

mistake be such as the directors might well make, notwithstanding the exercise of proper care, and if they acted in good faith and for the benefit of the company they ought not to be liable. If the innocent mistakes of directors in cases where the law was unsettled or unknown, is to subject them to damages, great injustice would be done. The law requires of them care and discretion such as a man of ordinary prudence exercises in his own affairs; and if they practice this and, nevertheless, make a mistake the law does not hold them answerable.”.

It would seem however that the liability of directors might more properly be regarded as the liability of trustees, and that they would only be protected by first taking the advice of counsel: Augell & Ames on Corp., § 392.

MAURICE G. BELKNAP.

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## NOTES AND COMMENTS ON RECENT DECISIONS.

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The following is a judgment in the Quarter Sessions, for obvious reasons we think it better to omit the name of the county and judge.

The defendant had in his possession packages of oleomargarine which came to him from another State as an article of merchandise and have remained in that condition unopened.

Is he liable to be convicted of a misdemeanor because he has sold them in the same condition, that is unopened?

The court in passing on this question is in somewhat of a dilemma.

Oleomargarine is a product of material taken from the carcasses of neat cattle. It was invented at the instance of the French Government for the use of their armies in hot climates, and the chief consumer at present is Holland from which the world receives and consumes it as food in the form of butter and cheese. No one has as a matter of fact ever doubted that it is a perfectly wholesome article of food—it is

as impossible to doubt this as in the Virginia case it was impossible to believe that beef ceased to be wholesome as food because slaughtered without the State; even the police power failed to protect the butchers in that case from the commerce clause.

Possessing this knowledge in common with all persons of moderate information the court is compelled to recognize that by a statute, without trial or evidence and probably without any inquiry, this article of food is condemned and the use of it as food is made criminal. As, however, the statute imposes the same consequences on those who prefer to substitute olive oil for butter which if used in any other way than as a substitute is lawful, it is impossible not to feel that there is no guide but the words of the statute. We have nothing outside the statute that assists in the interpretation of the Act—as exists for instance in legislation regulating the sale of dangerous drugs.

On the contrary we have now a large and influential body of citizens banded together to bring their votes to bear on this one question—*delenda est oleomargarine*.

We have been told authoritatively that the Legislature has the right to determine the unfitness of food for consumption and they have done so, and that this is no longer open to question.

Whether, when the same process is applied to Chicago beef or balbriggan undershirts, the logic will support the strain, it is not for an inferior court to consider. What the courts governing us have decided is this plain proposition—that if the Legislature shall recite that a particular article of food is unwholesome—and its use criminal no one can dispute the fact nor inquire into the truth of the assertion. The evasion of the constitutional guarantee of free trade between the State is thus left to the caprice of someone whether Legislature or court is not very material in the light of experience, for the next generation will certainly see that it is only necessary to assert that foreign products are unwholesome and the work is done.

It is therefore of the utmost importance that the rights of

the community, so far as they are protected by the Constitution of the United States, should be maintained. And by this it is clear that merchandise brought from one State into another, and until it leaves the condition in which it is sent and is sold or consumed, cannot be interfered with by the State unless it be to require it to be so kept as to injure no one. But if it is absolutely harmless, and still more, if it be a useful article that can under no circumstances injure any one it is not within the power of the State, even when engaged in the beneficent scheme, of preventing competition with the products of some of its own citizens at the expense of the masses to make the possession of such an object of commerce criminal even with the aid of the police power.

While, therefore, if it had been shown that this defendant had ventured to use oleomargarine on his bread at his breakfast, I should have felt myself bound to draw the inference that he had been guilty of substituting, to use the words of the Act, an oleoaginous substance not made from cream in the place of butter or cheese, I am, I think, prohibited by the Constitution of the United States from interfering with an article of commerce coming from another State, and which is free from all objections except relative cheapness as compared with butter, or with the liberty of a person who is simply the possessor of the article in the condition in which it is carried by the railroads from another State into this.

It will be time enough to consign him to prison when he ventures to consume the article as food or to sell it in any condition other than that in which it was imported. For until otherwise instructed I am compelled to hold that the right to import merchandise, guaranteed by the Constitution of the United States, includes also the right to sell it and in this I am supported by the Supreme Court of the United States in *Leisy v. Hardin*, which, though asserted in reference to intoxicating liquor, does not seem to be confined to that particular class of merchandise, I therefore give judgment for the defendant.