

John F. Jelke Company v. Emery
193 Wis. 311 (1927)

This case centers on a quirky Wisconsin law that made it a crime to manufacture or sell margarine in the state. The Legislature enacted the law in 1925 to aid the dairy industry. A unanimous Court found that the Legislature had no power to attempt to regulate competition to give one industry an advantage over another, affirming the ruling of Judge August C. Hoppman, Dane County Circuit Court. Justice Marvin B. Rosenberry wrote the opinion.

The Supreme Court’s decision voided Chapter 279, Section 352.365 of the Laws of 1925* which had prohibited the manufacture and sale of a butter substitute containing milk fats (known as oleomargarine or oleo) in Wisconsin.

Emery was dairy and food commissioner for Wisconsin. Arguing that it was his duty to enforce the provisions of Chapter 279, he petitioned the Court to prohibit the respondent, John F. Jelke Company, from producing and selling oleo in the state.

Justice Rosenberry’s majority opinion called Chapter 279 an “exercise of the police power” in that it prohibited the operation of a legitimate business and the sale of a product widely accepted as wholesome. He stated that “prohibition can only be justified upon the ground that it is necessary in order to protect the public health, public morals, public safety, prevent fraud, or promote public welfare.” Rosenberry referenced numerous cases offering evidence that oleomargarine was accepted as a “nutritious, wholesome, healthful food” which did not endanger public health or safety; therefore, the prohibition of its production and sale was not justified.

Further, while the Court agreed that oleo was a substitute for butter, it determined that the oleomargarine industry marketed and sold the product based on its own merits—showing no evidence of fraudulent activity. Rosenberry wrote that there was “certainly no question of morals” regarding this issue.

Considering the petitioner’s argument that the sale of oleomargarine created “unfair competition” for Wisconsin’s dairy industry, Rosenberry concluded that:

From the standpoint of constitutional right the legislature has no more power to prohibit the manufacture and sale of oleomargarine in aid of the dairy industry than it would have to prohibit the raising of sheep in aid of the beef-cattle industry or to prohibit the manufacture and sale of cement for the benefit of the lumber industry.

The Supreme Court determined that prohibiting the sale of oleomargarine was to the “advantage to a particular class of citizens and to the disadvantage of others.” Therefore, the Court said it had a duty to nullify the “oppressive acts” of legislation.

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* Wis. Stat. ch. 279, sec. 352-365 (Laws of 1925): “It shall be unlawful for any person, firm or corporation, by himself, his servant or agent, or as servant or agent of another, to manufacture, sell or solicit or accept orders for, ship, consign, offer or expose for sale or have in possession with intent to sell, any article, product or compound which is or may be used as a substitute for butter and which is made by combining with milk or milk fats or any of the derivatives of either any fat, oil or oleaginous substance or compound thereof other than milk fat.”