anything about apparatus?

A. Process and apparatus, I think it was.

Q. Before I reminded you of that, you thought it was for process, didn't you?

A. No, I would have said apparatus without my attention being called to it. 10

Q. Can you tell whether there was anything said about a reissue on the face of it?

A. I have no recollection of anything of that kind.

Q. What did you do with the paper afterwards?

A. I thought it was here this morning; I thought I had the paper in my possession still.

Q. Was it in your hands as counsel?

A. Yes, sir.

Q. For any other reason?

A. No. 20

Q. You could not have seen the paper for three years past?

A. No, I suppose not, according to that; if it was surrendered before June, 1880, I could not have seen it since that time.

Q. Before you went upon the stand you had been examining this reissue patent of 1880?

A. I had seen it here and I had it before me.

Q. Had read it?

A. Yes. 30

Q. Can you remember anything about the recitals in it that were written?

A. I think that all that was written was the date and number of the patent, and the name of the patentee and the title of the patent—"improvement in process and apparatus for rendering fats," and the date of the issue, and some little things of that kind.

Q. What did you mean by the date of the issue?

4. The date of the patent—the time it was issued, at the foot of the deed.

Defendant's counsel renews his motion.

Recess.

After recess.

10 THE COURT. I am inclined to rule in this case that the proof of loss or absence of this paper is not sufficient to admit evidence of its contents. Notwithstanding it is a matter returned to the Patent Office, I think it is incumbent upon the party who offers to show secondary evidence to prove every fact necessary to warrant the inference that is to be urged. For all that appears here, a simple application for that paper might have been sufficient to produce it. I do not see on what ground I can infer that such might not be the

20 case. There must be the exercise of diligence, and it must appear within reason to be out of the reach of the party before secondary evidence is admissible, and I cannot see in this case that this paper stands in that situation; at least it does not appear to the Court that the exercise of ordinary diligence might not have produced the paper, or under the act of Congress, which might have been the same thing. And in this decision I assume what counsel has stated in his opening, that there was a necessity in this case of proving his title. The title being an essential fact in the maintenance of

30 this action, which counsel has assumed, I do not see how we can go very far in this case unless counsel can manage to repair that in some way without a delay of the cause.

MR. LINN. I think we can supply this documentary evidence before we are through with our side of the case.

THE COURT. Then you may go on with your case in that view.

William E. Andrew, recalled, further testified as follows :

Direct examination continued by MR. LINN :

Q. In the spring of 1880 did you visit Chicago for any purpose ?

A. I did, for the purpose of negotiating with parties there for a right to use my patents in Chicago.

Q. What patent ?

A. For my patent of 1877. 10

Q. What time did you go to Chicago ?

A. I went there first about the last part of January, 1880.

Q. Did you make any sale of any interest in this patent or any right under it at that time ?

A. I did.

Q. To whom ?

A. To D. Ward & Co., Chicago.

(Defendant objects, that there is no sufficient averment in the declaration of special damage to make this line of examination relevant.)

(The Court admits the evidence, and allows the defendant an exception.)

Q. What had you sold to D. Ward & Co. ?

A. I sold him a shop right to work in Chicago, within Cook county.

Q. By MR. BEDLE. Was this in writing or verbal ?

A. The contract with him for the shop right was in writing. 30

Q. Have you that writing here ?

A. Yes, sir. [Witness produces it.] This is the contract I made with D. Ward & Co, for the shop right ; it bears date February 3d, 1880.

Q. Who is Mr. Bartlett ?

A. He was a bookkeeper of Mr. Ward.

Q. Was this contract made at the time it bears date ?

A. Yes, sir.

Q. Signed by you and Mr. Ward?

A. Yes.

Q. Who is the other man?

A. His partner.

Q. And witnessed by whom?

A. By his bookkeeper, living in Chicago.

Cross-examined as to the execution of the paper :

Q. When was the paper actually signed?

10 A. It was signed on the third of February.

Q. Were you present in Jersey City at the examination of Mr. Ward before Mr. Potts?

A. I was.

Q. Do you recollect of Mr. Potts speaking of a paper at that time?

A. I know that some one spoke of some paper.

Q. Do you know whether this is the paper?

A. No, I don't.

Q. Where did you get this from?

20 A. I brought it from Chicago when I came on, on the 3d of February, 1880.

Q. That identical paper?

A. Yes, sir.

Q. Signed by Mr. Ward at that time?

A. Signed by Mr. Ward at that time.

Q. And by Carson?

A. And by Carson.

Plaintiff offers the paper in evidence and it is marked Exhibit P. 1.

30

(Defendant objects to it as irrelevant, that it is not the contract set out in the declaration.)

MR. LINN. No, it is not; this is only preliminary.

The Court admits the paper in evidence and allows the defendant an exception.

Mr. Linn reads the paper.

Q. This is executed on the 3d of February, 1880.

When did you visit Chicago again?

40 A. I think I left Jersey City on the 3d day of March.

MR. BEDLE. In order that there may be no misunderstanding, I propose at the proper time, as I have already intimated, to raise a question of the jurisdiction, which is deeper than that to the formal proof of patent; but I understand the Court is now waiving the regular order for the present and allowing the plaintiff to go on with this branch of the case; and I am content if the Court understands that this is all subject to such objection as I may make hereafter on the question of jurisdiction.

10

Q. What did you visit Chicago on the second occasion for?

A. For the purpose of negotiating for the exclusive right of the State of Illinois.

Q. This contract which I have just read speaks of a license for the manufacture of oleomargarine—it don't refer to any other patent or the use of any patent?

A. The understanding was—[interrupted by objection.]

Q. You say you visited Chicago the second time for the purpose of negotiating the exclusive right for the State of Illinois—for the exclusive right of what?

A. Of my rendering patents for melting fats.

Q. What patents had you at that time?

A. I had two patents of 1876, one of 1877, and this reissue for rendering purposes; then I had this patent for—[Interrupted by objection.]

Q. What patents did you have when you went there on March 3d, 1880?

A. Do you want them all?

30

Q. By the COURT. At the time of making this contract.

A. I had the patent that was issued to me in August, 1874, for a process of rendering fat; and then I had another one that was issued in August, 1874, for a process for manufacturing artificial butter; I have another one issued to me February 1st, 1876, for process and apparatus for clarifying and rendering animal fats; I have another one issued to me July 18th, 1876, for process and apparatus for rendering fats; I have 40

another one issued April 10, 1877, for a process and apparatus for rendering animal fat; then I have the reissue.

Q. You were asked what you had at that time?

A. I had not the reissue at that time?

Q. For the use of what patent did you negotiate with D. Ward & Co., on the second occasion when you went to Chicago in the spring of 1880?

A. For the use of the two 1876 patents—that is
10 February and July—and for the 1877 patents, and those process patents.

Q. You were negotiating with him for the use of three patents?

A. Certainly; because one of them contains only part of the invention, and another another part.

MR. BEDLE. If these patents are important in the cause we are in the same difficulty as before.

Q. For what?

A. For the purpose of using them anywhere in the
20 State of Illinois.

Q. How long were you in negotiating at that time?

A. Perhaps two days—not exceeding that.

Q. Had you agreed upon any terms?

(Defendant objects to this mode of proving the contract.)

Q. What took place between you and Mr. Ward with regard to this contract?

A. Do you want me to give the entire transaction?

30 *Q.* Tell all that took place, as near as you can?

A. When I arrived in Chicago I met him immediately, and he at once brought up the point of purchasing or desiring to purchase the exclusive right; he asked me for my price, and I gave it to him. I asked him \$30,000, and one-quarter of a cent a pound royalty, the royalty to be guaranteed to be not less than \$3000 a year for the unexpired term of the patent; that was my proposition to him; he thought it was too high, and we talked the thing over considerable; we were
40 together most of the time; and at last he made me an

offer of \$25,000 and a royalty of \$200 a month, which would be \$2400 a year—that the royalty would amount to no less than that.

Q. Was there anything said in that offer about deducting what you had previously received?

A. Certainly, the amount that I had received from him for the shop right was to be deducted from the \$25,000.

Q. How much had you received?

A. I had received \$2000—I will correct that. I don't 10 think I had received that at that particular time—\$2000—but I had his obligations for it, which he paid afterwards.

Q. Tell all that took place between you and Mr. Ward with regard to it?

A. I told him that St. Louis lay near the line of Chicago; I would want to reserve at any rate East St. Louis so as to protect that point in case anybody bought the right of St. Louis.

Q. Where is East St. Louis? 20

A. It is right across from St. Louis; it is in the State of Illinois. He thought I ought to let the whole thing go in and not make any reservation, and I was considering the matter whether I would or not, and I had made up my mind to accept his proposition and let him have the entire State without any reservation.

Q. Then what took place?

A. Then we got so near to it that I thought I would make a trip out to Wisconsin; and I started on Saturday, March 13, and I was gone until Tuesday following, when I returned to the Palmer House with the idea of completing the negotiations with him the next day—which was the understanding. 30

Q. Had you put off your negotiations till the next day?

A. It was the understanding that I would be in Tuesday night, and he would meet me either Tuesday night or Wednesday, just as he chose; he came and met me there on Tuesday night; he came in; I think I was in 40

the rotunda at the time sitting in a chair ; and he came up to me and asked me a few questions ; he seemed to be quite excited, very much so ; he asked me if I owned what I was offering to sell him, or if I had a final decree and injunction against these patents. I told him no, that I had not. Then he put his hand in his pocket and took out a slip, handed it over to me, and asked me what I had to say in reference to that ; that was the first I knew of it ; I looked the thing over and told
 10 him it was not true, that there was not a final decree and injunction against these patents that I was selling.

Q. What was that slip that he took out and read to you and showed you ?

A. It was a notice cut out of one of the Chicago papers.

Q. Have you got any of the Chicago papers here containing that ?

A. Yes, sir. [Witness produces the Chicago Times.] That is the same notice that he showed me.

20 *Q.* What took place then ?

A. Then he accused me of trying to sell him something that I did not have the right to sell, and withdrew his proposition, and said that he would not go any further with it ; and also that he would not pay another cent on what he had agreed to pay ; he notified me that he would not pay me even the balance that was coming to me on the former contract.

Q. What business was D. Ward & Co. engaged in ?

30 *A.* The rendering of fats and curing of hides, and general commission business.

Q. Were they not carrying on a considerable extensive business there ?

A. A very large business, I should judge from appearances.

Q. Do you know what their financial standing in Chicago was ?

A. They stood very high, so far as I could learn anything about it.

(The last question is objected to and the Court is asked to overrule the answer. The Court overrules the answer.)

Mr. Linn reads the Chicago Times, dated Tuesday morning, March 23, 1880—the article in question.

Q. Can you tell when this notice was first published?

A. Under the date of March 13, Saturday, I think it was the first paper that I saw it in.

Q. In how many papers was this notice published? 10

A. It was published for thirty days every other day from the time it was started; in the Chicago Times, Chicago Tribune, Journal and Inter-Ocean—four papers.

Q. What was the character of those papers there?

A. They were the leading papers of Chicago, and had a very large circulation.

Q. Do you know whether this notice was published in any other papers?

A. It was published in Cincinnati in two or three papers there about the same time. 20

Q. What time did you start to go to Chicago on that occasion?

A. On the 3d of March, 1880.

Q. What time did you get in Chicago?

A. I arrived in Chicago on a Friday morning, March 12th.

The further examination of this witness is suspended in order to accommodate the following witness.

30

George Harding, a witness produced on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination by MR. BEDLE:

Q. Where do you reside?

A. Philadelphia.

Q. You are an attorney and counsellor at law?

A. Yes, sir.

Q. Practicing where?

A. In Philadelphia and New York.

40

Q. Have you been engaged in patent cases considerably?

A. Yes, sir.

Q. Is that the chief line of your practice?

A. Yes, sir.

MR. LINN. It is understood that this testimony is taken subject to any objection we may interpose afterwards?

MR. BEDLE. Certainly.

10 *Q.* Were you counsel of the United States Dairy Company?

A. Yes, sir.

Q. A company located where?

A. In New York.

Q. Is this a corporation?

A. A corporation.

Q. Are you acquainted with Charles D. Deshler?

A. Yes, sir.

20 *Q.* Do you know of the fact that he was secretary of the United States Dairy Company?

A. I treated him officially as such; as counsel I often had occasion to meet him.

Q. Did you as counsel of the United States Dairy Company come in contact with Mr. Charles D. Deshler as the secretary of the company?

A. Yes.

Q. Do you recollect of being called in by the United States Dairy Company to prepare a notice to be published?

30 *A.* Mr. Deshler asked me one day when at his office on other business connected with the company, if I would give him the draft of a form of notice, prepare one, in reference to this matter.

Q. Did you prepare a draft?

A. Yes; I then and there took my pen and wrote off a rough draft, interlining it and scratching it off, and I handed it to Mr. Deshler; I did not stop to have it engrossed; I just drew it in rough.

40 *Q.* Do you recollect who else was present besides Mr. Deshler?

A. I can not.

Q. Can you recall whether James Wilson was present?

A. I cannot be certain.

Q. Where was this act?

A. The office of the company.

Q. Did you hear Mr. Linn read a notice from the Chicago paper?

A. Yes, I have read this notice in the printed case.

[It is admitted to be the same as in the newspaper.] 10

Q. Tell whether that is a printed copy of the notice you prepared at that time or not?

A. To the best of my recollection it is. I recognized this when I saw it as the same notice when my attention was called to it.

Q. You were in the employ of the United States Dairy Company at that time?

A. Yes, sir, at that time.

Q. Not in the employ of Charles D. Deshler individually? 20

A. No, sir.

Q. Can you tell about how long ago this was?

A. Only by the date at the bottom of it, that it corresponds with my recollection—March 10th, 1880.

Q. I show you a paper marked Exhibit "D. 1," please state whether you have a recollection of that paper, Exhibit "D. 1"?

A. I have a recollection of this paper or one exactly like it; my recollection is based on its contents rather than the appearance of the paper. 30

Q. Do you see an endorsement on the back of it?

A. Yes.

Q. What is that endorsement?

A. Final injunction Andrew, Tallman & Co., I think it is.

Q. Have you any recollection of that endorsement on the paper?

A. I have a very strong conviction that that endorsement was there—the endorsement of final injunction; I feel satisfied it was there. 40

Q. Do you recollect of your memory that it was there before you saw the paper—I call your attention to last Saturday?

A. I am very confident I remember the words “final injunction” being endorsed on it.

Q. Did you look at the paper the time you drew the notice?

A. Yes, inside of the paper; that is where the doubt springs up as between the outside of the paper and the
10 inside of the paper.

Q. In using this language in the notice, “a final injunction and decree was obtained against the said Andrew and his associates in the Circuit Court of the United States for the Southern District of New York, as may be seen by reference to the record of said Court,”—do you recollect of looking at that paper to see the character of that injunction?

A. Yes, I asked Mr. Deshler about the character of the injunction; he remarked to me an injunction had
20 been granted, and in some way the question arose whether it was—either his suggestion to me or mine to him, at all events the conversation arose between us as to what kind of an injunction it was; and he then said that he had the paper and would get it for me, a copy of the injunction; then he handed me the paper, and I turned it over and read it, and I said “This is a final injunction.” Then I took the notice and wrote the word “final” in it—I interlined the word “final;” my mind was in doubt about it until I saw this paper;
30 then this paper resolved the doubt.

Q. Whose conclusion was it that it was a final injunction?

A. It was mine; I concluded just then and there from reading this paper that it was a final injunction.

Q. Is there any clause in there to show that it is a final injunction?

A. As a lawyer I would say it is in form the form of a final injunction. [Witness reads the paper aloud.]

Q. Have you any recollection of Mr. Deshler having
40 other papers there at that time that were submitted to you?

A. He had other papers; there was memoranda of cases, of suits as I recollect it, with some comments.

Q. I show you a paper marked Exhibit "D. 2." Look at that and tell us whether you recognize it or not as the list of which you spoke?

A. I know Mr. Deshler had this in his possession; I have seen it there; that is the reason I cannot say certainly that I saw it at this time; I think I saw it then, but I know I have seen it in his (Deshler's) office, and I think I saw it then.

10

Q. How many times do you think you saw it at his office?

A. Several times.

Q. How long ago?

A. Some time ago—before these transactions.

Q. State on that paper whether there is any memorandum of a suit against Andrew?

A. Yes, here is No. 11; this is a sort of docket of the suits of the Dairy Company, and No. 11 is against W. E. Andrew and others; then there is remarks 20 "final injunction and decree obtained."

Q. Do you know that handwriting?

A. I cannot say that I do; I am very familiar with it; I associate it with Mr. Dickerson's office, but who in there I don't know.

Q. Do you know Mr. Dean's handwriting?

A. Yes—now you mention it, I recognize this as Mr. Dean's handwriting.

Q. Mr. Dean was a clerk in Mr. Deshler's office?

A. Yes; I have heard that he was secretary of the 30 Dairy Company before Mr. Deshler. I know this to be Mr. Dean's handwriting.

Q. Do you recall any notices of publications in the newspapers at that time or not handed to you or presented to you on that occasion by Mr. Deshler as having been published by Mr. Andrew?

A. Yes, I saw notices that had been published in the papers; Mr. Deshler had them there in the office?

Q. Do you recollect whether those notices were in connection with any letters?

40

A. I cannot recollect on this particular occasion. About that time there were notices accompanied with letters; it might have been on another visit; if you fasten me to that exact date I cannot be certain, but about that time I saw notices from the papers handed to me by Mr. Deshler, and there were some letters from some parties in the west, but whether on this particular occasion or shortly before—but it was about that time.

10 *Q.* [Showing witness Exhibit "D. 3."] Tell us whether you have any recollection of that letter and slip being shown to you by Mr. Deshler at that time?

A. Yes, sir, these were shown about that time to me—such a letter and notice of this general tenor was handed to me.

Q. [Handing witness Exhibit "D. 4."] State whether you recollect that letter and that newspaper slip being produced at that time by Mr. Deshler?

20 *A.* I can only say as I did, that several letters of this tenor and character were shown to me then; I cannot recollect the contents—it is impossible.

Q. Have you it fixed in your mind that there were newspaper slips shown to you?

A. I know there were newspaper slips shown to me, and letters from the west from parties calling attention to them or complaining of them, but I cannot identify them any more closely than that; I think they are the same.

30 *Q.* Do you know who the Western Manufacturing Company was?

A. I think it is a company operating under the Mége patent.

Q. Were you familiar with the Mége patents?

A. Yes.

Q. Are you familiar with patents?

A. Yes, I have given a good deal of attention to them.

Q. How long have you been familiar with the Mége patent?

40 *A.* Five or six years, say four or five years; as many as four, perhaps five years.

Q. Are you familiar with the various patents in this country called the Mége patents, or the Mége patent in its different shapes—the issues and reissues?

A. Yes, I am familiar with what is called the Hippolyte Mége patent; also the first reissue, the second reissue, and I think the third.

Q. Notices of rival patentees or those in controversy with each other—how common were they?

(Question objected to by plaintiff.)

10

MR. BEDLE. I want to show by the witness how common it is to publish notices for the protection of patents.

The Court admits the question, and allows the plaintiff an exception.

A. I can only tell my own experience, only as to how frequent they are; but where a party has a patent and some other person is in his judgment infringing it or about infringing it, by selling articles which infringe 20 it or by negotiating patents which he considers to be infringing patents, it is quite usual to issue notices, circulars, advertisements, cautioning the public that you hold a patent, and that you regard the goods of these other parties as infringing upon it, and you hold them liable and responsible. It is very usual, and we consider we are bound to serve these notices before we can get an injunction: we feel that we are bound to keep the public apprized that we will hold certain articles to be violations of our rights, so that afterwards 30 when we come to sue these parties who buy or use the articles they cannot allege that we stood by and permitted them to become innocent purchasers; on that ground it is quite usual to do it, and I very often do it.

Q. Please state whether that notice was drawn by you at the time as counsel according to the condition of things as you then understood them?

A. Yes; I made this rough draft as I understood things to be at the time in response to a request to prepare a formal notice or prepare notices or some such 40

thing as that, to caution parties who might become purchasers or deal in these articles or this thing which we suppose infringed.

Cross-examined by MR. LINN :

Q. When were you first called in as counsel for the United States Dairy Company ?

A. I have acted for them as counsel off and on for three years I think, perhaps longer—three or four
10 years ; first of all I had a retainer from them and I don't think I did anything for some time.

Q. Do you recollect when you first received that retainer ?

A. I cannot ; it was three or four years ago.

Q. For some time after that you had nothing to do with their suits which they had had except occasionally to be called upon for advice ?

A. I think that was so, for some time I did not act ; they had had litigation before they consulted me and
20 in which I had taken no part and did not know anything about it except in a general way.

Q. Are you an officer of that company now ?

A. Only as counsel.

Q. Are you interested in the company ?

A. I had some stock in the company.

Q. Has that company any property out of which money could be recovered if judgment were obtained against it ?

A. I may possibly lead you into an error. I don't
30 think I have any stock in the United States Dairy Company. There is another company that grew out of that company. Now as to the precise dates I cannot now tell you whether that company was in existence at this particular time.

Q. What company is that in which you have the stock ?

A. That is in the present existing company ; it is called the " Dairy Company, limited," I think.

Q. Do you know whether in 1880 that company had
40

any property out of which money could be recovered if judgment were obtained?

A. I don't know; I have seen a desk up there, and they own these patents you know.

Q. "D. 1," this paper which was first shown you—do I understand you to say you saw in Mr. Deshler's office at the time you drew this notice?

A. A paper purporting to be a copy of a perpetual injunction.

Q. This particular paper? 10

A. A paper of that general appearance, and the contents were the same.

Q. The paper which you saw there was a paper produced by Mr. Deshler?

A. Yes, on my inquiry if he had a copy of this injunction.

Q. Did he suggest the matter of the injunction, or did you?

A. It was in this way. He asked me to prepare a proper form of notice, and I prepared the notices, 20 stating what is in there; and then when I came along down to the question of injunction, I stopped to see what kind of an injunction or how the doubt arose in my mind, or wishing to know, I cannot say; then I said to him what was this injunction, and he said he had a copy, and brought it out, and I looked at it and I saw the words "perpetual," and "enjoined forever," and I put down "final injunction."

Q. Who suggested the idea of injunction being embodied in the notice? 30

A. It was mine, because it was my practice to put in all the equities we have.

Q. That paper which was produced there you had never seen before?

A. I don't know.

Q. Was that an original paper issued by the officers of the Court, or a mere copy?

A. I don't think it had the original seal on; I think it was a copy.

Q. Do you know whether any such paper as that 40 ever issued in that suit from the Court?

A. At some time or other I have inquired since and been informed that such a paper did ; I don't think I ever inspected the original records ; I think I made inquiry, which satisfied me in some way about that time that this was a correct copy.

Q. You took that paper upon his statement ?

A. I asked Mr. Deshler if he had a copy of this injunction, and he handed it out to me, and I read the paper, and wrote in "final injunction."

10 *Q.* You state it is a very common practice for a patentee who believes that other persons are infringing his patents to issue notices warning persons using these things which are deemed to be infringements ?

A. Yes, sir, quite usual to do it.

Q. Did you ever know a patentee to issue a notice of that character stating that he had obtained an injunction against the use of a patent, against the use of which he was warning the public, when no such injunction had been obtained, excepting in this case ?

20 *A.* Of course I would not prepare a notice of a falsehood.

Q. Did you ever know that to be done ?

A. I cannot recall an instance ; I do not think it would be commendable.

Q. In issuing these notices patentees simply state that they claim that certain things are infringements of their patents, and the public are warned against infringements ?

A. Yes, sir ; if there has been litigation which they
30 think injures to their advantage, they make a statement of it.

Q. Did you ever prepare any other notices for this company wherein Mr. Andrew was interested ?

A. I don't recall any.

Q. Did you know when this suit against Tallman, Andrew and others, had been commenced—had you any knowledge of that suit ?

A. No personal knowledge of that suit at all.

Q. Did that take place before you were connected
40 with them ?

A. Yes, I think so ; at all events before I was actively connected.

Q. Have you any knowledge of the patents which have been issued to Mr. Andrew in regard to this fat rendering or oleomargarine manufacturing business ?

A. Yes, sir.

Q. You are quite familiar with those patents ?

A. I have read all of them, I think.

Q. And quite as familiar as you are with the one issued to Mége ?

A. No, I rather made the Mége patent a special study, but I have read Mr. Andrew's patents ; one of them I have read very carefully. 10

Q. You know his other patents also ?

A. Yes, because they all have some connection one with the other ; they are all germaine to butter or oil or oleomargarine.

Re-direct examination by MR. BEDLE :

Q. Did you hear Mr. Andrew on the stand, his statements of fact, that he had patents for 1874, 1876, 1877 ? 20

A. Yes, sir.

Q. You are familiar, as I understand, with those patents of Mr. Andrew ?

A. I have read them all.

Q. At the time you drew this notice you were familiar with them ?

A. Yes, I had knowledge of those patents at the time. 30

William E. Andrew recalled.

Direct examination continued by MR. LINN :

Q. In negotiating with Mr. Ward, did you have a copy of your patent or any of your patents there ?

A. I did.

Q. Did you show him the drawings and show him the patents ? 40

A. I showed him the drawings and the patents also.

Q. Had you anything else besides the drawings annexed to the patent?

A. I had my drawing of my apparatus.

Q. Is this it which I hold in my hands [Exhibit "P. 2"]?

A. Yes, sir.

Q. How long did you remain in Chicago after the thing fell through?

10 A. I think about two weeks, as near as I can tell.

Q. And these notices were continued in the paper for how long a time?

A. I think they were ranged from March 13 for one month every other day.

Q. Then you finally failed to consummate the bargain?

A. I did; I tried my utmost, of course, to do it, but I failed entirely.

20 Q. At that time had any injunction been issued against you forbidding your using these patents?

(Question objected to.)

Q. Did you know of any injunction against you at that time restraining you from using the patents which you were about selling to Mr. Ward?

A. I did not.

Q. Have you ever learned of any such injunction?

A. I have not.

30 Q. Has any injunction to your knowledge been issued against you at any time restraining you from the use of any of your patents?

A. I should think not, restraining me from the use of my patents.

MR. BEDLE. We desire to waive our examination for the present.

The COURT. You may do so.

(By agreement of counsel letters which were sent with the notices at the time they were sent to Chicago in regard to the publication of these notices, in order to show the connection of the defendant with the publication, are offered in evidence.)

40

Dennis Ward, a witness produced on behalf of the plaintiff, being duly sworn, testifies as follows :

Direct examination by MR. LINN :

Q. Where do you reside ?

A. Chicago.

Q. Were you residing there in the spring of 1880 ?

A. Yes.

Q. What business was you carrying on ?

A. Hide and tallow business, and the manufacture of oleomargarine. 10

Q. Carrying on quite an extensive business ?

A. Yes, quite a large business.

Q. Did you negotiate with Mr. Andrew in the spring of 1880 for the purchase of any patent rights, and if so what ?

A. I negotiated in the spring of 1880 for a shop right ; I purchased a shop right.

Q. After that did you negotiate with him for the purchase of any other right—I do not mean did you consummate a bargain, but did negotiations take place between you ? 20

A. I was negotiating with him for the State of Illinois.

Q. Can you tell when your negotiations were going on ?

A. It was in the fore part of March, 1880, I think.

Q. What did Mr. Andrew ask you for the right of the State of Illinois ? 30

(The form of the question is objected to.)

Q. State just what took place between you and Mr. Andrew in reference to this thing—what he said to you and what you said to him ?

A. There was a good deal of correspondence between us before he came to Chicago ; I think he told me when he arrived in Chicago that he came from Cincinnati ; and I went to the hotel where he was stopping ; I asked him what he would take for the State of Illinois for his 40

patent machine for making oleomargarine—something to that effect; he told me saying that as I had the right to use a shop right that he would take \$30,000 for it; I told him I could not pay that amount of money for that right; he also wanted to retain East St. Louis, and I would not have the state without I could have that also; I will not be positive whether I made it that night or the next day, but I offered him \$25,000 for the state; he also wanted \$3000 of a guaranty each year
 10 as royalties; I offered him \$2400.

Q. What was the meaning of that guaranty or royalties—explain that?

A. That if we manufactured oleomargarine enough at a royalty of one-quarter of one cent on the pound where it would not amount to \$2400, I was to pay the difference; if we were not manufacturing oil, I would have to pay \$2400 a year, and if it amounted to over that, he would be just so much ahead.

Q. Suppose you manufactured so much that the royalty of one-quarter of a cent a pound amounted to more than \$2400 a year, did he get the additional?
 20

A. Yes, sir.

Q. Were you prepared to carry that out if he accepted it?

A. Yes, sir; I have always carried out my obligations, and I would have carried that out at the time.

Q. Do you recollect what day of the week Mr. Andrew went to Wisconsin and came back again in a day or two?

30 *A.* He went on Saturday and came back either on Monday or Tuesday.

Q. Can you tell anything which occurred in the meantime which had any effect on your mind in regard to this contract?

A. I would not be positive whether it was on Saturday or Monday that I went to my office, and our book-keeper called my attention to this notice in the Chicago Times. I looked it over very carefully, and my mind was changed so far as my offer was concerned at
 40 once.

Q. When you were examined *de bene esse*, last summer, you produced a slip of paper?

A. I delivered a paper similar to that to the Master.

Q. Where did you get that paper which you delivered to the Master?

A. I got it at my office. I cut it out of the Chicago Times I think, I would not be positive as to the date.

Q. Are you positive which paper you cut it out of?

A. My impression is it is the "Times."

Q. Is that the paper which had that effect upon 10 your mind—you say your mind was changed?

A. This notice that I gave to the Master was.

Q. What did you do after you saw that notice in the paper?

A. I thought over the matter. Andrew was not in town then, he had gone up in Wisconsin; I waited till he came back, and by a former engagement I went to the hotel and met him; I had an engagement to meet him on the Tuesday night on his return from Wisconsin.

20

Q. Before Andrew came back did you do anything with that notice or show it to anybody?

A. Yes, I showed it to several; I showed it to my partner and to our general office help; I took it to my counsel and asked their advice about it.

Q. What did you then do after you had seen the notice and shown it to your partner and your counsel, and took their advice—when Mr. Andrew came back, what did you do?

30

(Question objected to as irrelevant; admitted; and exception allowed.)

A. After I took advice of my counsel I waited till Mr. Andrew came back, and when I saw him I was angry; I might have said a good deal more than I can remember now; I asked Mr. Andrew if he owned what he was selling me; and he said he did; I told him that I did not believe he did—something to that effect, and I showed him that notice and told him that I 40

would withdraw my offer that I had made to him a few days previous, and would have no more to do with him.

Q. And that ended your negotiations?

A. It did.

Q. Why did you withdraw your offer—why did you think that Mr. Andrew did not own what he was offering to sell you—what made you think so?

A. There were several things that made me think
10 so; in the first place I took advice of my counsel; they told me not to have anything to do with it.

(Defendant's counsel moves to overrule the answer in relation to the advice of counsel.)

(The Court permits it to stand and allows the defendant an exception.)

Q. Did your counsel say to you when there they would not advise you to have anything more to do
20 with it?

(Question objected to.)

A. I took this notice to my counsel, Dent & Black, and they directed me not to have anything to do with this, saying that it would need a large investigation to find out whether Mr. Andrew had a bona-fide right to sell to me what he was trying to sell to me; and therefore on those grounds I rejected it.

Q. Have you one of these patented kettles?

30 *A.* Yes.

Q. Have used one.

A. Yes.

Q. You have it still in use?

A. Yes.

Q. Did Mr. Andrew show you any drawings of his kettle at the time you were negotiating with him?

A. Yes.

Q. Do you recognize "P. 2" as the drawings which he showed you?

40 *A.* Yes, it was a paper something similar to that.

Q. Did he have any other drawings annexed to the specifications which he showed you?

A. Yes.

Q. Look at this, and say whether he showed you that, or anything similar to it? [Showing witness Exhibit "P. 3."]

A. He showed me a paper similar to that.

Q. Did you ever read these specifications, this description of the way of using it?

A. I think I did, when I first negotiated for it. 10

Q. Do you know whether it is used in the way in which it is described here?

A. Yes.

Adjourned for the day.

WEDNESDAY, DEC. 21st, 1881. 20

Dennis Ward resumed the stand.

Cross-examination by MR. BEDLE :

Q. When did you come on here from the west?

A. I arrived here Sunday evening.

Q. Are you a manufacturer of oleomargarine in Chicago?

A. I am, yes, sir.

Q. A paper was produced here yesterday by Mr. Andrew, purporting to be the agreement between yourself and himself [Exhibit "P. 1" shown to witness.] 30

Have you a duplicate of that paper?

A. I have.

Q. Have you it with you?

A. No, sir.

Q. Where is it?

A. In Chicago.

Q. You were examined before a Master I think you stated in Jersey City some months ago?

A. Yes. 40

Q. Did you have the paper with you at that time?

A. I did.

Q. Did you then refuse to produce it?

A. I did.

Q. You had it in your pocket at the time?

A. I did not.

Q. Who had it?

A. Mr. Linn.

Q. You handed it to him there before the Master,
10 did you not?

A. I did.

Q. And then you refused to produce it?

A. Yes, sir.

Q. And he instructed you not to, didn't he?

A. I don't recollect.

Q. Have you any other paper from Andrew besides
that you have just spoken of?

A. Well in what respect do you mean—what do you
mean?

20 *Q.* I mean in respect to the manufacture of oleo-
margarine?

A. I have not.

Q. By the COURT. Or any kindred product?

A. Except his letters; except letters which I hold
written to me.

Q. By MR. BEDLE. You spoke yesterday of corres-
pondence between Mr. Andrew and yourself. Have
you that with you?

A. No, sir.

30 *Q.* Have you copies of it?

A. No, sir.

Q. Haven't you copies of your letters sent to Mr.
Andrew?

A. I have a part of them.

Q. Didn't you swear before the Master that you kept
copies of the letters you sent to Mr. Andrew?

A. I kept copies of the important letters I sent to
Andrew.

Q. Where are those copies?

40 *A.* In Chicago.

Q. You were inquired about with reference to them when you were sworn before the Master, were you not?

A. Yes.

Q. Why didn't you bring them with you here?

A. I didn't think I would need them.

Q. Why didn't you bring your contract with you?

A. I didn't think that I would want it.

A. What did you bring it with you before for?

A. I brought it with me before to surrender it and 10 get the license.

Q. Did you get your license?

A. I did not.

THE COURT. When was that examination—is there anything here to indicate it?

MR. BEDLE. Yes; it was May 11th.

Q. That is what you brought it on for May 11th, 1881—to get the license?

A. Yes, sir.

Q. Did you expect to get a license under that con- 20 tract at that time?

A. I did.

Q. Why didn't you get it?

(Question objected to; allowed as touching the question of damages.)

Q. [Question repeated.] “Why didn't you get it?”

A. Mr. Andrew at that time says that he was not ready to give it to me. 30

Q. Wasn't willing to give it to you?

A. No—wasn't ready.

Q. Did he say why he wasn't ready to give it to you?

A. Yes.

Q. What did he say?

A. He said there was a balance due on that contract which he wanted paid before he would give it to me.

Q. What balance did he claim on the contract?

A. \$3000. 40

Q. On what part of the contract—there it is before you?

A. [Referring to paper.] I will have to read this to find out.

[The contract was read aloud to the jury by Mr. Linn.]

Q. Now state why he did not give you the license that you demanded of him?

A. Well, he demanded the \$3000—the balance on that contract—and I refused to pay it.

10 Q. That was the point in difference between you?

A. That was it.

Q. Had you been manufacturing oleomargarine under the license or under this contract?

A. Yes.

Q. To what extent had you been manufacturing it?

A. Quite a large extent.

Q. A large extent?

A. Yes.

20 Q. Were you manufacturing that kind of oleomargarine out of which they make butter?

A. I manufactured the stock.

Q. The stock?

A. Yes, at that time.

Q. The stock for the butter?

A. They press it afterwards.

Q. For what?

A. They press the stock after we get through.

30 Q. You manufactured the stock and put it in barrels?

A. Yes.

Q. And sold it where?

A. I sold it several places, where I could get a market for it.

Q. To about what extent had you manufactured it?

(Question objected to. Allowed.)

Q. [Repeated.] To about what extent had you manufactured it?

40 THE COURT. Answer it approximately, as near as you can?

A. We manufactured about 25,000 pounds a week.

Q. That is of the oil?

A. Stock.

Q. What do you mean by stock?

A. It is the unpressed, before the oil is taken from the stock—unpressed.

Q. About this \$3000, then, you declined to pay it?

A. Yes.

Q. And he declined to give you a license unless you did pay it?

A. Yes; he declined to give the license without I paid the \$3000. 10

Q. You had made the royalty, hadn't you?

A. The royalty on what—on the stock?

Q. Yes.

A. No, I did not.

Q. Was the ground upon which you declined to pay it that you hadn't made it?

A. I don't understand the question.

Q. I understand from you that he demanded \$3000 of you in order to give you a license, and you declined to pay it? 20

A. Yes.

Q. And you referred to a clause in the contract here, by which that \$3000 is in extra royalty at the rate of one-half cent per pound upon the product manufactured by said Ward & Co., making a total royalty of three-quarters of a cent per pound upon the first 600,000 pounds of oleomargarine manufactured by said Ward & Co. under said license? 30

A. Yes, but I refused to pay it because this advertisement had prevented me.

Q. That is why you refused to pay it?

A. That is the reason why I refused to pay it.

Q. And yet you made the royalty?

A. What do you mean?

Q. You had manufactured product enough to pay that royalty, hadn't you?

A. Yes.

Q. And more too? 40

A. Well, I have manufactured enough for that amount at three-quarters of a cent per pound.

Q. And a good deal more, hadn't you?

A. Well, I have manufactured enough for that.

Q. My question is—and a good deal more. Have you any objection to answer it?

A. I answer just as I did before.

Q. How is that?

A. I have manufactured enough to pay that amount.

10 *Q.* My question is, and a good deal more—hadn't you?

A. Well, I might have manufactured some more.

Q. That is a curious expression—"I might have manufactured some more"—you know whether you did or not, don't you? Tell me why you answer in that way?

A. I have manufactured more then, if that will do you.

20 *Q.* Will you please tell me why you answer me in that way—"I might have manufactured more"—do you mean to deceive me?

A. No, sir, I do not.

Q. Haven't you manufactured a great deal more than enough to pay that royalty?

A. I have manufactured more, yes.

Q. Haven't you manufactured twice as much more than enough to pay it?

A. Not at that time.

Q. Not at what time?

30 *Q.* When that demand was made on me.

Q. And you have been manufacturing from that time to this?

A. Yes.

Q. Did you give Mr. Andrew anything to show for the \$3000?

A. The contract.

Q. Has he got anything else?

A. No, sir.

Q. Had you paid him the \$2000?

40 *A.* I had.

Q. Did you ever see any of Mr. Andrew's patents?

A. I did.

Q. When?

A. When I negotiated that contract, or before.

Q. Wont you please speak a little louder?

A. Before I negotiated that contract.

Q. Did you see them at the time you negotiated this contract?

A. I did.

Q. This contract don't specify any particular patents—that is the way you understood it, isn't it? 10

A. My understanding of it was that I bought all the patents he had.

Q. Now you and he had a conversation, as I understand you, about the exclusive right of Illinois—and what day do you say that was, your first conversation?

THE COURT. Am I right in supposing that no claim of special damages is based upon anything connected with that contract? There is nothing, I understand, 20 in the declaration.

MR. LINN. No, I think not.

MR. BEDLE. They only get it in because they show it has connection with the purchase—the exclusive right.

Q. [Question repeated.] Can you give the date of that conversation?

A. I can't give the exact date.

Q. Whereabouts in Chicago was it?

A. I think the first conversation was in my office. 30

Q. I would like to ask you another question. How did you expect to get a license from Andrew without paying him the \$3000—you say you demanded it and he wouldn't give it to you?

A. I demanded it; and I told him if he had any rights in his patent and could show it to me that I would pay him the \$3000.

Q. What did he say to that?

A. Well, he said that he couldn't give me any more rights than what he had.

Q. Why didn't you take those then?

A. Well, I am not satisfied now.

Q. You are not satisfied yet, are you?

A. No, sir, I am not.

Q. Now you stated that when Andrew came to Chicago you had a conversation with him in regard to the exclusive right of Illinois, and for which he asked so much money?

A. I did.

10 *Q.* Was that for the exclusive right under all the patents, the same as the contract you had made?

A. For the exclusive right of all his patents.

Q. For the State of Illinois?

A. Yes, sir.

Q. And your proposition was based on that idea, was it not, of \$25,000 and a royalty as you have stated?

A. Yes, sir.

20 *Q.* And if you had bargained with him you would have expected to sell those rights in the State of Illinois, and to manufacture the product of oleomargarine, would you not?

A. I would expect to use them just as I seen fit for my own interest.

Q. Do you regard that as an answer to my question?

A. I do.

Q. Did you consider under the contract that you were getting the right to manufacture the product under the contract offered in evidence here—to manufacture it?

30 *A.* I did so far as my own house is concerned.

Q. And you did manufacture, of course, as you have stated?

A. Yes.

Q. Now I understand you, that your offer was never accepted by Andrew?

A. I made him the offer—

Q. I don't ask you that—it is cross-examination.

A. Well, I can't answer that without I can explain it.

40 *Q.* By the COURT. Did he, as you understand it, ever accept it—you can answer that, can't you?

A. He didn't accept it at that time when I made him the offer.

Q. By MR. BEDLE. I understand you that you made him the offer before he went to Wisconsin?

A. Yes, sir.

Q. And before he had got back you had seen the advertisement?

A. Yes, sir.

Q. And you took it to your counsel?

A. Yes, sir.

Q. And he advised you not to make the contract?

A. That was the day he advised me not to make the contract; I was satisfied from that advertisement that I would not have made the contract even without the counsel's advice after seeing that advertisement.

Q. You made up your mind, as I understand you, when you saw the advertisement, not to make the contract?

A. I did.

Q. There was no proposition as to terms of payment was there?

A. Yes.

Q. What were they?

A. The first payment was to be \$5000; and the balance of the payments was to be stretched along as it would be convenient to us.

Q. In the shape of royalty out of the product?

A. Nothing said about that; in the shape of notes.

Q. Notes of Ward & Co.?

A. Yes, sir.

Q. Covering what period of time?

A. It was not stated.

Q. Any agreement as to time of notes?

A. No, sir.

Q. Out of the \$5000 was there to come the \$2000 that had been paid under the other contract?

A. No, sir.

Q. Was there any agreement that the \$2000 should come out of the \$25,000?

A. Yes, sir.

10

30

40

Q. Out of what part of it?

A. Out of the \$25,000.

Q. I mean in the proposition—out of what part of the \$25,000?

A. There would be notes less that amount.

Q. Notes less the \$2000?

A. Yes, sir; I could if I would be allowed to state how that—what that was for—I would state it.

MR. LINN. Just answer his questions.

10 Q. Was anything said about the \$3000 that you owed on the other contract?

A. I was to pay that.

Q. Besides?

A. Yes, sir.

Q. Out of the \$25,000?

A. In the \$5000—that is, the total amount that I offered was to be \$25,000, less the \$5000; I was to pay \$5000 cash; the \$5000 was to be deducted from the \$25,000, which would leave \$20,000—that was the way
20 I understood it at the time.

Q. Mr. Andrew says that it was to be \$2000 out of the \$25,000—he does not get enough then, does he?

A. If I had paid the \$3000; of course the \$3000 would be added on if I hadn't paid it, but if I paid it it would be taken from it—but that was the total amount for the State of Illinois.

Q. By the COURT. Including what you had agreed to pay?

A. Yes, sir.

30 Q. By MR. BEDLE. That left the \$20,000?

A. When I paid the \$3000.

Q. Now in making the proposition of \$25,000 and the royalty, the royalty was to come from the manufactured article, wasn't it?

A. Yes.

Q. And if the bargain had been made you would have expected, would you not, to get the right to manufacture the product?

A. I don't understand you.

40 Q. [Question repeated.]

A. I would.

Q. If your proposition had been accepted would you have gone to your counsel to have had the matter examined into and had it pass under his supervision?

A. Yes, sir.

Q. I don't suppose you would have made a contract unless your counsel had advised you that you legally got what you bargained for, would you?

A. No.

Q. Do you recollect of seeing any notices of Andrew's published in Chicago?

A. No, sir.

Q. What did you understand me to ask you?

A. If I had seen any notices of Andrew.

Q. Published in Chicago?

A. Yes, sir ; I said no.

Q. Is there a concern manufacturing oleomargarine in Chicago called the National Dairy Company?

A. There is.

Q. And it has been manufacturing there how long? 20

A. Some time in 1880 I think they commenced.

Q. They commenced before that, didn't they?

A. They might have commenced in the latter part of 1879.

Q. They were manufacturing when you made this bargain in February with Andrew, weren't they?

A. No, sir, I didn't think they were.

Q. Didn't they commence before you did?

A. They commenced about the same time.

Q. They commenced before you saw that notice in the 30 paper, didn't they?

A. Not to my recollection.

Q. Do you know whether or not they were manufacturing in Chicago, at the time of the publication of this paper, this notice?

A. Yes, they were manufacturing then.

Q. And did you not understand that they were manufacturing under the United States Dairy Company?

(Question objected to as immaterial. Objection withdrawn.)

A. [Question repeated.] I don't know what company they were manufacturing under.

Q. Do you understand my question?

A. Yes.

Q. You don't know?

A. No.

10 Q. I don't ask you that? What did you understand?

A. About your question?

Q. That is my question. I will enlarge it a little. I will repeat the other question. Did you understand that they were manufacturing under the United States Dairy Company, or under what is called the Mége patent or patents?

A. I understood so.

20 Q. Did you not know of the existence of the Mége patents at the time you made the contract of February, 1880?

A. I knew there was such a company, yes.

Q. What do you say?

A. I knew there was such a patent.

Q. When the offer that you made Andrew was made, didn't you know there was a conflict between Andrew and the United States Dairy Company in regard to these patents?

A. I did not.

30 Q. What did Andrew say to you about the Mége patents?

A. I don't recollect he said anything to me about it,

Q. From whom did you learn of the Mége patents, of which you have spoken?

A. Only from street talk.

Q. Common talk?

A. Common talk.

Q. This National Dairy Company in Chicago made the product called oleomargarine, did it not?

40 A. I presume they did; I don't know.

Q. You understood they did, didn't you?

A. I understood so.

Q. You have got no license yet besides this contract, have you?

A. Only the contract.

Re-direct by MR. LINN :

Q. Before you made this offer to Mr. Andrew, had you or not shown these patents—his patents and the Mége patents—which he furnished, to your counsel, and taken advice about it? 10

A. Yes, sir.

Q. Who were your counsel?

A. Dent & Black?

Q. You had taken counsel then in regard to these patents before you made the offer, I understand?

A. No, after I made the offer.

Q. And before you saw the notice?

A. No—after I saw the notice; I made the offer before I saw the notice, and when I saw the notice I engaged a patent lawyer, which escapes my memory now—his name—with him, between Dent & Black and that man—I can't recollect his name—I was advised not to purchase the patent. 20

Q. My question was, whether before that time you had counsel with Dent & Black about it at all—on reflection just think whether you had before you made your offer talked to them about it?

A. I might have done so. 30

Q. You don't recollect?

A. I don't recollect.

Q. You say you were manufacturing oleomargarine—what do you understand by oleomargarine as you were manufacturing it? Just tell how you did it—what you did? I will put this question, and you need not answer it unless the Court directs that you shall. I ask you whether it was anything more than rendering the oil—that is, rendering the fat—by means of Mr. Andrew's kettle and putting it into barrels? 40

(Objected to as leading. Question allowed.)

[Mr. Bedle prays an exception.]

A. It was simply the rendering of that tallow—

Q. [Question repeated.] You may tell in the first place—before you answer the question, tell me just what you did?

THE COURT. If you withdraw the question we will start anew.

10 Q. [Question again repeated.]

A. Yes, that is all there is to it.

Q. And that stock put into barrels you call oleomargarine?

A. I call it oleomargarine stock.

Q. And that is all you were manufacturing?

A. That is all.

Q. And that is all you wanted to manufacture?

A. At that time.

20 Q. You didn't purpose manufacturing butter from this material?

A. No, not butter.

Q. Do you know how they make butter from that material—in what way—what is the process?

A. No, sir, I don't.

Q. You don't know what that is?

A. No, sir.

Q. In this method of rendering this tallow by Mr. Andrew's patent, do you know what degree of heat you applied?

30 A. I know what degree of heat that I drew from the kettle.

(Objected to by Mr. Bedle as not a cross-examination. Objection withdrawn.)

Q. You said that you knew the heat of the material drawn from the kettle?

A. Yes, sir.

Q. What was that?

40 A. It was from 185 to 190 degrees.

Q. As run from the kettle?

A. Yes, sir.

Re-cross :

Q. I understood you to say, on the direct examination, that Andrew told you nothing about the Mége patents?

A. I don't recollect anything about that.

Q. This heat of which you speak, at 185 to 190 degrees, was the heat where? In what? 10

A. As it ran out of the pipe from the bottom of the kettle.

Q. By the COURT. The temperature of the melted substance, do you mean?

A. Yes, sir..

Q. By MR. BEDLE. When you spoke, in answer to Mr. Linn's question—that the temperature was 185 or 190—whereabouts was that temperature?

A. It was at the mouth of the pipe which ran to the clarifier, that is about eight to ten feet from the kettle. 20

Q. Did you ever try it yourself?

A. Personally, yes, sir.

Q. When?

A. Several times—most every day.

Q. You say you didn't manufacture butter?

A. No, sir.

Q. If you were to sell rights under these patents you expected to sell rights to manufacture butter, didn't you?

A. I didn't want that patent for selling rights; I 30 wanted it for our own business.

Q. But when you offered to buy the exclusive right, you offered to buy the exclusive right of Illinois?

A. I wanted it for the firm of D. Ward & Co., for our own manufacture; I am no patent-right seller.

Q. You stood on East St. Louis, didn't you?

A. I wanted the State of Illinois.

Q. You stood on East St. Louis?

A. I wanted the whole of Illinois.

MR. LINN. I offer in evidence the certified copy of 40 this patent of 1877, from the Patent Office.

(Objected to as not being within the jurisdiction of the Court.)

It is admitted and marked Exhibit "P. 4."

William E. Andrew, recalled.

Cross-examination by MR. BEDLE :

Q. Where do you live?

10 A. 15 Magnolia avenue, Jersey City.

Q. Do you know where Mr. Deshler lives?

A. I only know by hearsay—New Brunswick, I understand he lives.

Q. How old are you?

A. I am thirty-three.

Q. What is your business?

A. Well, my business is what you see here, has been for the past eight years—giving my entire time to the working of this machine—these patents.

20 Q. Had you any business before that?

A. Yes, sir.

Q. What was it?

A. The wholesale butter business.

Q. As a clerk or in business?

A. In business for myself.

Q. Have you any knowledge of chemistry?

A. No, sir.

Q. Have you any education of a scientific character?

30 A. Well, I don't know that I have, except what I have got from my experience—practical experience.

Q. Have you any licensees under your patents who are doing business now?

A. I have.

Q. Where?

A. I don't know as they are doing business to-day exactly; I have licensees though—Rafferty & Williams of New York—they are licensees, but I don't know that they are working now.

40 Q. Don't you know they are not working?

A. No, for I heard the other day that they were working again.

Q. For a good while they didn't work?

A. Yes, sir.

Q. For years?

A. No, sir, not years, perhaps six months.

Q. You were in with them, were you not, in business?

A. No, sir.

Q. Interested in their business?

10

A. No, sir.

Q. They were your licensees though, were they not?

A. Yes, sir.

Q. Did you get any royalty from them?

A. I was up to the 4th day of October.

Q. The last 4th day of October?

A. Yes, sir.

Q. And you don't know whether they are working now or not?

A. No, because we have changed our agreements, 20 and whether they will continue I can't tell yet; they have the machinery there all ready to work at any time.

Q. Where have you got any licensees under your patents?

A. In Connecticut, Indiana, Kansas City, and in Philadelphia up till the 4th of October, which concern has changed hands and I don't know what will be done with it.

Q. Do you know that any of them are working under 30 your licenses?

A. I can't say as to the Philadelphia concern, but none of the rest have—none of the rest have fitted up yet; I have sold those rights, but I have not fitted up their factories.

Q. I speak of your oleomargarine or butter product patents. You understood me in that way, didn't you?

A. Yes, I understood you, certainly.

Q. And you intended your answers to apply to those? 40

A. I intended my answers to apply to my licensees as their licenses are issued.

Q. For making oleomargarine?

A. Well, that is the name that has been given to it, and I suppose that we will let it stand so; the law has compelled us to call it oleomargarine.

Q. In answer to the Court you said that you had patents in 1880, 1878, 1876—I think two in 1876—and 1874—that is the way I understood you; that is correct, is it?

A. Yes, sir.

Q. 1877 is also the one offered in evidence. Will you please to state in what the amendment between your patent of 1877 and your reissue of 1880 consisted.

A. Well, merely in adding the claims to the process—more claims—for the purpose of making the patent a little stronger, and making some changes in reference to the specifications—specifying it a little more clearly.

Q. Have you got your patent of 1874 here?

20 *A.* I rather think it is.

Q. Will you produce it?

A. [Refers to papers in possession of his counsel.] I have not got the original of it; it is reissued; I have only got the reissue.

Q. Have you got your patent of 1876 here?

A. Yes, sir.

Q. You said you had two I think, in that year?

A. I think I have, yes: I think they are there on the table.

30 *Q.* These are the patents of 1876 that you hand me?

A. I didn't look at the dates; I suppose they are.

Q. You went to Chicago, you stated, in March, 1880?

A. Yes, sir.

Q. Had you been to Cincinnati before you went there?

A. Yes, sir—well, yes, I had been there.

Q. Did you go directly from Cincinnati to Chicago?

A. I did.

40 *Q.* When did you leave home?

A. I left home on the 3d of March.

Q. Went directly to Cincinnati?

A. No, sir.

Q. Where first?

A. To Washington.

Q. To get what?

A. I had some business to attend to there.

Q. Were you in Cincinnati in January, 1880?

A. I think not.

Q. Did you publish any notice in Cincinnati when 10 you went there?

A. I did.

Q. In March, 1880?

A. Yes, sir.

Q. In what papers?

A. Well, I don't know that I can remember the names of the papers.

Q. In how many papers?

A. I don't know that I did in more than one.

Q. Could you recognize the paper if I should show 20 it to you?

A. I suppose I could.

[Showing witness a paper.] I show you what purports to be the Cincinnati Commercial of March 8th, and call your attention to a notice headed "Oleomargarine." Did you order that published in that paper?

A. Yes, sir.

Q. Did you say you were not there in January?

A. I think not.

Q. Did you send a notice on to be published in Jan- 30 uary?

A. Perhaps I might; I think that I did send one at some time, but I couldn't say whether it was in January or not.

Q. You recollect the fact of your sending one?

A. Yes, sir, I do, but I wouldn't attempt to swear to the date.

Q. I show you the Cincinnati Daily Gazette of January 24th, 1880, and call your attention to a notice headed "Oleomargarine Butter" [paper handed to 40

witness]—Did you authorize the publication of that notice?

A. I did.

Q. Do you know a company called the Western Manufacturing Company in Cincinnati?

A. I know of it, yes.

Q. You have been to their place of business, have you not?

A. No, sir.

10 *Q.* They were manufacturing what is commonly called "Oleomargarine," or the butter like product, weren't they?

A. Yes, sir, I understood so.

Q. Do you know Mr. Bailey, who is the secretary of that company?

A. I do not.

Q. You know there is such a man?

A. I couldn't say that I do.

Q. You have heard of him?

20 *A.* I don't know that I have.

Q. You knew that that company was a licensee, did you not, in Cincinnati, of the United States Dairy Company?

A. I did.

Q. Do you know how many issues you ordered of the notice, that is in the paper of January 24th, 1880—the Cincinnati Daily Gazette?

A. No, I couldn't state that.

Q. Give us some idea, wont you?

30 *A.* Perhaps two or three times; I don't know of the exact number.

Q. Do you know Mr. Lincoln, a lawyer in Cincinnati?

A. I have met the gentleman.

Q. Did you meet him in March, 1880?

A. I did.

Q. Did you tell him you were going on to Chicago?

A. I did.

40 *Q.* Did you publish any notices in Chicago?

A. I think I published—that is I think I directed a letter to one of the Chicago papers.

Q. Don't you know whether you did or not?

A. Yes, I can say I did, but I can't say what paper it was.

Q. Didn't you have a notice in Chicago before you reached there in March?

A. I don't know that I did.

Q. Don't you think you did?

A. No, I do not think I did.

10

Q. What day did you reach Chicago?

A. I reached there on Friday, March 12th, I think.

Q. On the 13th you left for Wisconsin, as I understood you?

A. Yes, sir.

Q. And before you had left for Wisconsin you had seen this notice?

A. No, sir.

Q. Didn't you state in your direct examination here yesterday that on Saturday, before you left for Wisconsin, you saw the notice of the United States Dairy Company?

20

A. I don't think I did state it; if I did I stated incorrectly.

Q. Did you not say that you saw it on the 13th?

A. If I did say so I said it incorrectly, and I would like to rectify it now, for I didn't see it before I went to Wisconsin.

Q. When did you first see it?

A. I first saw it in the Palmer House on a Tuesday following my return.

30

Q. Did you not see the notice before that Tuesday of which you speak?

A. No, sir, I did not.

Q. I have you down as saying that you first saw that notice Saturday, March 13th?

A. I think that I stated that in this way—that that was the first paper that I saw that it was printed in, but I didn't see it on that day; but the paper that I

40

saw it in—that it was printed in first—was on the 13th, but I didn't say that I saw it on that day.

Q. Just give that explanation over again?

A. I didn't say that I saw it on—that I read it on the 13th, yet still I might have read it in the paper of the 13th, but on a later day; that is the idea of it.

Q. The way Mr. Muirheid and I both have it down is, "I first saw this notice March the 13th."

A. Well, I can't help that, for the idea was that I didn't—if I said that I saw it on that day I wish to
10 correct it, because I didn't read the Chicago paper on the day that I went to Wisconsin.

[The stenographer then read from his notes the statement of the witness upon the subject.]

Q. Where did Rafferty & Williams carry on business?

A. Forty-fourth street and East river.

Q. Did you know persons by the name of Schwartz, and Stife, and Harris, and Madden, and Miller, who
20 were in the oleomargarine business?

A. Yes, sir.

Q. They are out of business now, are they not?

A. Yes, sir—that is, Schwartz is out of business; I don't know about the rest of them.

Q. They were your licencess, were they not?

A. Yes, sir, Schwartz was—I had forgot that—D. Schwartz & Co.

Q. Do you know a man by the name of Joseph Brooks?

A. No, sir, not that I know of.
30

Q. Rafferty & Williams were your licensees for what territory?

A. For New York City; we have had several different contracts.

Q. And they would have licensees that you wouldn't know about or care?

A. No, sir.

Q. Why not?

A. Because they had no right to give it to them.

Q. That was personal then—their license?
40

A. They had a license for to manufacture themselves?

Q. There was an injunction served on you once, wasn't there, in the name of the United States Dairy Company?

A. I think there was something, or some paper served purporting to be some kind of an injunction, if my recollection is correct.

Q. You see that is very indefinite?

A. Yes. 10

Q. Don't you know that there was a paper served on you that was an injunction?

A. Well, I think that I do; I think that there was such a paper.

Q. Can't you make it a little stronger than that—didn't you know that there was?

A. Well, it was some time ago now; I couldn't say positive; I know that, but my impression is, that there was such a paper.

Q. You have not any doubt of it now, have you? 20

A. Well, I wont say as to the doubt of it.

Q. Do you know who served it?

A. I do not.

Q. You understood that to be an injunction also, didn't you, against Tallman and against Rafferty?

A. No, sir, not as against Rafferty.

Q. Against Tallman?

A. I think the parties that were interested with me at that time were Tallman, Tenny, Judson, and Olmstead. 30

Q. Isaac P. Olmstead?

A. Yes, sir.

Q. Amos Tenny?

A. Yes, sir.

Q. William D. Judson?

A. Yes, sir.

Q. Peter E. Tallman?

A. Yes, sir.

Q. You understood that injunction to have issued 40

out of the Circuit Court of the Southern District of New York, didn't you?

A. I supposed it must, because the suit was in that Court.

Q. You knew where to go to find out about that injunction for the record, didn't you?

A. Yes.

Q. Had you lawyers in New York?

A. I had.

10 Q. Have you got with you any notice that was published by you in Chicago?

A. I have not.

Re-direct examination by MR. LINN :

Q. You say that you think an injunction was served upon you in that suit where you and Tallman and others were defendants, issuing out of the Circuit Court for the Southern District of New York. Did
20 you understand that to be a final injunction, or a temporary preliminary injunction?

A. A preliminary injunction.

Q. Who was your counsel?

A. George Gifford.

Q. What became of that suit?

(Question objected to, as a matter of record.)

Q. What did you understand became of that suit?

30 (Question objected to.)

Q. Had you any of these patents which you were negotiating the sale of to Mr. Ward?

A. At the time of the commencement of that suit?

Q. At the time of the injunction.

A. I think not.

Q. What patents were you selling to Mr. Ward or negotiating with Mr. Ward?

(Question objected to as not a proper subject matter
40 of cross-examination.)

THE COURT. In his direct I think he has already stated, that two of 1876 and one of 1877, as I remember.

MR. LINN. Then I will not repeat it if it is in the case.

Q. Now explain the process of manufacturing this oleomargarine briefly?

A. The process I carry on myself?

Q. Yes, yourself.

A. Just take the fat in a clean state—beef fat—and 10 run it through a meat hasher, hash it up fine, and then it runs through a spout into this machine, and when it strikes this machine I have a very high heat in between the jacket of the rendering kettle—[interrupted.]

Q. This machine is what you call the rendering kettle?

A. Yes, sir; it is jacketed, one inside the other; and on the inner surface between the two jackets the steam is admitted, and the fat falls on the upper surface of the inner jacket; and that surface is very hot, perhaps 20 300 or 350 degrees, and the very moment the fat strikes the surface it is at once melted; and that is continued during all day—as fast as it goes in through the hashing machine it runs out, so as to make it a continued process; the cooking is not done more than a minute or so.

Q. When that melted tallow runs from the kettle—

A. Then it runs out of the spout, and we call that melted stock.

Q. Sometimes called oleomargarine stock? 30

A. Oleomargarine stock it has been called; a good many people call it tallow stock.

Q. Is it anything different from tallow?

A. It is nothing different from simple tallow except it is in a cleaner state; it is rendered then, but it is nothing but tallow.

Q. When they proceed to make the butter from that, what do they do?

A. Then they run it in the seeding room and seed it—that is, allow the stearine to congeal. 40

Q. You run it into a tub to let it stand there, and for some time?

A. Yes, let it stand there for two or three days until the stearine forms, and it becomes seeded; then it is about the nature of soft lard.

Q. Or mush—like mush and milk?

A. Yes; in that condition it is put in two or three pound bags and put into a press into a warm room, and subjected to a very high pressure; and the oil is squeezed out and the stearine remains in the cloth; and they call that oleomargarine oil, and from that they make oleomargarine butter.

Re-cross-examined:

Q. Your patents of 1876 and 1877 and 1874, all contemplate the manufacture of this product, do they not—the rendering of fat?

(Question objected to, because the patents themselves will show, and they are here.)

A. Yes, the product that I have stated.

Q. And the mode of doing it differing only in machinery?

A. Yes, certainly, the process of doing it—the different processes; they show of course they are all different; that is, the machinery is different.

Q. But they were all to produce in the same general mode this product?

A. They were all to render this fat to the best advantage that I could possibly do it; that was my intention.

Q. The great object of your process was to get a pure product, wasn't it?

A. Certainly; I didn't want to render an impure product.

Q. It was to divest the product of the membrane or the fibre, was it not, so as to get the product in a clear pure state—was that it?

A. I don't understand that question. Let's have it again and may be I can understand it.

[The stenographer repeats the last question.]

A. It was for the purpose of rendering the fat, to separate the liquid portion from the membrane of course; that is what the machine was got up for.

Q. And it was intended by all of these patents from the fat to render a product out of which pure butter could be made?

A. Not intentionally; if it was needed it could be, or for any purpose that anybody saw fit to use it for.

Q. To get a product free from the contamination of the membrane and the fibre, wasn't that it? 10

A. Certainly.

Q. And also a product without taste or smell out of which butter could be made, if necessary—was that it?

A. Certainly, I was after a sweet product; I should not have worked eight years to get an impure product.

Q. And you professed to do that by these patents which you have spoken of?

A. I expected to do it with these machines; some of them have failed to do it—some of them have failed to accomplish that desired end. 20

Q. But you undertook to do it with these patents?

A. Certainly; I tried them until I saw that I could not do it; then I went for something else, until I did succeed.

Q. By the COURT. I understand you to say in your negotiations with Mr. Ward, your purpose was not to sell all the patents that you had touching this subject? 30

A. In the last negotiations the question of the butter patent which I have was brought up, but I refused to—[interrupted].

Q. Was it your understanding that the whole of the patents that you held touching this subject were to go to him?

A. He could take that patent provided he would take it at his own risk—that was the understanding.

Q. By the COURT. That is not what I am inquiring about. I understood a question to be asked you 40

whether you designed to sell him all the patents you had touching this oleomargarine business, and you either did or attempted to give some answer to it. Now what was your purpose in that negotiation?

A. My purpose was to give Mr. Ward the patents which I have named here for the rendering of the fat, which includes the machine.

Q. By the COURT. And not the others?

A. And not the others.

10 *Q.* Mr. Ward said he was to have all the patents you had.

A. Excuse me; he was to have the patent for the butter at his own risk; this was to be included in the assignment of the right.

Q. What patent is that?

A. Of 1875, and the reissue was 1878?

Q. He was to have that too, was he?

A. Yes, sir; I think the reissue in 1878.

Q. I understood you to say he was to have the pat-
20 ent of 1874.

A. There was nothing said in reference to the patent of 1874 whatever; I haven't put that in at all because I have abandoned it long ago—that process.

Q. Wasn't that 1874 patent reissued?

A. It was reissued, and after it was reissued I abandoned it—I abandoned that process.

Q. He was to have all the patents you had, wasn't he?

A. I supposed likely all of them went in, but the
30 butter patent was to be subject to his own risk, because I would not give him the licence to make butter; I was only giving him the licence to render fat, and if he made butter under the patent I have for that purpose, he was to do it at his own risk.

Q. The butter patent is the patent of 1874, and its reissues?

A. I cannot say that there was any understanding about that whatever.

Q. Was not the butter patent you spoke of, the pat-
40 ent of 1874, and its reissues?

A. I have no butter patent of 1874; my butter patent is of 1875, if my recollection is correct.

Q. Your butter patent of 1874—please answer me whether this is it as you claim it: “The process of separating oleomargarine and stearine from the membrane of animal fat,” &c.

1. The within described process of separating the oleomargarine and stearine from the membrane of animal fat, consisting of subjecting the fat to pressure when raised to a temperature sufficient to effect the separation, and conveying the oily product away from the heat to a cooler place as rapidly as expressed, without the use of water or chemicals, as specified, and for the purpose set forth. 10

2. The process consisting of subjecting the oleomargarine and stearine, procured as described, to a pressure at a reduced temperature, whereby the oleomargarine is separated from the stearine, as specified, without the use of water or chemicals.

3. In extracting oleomargarine from animal fat, for food or culinary purposes, the process of separating the oleomargarine and stearine from the membrane by taking the fat while retaining its animal heat, and raising it to the proper temperature by the application of dry heat, and subjecting it to pressure as soon as sufficiently heated, thus separating the oleomargarine and stearine from the membrane without the use of chemicals or water, as described. 20

Is that your patent of 1874 as you claimed it?

A. That was my patent in 1874. 30

Q. For extracting oleomargarine or animal fat for food or culinary purposes—is that for butter?

A. If it can be used for butter like substances of course.

Q. You expected under that patent to produce the oleomargarine product in a pure, tasteless state from the fibre or membrane, didn't you?

A. I did, but I failed.

Q. That was the object of that patent?

A. That was the object of it, yes, sir. 40

Re-direct examination by MR. LINN :

Q. That patent you abandoned right away ?

A. I abandoned that patent in 1875 or 1876—1876, I think.

Q. Did you ever consider it of any value afterwards ?

A. Not a cent.

Q. Did you ever try to get anybody to use it afterwards ?

A. No, not since I have abandoned it.

10 Q. You did not regard it of value ?

A. I did not regard it as of any value whatever.

Re-cross-examined by MR. BEDLE :

Q. You tried to improve on it by the subsequent patents ?

A. I invented machines after that.

Q. To improve on that mode and the product, didn't you ?

A. Certainly, to improve on the process ; I could
20 not say it was on that patent, because I had to get a different patent entirely.

Q. By your other patent you were seeking for the same kind of product—a tasteless, pure oleomargarine product ?

A. I was seeking by other patents to make a pure—as pure as I possibly could get it—a product from the fat of animals ; that is what I was after.

Q. So that butter could be made out of it ?

A. Yes, or so that they could make gold out of it if
30 it turned out so—anything they could make out of it.

Q. You mean that ?

A. Yes, I would like to have it turn out so.

MR. LINN. These three patents which have been called for, I offer in evidence.

MR. BEDLE. What do you offer ?

MR. LINN. Patent No. 172,942, bearing date February 1, 1876 ; also patent No. 179,883, bearing date July 18, 1876 ; also patent reissue 8048, bearing date Janu-
40 ary 22, 1878.

(Defendant objects to these as irrelevant, and on the ground of want of jurisdiction of the Court.)

[Mr. Linn asks permission to insert another count in the declaration precisely similar to the one in it except that it should recite that he was the owner of these three patents, not simply the one patent dated April 10, 1877, but of the three patents, bearing date as above named, with the same special damages.]

(Defendant objects to it as making another case from 10 that laid in the declaration, and on the ground of surprise.)

[The Court denies the application to amend.]

MR. LINN. Unless I have entirely overlooked something we now rest.

THE COURT. Do you mean a paper?

MR. LINN. Yes, sir; I have no further oral testimony to put in.

THE COURT. Any paper that you desire to put in 20 and is here present, you may put it in.

MR. LINN. I do not think of anything else now.

[Plaintiff offers in evidence an exemplified copy of the record—the complete record of this suit which has been spoken of where they say the injunction was obtained, the suit of the United States Dairy Company against Tallman, Andrew, Tenny, Judson, Olmstead—an exemplified copy of the complete record of that suit.]

(Defendant objects to it as irrelevant. The Court 30 admits it, assuming that the record is complete.)

MR. BEDLE. It appears to be correct.

THE COURT. You may have your exception to the admission.

Plaintiff rests.

Recess.

After recess.

[Defendant moves to non-suit the plaintiff on the ground that there is no evidence in this case to go to the jury upon which a verdict can be based ; and also on the ground that the evidence shows that it is simply a conflict or controversy with reference to the title to patents.]

Adjourned for the day.

-
- 10 I appreciate the suggestion of counsel for the plaintiff that where there is any doubt it is better to hold the cause and permit it to proceed to a final determination, because it is often better that the whole case be in on a review, and I have looked at this case with considerable care, I may say with a desire to hold it if possible, and have been unable on the examination that I have made to find in the evidence in the cause any support to some of the requisites to a recovery.
- 20 Plaintiff must show that the published matter impugning his title was untrue ; that the publication was malicious, and that he sustained special injury by it. The case from the commencement in respect to requirements necessary to its maintenance carries with it much of doubt ; even when you regard the proof of the falsity of the allegations there is great uncertainty, but as to that there is some proof and upon that ground I should not be willing to take the case from the jury. First take the allegation in the objectionable article,
- 30 and all that is essential in causing the alleged injury in that article must be proved to be untrue. It asserts that the defendants principals are the owners of the Mége patent for the manufacture of this butter substitute, and this not being controverted stands as a fact for our present purpose in the case. It is alleged that suits are pending in the United States Courts against parties using Andrew's patent ; and there is no negation of that fact, and, therefore, here it must be regarded as if it were true.
- 40 There is an allegation that a final injunction and de-

cree was obtained against the said Andrew and his associates in the U. S. Circuit Court in Southern New York. As to that all there is in the case that goes to its negative is, that the injunction was not strictly intended as a final injunction.

The rest of the article is cautionary against suits.

So that the case comes down on the proof of falsity, so far as appears, to that in the single statement of the nature of the injunction that was issued. The fact of an injunction is not denied, indeed it is admitted 10 in proof in the cause. If this were the only point upon which the proof is weak, as there is some evidence, I should not take the case from the jury. But the falsity is not the only thing that must be shown in order to the maintenance of this action; it must as well be shown that the publication was of malice. And cases are not wanting in which it is declared as a rule of law that this action so assimilates to that of an action for malicious prosecution, that distinct proof of want of probable cause as in that action must be 20 made. But necessarily some proof in that direction is involved in a case of this kind in the maintenance of the necessary allegation of malice. Malice, of course is not necessarily ill-will, but any unlawful act intentionally done to the injury of another, in general phrase, constitutes what is called legal malice, but the act done out of which malice can be inferred, must be an act *mala fides*. There must be in it some intention or purpose of wrong or mischief, it must be something beyond a mere mistake or wrong opinion. And I take it 30 it never can arise in a case like this where one is in the legitimate assertion of a real or supposed claim of right. An act is never malicious when done in good faith. It must be done with an intention to do some wrong or mischief to another. Now in this case I am at a loss to find any circumstances in that direction other than the mere fact that the defendant intentionally caused this publication to be made. It is undoubtedly true that circumstances may surround an 40 act of publication of such a character as in themselves

to be evidence of malice or want of just or reasonable cause for such publication, and thus afford the requisite proof to support that feature of the action.

But what is there in this case more than the simple direction of this publication, what fact or circumstance in the case to indicate on the part of the defendant anything that is *mala fides*. Admitting that the company he represented owned this patent and that it was for the purposes stated in it, what is there in the act
 10 of publication to indicate any such condition of mind or illegal purpose. It may have been a mistake as to the rights, but something should be shown by which we can characterize the act which he does as springing out of a want of good faith. I am unable to find it in this case. The burthen of proving that is on the plaintiff. When this case was in the Supreme Court it brought out an expression clear and distinct upon that point, that in addition to the untruth of the alleged libelous matter it must appear by the plaintiff's
 20 proofs that the publication was maliciously made. If the law simply required proof of the falsity of the objectionable statement in support of the action, there would seem to be no reason for any declaration of the necessity of the other requirement, malice. If it necessarily springs out of the untruth of the alleged libel it would be superfluous as a requirement in such suit, clearly superfluous if falsity is evidence of the malice *per se*. It is urged that the averment in the article that the injunction issued by the Circuit Court of
 30 the United States was a final injunction is a statement of such manifest untruth, that from it the jury might infer malice. But when you look at the record you find that the writ is in its terms a perpetual injunction.

The record it is true, when examined by one familiar with such proceedings, (which the defendant is not shown to be) assures us that it must have been a mistake, but must we infer that he knew the mistake, and that he fraudulently misstated the fact, as it appeared?

However the plaintiff may himself conceive the fact
 40 to be, the evidence seems to me to fail in disclosing the

published notice to be other than an assertion of a supposed right on the part of the defendant, and it fails to show any evil or mischievous design from which a jury would be justified in finding malice. If this case were now by me to be submitted to the jury it would be a submission of facts to be found by them. I could not in my judgment say that there was any evidence upon which a verdict could be had for the plaintiff, and therefore so believing, it seems to be my duty to arrest the case here and order a non-suit. 10

There is nothing in the decision of this case that can in anywise affect the respective rights of these parties in this patent; they stand and would stand whether the case stops here or goes to a verdict just as they were in that respect when this suit came into Court. That matter must be settled in another forum.

I will give counsel any aid I can to bring this matter before the Supreme Court or allow an exception, whichever may be desired. 20

Whereupon the plaintiff by his counsel prayed an exception to the ruling of the Court in taking the case from the jury and ordering a non-suit, upon the ground that there was sufficient evidence in the cause from which the jury might legally have found all of the facts in favor of the plaintiff essential to sustain the plaintiff's action, which exception is allowed by the Court and sealed accordingly.

M. M. KNAPP, [L. s.] 30
J. S. C.

And the plaintiff by his counsel prayed an exception to the ruling of the Court in taking the case from the jury and ordering a non-suit, for the reason that there was legal evidence in the cause to be submitted to the jury, upon all the facts essential to support the plaintiff's action, and that it was the province of the jury to decide upon the weight of the evidence, which exception is allowed and sealed accordingly.

M. M. KNAPP, [L. s.] 40
J. S. C.

And the plaintiff by his counsel prayed an exception to the ruling of the Court in taking the case from the jury, and ordering a non-suit, for the reason that there was some evidence upon which a verdict could be had and sustained for the plaintiff, and the jury should have been allowed to judge of the weight of the evidence; which exception is allowed and sealed accordingly.

10

M. M. KNAPP, [L. S.]
J. S. C.

And the plaintiff by his counsel prayed an exception to the ruling of the Court in taking the case from the jury and ordering a non-suit, which exception was allowed and sealed accordingly.

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M. M. KNAPP, [L. S.]
J. S. C.

Stipulation and Letters referred to on page 60
of Testimony.

IN NEW JERSEY SUPREME COURT.

WILLIAM E. ANDREW,	}	In Case.	10
vs.			
CHARLES D. DESHLER.			

It is admitted by the defendant that the notice set out in the plaintiff's declaration as having been published in The Chicago Times, The Daily Inter-Ocean, and The Chicago Evening Journal, was published by those papers respectively, by virtue of letters of which the following are copies :

MARCH 10th, '80. 20

HENRY S. TOWLE, Esq.,
Chicago, Ill.

My dear Sir—Mr. James Wilson desires me to enclose the within NOTICE to you, and request that you will secure through an advertising agency, its insertion at the most favorable rates, every other day for one month, as an advertisement in the Tribune, Times, Inter-Ocean, and some afternoon paper, in Chicago ; and in two morning and one afternoon papers at St. Louis. Please have this done immediately. 30

Yours respectfully,
CH. D. DESHLER,
Sey.

NEW YORK, MARCH 10, 1880.

MR. H. S. TOWLE,
Chicago, Ill.,

Dr. Sir—I omitted to say in my note of this date,
that you will please have the bills for the advertising
ordered, sent to this office for payment.

Yours respectfully,

CH. D. DESHLER,
Sey.

BEDLE, MUIRHEID & MCGEE,
Attys. of Deft.
Nov. 7, 1881.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

WILLIAM E. ANDREW,

vs.

CHARLES D. DESHLER.

In Case.

10

Assignment of Errors.

Afterwards, that is to say, on the _____ day of March, in the year eighteen hundred and eighty-two, in the Court of Errors and Appeals in the last resort in all causes, of the State of New Jersey, comes the said William E. Andrew, by Linn & Babbitt, his attorneys, and says that in the record and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions, and also in giving the judgment aforesaid, there is manifest error in this, to wit :

1. That the said Justice at the Circuit withdrew the case from the consideration of the jury, and ordered a non-suit, whereas by law and upon the evidence produced on the said trial, the cause should have been submitted to the jury for their verdict upon the facts before them. 20

2. Also that said Justice withdrew said cause from the consideration of the jury, and ordered a non-suit, when, according to law and the evidence in the cause, the plaintiff was entitled to have said cause submitted to the jury for their verdict upon the evidence.

3. Also that the said Justice withdrew said cause from the consideration of the jury, and ordered a non-suit, when there was sufficient evidence in the cause 40

from which the jury might legally have found all of the facts in favor of the plaintiff essential to sustain the plaintiff's action.

4. Also that the said Justice withdrew said cause from the consideration of the jury, and ordered a non-suit when there was legal evidence in the cause to be submitted to the jury upon all the facts essential to support the plaintiff's action, and that it was the province of the jury to decide upon the weight of such evidence.

5. Also that the said Justice withdrew said cause from the consideration of the jury, and ordered a non-suit when there was some evidence in the cause upon which a verdict might have been found and sustained for the plaintiff, and the jury should have been allowed by their verdict to pass upon the weight of such evidence.

20 Therefore the said William E. Andrew prays that the judgment of non-suit aforesaid, by reason of the aforesaid errors and of other errors appearing in the record and proceedings aforesaid, be reversed, annulled and for nothing holden, and that the said William E. Andrew may be restored to all things he has lost on occasion of the said judgment, and that the said Charles D. Deshler may rejoin to the said errors, &c.

LINN & BABBITT,

30 Attys. and Counsel of said Plaintiff.

Exhibits on part of Complainant.

EXHIBIT P. 1.—*Contract.*

Articles of agreement, made at Chicago, Illinois, February 3, 1880, between William E. Andrew, of Jersey City, in the State of New Jersey, and Dennis Ward 10 and James D. Carson, partners doing business in Chicago under the firm name of D. Ward & Co.

Witness, That the said William E. Andrew hereby agrees to issue and duly execute to the said D. Ward & Co., a license, in the usual form of licenses for the manufacture of patented articles, granting to the said D. Ward & Co. the right to manufacture at any place in Cook county, Illinois, the article known as Oleomargarine, covered by letters patent issued from the Patent Office of the United States to the said William E. An- 20 drew, and to sell said product so manufactured under said license.

In consideration of the issuance of said license, the said D. Ward & Co. are to pay the said William E. Andrew a license fee of five thousand dollars, payable as follows: Two thousand dollars cash and three thousand dollars in extra royalty at the rate of one-half cent per pound upon the product manufactured by said Ward & Co. under said license, making a total royalty of three-fourths of a cent per pound upon the 30 first six hundred thousand pounds of oleomargarine manufactured by said D. Ward & Co., under said license; provided, that the manufacture of such article by said D. Ward & Co. shall not be enjoined or restrained in any legal proceeding or proceedings. After the said sum of five thousand dollars shall be fully paid as license fee, as above provided, the regular royalty to be thereafter paid by said D. Ward & Co. shall be one-fourth of a cent a pound upon all oleomargarine thereafter produced under said license.

The said D. Ward & Co. are to keep books, as required in the license to be issued, as above provided.

In case any suit or suits, action or actions, shall be brought against D. Ward & Co., challenging or questioning the validity of the said patent issued to the said William E. Andrew, or the right of said Ward & Co. to manufacture said product under said license, the said William E. Andrew agrees to sustain all expenses incident to such litigation, and to save and keep
 10 the said Ward & Co. harmless therefrom. And if the said Ward & Co. shall incur any expenses by way of court costs, solicitor's fees, or otherwise, in or about such litigation, the same shall be refunded by said William E. Andrew, and may be set off against any royalty due or to become due under said license.

This agreement to be destroyed upon the delivery of said license to said D. Ward & Co.

This agreement shall be binding upon the parties hereto, their respective heirs, executors and assigns.

20 In witness whereof, the parties have hereto subscribed their hands, at Chicago, the day and year above written, in duplicate.

Witness,

C. T. BARTER.

W. E. ANDREW,
 DENNIS WARD,
 JAS. D. CARSON.

EXHIBIT P. 2.—*Drawing.*

30

EXHIBIT P. 3.

Specifications and Drawings. Same specifications annexed to Declaration.

EXHIBIT P. 4.

Copy of Original Patent, No. 189,541.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting.

This is to certify that the annexed is a true copy
from the records of this office of the Letters Patent 10
granted William E. Andrew April 10th, 1877, No.
189,541, for Improvement in Process and Apparatus
for Rendering Fats.

In testimony whereof, I, V. D. Stockbridge,
Acting-Commissioner of Patents, have
caused the seal of the Patent Office to
be affixed this twentieth day of Decem-
ber, in the year of our Lord one thou-
sand eight hundred and eighty-one,
and of the Independence of the United 20
States the one hundred and sixth.

[L. s.]

V. D. STOCKBRIDGE,
Acting-Commissioner.

No. 189,541.

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come :

Whereas, William E. Andrew, of New York, New
York, has presented to the Commissioner of Patents a 30
petition praying for the grant of Letters Patent for an
alleged new and useful Improvement in Process and
Apparatus for Rendering Fats, a description of which
invention is contained in the specification, of which a
copy is hereunto annexed and made a part hereof, and
has complied with the various requirements of law in
such cases made and provided ; and

Whereas, upon due examination made the said
claimant is adjudged to be justly entitled to a patent 40
under the law ;

Now, therefore, these Letters Patent are to grant unto the said William E. Andrew, his heirs or assigns, for the term of seventeen years from the tenth day of April, one thousand eight hundred and seventy-seven, the exclusive right to make, use and vend the said invention throughout the United States and the Territories thereof.

10 In testimony whereof, I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington, this tenth day of April, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States of America the one hundred and first.

A. BELL,
Acting Secretary of the Interior.

20 ELLIS SPEAR,
 Commissioner of Patents.

(Copy of Specifications annexed to Declaration.)

EXHIBIT P. 5.—*Record.*

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

To all to whom these Presents shall come, Greeting :

30 Know ye, That we having inspected the records and files of the Circuit Court of the United States for the Southern District of New York, do find certain paper writings there, remaining of record, in the words and figures following, to wit :

[L.S.] *The President of the United States of America, to*
George Tallman, Wm. E. Andrew, Amos Tenney,
Wm. D. Judson, and Isaac P. Olmstead, Greeting.

You are hereby commanded that you and each of you personally appear before the Judges of the Cir-

cuit Court of the United States of America, for the Southern District of New York, in the Second Circuit Court, in Equity, on the first Monday of December A. D. 1874, wherever the said Court shall then be, to answer a bill of complaint exhibited against you in the said Court by The United States Dairy Company, and do further and receive what the said Court shall have considered in that behalf. And this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars. 10

Witness, Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the City of New York, on the 12th day of November, in the year one thousand eight hundred and seventy-four, and of the Independence of the United States of America the ninety-ninth.

KENNETH G. WHITE,
DICKERSON & BEAMAN, Clerk.
Compl'ts Sol'rs.

The defendants are required to enter appearance in the above cause in the Clerk's office of this Court on or before the first Monday of December, 1874, or the bill will be taken *pro confesso* against them. 20

K. G. W., Clerk.

[ENDORSEMENT.]

I hereby certify that on the 12 day of Nov., 1874, at the City of New York, in my District, I personally 30 served the within writ upon the within named George Tallman, Wm. E. Andrew, Amos Tenney, Wm. D. Judson, Isaac P. Olmstead, by exhibiting to each of them the within original, and at the same time leaving with each of them a copy thereof.

Dated Nov. 14, 1874.

OLIVER FISKE,
U. S. Marshal, S. D. N. Y.

CIRCUIT COURT OF THE UNITED STATES,
FOR THE SOUTHERN DISTRICT OF NEW YORK.

In Equity.

To the Judges of the Circuit Court of the United States, for the Southern District of New York.

The United States Dairy Company, of the City of
10 New York, a corporation created by the laws of the State of New York, bring this their bill of complaint against George Tallman, Wm. E. Andrew, Amos Tenney, Wm. D. Judson, and Isaac P. Olmstead, and thereupon your orators complain and say, that before the year 1869 Hippolyte Mège, of Paris, France, discovered that a substance substantially identical with true butter, might be extracted from the fats of kine or other animals, and having reduced the same to practice, he took patents for the said invention in France
20 and England, in the year 1869.

And your orators further show unto your Honors, that an account of the invention of the said Mège was published in the *Revue Hebdomadaire*, in France, and in the *Chemical News*, in New York, in the year 1870; and the said publications were seen and read, as your orators are informed and believe, by one Alfred Paraf, a Frenchman, then residing in the City of New York, who fraudulently applied for Letters Patent for substantial and material parts of the said invention, and
30 procured letters patent of the United States, dated April 8th, 1873, to be issued to him therefor, as the inventor thereof.

And your orators further show unto your Honors, that the said Hippolyte Mège being informed that the said Paraf had fraudulently obtained a patent for substantial parts of his said invention, did on the 1st of November, 1873, apply to the Patent Office for a patent for his said invention, and such proceedings were had that on the 30th of December, 1873, letters pat-
40 ent of the United States were issued to him for his

said invention, so made by him before the year 1869, and patented by him in that year in England and France—the said invention not having been introduced into public use in the United States for more than two years prior to his said application.

And your orators further show unto your Honors, that the said Hippolyte Mége sold and assigned the said invention to your orators.

And your orators further show unto your Honors, that the said letters patent were found to be inopera- 10
tive, and invalid by reason of a defective description and specification; and thereupon the said Hippolyte Mége, by the consent of your orators, surrendered said original letters patent to the Commissioner of Patents, and such proceedings were had, that on the 12th day of May, A. D. 1874, letters patent of the United States were reissued to your orators, as assignees of the said Hippolyte Mége, for the said invention entitled “For a new and useful improvement in treating animal fats,” and numbered 5868; whereby there was 20
granted to your orators the full and exclusive right to make, use and vend the said invention throughout the United States, for the term of seventeen years, from the 30th day of December, 1873, subject to the provisions of the twenty-fifth section of the act of Congress of July 8, 1870, chap. 230. And your orators annex a copy of said letters patent as a part of this their bill of complaint.

And your orators further show unto your Honors, that the introduction of the said invention into the 30
United States has rendered a great service to the people thereof, by utilizing, for the purpose of butter, large quantities of animal fat, which before that time were used for purposes much less valuable and desirable; and that the said invention is of very great value and importance.

And your orators further show unto your Honors, that they have licensed a considerable number of persons to manufacture under the said patent, and have established, and are engaged in establishing an exten- 40

sive business to the great advantage of the public ; but that the defendants herein, disregarding the rights of your orators and the rights of their licencees (who, relying upon the letters patent, have taken licenses thereunder, and invested money in the manufacture of butter, in accordance with the same,) have set up an establishment for manufacturing butter according to the process invented and patented by the said Mége, as aforesaid, and have been manufacturing butter according to said process, in violation of the rights of your orators, and refuse to desist therefrom ; but threaten to continue such manufacture in defiance of your orators and to their great injury.

And your orators further show unto your Honors, that the aforesaid actings and doings of the defendant are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators in the premises ; and that your orators have requested the said defendant to desist from such violations and infringements of said patents, but they have refused so to do.

In consideration whereof, and for as much as your orators can have adequate relief only in this Court, where matters of this sort are properly cognizable and relievable ; and to the end therefore that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may upon their corporal oath, and to the best of their knowledge, information and belief, full, true, direct and perfect answer make to all the matters and things hereinbefore set forth or charged, and that as fully and particularly as if the same were here again repeated, and the defendants particularly interrogated thereto ; and that they may be enjoined and restrained by a writ of injunction issued out of and under the seal of this honorable Court, from directly or indirectly making, using or vending, or causing to be made, used or vended, any process for manufacturing butter such as they are now using as hereinbefore set forth, or such as are substantially the same, or as embody the said inventions

and improvements, or any of them, or any substantial or material part thereof, patented in and by the said letters patent owned by your orators as aforesaid, and from in any way directly or indirectly infringing said patent or any part thereof; and that the said defendants may be decreed to account for and pay over to your orators the gains and profits by them made, or realized by the use of the aforesaid invention, or any part thereof; and that your orators may have such other and further relief as may be consistent with 10 equity and good conscience.

May it please your Honors to grant unto your orators a writ of injunction issuing out and under the seal of this honorable Court, directed to the said defendants, their agents, servants, attorneys, workmen, employees, and confederates, and each and every of them, commanding, enjoining and restraining them and each and every of them, as your orators have above in that behalf prayed.

May it please your Honors to grant unto your ora- 20 tors a writ of subpoena, issuing out of and under the seal of this Court, directed to the said defendants, commanding them to appear at a certain time and place, in this Court, to answer the premises, and to stand to and abide such orders and decrees herein as may be consistent with equity and justice, and as shall be made against them; and also a writ of special injunction as above prayed for.

And your orators, as in duty bound, will ever pray, etc.

30

SIDNEY WHITTEMORE,

Secretary.

DICKERSON & BEAMAN,

Sol'rs for Compl't

and of Counsel.

UNITED STATES OF AMERICA, }
 DISTRICT OF } ss.

Sidney Whittemore, being duly sworn, says he is Secretary of the United States Dairy Company, the complainants above named; that he has read the foregoing bill of complaint, and knows the contents thereof, and that the matters and things set forth in the said bill, so far as they relate to the acts and deeds of the said complainants, are true, and so far as they
 10 relate to other matters or to the acts and deeds of any other person or persons, he believes them to be true.

And he further saith that he has signed this jurat as secretary, and affixed the seal of the United States Dairy Company thereto, by authority of said company.

SIDNEY WHITTEMORE,
 Secretary. [L. S.]

Sworn and subscribed before me, the 3d day of October, A. D. 1874.

20

JOHN R. LEFFERTS, 131,
 [L. S.] Notary Public,
 N. Y. City and Co.

UNITED STATES PATENT OFFICE.

Hippolyte Mége, of Paris, France, Assignor, by Mesne Assignments, to the United States Dairy Company, of New York City, Improvement in treating Animal Fats.

30 Specification forming part of Letters Patent No. 146,012, dated December 30, 1873; reissue No. 5868, dated May 12, 1874; application filed May 5, 1874.

To all whom it may concern :

Be it known, that I, Hippolyte Mége. of Paris, France, have discovered that a substance, substantially identical with true butter, may be extracted from the fats of kine or other animals; and have invented processes by which this product may be produced with
 40 greater or less perfection, as it may be desired. The

butter which is obtained from milk, is produced by the cow by elaborating her own fat through her cellular and mammary tissues, at the low temperature of the body. The animal fat, from which the butter-cells in milk are produced, is composed chiefly of oleine, margarine, stearine, and small quantities of other substances.

The natural process performed by the cow consists mainly, first, in separating the oleomargarine from the stearine, without developing disagreeable odors or flavors, in the oleomargarine; and secondly, in producing a slight change in the oleomargarine by which it assumes the character of butter. 10

The object of my invention is to produce these same effects by artificial means; and I accomplished it by the methods hereinafter described.

When fat is melted at a high temperature, such as is employed in rendering tallow, it has a disagreeable odor, very difficult to remove. It is therefore, necessary to avoid any process which employs high heat. A temperature of about 103° Fahrenheit, or slightly upward, is practically about sufficient for melting the fat in the treatment hereinafter described. 20

It is also true that oleomargarine melts at a lower temperature than stearine. It is therefore desirable to use a temperature below the melting point of stearine, when the process of separation is being performed by pressure, so as to leave the stearine in a solid form. I find the temperature of about 80° Fahrenheit to be very proper for this purpose.

The use of low temperature, for the reasons referred to, is controlling in the process I have invented for separating the oleomargarine from the stearine, and thereby producing a virgin fat, free from the taste or odor of natural fat, and free from that which is produced by melting it at a high temperature, and out of which butter may be easily made. 30

The first step preparatory to the process of separation is to crush, grind, or disintegrate the fat by any suitable machinery, such as rollers, or mill stones, and to wash it by a stream of pure water, which may be 40

poured on it while the act of disintegrating is being performed, until it is as free as possible of everything soluble or separable by water. The fat, being thus thoroughly cleansed and disintegrated, may be subjected to artificial digestion.

The gastric juice is made with the half of the stomach of a pig, sheep, or calf, and three litres of water containing thirty grams of bisulphate of lime. After a maceration of three hours, the infusion is passed
 10 through a fine sieve, and two litres of gastric juice result, which are sufficient for a hundred kilograms of fat, with which it is to be mixed. The temperature of this mixture is to be slowly raised to about 103° Fahrenheit, so that the separation shall be complete. The temperature may run higher, and an increase of heat will produce the result more rapidly; but care must be taken not to heat the material so as to induce the change which produces disagreeable odors, and my
 20 observation is that 125° Fahrenheit is about as high as the heat can be raised safely. The lower temperature produces the most satisfactory results. Or the fat may be melted in water of about the same temperature as above described, without the admixture of any other substance, until it is all limpid on the surface, and the membranous matter in it has been deposited on the bottom of the vessel. The water is then drawn off, or the fat is removed from its surface, as most convenient, and allowed to cool. This preliminary treatment is for the purpose of removing membrane, and
 30 obtaining the fat free from foreign substances, as nearly as possible, whereby the separation will more surely result in pure oleomargarine than if these precautions are not taken.

In this condition, the process of separating the oleomargarine from the stearine is to be performed. This is done either by packing the putrified fat in sacks of woolen or cotton cloth, and subjecting them to pressure in a press, or by the use of a centrifugal machine, such as is used for drying sugar. The effect produced
 40 is that the oleomargarine practically separates from

the stearine and flows out, leaving the stearine in the sacks or in the centrifugal machine, as one or the other means are used. The fat must not be allowed to be chilled in this process below the point at which the oleomargarine will flow readily, or the process will cease to yield the product. I find 80° Fahrenheit a good temperature. About sixty per cent. of oleomargarine is thus obtained, more or less, according to the fats used.

The oleomargarine thus produced is free from any disagreeable taste or odor, and is suitable for various culinary uses, and also for replacing olive oil in the manufacture of soaps, and as a superior lubricator, etc. It is composed, like butter, of oleine, margarine, and a little odoriferous oil, and has not undergone any modification, either by excessive heat or by chemical agents. And this is the substance which, passing through the udders of the cow, where it is subjected to the action of the mammary pepsin, is converted into butter. If this neutral fat is to be immediately used for any of the purposes above indicated to which it is applicable, nothing more need be done with it; but it may be somewhat modified in quality by treating it in a closed vessel, which is provided with a revolving fan or other beater, operated from without by a shaft passing through an air-tight opening. The vessel may be immersed in water at suitable temperatures, the fat being agitated by the beater till it becomes quite thick and uniform. When kept cold, it will be solidified and quite brittle. In either case, it is desirable, in order to give consistancy and tenacity to the oleomargarine, to work it between rollers or otherwise, as is customary with butter. It is useful to prepare the raw fat for the processes above described by immersing it in a solution of fifteen per cent of common salt and one per cent of sulphite of soda, the effect of which will be to prevent fermentation while the process is going on. And after the melting of the fat and its purification, as above described, and before it is subjected to the operation of the press or centrifugal

machine, I have found it useful to permit the fat to stand for some hours in vessels into which it has been poured when liquid, and slowly to cool, whereby a partial separation of the stearine occurs in the manner of crystallization in the mass, and the work of the press or centrifugal machine is facilitated. When it is desired to convert the oleomargarine, as it is separated from the stearine, into butter, if the butter is to be immediately used, that transformation is effected by

10 adding to it a small quantity of curds of milk (or their equivalent), or pure milk or cream, and then working it as cream is worked until the butter forms in the usual way. Common salt, one per cent of bicarbonate of soda, and coloring matter may be added with advantage. If the butter is to be preserved, it will be better to mix the oleomargarine at animal heat, with its weight of water, in which has been mixed a fiftieth part of mammary tissue (which is the udder of the cow minced fine), a hundredth part of bicarbonate

20 of soda, a fiftieth part of curds of milk, and some coloring matter, and to agitate the mixture for three hours, maintaining animal heat. When this compound settles and cools, the butter will be good and capable of being preserved. The pepsin in the mammary tissues contains the principle which operates usefully in making the transformation, and it may be obtained by macerating the mammary tissue in water, and using the water at about 86° Fahrenheit in making the mixture. If the butter is needed for long preser-

30 vation, I add only the mammary pepsin to the oleomargarine, which is prepared as above described, omitting the other ingredients. It is to be remarked that all the metal vessels used should be thoroughly tinned, and the plates employed to separate the sacs in the press should be doubly coated with tin, in order to prevent any contact with iron or copper.

What I claim as my invention, and desire to secure by letters patent, is—

1. The process by which oleomargarine, pure and
40 free from disagreeable odor or taste, is extracted from

animal fats or suets by pressure at a low temperature, substantially as described.

2. The process by which butter can be obtained from oleomargarine by the aid of pepsin and curds of milk, or their equivalents, substantially as described.

3. The new butter-like product or manufacture, substantially as described.

4. The combination of artificial gastric juice, substantially such as described, with animal fats, for the purpose of facilitating the process of separating the oleomargarine from the stearine, as described. 10

5. In the process of converting oleomargarine into butter, the combination of milk or cream, or the curds of milk with the oleomargarine, substantially as described.

6. In the same process, the combination of the mammary tissue of the cow, or mammary pepsin, with the oleomargarine, substantially as described.

In testimony whereof, I have signed my name to this specification in the presence of two subscribing witnesses. 20

HIPPOLYTE MÉGE.

Witnesses :

ROBT. M. HOOPER,

T. AUGINZ.

U. S. CIRCUIT COURT,
SOUTHERN DISTRICT OF NEW YORK.

In Equity.

10	THE UNITED STATES DAIRY COMPANY, vs. GEORGE TALLMAN, WILLIAM E. AN- DREW, AMOS TERRY, WILLIAM D. JUDSON and ISAAC OLMSTEAD.
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SIR :—

Please enter my appearance as solicitor for the de-
fendants in the above entitled suit.

20 Dated Dec. 7, 1874.

Yours, &c.,

GEO. GIFFORD,

Defendants' Solicitor,

34 Beach street,

New York City.

To

KENNETH G. WHITE, Esq.,

Clerk of said Court.

U. S. CIRCUIT COURT,
SOUTHERN DISTRICT OF NEW YORK.

In Equity.

UNITED STATES DAIRY COMPANY,

vs.

GEORGE TALLMAN, WM. E. ANDREW,
AMOS TENNEY, WILLIAM D. JUDSON,
and ISAAC P. OLMSTEAD.

10

The answer of Peter E. Tallman, sued under the name of George Tallman, William E. Andrew, Amos Tenney, William D. Judson and Isaac P. Olmstead, defendants, to the bill of complaint of The United States Dairy Company, complainants. 20

These defendants now and at all times hereafter saying and reserving unto themselves all and all manner of benefit and advantage of exception that can or may be had or taken to the many errors, uncertainties and insufficiencies in the said bill of complaint contained for answer thereto, or unto so much thereof as they are advised it is material or necessary for them to make answer unto, answering say :

That they do not know and are not informed save 30 by said bill, whether or not said complainants are a corporation created by the laws of the State of New York, and leave said complainants to make such proof thereof as they may be advised is material.

And these defendants further answering, on information and belief, deny that before the year 1869, Hippolyte Mège, of Paris, France, discovered that a substance substantially identical with true butter might be extracted from the fats of kine or other animals.

40

And these defendants further answering, say that as to the matters alleged in said bill in reference to said Mége reducing said alleged discovery to practice, the publication of the same, and the acts of Alfred Paraf, these defendants do not know and are not informed save by said bill, and leave said complainants to make such proof thereof as they may be advised is material.

And these defendants further answering admit, that application was made to the Patent Office for a patent
 10 for said alleged discovery, and that letters patent were issued to said Mége therefor on the 30th day of December, 1873. But these defendants on information and belief, deny that said discovery had not been introduced into public use in the United States for more than two years prior to said application.

And these defendants further answering, admit that said letters patent were surrendered, and that on the 12th day of May, 1874, reissued letters patent were granted to said complainants as alleged assignees of
 20 said Hippolyte Mége. But whether or not said Mége assigned said discovery or invention to said complainants, or whether or not said original patent was surrendered by said Mége by the consent of said complainants, these defendants do not know and are not informed save by said bill, and leave said complainants to make such proof thereof as they may be advised is material.

And these defendants further answering on information and belief, deny that the said letters patent were
 30 found to be inoperative or invalid by reason of a defective description or specification. On the contrary, on information and belief, these defendants say that said surrender was made, and said reissue obtained for the purpose of causing said reissue to cover more than said Mége was the first inventor of, and that said reissue is not for the same invention as was said original patent, but is for more than was described or made known in said original patent; and for more than said Mége was the first inventor of, and that said surrender
 40 and reissue were fraudulent and void.

And these defendants further answering on information and belief, say that on the 17th day of April, 1874, said complainants having been therefore advised that The H. R. Nash Co., a corporation organized under the laws of the State of Connecticut were conducting the business of extracting animal oils and of treating the same, to produce a substance resembling butter, with full and admitted knowledge that said process was different from the process described in said original letters patent, applied to said corporation for a 10 written description of the process then in use by them for extracting and treating animal oils. That on the 18th day of April, 1874, in pursuance of such request, the said corporation gave to said complainants a written description of said process then in use by them, which was in substance as follows: The oil is extracted from the comminuted fat mixed with one-quarter of its weight of water by the application of steam of such temperature from 100° to 120° as will dissolve the fat; dry salt is stirred in and the mixture allowed to settle; 20 the oil is drawn off and when cooled separated from the stearine by pressure and churned with either water or milk, coloring matter being added if desired: and thereupon and in less than twenty days after receiving said written description from said corporation, to wit: on the 5th day of May, 1874, said complainants surrendered said original letters patent, and procured to be issued on the 12th day of May, 1874, said reissued letters patent describing and purporting, as the complainants claim, to patent to complainants as 30 the invention of the said Hippolyte Mége, the aforesaid described process used by said corporation of The H. R. Nash Co.

And these defendants further answering say, that they do not know and are not informed, save by said bill, whether or not the introduction of said alleged invention of said Mége into the United States has rendered great or any service to the people thereof, or whether or not said complainants have licensed a considerable number of persons under said patent, or have 40

established an extensive business, and leave said complainants to make such proof thereof as they may be advised is material.

And these defendants further answering on information and belief deny, that said Mége was the first inventor of any of the processes or things specified as his invention in said reissued patent, but that on the contrary, on information and belief, they say that long before any invention thereof by him, the same and material and substantial parts thereof were known to
 10 and used by H. R. Nash at New Haven, Connecticut, who now resides at said New Haven; George Hammond at Detroit, Michigan, who now resides at said Detroit; Allan Hay, Charles E. Ward and Thomas Hay in the City of New York, who now reside in the said City of New York; A. V. S. Groesbeck in said City of New York, who now resides in Hudson county, New Jersey. And that the alleged invention or things specified as the invention of said Mége in said reissued patent and
 20 substantial and material parts thereof were prior to any invention thereof by him, described in and patented by letters patent granted in 1826 by the Government of Great Britain to N. H. Monicler, dated September 19, 1826, numbered 5345; in letters patent granted in 1846 by the Government of Great Britain to William Palmer, dated April 15, 1846, numbered 11,414; in letters patent granted in 1846 by the Government of Great Britain to George F. Wilson, dated August 27, 1849,
 * numbered 12,501; in letters patent granted in 1855 by
 30 the Government of Great Britain to James Murdock, dated December 13, 1855, numbered 2817; in letters patent granted in 1860 by the Government of Great Britain to R. A. Brooman, dated May 26, 1860, numbered 1305; in letters patent granted in 1860 by the Government of Great Britain to Harbor J. Hathaway, dated in ———, 1860, numbered 982; and were also described in letters patent granted in 1863 by the United States to H. A. Amelung, dated January 27, 1863, and numbered 37,482; also that said alleged inventions or
 40 things specified as the invention of said Mége in said

reissued patent were prior to any invention thereof by said Mége described in the following printed public works : Chemical News, volume 4, pages 221, 283 and 328, published in London in the year 1861 ; Ure's Dictionary of Arts, page 197, published in London in the year 1839 ; Watt's Dictionary of Arts, volume 1, page 687, published in London in the year 1863 ; Rassal on Food and its Adulteration, page 537, published in London in the year 1855 ; Morfitt's Chemistry, page 60, published in London in the year 1847 ; Eroni's 10 Chemistry, volume 1, page 404, published in London in the year 1860 ; Cooley's Encyclopedia, published in London, ; Ree's Encyclopedia, Brande's Manual of Chemistry, volume 2, pages 1263, 1264, 1265, 1266, 1281 and 1283, published in London in the year 1848 ; Ure's Dictionary of Chemistry, pages 460, 461, 462, 463 and 464, published in London in the year 1831.

And these defendants further answering on information and belief deny that they have ever set up an 20 establishment for manufacturing butter according to any process alleged to be invented by said Mége and specified as his invention in said reissued patent, or that they have ever manufactured butter according to any process specified in said reissued patent or threaten so to do. And they deny on information and belief, that they have ever either collectively or individually infringed upon said reissued patent or violated any right secured thereby to said complainants.

And these defendants further answering say, that 30 they are licensed under letters patent of the United States issued to the defendant Andrew, dated August 11, 1874, numbered 153,999, for an invention in processes for separating oleomargarine and stearine from animal fat, and that all the butter which they have manufactured has been made under and in accordance with said last named letters patent. And these defendants are advised that the processes or means described as the invention of said Andrew, and specified in the claims of said letters patent to him, are substantially 40

different from anything described in the reissued patent on which this suit is brought.

And these defendants pray the same benefits of the facts and things herein set forth as if for the reason thereof the said bill had been demurred to where a demurrer would have been proper, and the same benefit thereof as if they had been specially pleaded to the said bill where a special plea would have been proper.

10 And these defendants submit to this Honorable Court that said complainants are not entitled to any further answer to said bill or any part thereof than is hereinbefore contained, and no right to any injunction, account or other relief prayed for in said bill, and these defendants pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

PETER E. TALLMAN,
WILLIAM E. ANDREW,
I. P. OLMSTEAD.

20

GEORGE GIFFORD,
Solicitor and of Counsel
for Defendants,
34 Beach street,
New York City.

UNITED STATES OF AMERICA, }
SOUTHERN DISTRICT OF NEW YORK, } ss.

30 On this 13 day of January, 1875, before me personally appeared Peter E. Tallman, William E. Andrew and I. P. Olmstead, the above named defendants who being by me severally duly sworn each for himself deposes and says, that he has read the foregoing answer subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

W. C. WILTER,
Notary Public,
N. Y. Co.

40

CIRCUIT COURT OF THE UNITED STATES,
SOUTHERN DISTRICT OF NEW YORK.

In Equity.

UNITED STATES DAIRY COMPANY, vs. PETER E. TALLMAN, sued as GEORGE TALLMAN, WM. E. ANDREW, AMOS TENNEY, WM. D. JUDSON, and ISAAC P. OLNSTEAD.	}	10
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The replication of United States Dairy Company, complainant, to the answer of Peter E. Tallman (sued as Gorge Tallman), William E. Andrew, Amos Tenney, William D. Judson and Isaac P. Olmstead defendants.

The repliant saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, says that it will aver and prove its said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the defendants is uncertain, untrue, and insufficient to be replied unto by the repliant; without this, that any other matter or thing whatsoever, in the said answer, contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. 30

All which matters and things the repliant is and will be ready to aver and prove as this Honorable Court shall direct, and humbly prays as in and by its said bill it has already prayed.

Dated Jan. 16th, 1875.

DICKERSON & BEAMAN,
Complainant's Solicitors.

UNITED STATES CIRCUIT COURT,
SOUTHERN DISTRICT OF NEW YORK.

In Equity.

UNITED STATES DAIRY COMPANY,
against

10 GEO. TALLMAN, WILLIAM E. ANDREW,
AMOS TENNEY, WILLIAM D. JUDSON
and ISAAC P. OLMSTEAD.

Gentlemen :

Please take notice that on the bill of complaint filed
in this cause, with a copy of which you are herewith
served, and on the affidavits of H. P. Dewees, Chris-
topher H. Miller, Richard H. Walsh, George J. Banks,
20 Robert Ogden Doremus and Sidney Whittemore, copies
of which are also herewith served upon you, we will
move the Judge of the United States Circuit for said
District, at the Court Rooms, No. 41 Chambers street,
in the City of New York, on Saturday, December 19th
inst., at 11 A. M. of said day, or as soon thereafter as
counsel can be heard, for an order for a preliminary
injunction against you according to the prayer of said
bill of complaint, or for such other or further order as
30 may be just and proper.

Dated, New York, December 14th, 1874.

Yours, &c.,

DICKERSON & BEAMAN,
Compls. Solers.

To the Defendants.

UNITED STATES OF AMERICA, }
SOUTHERN DIST. OF NEW YORK, } ss.

Richard H. Walsh, being duly sworn, deposes and says, that on December 14th, 1874, at corner Church, Worth and West Broadway streets, in the City of New York, he personally served George Tallman, the defendant, with notice of motion, of which the foregoing is a true copy, together with the papers therein referred to, by delivering the said papers to him and leaving¹⁰ them with him; and on said date, at 315 West Thirtieth street, in said city, he also personally served the defendant Wm. E. Andrew with notice of motion, of which the foregoing is a true copy, together with the papers therein referred to, by delivering said papers to him and leaving them with him; and deponent knew the persons so served to be the said named defendants.

RICHARD H. WALSH.

Subscribed and sworn to before me, this 4th day of 20
January, A. D. 1875.

JNO. R. LEFFERTS, 131,
Notary Public,
N. Y. City & Co.

CIRCUIT COURT OF THE UNITED STATES,
SOUTHERN DISTRICT OF NEW YORK.

In Equity.

THE UNITED STATES DAIRY COMPANY,
against

10 GEORGE TALLMAN, WILLIAM E. ANDREW,
AMOS TENNEY, WILLIAM D. JUDSON and ISAAC P. OLMSTEAD.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } ss.

Hardman P. Dewees, being duly sworn, says, that
20 he is a practicing physician in the City of New York,
and has been so for thirty years; that he is well acquainted
with Alfred Paraf, an Alsatian, who was resident
in New York, in the year 1872.

And this deponent further says, that in the month
of May or June, 1872, the said Alfred Paraf read to
this deponent in the City of New York, from a French
publication, which said Paraf had in his hands, and
which he informed this deponent he had just obtained,
an account of the invention of Mége Mourriez, by which
30 animal fat was made into butter by processes described
in the said publication. Paraf expressed himself very
much delighted with the information there contained
and at once suggested that he would get a patent in
this country, founded upon that information.

And this deponent further says, that the said Paraf
immediately afterwards commenced a series of experi-
ments for the purpose of testing the accuracy of the
information which he had derived from the French
40 publication, and the result of these experiments was
the production of butter out of animal fat. Afterwards

Paraf applied for and obtained the patent which bears his name, and which appears to have been issued April 8th, 1873. When the said Paraf read to this deponent from the French publication the name of Mége Mourriez, it was the first time that this deponent had ever heard of that name, or of the invention described in that publication, and the subject was discussed between this deponent and Paraf at that time as a new subject, and one possessing great interest, scientifically and practically. 10

There was no pretence by Paraf at that time that he had ever thought of the subject himself, before he saw that publication, or that he had any knowledge of it, except that which he had derived from the publication. Paraf subsequently proposed to buy and secure the Mége patent and make a company, but this he never did. He organized a company under the Paraf patent, and promised to buy out the Mége patent, but never did.

H. P. DEWEES. 20

Subscribed and sworn to before me this 7th day of August, 1874.

JNO. R. LEFFERTS, 131,
Notary Public,
N. Y. City & Co.

UNITED STATES CIRCUIT COURT,
SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES DAIRY COMPANY,

vs.

10 GEO. TALLMAN, WM. E. ANDREW, AMOS
TENNEY, WM. D. JUDSON and ISAAC
P. OLMSTEAD.

U. S. OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK, } ss.

Christopher H. Miller, being duly sworn, deposes and says: I am a resident of the City of New York. I know William E. Andrew, a defendant herein, and have seen him at the butter manufacturing works of
20 the defendants at Nos. 245, 247 East Fifty-sixth street, New York. I visited this factory on the 25th of November last, and on the 1st and 2d of December last. The factory was not at that time in operation, but I saw there the defendant William E. Andrew, and one of the employees, a Mr. Miller.

By their permission I examined the apparatus which they told me they had used for the manufacture of butter from animal fats, and Mr. Andrew particularly described to me the manner in which they had used
30 this apparatus. He told me that their process was as follows:

First—They took the animal fat as it came from the butchers, and after it had been somewhat dried, they put it into the hashing machines and cut it up fine. They then put it into bags of about two pounds each, and put these bags in layers upon a press with plates between each layer of bags. This press I saw, and it was an ordinary toggle screw press. This press was enclosed in a close closet with a double door in
40 one of the sides of the closet. The closet was very

close to the press on all sides, there being only room between the partitions and the press sufficient for a row of steam pipes on each side of the press, into which the steam from the boiler passed. By means of the heat from these pipes the hashed animal fat under the press was heated, and while heated was pressed. By means of this pressure and heating, the oleomargarine and stearine were pressed out together as melted fat, leaving the scraps in the press. This process is substituted for the process described in the 10 Mége patent for separating the scraps from the fat. After this process both Andrew and Miller told me that they took the product and allowed it to cool, and again put it into small sacks, and then submitted it to pressure in another press, at the ordinary temperature of the room, the fat free from scraps or membrane being put into sacks as before, and laid in layers on the press with sheets of metal between successive layers. By this operation the oleomargarine was separated from the stearine. They next put the 20 oleomargarine into churns with some milk or cream and coloring matter, and the operation then went on in the ordinary way of making butter. They told me several times that they had used the process above described for making butter previous to the beginning of the above suit; and I saw at their factory all the necessary apparatus for making artificial butter in the way I have above described.

I am well acquainted with the various processes of manufacturing butter from animal fat as the same is 30 described in the Mége patent referred to in this case, and was one of the defendants in the suit of the above complainant against Wm. B. Reynolds, Geo. E. Downing, and Christopher H. Miller, for infringing certain letters patent owned by the said company and granted to the United States Dairy Company as assignees of Hippolite Mége, May 12th, 1874, in which suit an injunction has been obtained. My first knowledge of the art of making butter out of animal fat was derived from a publication of the process in the Scientific American, 40

which I saw early in 1873, and which led me to experiment in order to verify the truth of the statements therein made. I was afterwards employed in the factory of the company in New York, which started under the Paraf patent to make butter in 1873; and afterwards I joined with Reynolds and others in their operations which have since been enjoined.

To the best of my knowledge this art was not known in this country till 1873, when it was started in New
10 York. When I was engaged with Reynolds I made all the enquiries I could and never heard that any such process had been carried on before 1873.

I have experimented very carefully with a view to ascertain the temperature at which the fat can be melted without destroying its good qualities and imparting to it a disagreeable taste and odor. One of my objects in this experiment was to ascertain whether good butter could not be made after the fat had been melted at a high temperature, and at one time I sup-
20 posed that I had discovered that a much higher temperature than that specified in the patent of Mège was not injurious. But after putting the process into practical use in the Twenty-seventh street factory operated by Reynolds, Downing and myself, I found that whenever the temperature was raised higher than about 125° Fahrenheit, the result was to impart a disagreeable taste and odor to the fat which could not afterwards be removed. I found by experiment that the best result was produced when the fat was melted
30 originally at a temperature not greater than 105° Fahrenheit, and the process at that temperature is necessarily so slow that we sacrificed excellence of butter to economy in the process, and heated the fat to the temperature of about 125° Fahrenheit, at which temperature it melts freely and quickly. Beyond that temperature however, the two facts described in Mège's patent began to develop themselves rapidly, and in order to produce good butter it is necessary to keep within these limits.

40 In the apparatus which I saw for melting the fat, in

order to separate it from the scraps in the factory of the defendants, the heat of the melted fat would not entirely exhaust the temperature of 125° Fahrenheit, because at that temperature the fat melts freely and the heat which radiates from the steam pipes surrounding the press is absorbed in converting solid into liquid fat, and carried off rapidly in the flowing liquid which is expressed by the pressure applied to the mass. In a kettle where the fat can not flow away as it melts, its temperature can be raised to a very much 10 higher point, but in an operation in which fat is allowed to run out as fast as it melts, and in which the temperature is imparted from a coil of steam pipes in its vicinity, the temperature of the fat cannot be raised very high.

C. H. MILLER.

Subscribed and sworn to before me this 10th day of December, 1874.

JNO. R. LEFFERTS, 131,
Notary Public, 20
N. Y. City & Co.

UNITED STATES CIRCUIT COURT,
SOUTHERN DISTRICT OF NEW YORK.

In Equity.

UNITED STATES DAIRY COMPANY, against GEORGE TALLMAN, WILLIAM E. ANDREW, AMOS TENNEY, WILLIAM D. JUDSON, and ISAAC P. OLMSTEAD.	}	30
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UNITED STATES OF AMERICA, }
SOUTHERN DISTRICT OF NEW YORK, } ss.

Richard H. Walsh being duly sworn, deposes and 40
says: I reside at No. 160 West Twenty-sixth street,

in the City of New York. On the 1st of October last I visited the factory of Tallman, Andrew & Co., at Nos. 245-7 East Fifty-sixth street, in the City of New York, where I saw the process of manufacturing artificial butter carried on. William E. Andrew was in the factory at the time and showed me the machinery and the process, so far as it was then being executed, and explained to me the operations. When I was there, they were pressing oleomargarine from stearine by a
 10 press, which was operating in the temperature of the room, which was about 80° Fahrenheit. Under the press there were sacks in which fat was contained, and out of which was flowing oleomargarine—the stearine being left in the sacks. I also saw them churning the oleomargarine, thus obtained, in upright churns, in which milk and cream were mingled with the oleomargarine and out of which butter was being produced.

I did not see the process of separating the membrane from the fat, but I saw the apparatus for that purpose
 20 which Mr. Andrew exhibited to me, and the operation of which he explained. This apparatus consists substantially, of a powerful press which is encased in a closet, and heated by coils of steam pipes inside of the closet. The fat, after having been hashed, was placed in sacks and subjected to the temperature of the closet in which the press was situated, and when melted by the heat of the closet, a pressure was applied, the result of which was to squeeze out the melted fat, and to leave the membrane or scrap, as it is called, in the
 30 bags.

This was the process described to me by Mr. Andrew. In this process the stearine and oleomargarine are both melted, so that the squeezing operation has no effect to separate one from the other, but only to separate the melted fat from the scraps or membrane with which it is united, when furnished from the butchers. The operation of separating the oleomargarine from the stearine is done at a temperature below that at which the stearine melts; and therefore the effect of the pre-
 40 ssure is to squeeze out only that part of the fat which

does melt at the low temperature under which the process is carried on.

Mr. Andrew also told me that the fat, after having been separated from the scraps by the first process, was allowed to cool, and then afterwards was cut up and put into the cloths in which it was pressed by the separating press.

The process for separating the fat from the scraps was not in operation when I was present.

RICHARD H. WALSH. 10

Subscribed and sworn to before me this 12th day of December, 1874.

JNO. R. LEFFERTS, 131,
Notary Public,
N. Y. City & Co.

UNITED STATES CIRCUIT COURT. 20
SOUTHERN DISTRICT OF NEW YORK.

In Equity.

UNITED STATES DAIRY COMPANY,

against

GEORGE TALLMAN, WILLIAM E. ANDREW, AMOS TENNEY, WILLIAM D. JUDSON and ISAAC P. OLMSTEAD. 30

UNITED STATES OF AMERICA, }
SOUTHERN DISTRICT OF NEW YORK, } ss.

George I. Banks being duly sworn, deposes and says: I reside in the City of New York, and am acquainted with the defendant, William E. Andrew. I have read the affidavit of Christopher H. Miller, herein. I have visited the butter manufacturing works of 40

the defendants at Nos. 245, —7 East Fifty-sixth street, once in last May or June, and again about a fortnight ago. I have there seen the various apparatus for making butter described in the affidavit of Mr. Miller. When I was there in May or June, I saw Andrew at work, working and washing the butter on a butter table, and at that time he told me how they made their butter, and the method that he described to me was essentially the same as that described in
 10 the affidavit of Christopher H. Miller. I was working for Mr. Alfred Paraf in New York about two years ago, beginning in October, 1872. At that time, I knew of no process by which butter had ever been made from animal fats, and at that time, in connection with Mr. Paraf, made very many experiments before the Paraf Company was formed.

I have experimented very carefully with a view to ascertain the temperature at which the fat can be melted without destroying the product; but I have
 20 found that the best butter cannot be obtained if the temperature in the melting process is raised above 120° or 125° Fahrenheit. Any raising of the temperature above those figures in the melting process, imparts a disagreeable taste and odor to the product. The lower the temperature at which the oil can be separated from the fat the better is the product.

I was at one time Secretary and Treasurer of the Paraf Company.

GEORGE I. BANKS.

30 Subscribed and sworn to before me, this 12th day of December, 1874.

JNO. R. LEFFERTS, 131,
 Notary Public,
 N. Y. City & Co.

UNITED STATES CIRCUIT COURT,
SOUTHERN DISTRICT OF NEW YORK.

In Equity.

UNITED STATES DAIRY COMPANY, against GEORGE TALLMAN, WILLIAM E. AN- DREW, AMOS TENNEY, WILLIAM D. JUDSON and ISAAC P. OLNSTEAD.	}	10
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UNITED STATES OF AMERICA, SOUTHERN DISTRICT OF NEW YORK,	}	ss.
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Robert Ogden Doremus, being duly sworn, deposes and says, that he is a Chemist and a Professor of Chemistry in the Bellevue Hospital Medical College of the City of New York, and that he is very familiar with the reissued patent granted for the invention of Hippolyte Mége, on May 12th, 1874. He has been familiar with the process and the product from the time when it was first put into use in this city by Alfred Paraf in 1873, until the present time; and he is familiar with the state of knowledge existing in the world so far as the same is contained in scientific books relating to such matters, and he knows what was the general knowledge on this subject at the time when the invention of Hippolyte Mége was announced, and he knows that it was received generally by scientific persons as a very remarkable and novel invention, and one which promised great utility.

He has had occasion to examine the state of the art preceding and subsequent to the invention of Mége, and he believes it to be true, and has no doubt that before that invention was introduced in this country, no such manufacture was carried on any where in this country, and that since it has been introduced, and

within the last year, large numbers of manufactories have sprung up who are producing butter from the fat of animals, and that great quantities of it are now found in the markets.

And this deponent further says, that he himself has experimented with the process and has produced and used the new product made under that process, and knows that it is a very great and valuable invention, of great utility to the world.

10 And this deponent further says, that he has read the affidavits in this case of Christopher H. Miller, Richard H. Walsh, and George I. Banks, and from the description therein given, he has no doubt that the process and product therein described are the process and product described and specified in the reissued patent of Mége aforesaid, in the first, third and fifth claims of the said patent.

R. OGDEN DOREMUS.

20 Subscribed and sworn to before me, this 12th day of December, 1874.

JNO. R. LEFFERTS, 131,
Notary Public,
N. Y. City and Co.

UNITED STATES CIRCUIT COURT,
SOUTHERN DISTRICT OF NEW YORK.

In Equity.

THE UNITED STATES DAIRY COMPANY,

against

GEO. TALLMAN, WM. E. ANDREW, AMOS
TENNEY, WM. D. JUDSON and ISAAC
P. OLMSTEAD.

10

UNITED STATES OF AMERICA, }
SOUTHERN DIST. OF NEW YORK, } ss.

Sidney Whittemore, of the City of New York, being duly sworn, deposes and says: I am the Secretary of the United States Dairy Company, and am familiar 20 with the progress of the litigation against infringers of their patent. A bill in equity was filed against William B. Reynolds, George E. Downing, and Christopher H. Miller, in the month of October last, and a notice of a motion for injunction was given against the defendants, returnable on Saturday, November 7th. Mr. John H. B. Latrobe, of Baltimore, appeared as counsel for the defendants, and applied for time to examine the case and to prepare to meet the motion for injunction; which application was granted for one 30 week. Afterwards Mr. Latrobe applied for further time, and there were two other adjournments given at his request. The company was very desirous to have the motion heard, but yielded to Mr. Latrobe's applications in the hope of having a thorough examination made by him and a satisfactory hearing upon the merits. Finally Mr. Latrobe consented to an injunction as the same appears on file. This consent was made at the suggestion of Mr. Latrobe—the company being desirous to have the defence made if possible, and in 40

no way favoring the settlement of the case by consent. The arrangement with Mr. Latrobe was made at his suggestion, and reserved to him the right to defend the case on final hearing.

I make this statement in order to exclude the inference that the injunction by consent was in the interest of the complainant, or in any way procured by it. The company has had great difficulty in finding out the processes practiced by infringers, who have generally kept their places closed, and practiced the process in secret.

SIDNEY WHITTEMORE,
Secretary.

Subscribed and sworn to before me this 10th day of Dec'r, 1874.

JNO. R. LEFFERTS, 131,
Notary Public,
N. Y. City & Co.

20

UNITED STATES CIRCUIT COURT,
SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES DAIRY COMPANY,

vs.

GEO. TALLMAN, WILLIAM E. ANDREW,
AMOS TENNEY, WILLIAM D. JUDSON
and ISAAC P. OLNSTEAD.

30

Gentlemen—Please take notice that on the hearing of the motion for a preliminary injunction herein, which was noticed for December 19th inst., and which stands over to the 26th inst., we shall read the affidavit

of Charles D. Moulton, a copy of which is herewith served upon you.

Dated December 21st, 1874.

Yours, &c.,

DICKERSON & BEAMAN,
Complts. Solers.

To the Defendants.

10

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES DAIRY COMPANY,

vs.

GEORGE TALLMAN, WILLIAM E. ANDREW, AMOS TENNEY, WM. D. JUDSON and ISAAC P. OLMSTEAD.

20

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK, } ss.

Charles D. Moulton, being duly sworn, deposeth and saith: I have been for some time past engaged in the manufacture of artificial butter, and in experimenting upon processes for its manufacture.

I began to manufacture without any license or per-
mission from the owners of the Mège patent, and I was
sued by The United States Dairy Company, by a bill
in equity filed against me in the Eastern District of
New York. Being desirous of continuing the manu-
facture I undertook the examination of the art, to
which this process relates, for the purpose of discover-
ing if possible, any defence to the suit which had been
brought against me. I also came into communication
with other persons who were prosecuting the same
manufacture without license from the Dairy Company, 40

and who were endeavoring to find some defence against the Mége patent. I have examined all the books to which I could get access ; have seen copies of various patents, and I have talked with various persons who claimed to have knowledge that Mége was not the inventor of the process patented by him. But after making a thorough examination I concluded that a defence could not be successfully maintained against that patent, and I have abandoned the business.

10 In the course of my experiments, I have manufactured butter by the use of all the means described in the patent of Mége, and I have manufactured it by the use of only a portion of those means ; and the result of my experiments and experience is, that the lower the temperature at which the fat is melted, the better will be the result in the butter produced, and that it is very difficult to prevent the disagreeable odors from being generated if any high temperature is employed in melting the fat for the purpose of separating it
20 from membrane and scraps. Practically, I found that about 125 degrees of temperature was as high as the heat could be carried without producing disagreeable odors, unless some special means were resorted to for the purpose of preventing that effect of heat.

Sometimes I manufactured the oleomargarine by melting the fat at a low temperature and separating it from the scraps, and by subsequently allowing it to cool, and then squeezing the purified fat at a temperature of about 80 ; and then I sent the oleomargarine,
30 free from disagreeable odors, into the country, where it was treated with milk or cream and churned for the purpose of producing butter. And sometimes I carried on the whole process in Brooklyn, and produced the perfected butter there ; but in all cases I found it necessary to perform the operations which I have described, practically under the conditions specified in the patent of Mége.

The product thus produced is an excellent substitute for butter, and is fit to be used in place of butter for
40 most of the purposes to which butter is usually ap-

plied. It retains its sweetness better than butter, and for a longer time, and it can be manufactured at a very much less cost than butter; so that a great advantage results from the use of the process, whereby large amounts of fat which had been almost wasted, are made useful for food; while the stearine is also extracted in the process, and serves the purposes of stearine the same as if its extraction had been the principal object of the process.

I consider the invention by which animal fat is thus 10 utilized to be a great benefaction.

CHARLES MOULTON.

Subscribed and sworn to before me this 18th day of December, 1874.

JNO. R. LEFFERTS, 131,
Notary Public,
N. Y. City & Co.

20

At a regular stated Term of the Circuit Court of the United States for the Southern District of New York, held at the Court House No. 41 Chambers street, in the City of New York, on Saturday, January 9th, A. D. 1875.

Present—HON. SAML. BLATCHFORD,
U. S. District Judge.

30

THE UNITED STATES DAIRY COMPANY,

against

GEORGE TALLMAN, WILLIAM E. ANDREW, AMOS TENNEY, WILLIAM D. JUDSON and ISAAC P. OLNSTEAD.

- 10 A motion having been made in this cause on the part of complainants, for a preliminary injunction against the said defendants, pursuant to the prayer of the bill of complaint filed herein, and the same being now brought to a hearing, and Messrs. Dickerson & Beaman appearing as counsel for complainants, and no one appearing for defendants; and after reading and filing notice of motion, dated December 14th, 1874, with proof of service thereof, upon the defendants Tallman and Andrew, together with the papers therein
- 20 referred to, being copy of the said bill of complaint, and of the affidavits of H. P. Dewees, Christopher H. Miller, Richard H. Walsh, George I. Banks, Robert Ogden Doremus, and Sidney Whittemore, and also additional notice to defendants, dated December 21st, 1874, with admission of service thereof on defendants by George Gifford, Esqr., their solicitor, and of the affidavit of Charles D. Moulton therein referred to, it is
- 30 Ordered, adjudged and decreed, that an injunction be issued pursuant to the prayer of the bill herein, strictly commanding and enjoining the said defendants Peter E. Tallman, sued herein as George Tallman, William E. Andrew, Amos Tenney, William D. Judson, and Isaac P. Olmstead, and their clerks, attorneys, agents, servants and workmen under the pains and penalties which may fall upon them and each of them, in case of disobedience, that they forthwith and until the further order, judgment and decree of this Court, desist from making, using, or vending, or causing to
- 40 be made, used, or vended, any butter made in the manner or pursuant to the process described in the letters

patent granted to the said complainants, as assignees of Hyppolite Mége, dated May 12th, 1874, which process embodies the invention and improvement of said Hyppolite Mége as set forth in said letters patent, for the manufacture of butter from animal fats.

SAML. BLATCHFORD.

The President of the United States of America, to 10
 Peter E. Tallman, sued as George Tallman, William E. Andrew, Amos Tenney, William D. Judson and Isaac P. Olmstead, their clerks, attorneys, agents, servants and workmen, Greeting :

Whereas, it has been represented to us in our Circuit Court of the United States for the Southern District of New York, that letters patent of the United States were issued in due form of law on the 12th day of May, 20 A. D. 1874, to the United States Dairy Company, as assignees of Hippolite Mége, for a new and useful improvement in treating animal fats, said letters patent being known and distinguished as No. 5868, and that we the said Peter E. Tallman, sued as George Tallman, William E. Andrew, Amos Tenney, William D. Judson and Isaac P. Olmstead, have infringed the rights secured by the aforesaid letters patent, by manufacturing, making and selling to others butter manufactured and made according to the process patented as aforesaid, 30 contrary to the form of the statute in such case made and provided.

Now, therefore, we do strictly command and perpetually enjoin you, the said Peter E. Tallman sued as George Tallman, William E. Andrew, Amos Tenney, William D. Judson and Isaac P. Olmstead, your clerks, attorneys, agents, servants and workmen, under the pains and penalties which may fall upon you, and each of you in case of disobedience, that you forthwith and forever desist from making, manufacturing, or selling, 40

in violation of said patent, any butter made and manufactured substantially as described and claimed in the said letters patent.

Witness, the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at New York, this 16th day of February, A. D. 1875.

KENNETH G. WHITE,

DICKERSON & BEAMAN,

Clerk.

Compl'ts Sol'rs.

10

UNITED STATES OF AMERICA, }
CITY AND COUNTY OF NEW YORK, } ss.

I. W. Cary, being of full age and duly sworn, deposes and says: that on the 16th day of March, 1875, he personally served upon Wm. D. Judson, also on the 17th day of March, 1875, he personally served upon Isaac P. Olmstead, a copy of the within injunction, and that he knew the persons so served to be
20 Wm. D. Judson and Isaac P. Olmstead, and also exhibited the original.

I. W. CARY.

Subscribed and sworn to before me this 16th day of March, 1875.

JNO. R. LEFFERTS, 131,

Notary Public,

[L. S.]

N. Y. City & Co.

30

UNITED STATES OF AMERICA, }
CITY AND COUNTY OF NEW YORK, } ss.

I. W. Cary, of full age being duly sworn, deposes and says, that he personally served upon Peter E. Tallman and Amos Tenney, on March 2d, 1875, and leaving with each of them, a copy of same, and exhibiting to each of them at the same time the original injunction, and also on the 3d day of March, 1875,
40 this deponent served upon William E. Andrew a copy

of same, and exhibiting to him the original injunction, and this deponent knew the persons so served to be Peter E. Tallman, Amos Tenney and William E. Andrew.

I. W. CARY.

Subscribed and sworn to before me, this 5th day of March, A. D. 1875.

JNO. R. LEFFERTS, 131,
 [L. S.] Notary Public, 10
 N. Y. City & Co.

I certify that the within injunction was served as appears by the affidavit of I. W. Cary, enclosed herein.

March 23d, 1875.

OLIVER FISKE,
 U. S. Marshal.

U. S. CIRCUIT COURT, 20
 SOUTHERN DISTRICT OF NEW YORK.

In Equity.

THE UNITED STATES DAIRY COMPANY,

vs.

GEORGE TALLMAN, WILLIAM E. ANDREW, AMOS TENNEY, WILLIAM D. JUDSON, and ISAAC P. OLMSTEAD. 30

It is hereby consented that the above entitled suit be discontinued, without costs to either party, and that an order to that effect be entered.

DICKERSON & BEAMAN,
 Compt's Solicitors.
 GEO. GIFFORD,

Jan. 6, '79

Def'ts Sol'rs. 40

[ENDORSED.]

U. S. Circ. Court, So. Dist. of N. Y. In Equity.
 United States Dairy Co. vs. George Tallman et als.
 Consent that suit be discontinued. Dickerson & Bea-
 man, Compls. Solrs., Staats Zeitung Bldg., N. Y.
 Geo. Gifford, Defts. Solr., 32 Park P., N. Y. U. S.
 Circuit. Filed Jan. 7, 1879. John I. Davenport,
 Clerk.

10 A copy :
 JOHN I DAVENPORT,
 [L. s.] Clerk.

CIRCUIT COURT OF THE UNITED STATES,
 SOUTHERN DISTRICT OF NEW YORK.

In Equity.

20

UNITED STATES DAIRY COMPANY, v. GEORGE TALLMAN, WILLIAM E. ANDREW, AMOS J. TENNEY, WILLIAM D. JUD- SON and ISAAC OLMSTEAD.
--

From the Equity
 Rule Book.

30 On reading and filing the consent of Dickerson &
 Beaman, complainant's solicitors, and George Gifford,
 defendants' solicitor herein, it is ordered, that the
 above entitled suit be and the same is hereby discon-
 tinued, without costs to either party.

Dated, N. Y., January 7th, 1879.

All of which we have caused by these presents to be exemplified, and the seal of the said Circuit Court to be hereunto affixed.

Witness, the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the City of New York, in the Southern District of New York, this fifth day of April, in the year of our Lord one thousand eight hundred and eighty-one, and of our Independence the one hundred and fifth.

JOSEPH M. DEUEL, 10
Clerk.

[SEAL.]

I, Sam'l Blatchford, Judge of the said Circuit Court, do hereby certify that the foregoing exemplification is in due form of law.

SAM'L BLATCHFORD.

Exhibits on part of Defendants.

EXHIBIT D. 1.

The President of the United States of America, to

Peter E. Tallman, sued as George Tallman, William E. Andrew, Amos Tenney, William D. Judson and Isaac P. Olmstead, their clerks, attorneys, agents, servants and workmen, Greeting :

10.

Whereas, it has been represented to us in our Circuit Court of the United States for the Southern District of New York, that letters patent of the United States were issued in due form of law on the 12th day of May, A. D. 1874, to the United States Dairy Company, as assignees of Hippolyte Mège, for a new and useful improvement in treating animal fats, said letters patent being known and distinguished as No. 5868, and that you the said Peter E. Tallman, William E. Andrew,

20 Amos Tenney, William D. Judson and Isaac P. Olmstead, have infringed the rights secured by the aforesaid letters patent, by manufacturing, making and selling to others butter manufactured and made according to the process patented as aforesaid, contrary to the form of the statute in such case made and provided.

Now, therefore, we do strictly command and perpetually enjoin you, the said Peter E. Tallman sued as George Tallman, William E. Andrew, Amos Tenney, William D. Judson and Isaac P. Olmstead, your clerks,

30 attorneys, agents, servants and workmen, under the pains and penalties which may fall upon you, and each of you in case of disobedience, that you forthwith and forever desist from making, manufacturing, or selling, in violation of said patent, any butter made and manufactured substantially as described and claimed in the said patent.

Witness, the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at New York, this 16th day of February, A. D. 1875.

KENNETH G. WHITE,

40 DICKERSON & BEAMAN,
Compl'ts Sol'rs.

Clerk.

EXHIBIT D. 2.

SUITS BY THE U. S. DAIRY CO. AGAINST PARTIES INFRINGING THEIR RIGHTS AS SECURED BY LETTERS PATENT.

NO.	AGAINST	DATE	FACTORY AT	DIST. COURT OF	REMARKS
1	Chas. S. Crane and John Hurd.....	Aug., '74	Bridgep't	Conn.	Settled.
2	H. R. Nash, W. H. Beecher & Dalden.....	" "	New Haven	"	Settled & License taken under Co. for Conn.
3	J. W. Mirriam, O. F. Loomer, S. Houghton, J. Reardon, E. Reardon, J. H. Reardon & W. Reardon.....	" "	Boston	Mass.	Settled & License taken under Co. for Mass.
4	Chas. D. Moulton.....	" "	B'klyn	East N. Y.	Injunction and Final Decree obtained.
5	H. Platner, J. R. Cook, S. Churchill & G. R. Platner.....	.....	Rahway	New Jersey	Final Injunction and Decree obtained.
6	The Churchill Dairy Co.—A. S. Dittenhoffer, J. Sonneben, J. S. Englehart & Jas. S. Taylor.....	.....	"	" "	Sold out by sheriff.
7	The Hudson Co. Dairy Co.—G. S. Abrahams, L. W. Tappen, L. Harrington & J. H. Co- nant.....	.....	Hoboken	" "	Sold out by sheriff.
8	The Waverly Butter Co.....	.....	Charlestown	Mass.	Dismissed to be brot. again.

EXHIBIT D. 2.—(Continued.)

NO.	AGAINST	DATE	FACTORY AT	DIST. COURT OF	REMARKS
9	The Albany B. Co.—O. F. Boomer, W. B. Fiske & W. W. Northrup. ....	.....	Albany	No. N. Y.	Final Injunction and Decree obtained.
10	W. B. Reynolds, G. E. Downing & C. H. Miller	.....	N. Y. City	South N. Y.	Settled.
11	Peter E. Tallman, W. E. Andrews, A. Tenney, W. D. Judson & I. P. Olmstead. ....	.....	N. Y. City	So. N. Y.	Final Injunction and Decree obtained. Final Decree obtained May 20, '76.
12	D. Toffey, W. V. Toffey, Geo. Toffey & J. J. Toffey .....	.....	Jersey City	New Jersey	Testimony now being taken for trial.
13	Lyman G. Crittenden. ....	.....	Rahway	" "	No papers served.
14	S. H. Churchill.	"	" "	Final Decree procured.
15	The Oleomargarine Co. of Mass.	Boston	Mass.	

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New York, March 31st, 1876.

EXHIBIT D. 3.

J. D. LEHMER, President.
A. L. BAILEY, Sec'y & Treas.

BUTTERINE THE WESTERN MANUFACTURING CO.
MEGE 49, 51 & 53 Yeatman Street,
PATENT. Between Broadway & Sycamore, near River.

Address all Communications
to the Company.

CINCINNATI, Jan. 26th, 1880.

THE U. S. DAIRY Co., 10
New York City, N. Y.

C. D. DESHLER, Esq., Sec'y.

DEAR SIR:

Your attention is called to the enclosed advertise-
ment which appeared in the columns of the Cincinnati
Gazette of the 24th inst. We desire some information
with reference thereto as we do not care to pay royalty
to two parties. Your early attention to this matter
will much oblige

Yours truly, 20

THE WEST'N MFG. CO.,
per A. L. BAILEY, Sec'y.

OLEOMARGARINE BUTTER.

TAKE NOTICE.

All persons interested in the manufacture of Oleo-
margarine Butter are requested to take notice that by
Letters Patent of the United States, Reissue numbered
8048, dated January 22, 1878, THE ONLY PROCESS BY
WHICH THIS CAN SUCCESSFULLY BE DONE has been se- 30
cured to me as my invention. This process of mine is
being used by the Licensees of the United States Dairy
Co. and others. Now, whosoever shall engage in the
manufacture of this article without authority from me,
if successfully done, will be driven to the necessity of
infringing my patents, and must do so at their peril, as
they certainly will be held responsible for all damages
I may sustain.

W. E. ANDREW,
44th St. and East River, New York City. 40

EXHIBIT D. 4.

J. D. LEHMER, President.
A. L. BAILEY, Sec'y & Treas.

BUTTERINE THE WESTERN MANUFACTURING Co.
MEGE 49, 51 & 53 Yeatman St.
PATENT. Between Broadway & Sycamore, near River.

Address all Communications
to the Company.

CINCINNATI, Mar. 8, 1880.

10 THE U. S. DAIRY Co.,
New York City, N. Y.

C. D. DESHLER, Esq., Sec'y.

DEAR SIR :

We enclose herewith a clipping from the advertising columns of this morning's issue of the Cinti. Commercial, which please note—: the item in question explains itself, and has created considerable consternation among our stockholders, or more particularly, among those of the "National Dairy Co." (of Chicago.)

20 Mr. Andrew leaves here Wednesday, and continues his trip to Chicago. We also enclose you a proof of a memorial we are now placing before the Legislature of this State. There will be several slight corrections, however, before it goes forward. Rest assured we are bringing all our forces to bear.

Truly Yrs.,

THE WESTERN MFG. CO.,

A. L. BAILEY, Sec'y.

30

OLEOMARGARINE.

TAKE NOTICE, that Letters Patent of the United States have been issued to me for the cheapest and best machinery, and processes for making oleomargarine oil and butter from animal fats, which machinery and process is now being used in New York city. If any parties that are or are about to invest in this business with any other patent or company desire to first see and know what I have secured to me by my patents for making oil and butter from fats, may do so before I leave town on Wednesday. Also the right to use my patents in this city or State is for sale.

40

W. E. ANDREW, Grand Hotel.

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