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OLEOMARGARINE.

REMARKS

OF

WILLIAM W. GROUT,

OF VERMONT,"

IN THE

HOUSE OF REPRESENTATIVES,

MAY 25, 1886,

ON THE BILL TO TAX OLEOMARGARINE.

*"Ill fares the Land, to hastening ills a prey,
Where wealth accumulates, and men decay;
Princes and Lords may flourish, or may fade,
A breath can make them, as a breath has made;
But a bold peasantry, their country's pride—
When once destroyed, can never be supplied."*

GOLDSMITH.

WASHINGTON.

1886.

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IN THE HOUSE OF REPRESENTATIVES,

Tuesday, May 25, 1886.

The House being in Committee of the Whole, and having under consideration the bill (H. R. 8328) defining butter, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine—

Mr. GROUT said:

Mr. CHAIRMAN: In what I have to say upon the proposition contained in this bill to tax the manufacture and sale of oleomargarine I shall attempt to answer two questions. First, is such tax lawful; second, is it necessary?

The answers to these questions will run somewhat together. But, first—

IS IT LAWFUL?

The right of taxation is one of the essential powers of government. Section 8, Article I of the Constitution, designates how, under our system, this power shall be exercised. It reads:

Congress shall have power to lay and collect taxes, duties, imposts, and excises to pay the debts, provide for the common defense and general welfare of the United States.

Under this explicit grant of authority Congress has dealt with the subject of taxation in all its branches as the public necessities and general welfare have demanded.

In the leading case of *Hylon*, plaintiff in error, *vs.* The United States (3 Dallas, 171), Mr. Justice Patterson quotes approvingly from *Smith's Wealth of Nations* (volume 3, page 341), as follows:

Consumable commodities, whether necessities or luxuries, may be taxed in two different ways; the consumer may either pay an annual sum on account of his using or consuming goods of a certain kind, or the goods may be taxed while they remain in the hands of the dealer and before they are delivered to the consumer.

The tax here spoken of was an excise tax the same as that proposed by this bill. Note the language: "Consumable commodities, whether necessities or luxuries, are taxable." Hence the fact that oleomargarine is an alleged article of food and may be classed with necessities can in no way affect the power of Congress to tax it. It can only be a fact addressed to the discretion of Congress in the exercise of the power. But if Congress exercise the discretion and impose the tax it has only done that which a plain grant of the Constitution empowers it to do. Though the tax be unwisely imposed, it is, nevertheless, lawful. If

the tax should prove a mistake, it would be a mistake of fact and not of law; and the remedy would be not with the courts but with the people. The courts would have no power to make correction; a subsequent Congress would.

The right to tax consumable commodities should not be confounded with the right to prohibit the production and sale of them. But the distinction between the two, which is a broad one, has evidently been lost sight of by those who deny or doubt the power of Congress to lay this tax on oleomargarine. This is to be inferred from the fact that they cite the case of *The People vs. Marx*, decided in June last in the New York court of appeals (54 Sickles, page 377), as an authority against the constitutionality of this bill. This case is upon the lips of every defender of bogus butter. It is confidently referred to as an authority against any rightful legislative control of the subject. Now, the only applicability of the Marx case to the bill before us is that both relate to oleomargarine.

The bill proposes to tax it. The Marx case says not one word about taxation. It contains no hint even upon the subject. It simply holds a statute in New York which prohibited the manufacture and sale of oleomargarine unconstitutional, in a case where it was not shown that it was unwholesome, and in which it was admitted that it was not sold for butter, but was sold for just what it was.

The head-note of the Marx case shows just what was decided. It is as follows:

A legislative enactment which absolutely prohibits an important branch of industry not shown to be injurious to the community and not fraudulently conducted, solely for the reason that it competes with another industry and may reduce the price of an article of food, is unconstitutional.

Now every good lawyer will agree that as the Marx case was made up the decision was a sound one. The difficulty in that case lay, in the first place, in the statute, which was one of absolute prohibition; and in the second place in the grounds upon which the prosecuting officer rested his case.

It will appear also from a careful examination of the full text of this case that had it been shown that oleomargarine is unwholesome, or that it is made in imitation of butter, and as a fraud upon butter, the court would have held even the prohibitory statute valid. Now, if upon these grounds a prohibitory statute would be valid, certainly there can be no objection to the bill before us, which only proposes, by a tax upon the article, to so identify it that this fraudulent product shall be sold for just what it is.

There can be no doubt but this tax, if imposed, will be "lawful." The only real question is, is it "expedient?"

IS IT NECESSARY?

In answering this question we must look just a little into the character of oleomargarine and of the fraudulent trade in it.

An ancient writer of high repute said: "God hath made man upright; but they have sought out many inventions." Oleomargarine is one of them. It must have been the very one that crowded in ahead of all others upon Solomon's sorrowing vision as he bewailed the departure of man from the "upright." In all the crookedness of man, in both ancient and modern times, the manufacture and sale of oleomargarine must stand first among his false and deceptive works. It is in the first place a counterfeit. It is studiously made to resemble in all respects butter. And the resemblance is so close that only the microscope or a chemical

analysis will detect the difference; and some assert that neither the microscope nor chemistry can tell the one from the other.

But this last is one of the falsehoods of this false business, to which is always added, "If science can not tell the difference, then what is the difference? Why is it not as good as butter?" But I repeat, this should be branded as a falsehood. Certainly Professor Taylor's microscope reveals even to the unpracticed eye an unmistakable difference, much like the difference between the green leaf of spring and the dead leaf of autumn. To this many gentlemen upon this floor can testify. But it is a counterfeit, a confessed counterfeit, better calculated to deceive than the most skillful counterfeit of the current coin or paper money of the United States. Like the pirate, who displays a friendly flag, it sails under false colors; and like the pirate and the counterfeiter it takes from others without giving an equivalent in return. It is manufactured for 8 or 9 cents per pound and sold to the consumer for 20 or 30 cents per pound; not for what it is, but for pure butter; just as the counterfeit dollar is passed not for what it is, but for what it appears to be. But it is said that the manufacturer sells to the dealer for just what it is. In most instances very likely. So does the maker of counterfeit money supply the one who puts it into circulation for just what it is; but never at a fair profit only on what it cost him to make it. He would want at least about one-half the whole fruit of the fraud; just as he who steals a horse would be willing to pass it to the receiver at perhaps half its value, who in turn would have a margin left for his share. So it is with this oleomargarine trade. Between the first cost and the price paid by the consumer enormous profits cluster along the way. If these profits were legitimate no fault could be found; but they are won by fraud. They are made by selling oleomargarine for butter. Not one pound in a million of this counterfeit stuff is bought and eaten by the consumer for what it is. Like the counterfeiter's victim, who "took it for a dollar," one always buys butter, but in blissful ignorance he too often eats oleomargarine. The only way one can be certain is to establish a chemist's laboratory in his kitchen and plant a microscope by his plate.

The oleomargarine trade is by no means a small affair. It is simply immense. It is estimated that at least 150,000,000 pounds of oleomargarine were made in the United States during the last year—7,500 tons. At 8 cents per pound it cost \$12,000,000; sold as butter at 25 cents per pound the people paid for it \$37,500,000—a downright swindle upon them of at least \$25,000,000, allowing \$500,000 for legitimate profit, if indeed there can be any such thing as legitimate profit in a fraudulent business like this. Can it be that a free people will let a fraud upon themselves of this magnitude go unwhipped of justice? Can it be that they will sit quietly by and let this counterfeit butter business fatten off their gullibility at the rate of \$25,000,000 annually, in fact in a much larger sum in the future, for the business is rapidly increasing?

If oleomargarine be the poor man's blessing, as is claimed, it should be secured to him at the poor man's price. But this will never be till compelled, as proposed by this bill, to go upon the market in no guise but its own and under no name but its own. As oleomargarine it will pay the tax proposed by this bill, and then reach the poor man's table at much less cost than it now does; if indeed it be fit to eat, of which a word in a moment. But it now sells for the price of butter, from 20 to 30 cents per pound, and leaves the poor man without the blessing

which it falsely promises him. It thus gathers in \$25,000,000 ill-gotten gains annually, the very harvest of fraud itself, and at the same time strikes a staggering blow upon an honest industry in which millions of the working men and women of this country now gain only a hard-earned livelihood. Now this is oleomargarine, an acknowledged counterfeit, but deceitfully passed for the true; intrenched behind the millions it has filched from the people in the name of butter; false to its promises to the poor; the disturber of our industries; the very embodiment of falsehood and fraud. And yet this false-faced monster sits with us familiarly at table in the dress of an old friend, and makes his oily way into the very citadel of *man's* affections. Then, if in the silent watches of the night the stomach becomes suspicious that it may be "entertaining an angel unawares," and yearns—for information as to the character of this nocturnal visitor, which the friends of oleomargarine tell us comes as an angel laden with blessings for the race, it is respectfully referred to the Patent Office reports. [Laughter.]

Volume 5 is taken down and opened to page 329, and the poor benighted stomach asks if the angel was made under patent No. 148767, which is as follows: "This substitute for butter" "consists of a base of yolk of eggs, butter, and milk, agitated in a zinc vessel that has been coated with a solution of niter." But hearing no response, it takes down volume 22 and opens to page 1489, and reads in patent No. 266777 this formula for making a "substitute for butter" "consisting of cotton-seed oil or other vegetable oils treated with a solution of caustic soda in combination with farinaceous flour, which had previously been thoroughly cooked in salt water as described; incorporating and agitating the mass, working in the oil, milk, coloring, and flavoring as per process described." But still there is no response. There can be no certainty of the parentage of the child in this patent; and lest the wondering stomach may find some worse formula for the manufacture of angels, it takes down volume 28 and looks hopefully for the pedigree of its particular guest in patent No. 301782, found on page 173:

"The process consists in first forming a soap emulsion of the fats or fatty oils with caustic soda; then precipitate the lyes; then applying chlorinated alkaline lye, or chlorinated gas, to the soap emulsion, as described."

But this formula is found to be so full of lyes (lies) and sounds so much like a receipt for making soap that the bewildered stomach abandons the inquiry, declaring in tones of astonishment that oleomargarine is, indeed, the mystery of mysteries—a far profounder mystery than hash or sausage. [Laughter.]

Let not this sad tale of a child without a father divert attention from the fact—let it rather fix the mind upon it—that so long as bastard butter is sold for the genuine no purchaser can be sure but that he is eating it, nor can he be sure either of what ingredients it may be composed. It presents the well-known condition of every illegitimate birth, namely, an uncertain paternity; and as a doubtful place in the pedigree may let in bad blood, so uncertainty as to the ingredients of counterfeit butter admits the possibility that they may be unclean and unwholesome. Who can look with entire composure upon this possibility? Who will say that the things we eat ought not like Cæsar's wife to be above suspicion?

It will not be pretended but that a substitute for butter made according to the formula of M. Mège, the French inventor, is a wholesome food product. But this can not be said of all the American devices in

which lard and vegetable oils and tallow take the place of margarine oil and in which various acids and alkalies are used, some of which, as every one knows, are not only unwholesome but absolutely dangerous. The following are a few of the many articles named in the many patents granted for the manufacture of substitute butter: Bisulphate of lime, borax, salicylic acid, benzoic acid, orris root, cotton-seed oil, bicarbonate of soda, glycerine, capsylic acid, alum, capsic acid, sulphite of soda, cows' udders, sulphuric acid, pepsin, tallow, lard, salt, corn starch, butyric ether, caustic potash, castor oil, chalk, slippery-elm bark, caul, oil of sesame, oil of sunflower seed, olive oil, turnip-seed oil, bromo chloralum, chlorate of potash, oil of sweet almonds, oil of peanuts, peroxide of manganese, stomach of pigs, sheep, or calf, nitrate of soda, mustard-seed oil, nitric acid, dry blood albumen, sugar, butyric acid, bicarbonate of potash, and caustic soda.

Of course it does not necessarily follow that all or any of these articles enter into the manufacture of the oleomargarine product of this country; but there is a strong probability that many of them do. The following extract from a letter to the newspaper press of this city by Mr. J. H. Crane, a reputable provision dealer here, contains facts worthy of consideration, and he stated the same in substance before the Committee on Agriculture:

It is notorious that what is called butterine is now generally made in soap factories. It is only a few days since that the undersigned had sent to him from a large soap factory at the West, a sample of soap and a sample of butterine. The two go hand in hand together. Why is butterine made in soap factories? The reason is evident. It is because it can be made cheaper there. If "the ham-fat man" brings in more grease than is wanted for soap the surplus can be made into butterine. If he brings in more than is wanted for butterine the surplus can be turned into soap. In this way the two play into each other's hands. The process of bleaching and deodorizing is said to be about the same in each, the same poisonous alkalies being used in each. If wrong in this I stand ready to be corrected. It is a mistaken idea that some have that butterine is never made of anything but the purest leaf lard and best creamery butter. It may be that soap manufacturers buy pure leaf lard to use in their business. If so I have never heard of it. Butterine can be made of soap-grease, and I believe it is made of soap-grease, and sometimes of the most disgusting kind. The bleaching and deodorizing process it is put through makes it impervious to taste or smell.

The price it is sold at, it being sold just as low when pure butter is at 40 cents per pound as when it is 20, proves that but little, if any, butter enters into its composition. It having no smell or taste of its own, all that is needed is that the little smell and flavor it has shall be that of butter, which is obtained by churning it in buttermilk or milk. It is then salted and colored to suit the eye and taste, christened by some fancy name, and put upon the market as butter. When the butterine men were buying up all the Elgin butter they could get at 40 cents per pound a drummer from a neighboring city tried to induce men to buy what he called his fancy brand of butterine at 12 cents per pound, agreeing to mark it "Snow Flake Creamery, Morning Star Creamery, Rising Sun Creamery," or by any other high sounding name I might select, telling me he was selling it all over Washington to dealers, who in turn sold it for butter, he marking it "Fresh Creamery Butter," or by any other name they chose to have put on it.

But the worst remains to be told of this disreputable business. Formerly dead animals were collected and buried at a heavy expense. Now they command a premium, even to the rabid dogs. What becomes of them? Let the boiling establishments and the butterine factories answer. Horses dying with glanders or pneumonia, and dogs dying with rabies are all gathered up and carted to the boiling establishment, where the fat is extracted, put up in barrels and shipped away. This diseased fat, after being put in shipping order, is said to look as clean and nice as any other. What becomes of it? Where does it go, and for what purpose is it used? Is it marked to distinguish it from any other fat? I am told not by one who has been in the business. What assurance have we that it does not find its way to the butterine factories? None.

But, says some one, it is by no means certain that any of these unclean and unwholesome articles go into the manufacture of bogus butter. No, it is not certain that they do; but is it certain that they do

not? Perchance they do. "Perchance" soap-grease. "Ay, there's the rub;" and when upon the authority of a respectable gentleman like Mr. Crane, we find soap and butterine coming from the same factory it would seem to "rub" pretty close.

As bearing upon this point I will also give a brief extract from a recent letter of Mr. O. M. Tinkham, secretary of the Vermont Dairy-men's Association, to the Woodstock (Vt.) Standard, in which among other things he says:

I have a friend living near Boston who keeps from six to eight hundred hogs. To feed them he has the wastes and swill from some of the large hotels in the city. All the meats, fish, flesh and fowl, sauces, gravies, and all grease are dumped into one tub and carried out to the farm. This was formerly fed to the hogs, but was thought to be unhealthy by reason of too much grease, so he had large tanks made into which the stuff was dumped on arrival from the city, and water added, the whole thoroughly steamed and left to cool, which left a good cake of the grease on top of the mass when cold. This was taken off and sold to the "venderer" in the city. The "venderer" is the person to whom all the dead hogs that come in on the trains, the dead cattle and horses from the street, are sent to be disposed of. Once when my friend was in there he saw I think it was fifty tubs, of 30 pounds each, new Vermont spruce tubs, and lifting the covers saw they were filled with this "neutral grease," and said he had no doubt some of the grease he sold was in those tubs, of which I have no doubt, and that it was far better than some of the rest which made up the shipment. These tubs were marked for shipment to a man in New England who was running a creamery.

Now, both Mr. Tinkham and Mr. Crane state facts which tend very strongly to show that the "neutral grease" of the "venderer" does find its way into counterfeit butter.

The man running a creamery in New England to whom those fifty tubs of "venderer's grease" were directed was doubtless running the same kind of creamery that the man was who offered to Mr. Crane his fancy brand of butterine at 12 cents per pound to be marked "Snow Flake Creamery," &c. This New England creamery man, however, may have made some pure butter.

The fact is, bogus butter can be more cheaply produced in connection with the manufacture of creamery butter than elsewhere, because of the plentiful supply of buttermilk in which to churn the compound, and thus give it the flavor of butter; just as the bouquet is given to wines by the use of some aromatic substance. Every variety of imitation butter product, and their name is legion, is churned either in milk or buttermilk else it would be without the butter flavor and would deceive no one. At the creamery the buttermilk is at hand for this purpose; whereas if the margarine factory be remote a supply must be brought from a distance.

One of the great packing establishments in Chicago have of the Elgin creameries the buttermilk in which to baptise, in the name of butter, probably a thousand tons a year of this counterfeit product; and pay for it, if the statement of their agent now in charge of their goods in the Central Market in this city can be relied upon, for he made the statement to me, \$100 per day. Now, this is almost equal to the wag's formula for making a first-class article of chicken soup for boarding-house consumption, namely, drive a hen through a dish of hot water. *O tempora! O mores!* [Laughter.]

But enough about the character of counterfeit butter. It may be that the cheap grease known in the market as "neutral grease" when subjected to treatment by the alkalies and acids named in the various imitation-butter formulas is not absolutely unwholesome; for chemistry works wonders in the transformation of physical substances. I say this may be, but suppose it is, who wants to eat it? That this "neutral

grease" is to a great extent used in the manufacture of these imitation products no reasonable person will doubt. The different formulas themselves prove it by the chemical agents which they contain for the manifest purpose of deodorizing and correcting it. Besides, as every one knows, it is a counterfeit and a fraud; and who is verdant enough to suppose that the counterfeiter would be at all scrupulous as to the materials he used in his business? The object is to make the counterfeit article at the least possible expense for the sake of the greatest possible profit. And if "neutral grease" can be obtained at one-fourth or one-third the expense of tallow or lard, who for a moment doubts which the counterfeiter would use?

But this stuff, even if not absolutely unwholesome, is not fit for a self-respecting American citizen to eat. It might answer for a digger Indian, who lives on snakes, or for the Mexican peon, who in his poverty consumes with avidity every organic part of the animal, excepting only the horns, hoofs, hair, and bones. It might answer for these, but it does not comport with our American civilization. It is no credit to it. It has no proper place in it, and it could not exist for a moment except through fraud and imposition. The American people can be in better business. With "cattle upon a thousand hills," and many, many thousand hills scattered all over our vast domain, where now grows wild grass or stands "the forest primeval," but where hardy husbandmen might graze and milk their herds of kine, and thrifty housewives might emulate the virtue and valor of Jael, the wife of Heber the Kenite, who "brought forth butter in a lordly dish," does it not seem like small business, like the disreputable business it is, for an able-bodied American citizen to be trying to find out how chemistry can extract from "cow's udders" the oil that shall give to tallow and lard and the intestinal and offal fats and "neutral grease" and the vegetable oils the taste of butter, thereby enabling the unscrupulous to sell them, after they are washed in buttermilk, for butter, and thus put these cheap and nasty fats into competition with the golden issues of the housewife's churn?

And this brings me to the chief reason for the passage of this bill, namely, the ruinous effect of this dishonest competition upon the great, in fact the greatest, industry of this country—an industry which while it gives employment to millions of capital and millions of men and women is yet made up from an aggregation of humble interests which, when treated fairly, only afford very small profits in return for much hard work.

Dairying is the largest single branch of American agriculture. The butter, milk, and cheese produced for the last year, as estimated by reliable experts, amounted to the enormous sum of \$564,959,500. This is more than four times the value of the entire oat crop of the country; more than five times the value of the pig-iron product; more than twice the value of the iron and steel product; about four and one-half times the value of the cotton crop, and about \$150,000,000 more than the entire wheat crop of the country. The amount invested in milch cows is about \$700,000,000—more than the entire capital stock of all the national banks of the country.

Not only is dairying the great leading branch of our agriculture but it is so related to every other branch of that great industry that when it suffers the whole feels the depressing effect. Especially is this true in our older States where the soil, well-nigh exhausted by long-continued cropping, is arrested from further deterioration and brought

back to a high degree of fertility by dairy farming, and thus worn-out lands are restored and more of every kind of agricultural product is produced, more forage for animals and more food for man. It is estimated that in dairying at least four millions of our population are employed, while agriculture in all its branches gives employment to almost one-half of our entire population who therefrom feed and clothe themselves and feed and clothe the other half.

Without agriculture we should go both hungry and cold. We should relapse into barbarism, should go back to the skins of beasts for clothing and hunt again the wild boar for food. A thrifty agriculture makes every other work of civilization possible. Without it the earth, the source of all wealth, would fail to yield her fruits and every other enterprise and industry would languish. We have already seen that the dairy interest is the very soul itself of our agriculture. Now, shall this interest be preserved, or shall it be sacrificed, not to a fair competition—if the competition were fair no fault would be found—but to a down-right fraud, to a filthy counterfeit, masquerading in the stolen livery of the very industry it is seeking to overthrow? [Applause.]

Even if the competition were fair it would still present a serious question of public policy; one not only involving public health but the public intelligence and morals also, namely, whether we should kill out the dairy industry and cease to be a butter-eating people and feed upon the coarser and more cloying animal fats, thus taking a step back toward the raw tallow and lard which were the delight of our Saxon ancestors in the forests of Germany. It involves also another question which takes strong hold upon the labor problem, which has long vexed the governments of Europe, and now threatens the peace and prosperity of this Republic. It is this: Whether a few capitalists giving employment to a few thousand men shall be allowed to overwhelm with a fraudulent business an honest industry which gives employment to millions, and which is the very cream of that grand pursuit which, through the common mother of the race, provides for us all.

You have just passed a labor-arbitration bill and sent out a special committee to collect data for the adjustment of the delicate relations between capital and labor. But right here, in the disposition of this bill, is an opportunity to deal with the labor question from the very foundation, and in a way to dispense with arbitration bills and special committees, or make them a standing necessity. It has been said that "an ounce of prevention is better than a pound of cure." Enactments preventive of threatening evils are always wiser than the wisest provisions for the correction of those evils after they are developed. It is always the highest achievement of legislation to formulate laws which in their practical operation shall reconcile antagonisms and bring all interests into harmony. This can only be done by giving all men and all honest enterprises a fair chance.

Now, pass this bill and you take an important step in both remedial and preventive legislation. You at once relieve the dairy industry of the killing fraud which now completely paralyzes it. And as one of the immediate results the milch-cows, which as shown by the last report of the Commissioner of Agriculture were depreciated during the last year to the amount of \$32,751,392, will be restored and doubtless somewhat advanced. This vast sum will thus be added to the exchangeable value of property not belonging to capitalists but to the millions of hard-working men who own those cows and are struggling to pay with the income from them the mortgages which capital holds upon their farms.

Not only this, but the number of cows will be greatly increased. There will not be slaughtered 30,000 of them for beef in the city of Chicago for the year to come, as your committee reported there was in the year that is past. They will be wanted for the dairy. To this extent certainly there will be an increased demand upon those who breed cattle for beef; and that branch of agriculture, now sadly discouraged, will take a fresh start. More hay and grain must be provided for the support of this increased number of animals, both for beef and the dairy, and more men found to feed and care for them. A corresponding demand for labor on the farm will surely follow and will draw off from the employ of the great corporations, to which all surplus labor tends, the discontented ones who are now the leaders in labor disturbances, but who would find in the great, open field of agriculture, every department of which would feel the impulse of a restored dairy industry, an opportunity to gain for themselves and their families a subsistence, nay, more, a competence; and this is how the passage of this bill would begin to solve the labor problem. It would begin at the right end of it. [Applause.]

It would be far more to the point than arbitration bills and investigating committees. A restored dairy industry would surely occupy, with valuable improvements, new areas of land, and as surely restore to fertility the old, much of which now lies fallow, thus adding millions to the productive and taxable wealth of the country. Nor is this all. A return to the production of honest butter would restore our export trade. For the last five years, since false butter has usurped the place of the true, there has been a steady decline in the annual export of American butter. That which was bought and shipped for genuine too often turned out to be spurious. As the result no dealer would risk the sale of American dairy products in foreign markets, and the trade fell off. The extent of this decline is shown by the fact that in 1881 the total amount of American dairy exports was \$22,636,272. In 1885 it was but \$14,086,055, a decrease in four years of \$8,548,220. Instead of this there should have been an equal or greater increase. There is still another humiliating fact in this connection. It is this: much of the butter which we exported in 1885 was not handled by American merchants, but by Canadian merchants, who first bought in our markets and shipped to Canada. Then, when reshipped from Canadian ports, it would go upon the European markets as Canadian butter, which is not yet under suspicion like our own. But let this same butter, perhaps perfectly pure, be shipped from an American port or by an American merchant, and it could be sold only at a reduced price.

Thus, because of these fraudulent imitations is the commerce of this the foremost people in all the earth driven like a culprit to the use of an *alias* in order to make its way into foreign markets; thus also are American merchants deprived of the profits of handling this merchandise in those markets; thus is an annual outlet for nearly \$9,000,000 worth of dairy products closed and the business to that extent depressed; and thus as a people are we that amount poorer than we should be if that trade were not interrupted. We have that amount less annually of circulating medium, that amount less of gold and silver; for remember that our foreign exchange is always in gold and silver. Now pass this bill and give to American dairy products a reputable entrance into foreign markets and you will bring into the United States within the next ten years of foreign gold and silver \$85,000,000 at least, and probably more. But this is a larger sum than proposed by the Blair bill for

education at which so many upon this floor stand aghast. Pass this bill and you correct all the evils arising from counterfeit butter and put not only the dairy industry but the whole vast industry of agriculture upon a career of prosperity; and in its train shall follow all the other industries and the arts and the best culture of a progressive civilization. Refuse it, and you perpetuate all the evils above enumerated and engender others which in turn shall "become the hatch and brood of time." You deliberately protect a fraud which is sapping the very foundations of the farmer's success and crippling his every effort to get on in the world. You help capital, which holds the mortgage on his farm and owns also the oleomargarine factory, to destroy the butter market and thus deprive him of his last opportunity to keep down the interest on that mortgage, and then take from him the farm itself and turn him into the street a vagabond and a tramp; and when next you hear from him he is in the front rank of some labor agitation. Then to tide over the troubles produced by your unwise legislation a Congressional investigating committee will be in order.

By refusing this bill you continue a policy calculated to destroy the hope of the husbandman and drive not a few only but thousands from agriculture into other departments of labor already overcrowded. Can you afford to do this? Can you afford to break down and disperse into other pursuits the hardy tillers of the soil, thus lessening the number of producers and increasing the number of consumers? A sound public policy lies in just the opposite direction—in developing and fostering every department of our agriculture, whereby enough may be gathered of the products of the earth to feed and clothe and preserve from distress and agitation all other departments of industry, and at the same time contribute in the most effectual manner possible to the national wealth. But enough. The general wisdom of this bill will not be disputed. Its justice to the farmer must be admitted. The salutary effect it will have upon our industries is apparent. The general demand of the American people for wholesome articles of food calls for it.

But, say certain eminent lawyers upon this floor, it is unconstitutional. Of course, if it contravene the Constitution, however desirable it may be from every point of view, it should not receive the sanction of this body. But let us see.

We have already seen that the power of Congress to tax whatever article it will is limited only by its discretion.

But, says the objector, while Congress may tax, it can tax only for the purpose of revenue; and since the professed purpose of this bill is not to raise revenue but to regulate the sale of an article of commerce, it follows, says the objector, that there is no constitutional authority for it. But the bill proposes to raise, and if it becomes a law it will raise, revenue. Now, is not this fact alone a full answer to the objection? But, says the objector, though it may raise revenue that is not the motive in passing the bill. To this it is sufficient reply to say, that if Congress has power to levy the tax, and does levy it in legal form, the particular motive from which this is done is of no legal consequence whatever. It would fall within the rule laid down by Jacob Collamer, who died the distinguished chairman of the Judiciary Committee of the United States Senate, while a representative in that body from the little State of Vermont, and whose statue the State has since put in Memorial Hall as a fair type of the Vermonter and of Senatorial dignity and learning.

Now, when upon the bench of the supreme court of Vermont he said:

Improper motives can never alter the character of a legal act. Whatever a man has a legal right to do he may do with impunity. (11 Vt., 22.)

So a legislative act which is in itself constitutional will not be made unconstitutional because it was passed from an improper motive.

The motive can not be reviewed judicially. It may be reviewed by the constituencies represented in this body but not by the courts.

Again, a legislative act such as the Constitution allows, which serves a constitutional purpose, does not become unconstitutional because it at the same time serves another purpose, which of itself would not bring the act within the purview of the Constitution.

Here the familiar principle governing the jurisdiction of cases before courts in chancery would apply. If the bill in equity present a single point where relief can not be had under the strict rules of law, and several points where the law would afford relief and thus defeat equity jurisdiction, yet a court of equity will always take jurisdiction upon the single point, and will then do equity upon all the matters presented by the bill, even though the principal points decided be those which the court could not have taken jurisdiction of alone.

In like manner if Congress have constitutional authority to tax imitation butter and pass a law to that effect the law is not unconstitutional because at the same time it may incidentally prevent the sale of it for genuine butter. This bill contains no provisions except such as lay the tax and provide for its collection. If those provisions are such as to prevent at the same time the fraudulent sale of oleomargarine, that can create no constitutional or other objection to the law. It should the rather be accepted as high proof of its wisdom. A law which will cut two ways and cut all the time for the right will not be held in disfavor by either the courts or the people.

Another objection by these left-handed defenders of the Constitution is, that this bill takes from the States the police power which the Constitution leaves to them.

They also say, even if Congress have the power it is too small business for the National Legislature, and as matter of policy should be left to the States.

But taxation can not be effective without complete police power over the article taxed; and as to the policy of Congress in dealing with this subject a precedent may be found in section 3328 of the Revised Statutes, which has been on the statute-book eighteen years, and which is for the protection of the wine industry of this country against imitation wines, and if some gentleman will tell us the difference between this section and the bill before us I will yield to him now.

Mr. BRECKINRIDGE, of Arkansas. I would like to ask the gentleman if he is referring now to the Federal statutes?

Mr. GROUT. Yes, sir.

Mr. BRECKINRIDGE, of Arkansas. And do I understand him to say that provision is made for levying this tax upon imitation wine?

Mr. GROUT. Yes, sir; in section 3328, which I would read had I the time and will do so if the gentleman will see that my time is extended.

* Mr. BRECKINRIDGE, of Arkansas. No. I am not disputing the statement; but it has escaped my observation, and I only asked for information. It is a subject that I shall look into with interest.

Mr. CUTCHEON. What machinery is provided for collecting the tax?

Mr. GROUT. It is quite meager; but it is provided. How operative it is I do not know. But the statute is there, and the National Congress is committed to the policy. The statute puts the collection of this wine tax under the control of the Commissioner of Internal Revenue the same as this bill proposes to put this bogus-butter tax.

Now, who will say that a tax of 10 cents per pound on imitation butter is not as defensible on every ground as a tax of 10 cents per pint on imitation wines? And who will say it is any smaller or less worthy business to protect the dairy interest, which employs 4,000,000 laborers, with an annual product of \$564,959,500, than the wine industry, whose exact annual product I am unable to ascertain; for, strange as it may seem, the Tenth Census gives no information upon the subject, nor can any be obtained at any of the Government Departments. But that product is probably only of a few hundred thousand dollars' value, and in the production of it probably only a few thousand laborers are employed.

Mr. MILLIKEN. If it be insisted that it was not competent to tax an industry out of existence, let me ask if it is not nevertheless true that we have taxed out of existence the State banks?

Mr. GROUT. Yes, sir.

Mr. MILLIKEN. And further, I would ask if the decisions of the Supreme Court that States can not tax the Government bonds were not founded upon the principle that if that power was granted to them they might tax the bonds to their full amount, their full par value, and therefore tax them out of existence?

Mr. GROUT. Certainly, and you will see before I close that the States have not the power to give adequate relief from these fraudulent butter imitations. That Congress alone has the power to do it. Moreover, if you will look at section 3272, Revised Statutes, you will find Congress has imposed heavy penalties against the introduction into distilled spirits of any ingredient or substance calculated to give fictitious proof. Now, shall it be said that the members of this House have made laws to preserve the proof of the whisky they drink and keep from adulteration the wine they drink, but think it too small business to provide against the adulteration of the butter which their wives and children eat?

But in closing, while it is apparent that Congress has full power over this fraudulent butter question as an incident of taxation, and while we also find Congress has already committed itself to that control in precisely the manner proposed by this bill, yet if other authority were wanting it may be found in that distinct grant of power by the Constitution to regulate commerce among the States. The clause is as follows:

The Congress shall have power * * * to regulate commerce with foreign nations, and among the several States, and with the Indian tribes.

It is true that the only exercise of this power by Congress thus far over interstate commerce has been confined to the navigable waters of the United States. But the day is not far distant when Congress will pass a law—as it ought long before this to have done—regulating transportation between the States by land. Nor is this power limited to the subject of transportation merely. It also extends to the status of merchandise taken from one State into the markets of another. In no provision of the Constitution was there a display of higher wisdom than in this grant to the National Legislature of full control over commerce between the States, nor is any constitutional grant plainer. Though

Congress has not yet entered upon the full exercise of this power, yet every attempted exercise of it by the States, no matter in what form, whether by an attempted control of navigable waters or by a tax upon freight carried from one State into another, or upon freight carried across a State, or by the imposition of a tax upon articles manufactured in one State and sold in another, the Supreme Court has invariably held that it was the attempted exercise of a power which the States do not possess, but that the power is lodged by the Constitution in Congress alone. (See *Gibbons vs. Ogden*, 9 Wheat, 1; *R. R. Co. vs. Fuller*, 17 Wall., 560; *Delaware R. R. tax*, 18 Wall., 206; *R. R. Co. vs. Richmond*, 19 Wall., 584; *R. R. Co. vs. Maryland*, 21 Wall., 456; *Downhall vs. City of Alexandria*, 7 Howard, 283.)

In commerce with the Indian tribes it was held in *United States vs. Forty-three gallons of whisky* (93 U. S., 188), that Congress may prohibit the transportation or sale in the Indian country of intoxicating liquors. And remember that Congress has no greater power over commerce with the Indian tribes than it has over that between the States, but precisely the same.

Thus do we see that control of this whole subject of commerce among the States, and every phase of it, not only relating to the transportation of merchandise but the sale of it also, belongs not to the States but to Congress. Now to apply this principle to the bill before us.

Take for illustration two States. Massachusetts, with about five and one-half times the population of Vermont, makes about one-third as much butter. As the result Vermont butter finds its way into Massachusetts markets, and there encounters these imitation products, which the laws of Massachusetts fail to prevent being sold as butter, thus putting Vermont butter at a very serious disadvantage.

We have seen that if Massachusetts were to pass a law putting Vermont products under some disadvantage, whether in transportation or sale in her market, it would be an invasion of the power of Congress over this subject, and would be set aside by the Supreme Court. Now, if instead of this positive act, Massachusetts were to neglect to give Vermont products suitable protection against these fraudulent imitations, and thus do Vermont a negative injustice, would it be any less an injustice? And where but in Congress is the power of correction? And what would a law like that proposed by this bill, which would relieve Vermont butter in Massachusetts from these fraudulent imitations, be but a regulation of commerce among the States? Where but to Congress can the Vermont farmer go for relief? Certainly not to the Massachusetts Legislature, for he is not represented there, and perhaps for the sake of cheap butter Massachusetts may wink at the fraud.

But, inasmuch as the Massachusetts delegation is believed to be a unit for this bill, let us suppose what is far more probable, that Massachusetts really wants to be rid of these imitation products; and accordingly resolves that as inasmuch as no oleomargarine is manufactured in Massachusetts—which I hope is true, but have my fears—that none shall be brought into the State from other States. But we have already seen, upon the authority of the Supreme Court, that Massachusetts has no power to do this. She can not prevent oleomargarine being shipped into her jurisdiction from New York and Chicago, were she to try ever so hard, which would leave Massachusetts powerless to do justice to Vermont if she would; and Vermont would be powerless, whatever course Massachusetts might take. This illustration will apply not to

Vermont and Massachusetts alone, nor to butter alone, but to all the States of the Union and to every other article of merchandise that may be produced in one State and consumed in another. Now, who fails to see that the only power to relieve in this matter is vested in Congress?

Who fails to see how utterly chaotic is the doctrine declared by the learned Judiciary Committee of this House, that there is no power in Congress over this subject and that "legislation, if proper, must be sought from the States," thus placing the authority of the States in this matter above that of Congress, when the States have no power whatever and Congress has full power? What a bedlam of conflicting interests between the States would this doctrine of the Judiciary Committee foster? It is withal an anti-national doctrine, a dangerous doctrine, and leads to anarchy. It is born of that now exploded philosophy which a quarter of a century ago so bewildered a certain well-meaning but weak "public functionary" that he was not able to find any power in the Constitution to coerce a State. But the American people found a way to coerce a State; and they will find a way to relieve themselves from fraudulent butter products which are at once a scandal to the country and a glaring wrong to an honest industry. They will find a way, because the Constitution, by a plain provision, gives Congress power over this subject; and the people are here in Congress in the persons of their representatives.

This absolute power over commerce between the States given by the Constitution to the National Government is one of the principal badges of the national sovereignty. It is an important, far-reaching power, and should be duly magnified. The future will bring it into exercise more than the past has done. The rapidly increasing commerce between the States will require from Congress constant supervision, and new rules will be required as new emergencies arise. In interstate commerce, which will increase with our increasing numbers and better facilities for intercommunication, shall be found the strongest future bond of union between these States. A free and fair interchange of commodities between the remote sections of the country will to our political and social relations add the ties of trade, than which between peoples and States none are stronger; and thus, in a vast domestic commerce, so regulated by Congress as to be mutually beneficial to all sections and all industries, shall be heard—

In the rushing wheels
Of trade's tumultuous jar—

the richest music of the Union.

Down the future, as our population becomes denser and our commercial rivalries sharper and our accumulated wealth greater, who can tell how this paternal authority of the National Government may be used to allay those rivalries, to check the greed of monopolies, to protect one State against the fraudulent products of another, and bring all departments of our domestic commerce, which is but the sum of our domestic industries, into such relations with each other as that each part shall contribute to the vigor of every other part, and thus create a harmonious system in which labor shall find employment, capital shall have its own, and every honest industry a fair chance? Now this will be the problem for the future statesmen of this country to solve. This problem is, in fact, crowding upon us to-day. We have seen how this measure before us reaches out into all these questions. We have also seen that Congress has a double power over the subject. Let us then rise to the occasion and pass this bill. [Applause.]

[From the five minutes' debate of May 26.]

MR. GROUT. I understood the gentleman from Arkansas [Mr. BRECKINRIDGE] when first upon the floor this morning to have questioned the correctness of my statement on yesterday that Congress was already committed to the principle of protecting the industrial products of the country from fraudulent imitations. I made that statement in substance, and cited in support of it section 3328 of the Revised Statutes of the United States, which I did not then have time to read. The gentleman from Arkansas incorporated into his remarks so much of that section as suited the purpose of his argument this morning. I desire now to read the whole of it. It is as follows:

SEC. 3328. On all wines, liquors, or compounds known or denominated as wine, and made in imitation of sparkling wine or champagne, but not made from grapes grown in the United States, and on all liquors, not made from grapes, currants, rhubarb, or berries grown in the United States, but produced by being rectified or mixed with distilled spirits or by the infusion of any matter in spirits, to be sold as wine, or as a substitute for wine, there shall be levied and collected a tax of 10 cents per bottle or package containing not more than 1 pint, or of 20 cents per bottle or package containing more than 1 pint and not more than 1 quart, and at the same rate for any larger quantity of such merchandise, however the same may be put up, or whatever may be the package. The Commissioner of Internal Revenue shall cause to be prepared suitable and special stamps denoting the tax herein imposed, to be affixed to each bottle or package containing such merchandise, by the person manufacturing, compounding, or putting up the same, before removal from the place of manufacture, compounding, or putting up; and said stamps shall be affixed and canceled in such manner as the Commissioner may prescribe; and the absence of such stamp from any bottle or package containing such merchandise shall be *prima facie* evidence that the tax thereon has not been paid, and such merchandise shall be forfeited to the United States. Any person counterfeiting, altering, or reusing said stamps shall be subject to the same penalties as are imposed for the same offenses in relation to proprietary stamps.

Now, sir, if a tax of 10 cents per pint on imitation wines is not for the purpose of protecting and encouraging the production of genuine wines, for one I am unable to understand what it is for. The inventive gentleman from Arkansas says that this tax is for the protection of the revenue which the Government derives from the import duty on foreign wines. That duty is, I believe, 50 cents per quart on champagne or sparkling wine and 25 cents per quart on all still wines. Every one knows that this duty is for the protection of the wine industry of this country, that upon the American wine product there is no internal-revenue tax as upon whisky, but that the Government encourages this industry by a high protective tariff.

Now, suppose that the assertion of the gentleman from Arkansas be true—which let it be understood is only supposed—namely, that this tax of 10 cents per pint on imitation wines is really for the purpose of more certainly collecting the duty on foreign wines, would it not still operate for the protection of genuine American wines, inasmuch as that import duty is for the protection of those wines?

It seems like a solecism in argument to claim otherwise. The fact remains, however, upon the very face of the statute itself that this tax is for the protection of American wine products against fraudulent American imitations; and no amount of sophistry can break the force of the argument for what it may be worth, that section 3328 is a precedent for the bill before us.

But there is upon foreign butter as well as upon foreign wines an im-

port duty, and if an excise tax of 10 cents per pint upon imitation wines helps the Government collect the tariff duty on imported wines, we will let the gentleman have his argument and give him this 10-cent tax on imitation butter to help in the collection of the duty on imported butter.

May 29, 1886.

MR. GROUT. Mr. Chairman, I rise to a question of privilege—the privilege of not being classed with any set of men whose convictions are at all “mixed” upon the question now under consideration—the privilege, to be more specific, of not going into the RECORD in this debate as from the State of Pennsylvania, as yesterday’s issue, on page 5254, in giving remarks of the gentleman from Illinois [Mr. HITT], puts me. Ordinarily, sir, I might not object to being credited to the grand old State of Pennsylvania—the State of “brotherly love,” the nobility and hospitality of whose people are proverbial; but I can not permit it in this connection for the reason that her Representatives on this floor are somewhat “mixed” on this question of oleomargarine, some of them showing a strange disposition to pay their devotions at the shrine of this myriad monster, this mixed mystery of the modern magician. Hence, I ask that the RECORD at the point I have indicated may be corrected and that I may be credited where I belong.

MR. KELLEY. Pennsylvania makes no objection. [Laughter.]

MR. GROUT. I thank you, sir. Mr. Chairman, only for the kind consent of the distinguished gentleman it might have been difficult.

MR. BAYNE. My friend will allow me to suggest that when the vote shall be taken on this bill it will be found that the Representatives of Pennsylvania are not very much “mixed.”

MR. GROUT. Very likely; but I want to be credited where I belong, since Judge KELLEY is willing I should be; and that is to the little but constant State of Vermont, whose people neither make nor eat oleomargarine, but do make 25,000,000 pounds of butter annually, with which you may butter your bread and not feel under the knife-blade as you do it the wiggling kick of a million animalcules. [Laughter.]

But, since the gentleman from Pennsylvania, my friend Colonel BAYNE, speaks hopefully of the Pennsylvania delegation, let me ask that this correction be made without prejudice to him and without prejudice also to all others of that delegation who prefer butter to oleomargarine. [Applause.]

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