RECORD. No. 61

THE STATE OF MARYLAND

vs.

LOUIS HYMAN.

ATTY. GEN'L RAYNER,
EDGAR ALLEN POE,
For Appellant.

FOUTZ & NORRIS,
MEYER ROSENBAUM,
For Appellee.

IN THE

COURT OF APPEALS

OF MARYLAND.

Appeal from the Criminal Court of Baltimore.

FILED OCTOBER 28, 1903.

HAGERSTOWN HERALD PRINT.

Appeal from the Criminal Court of Baltimore.

RECORD OF APPEAL TO THE COURT OF APPEALS OF MARYLAND.

STATE OF MARYLAND

vs.

LOUIS HYMAN.

In the Criminal Court of Baltimore.

No. 1268-1269-1270 May Term, 1903.

Charge: Violation Sweat Shop Law.

23 July Recognizance filed.

27 July Presentment filed-e. d.-Capias issued—Cepi on Bail.

28 July Recognizance taken, Levi Goldsmith, $100.—

31 Aug. Indictment filed as follows:

STATE OF MARYLAND,

City of Baltimore, to-wit:

The Jurors of the State of Maryland, for the body of the City of Baltimore, do on their oath present, that Louis Hyman late of said city, on the first day of July in the year of our Lord nineteen hundred and three, at the city aforesaid, unlawfully did use and cause to be used a certain room and appartment in a certain tenement and dwelling house there situate, by other than the immediate members of the family then living therein for the manufacture of coats, vests, trousers, knee pants, overalls and cloaks, contrary to the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

SECOND COUNT.

And the jurors aforesaid, upon their oath aforesaid, do further present that the said Louis Hyman on the said day, in the said year, at the city aforesaid, unlawfully did use a certain room and apartment in a certain tenement and dwelling house there situate for the manufacture of coats, vests, trousers, knee pants, overalls and cloaks, he the said Louis Hyman not being then and there an immediate member of the family then living in said room and apartment, contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

THIRD COUNT.

And the jurors aforesaid, upon their oath aforesaid, do further present that the said Louis Hyman on the said day, in the said year, at the city aforesaid, being then and there a part of a family unlawfully did use a certain room and apartment in a certain tenement and dwelling house there

situate for the manufacture of coats, vests, trousers, knee pants, overalls and cloaks, not having first obtained a permit from the Chief of the Bureau of Industrial Statistics, stating the number of persons allowed to be employed therein, contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

FOURTH COUNT.

And the jurors aforesaid, upon their oath aforesaid, do further present that the said Louis Hyman on the said day, in the said year, at the city aforesaid, in a certain room and apartment in a certain building, rear building and building in the rear of a certain tenement and dwelling house there situate, unlawfully did work at and hire and employ divers persons to work at making divers coats, vests, trousers, knee pants, overalls and cloaks, in whole or in part, without first obtaining a written permit from the Chief of the Bureau of Industrial Statistics, stating the maximum number of persons allowed to be employed therein, contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

FIFTH COUNT.

And the jurors aforesaid, upon their oath aforesaid, do further present that the said Louis Hyman on the said day, in the said year, at the city aforesaid, then and there employing divers persons in a certain tenement and dwelling house there situate to make and wholly and partly finish divers coats, vests. trousers, knee pants, overalls and cloaks unlawfully did fail to keep a written register of the names and addresses of all persons to whom such work was given to be made as aforesaid, contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

EDGAR ALLEN POE,
The State's Attorney for the
City of Baltimore.

The above indictment endorsed "True Bill, Isaac S. Field, Foreman."

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20 Oct., 1903, Demurrer to Indictment filed as follows:

STATE OF MARYLAND	
vs.	In the Criminal Court of Baltimore City.
LOUIS HYMAN.	

Louis Hyman, the above named traverser, by Foutz & Norris and Meyer Rosenbush, his attorneys, as to the first count in said indictment says: That the same is bad in substance.

And as to the second count in the indictment says: That the same is bad in substance.

And as to the third count in the indictment says: That the same is bad in substance.

And as to the fourth count in the indictment says: That the same is bad in substance.

And as to the fifth count in the indictment says: That the same is bad in substance.

FOUTZ & NORRIS,
MYER ROSENBUSH,
Attorneys for Traverser.

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20 Oct., 1903, Demurrer sustained by Stockbridge, J.
" " " Motion to quash indictment.
" " " Motion granted by Stockbridge, J.
24 " " Order of Appeal, affidavit of the State's Attorney that appeal not taken for delay and order of Court thereon filed, as follows:

STATE OF MARYLAND	
vs.	In the Criminal Court of Baltimore.
LOUIS HYMAN.	

MR. CLERK:

Enter an appeal on behalf of the State in the above entitled case.

EDGAR ALLEN POE,
State's Attorney for Baltimore City.

STATE OF MARYLAND,

City of Baltimore, to-wit:

I hereby certify that on this 24th day of October, in the year nineteen hundred and three, before me, the subscriber, the Clerk of the Criminal Court of Baltimore, personally appeared Edgar Allen Poe, State's Attorney for the City of Baltimore, and made oath in due form of law that the appeal taken in the above entitled case is not taken for the purpose of delay.

HENRY J. BROENING,
Clerk Criminal Court of Baltimore.

Let the appeal in the above entitled case be granted.

HENRY STOCKBRIDGE.

STATE OF MARYLAND,

City of Baltimore, to-wit:

I hereby certify that the aforegoing is a true copy of the record of proceedings of the Criminal Court of Baltimore in the case of the State of Maryland vs. Louis Hyman.

{ SEAL. }

In testimony whereof I hereto set my hand and affix the seal of the Criminal Court of Baltimore this 26th day of October, A. D., 1903.

HENRY J. BROENING,

Clerk Criminal Court of Baltimore.

STATE OF MARYLAND

vs.

LOUIS HYMAN.

No. 1268-1269-1270

In the Criminal Court of Baltimore.

May Term, 1903.

Charge: Violation Sweat Shop Law.

23 July, Recognizance filed.

27 July, Presentment filed—e. d.—Capias issued—cepi on Bail.

28 July Recognizance taken Levi Goldsmith, $100.—

31 Aug., Indictment filed.

20 Oct., Demurrer to Indictment filed.

20 Oct., Demurrer sustained by Stockbridge, J.

20 Oct., Motion to quash indictment.

20 Oct., Motion granted by Stockbridge, J.

24 Oct., Order of Appeal, affidavit of State's Attorney that appeal not taken for delay and order of Court thereon filed.

STATE OF MARYLAND,

City of Baltimore, to-wit:

I hereby certify that the aforegoing is a true copy of the docket entries in the aforegoing case taken and copied from the record of proceedings of the Criminal Court of Baltimore.

{ SEAL. }

In testimony whereof I hereto set my hand and affix the seal of the Criminal Court of Baltimore, this 26th day of October, A. D., 1903.

HENRY J. BROENING,

Clerk Criminal Court of Baltimore.

61

STATE OF MARYLAND

vs.

LOUIS HYMAN.

IN THE

COURT OF APPEALS

OF MARYLAND.

JANUARY TERM, 1904.

GENERAL DOCKET,

No. 10.

Appeal from the Criminal Court of Baltimore City.

BRIEF FOR THE STATE.

The controlling question in this case is the constitutional validity of Chapter 101 of the Acts of 1902, prohibiting the use of rooms and apartments in tenement or dwelling houses for the manufacture of clothing and other articles by any persons except the immediate members of the families living there, which immediate members of such families are limited to a husband and his wife, and their children or the children of either. The Act further prohibits the use of any such apartment for such purpose of manufacture by families living therein "until a permit shall first have been obtained from the Chief of the Bureau of Industrial Statistics, stating the maximum number of

persons allowed to be employed therein." Such permit is only to be granted after an inspection of the premises, and is liable to be revoked by the Chief of the Bureau of Industrial Statistics "at any time the health of the community or of those employed or living therein may require it."

Permits are to be annually applied for; are required to be kept posted conspicuously in one of the rooms to which they relate. Every person, firm or corporation contracting for the manufacture of any of the mentioned articles, or giving out the incomplete material from which any of them may be made, or employing persons in any tenement or dwelling house or other building to make wholly, or to partly finish the mentioned articles "shall keep a written register of the names of all persons to whom such work is given to be made or with whom they may have contracted to do the same." Such register shall be furnished on demand of the Chief of the Bureau of Labor Statistics, or of one of his deputies.

Authority is also given to the Chief of the Bureau of Labor Statistics and to certain of his assistants to enter any room in any tenement or dwelling-house, workshop, manufacturing establishment, mill, factory or place where any goods are manufactured, for the purpose of inspection. Access and information in regard to such places is required to be furnished by the persons, firms, or corporations owning or controlling or managing such places to the Chief of the Bureau of Labor Statistics, or his deputies, "at any and all reasonable times while work is being carried on."

This Statute was declared invalid by the late JUDGE RITCHIE in the Criminal Court of Baltimore, in the case of *The State vs. Morris Legum*, on December 17, 1902, and a learned and careful opinion was filed by that able judge in which the objections to the validity of the law are stated with force and clearness.

ARGUMENT.

It is respectfully maintained that the Act of 1902, above referred to, was well within the power of the Legislature, and that it does not conflict with any clause of either the State or the Federal Constitution.

"'This police power of the State,' says another eminent judge, 'extends to the protection of the lives, limbs, health, comfort and quiet of all persons, and the protection of property within the State, according to the maxim, *Sic utere tuo ut alienum non laedas*, which being of universal application, it must, of course, be within the range of legislative action to define the mode and manner in which every one may so use his own as not to injure others.' And again: By this 'general police power of the State, persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort, health and prosperty of the State; of the perfect right in the Legislature to do which, no question ever was, or upon acknowledged general principles, ever can be made, so far as natural persons are concerned.'

"And neither the power itself, nor the discretion to exercise it, as need may require, can be bargained away by the State."

Cooley on Constitutional Limitations, (6th Ed.) 706.

Thorpe vs. Rutland & B. R. R., 27 Vermont, 140, 149.

"Neither the amendment—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the State, develop its resources and add to its wealth and prosperity."

JUDGE FIELD in Barbier Case, 113 U. S. 31.

"What is termed the police power has been the subject of a good deal of consideration by both the Federal and State Courts, and all agree that it is a difficult matter to define the limits within which it is to be exercised. Every well organized government has the inherent right to protect the health and provide for the safety and welfare of its people. It has not only the right, but it is a duty and obligation which the sovereign power owes to the public, and as no one can foresee the emergency or necessity which may call for its exercise, it is not an easy matter to prescribe the precise limits within which it may be exercised. It may be said to rest upon the maxim, '*salus populi suprema lex*,' and the constitutional guarantees for the security of private rights relied on by the appellant have never been understood as interfering with the power of the State to pass such laws as may be necessary to protect the health and provide for the safety and good order of society. 'Property of every kind,' says MR. JUSTICE STORY, 'is held subject to those general regulations which are necessary for the common good and general welfare And the Legislature has the power to define the mode and manner in which every one may use his property.' 2 Vol. Story Const."

Deems vs. Baltimore, 80 Md. 173.

So the CHIEF JUSTICE in deciding the recent case of *State vs. Broadbelt*, 89 Md. 585, quoted with approval *Chief Justice Shaw's* famous judgment in *Com. vs. Alger*, 7 Cush. 84, as follows:

"Whilst it is undoubtedly true that the police power cannot be put forward as an excuse for oppressive and unjust legislation, it may, most certainly, be resorted to for the purpose of preserving the public health, safety or morals, or the abatement of public nuisances; and a large discretion 'is necessarily vested in the Legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such

interests.' *Lawton vs. Steele*, 152 U. S. 133. As observed by CHIEF JUSTICE SHAW, in *Commonwealth vs. Alger*, 7 Cush. 84: 'Every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it may be so regulated that it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. * * * Rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment as will prevent them from being injurious, and to such reasonable restraints and regulations established by law, as the Legislature, under the governing and controlling power vested in them by the Constitution, may think necessary and expedient.' 'This power, legitimately exercised, can neither be limited by contract nor bartered away by legislation.' *Holden vs. Hardy, supra.*"

It is to be borne in mind that this police power—this power to legislate for the public health and public morals and public safety and public convenience, is confided to the discretion of the *legislative* branch of the State Government.

No matter whether the action that co-ordinate branch of the government was, in the opinion of the Courts, just or unjust, wise or foolish, if the Courts can see that it had, "a real and substantial relation" to any one of the heads of the police power, they are not authorized to interfere, and to override and nullify the legislative will.

Lake Roland R. R. vs. Baltimore, 77 Md. 380, 381.
Powell vs. Pennsylvania, 127 U. S. 684.
Mugler vs. Kansas, 123 U. S. 661, 662, 663.
Sprigg vs. Garret Park, 89 Md. 406, 411.
Stevens vs. State, 89 Md. 674.
State vs. Broadbelt, 89 Md. 577.
State vs. Knowles, 90 Md. 646.

Of course every intendment is made by the Courts in favor of the constitutionality of a Statute. The Court, unless the contrary is manifest, will presume that the Legislature acted within its constitutional limitations.

R. R. vs. Matthews, 174 U. S. 96.
Mugler vs. Kansas, 123 U. S. 661.
Powell vs. Pennsylvania, 127 U. S. 684.
Co. Com. vs. Meekins, 50 Md. 39, 40.
Baltimore vs. State, 15 Md. 453.
In re Ten Hour Law, 61 L. R. A. 614.
Cooley on Constitul. Limt., 216.

Indeed, if one construction, of which a Statute is susceptible, would make it valid, and another equally plausible construction would make the Statute unconstitutional, the validating construction will be adopted by the Courts; for it will not be presumed that the Legislature intended to pass a void or unconstitutional Statute.

Temmick vs. Owings, 70 Md. 251.
U. S vs. Coombs, 12 Peters, 76.
Hooper vs. California, 155 U. S. 657.
Broughton vs. Pensacola, 93 U. S. 269.
Gordon vs. M. & C. C., 5 Gill, 241.

As illustrating exertions of the police power by the Legislature, which have been held by the Courts as not infringing any constitutional prohibitions, the following adjudications are cited:

A Statute of the State of Utah limiting hours of labor in mines to 8 hours a day was valid.

Holden vs. Hardy, 165 U. S. 368.

The Supreme Court of Rhode Island held valid a Statute limiting the hours of labor of conductors, gripmen and motormen on Street Railway cars to 10 hours a day.

In re Ten Hour Law, 61 L. R. A. 612.

A Statute requiring immediate payment of wages of discharged employes is valid.

R. R. vs. Paul, 173 U. S. 404.

A Statute invalidating a sale of a stock of goods in bulk, without ascertaining the seller's creditors, is valid.

McDaniels vs. Connelly, 60 L. R. A. 947.

An Act limiting the hours of labor of women is valid.

Wenham vs. Nebraska, 58 L. R. A. 825.

Forbidding a barber shop to remain open on Sunday, while hotels, baths, livery stables, etc., do so, is not denying to barbers the equal protection of the laws.

Utah vs. Sopher, 60 L. R. A. 468.

The State can discriminate between the restrictions placed upon electric cars and upon other vehicles using the public streets.

Detroit R'lway vs. Osborne, 189 U. S. 383.

A Statute requiring workmen to be paid in cash or requiring the redemption of store orders in cash is a valid exercise of the police power.

Knoxville Co. vs. Harbison, 183 U. S. 13, 21.
Harbison vs. Knoxville Co., 103 Tenn. 421.

A special tax on the business of hiring persons to go to work beyond the limits of the State is valid.

Williams vs. Fears, 179 U. S. 270.

A law providing for the inspection of coal mines where more than five men are employed is not unconstitutional, nor does the fact, that, while at least four inspections are required, there *is a discretion* lodged in the inspectors to inspect more frequently, if they see fit, affect the validity of the Act.

St. Louis Con. Coal Co. vs. Illinois, 179 U. S. 203.

It is within the province of the State to *entirely prohibit* the sale of cigarettes after they have been taken from the original packages, where there is no discrimination against those imported from other States, and there is no reason to doubt that the Act in question is intended for the protection of the public heath.

Austin vs. Tennessee, 179 U. S. 343.

In *Missouri vs. Layton*, 62 L. R. A. 163, it was held that the statutory prohibition of the manufacture or sale of baking powder containing alum is not unconstitutional, in view of the dispute as to the fact of its wholesomeness, which prevents the Court from taking judicial notice that it is wholesome and innocuous.

See also the famous oleomargarine case of—

Powell vs. Pennsylvania, 127 U. S. 678.

A rule of the Board of Education requiring the pupils to go directly home when dismissed from school was upheld in Michigan (Jones vs. Cody, 62 L. R. A. 160) under statutory authority to pass rules relative to anything whatever that may advance the interests of education, the good government and prosperity of the free schools and the welfare of the public concerning the same.

It can scarcely be contended that this Statute was intended to give to the Board of Education broader and more plenary powers than the Legislature itself possesses under the name of the police power.

So likewise in Tennessee, a Statute forbidding the taking of a note for an interest in a patent, which note does not, on its face, state that fact, is not unconstitutional, and its passage is within the police power of the State.

Tennessee vs. Cook, 62 L. R. A. 174

Can it be successfully contended that the prohibition of persons manufacturing garments in dwelling or tenement

houses has "no relation" to the health of the public who may purchase the clothing so manufactured? Or of the unfortunate and frequently abject and ignorant workmen and workwomen who may be crowded in unhealthy numbers into living rooms to work? The Court will judicially know that the health of the community may be imperilled by the spread of disease through sweatshop garments. The Court will also judicially know that the health of men and women and also of little children is sometimes undermined and destroyed by underpaid, underfed families crowding in unhealthy numbers in a single room, in which they eat and sleep and work in squalid misery.

That the Act confides to the Chief of the Bureau of Industrial Statistics the power to revoke the permit to members of the same family to manufacture clothing in a dwelling or tenement house "at any time the health of the community or those employed or living therein may require it," without making any provision for the review by a judicial tribunal of his findings of fact or of law, is no objection to the constitutionality of the law.

That there is no constitutional objection to permitting an executive officer to decide finally and without appeal any question either of law or of fact was held in

Reetz vs. Michigan, 188 U. S. 505.

Authorizing a State Board of Health to make rules for the prevention of the spread of disease is not an unlawful delegation of legislative power. And a regulation requiring school children to be vaccinated during a smallpox epidemic is not invalid.

Blue vs. Bleach, 155 Indiana 121.

An Act of the Connecticut Legislature authorizing a Railroad Commission to order railway tracks at a highway

crossing to be removed when such action was deemed necessary was held valid.

Woodruff vs. N. Y. & N. E. R. R., 20 Atl. Rep. 17, 22.

See also--Atlantic Express Co. vs. R. R., 18 L. R. A. 393.

R. R. Commission Cases, 116 U. S. 307.

Detroit, etc., R. R. vs. Osborne, 62 L. R. A. 149.

There has for many years been an ordinance in force in the City of Baltimore requiring, under a penalty, street car tracks to be repaired whenever "any part thereof shall, *in the opinion of the City Cammissioner*, require repairing."

City Code of 1893, Art 41, Sect. 12.

A milk inspector could by ordinance be given lawful authority to destroy (without opportunity to appeal or to have a review of his decision) milk which he found, on inspection, to be impure.

Deems vs. Baltimore, 80 Md. 164.

See also—Boehm vs. Baltimore, 61 Md. 260.

Of course, if, before the Chief of the Bureau of Labor Statistics could revoke a permit to prevent the spread of disease, it were necessary that there should be a judicial investigation with the accompanying inevitable delays, the whole purpose of the revocation of the permit would be, in many instances, defeated.

The spread of diseases occasioned by the continued operation of the sweat shop might be accomplished while the Court was hearing evidence and determining whether any preventive measures should be taken.

It is respectfully submitted that while it is very possible that the Chief of the Bureau of Labor Statistics might render himself liable civilly or criminally, or both, if he arbitrarily and corruptly or maliciously revoked a permit

without any reasonable ground for believing that there was any lawful occasion for doing so; or that even an Injunction might be obtained on showing such facts nullifying such corrupt and maliciously given order of revocation—although the legal propriety of the issuance of such an Injunction, in any event, is very much doubted—the fact that it is conceivable that the power may at some time be abused is no ground for holding invalid this Statute passed for the salutary purpose of mitigating the evils flowing from the manufacture of Sweatshop clothing.

Bevard vs. Hoffman, 18 Md. 479.
Friend vs. Hamill, 34 Md. 304.
Elbin vs. Wilson, 33 Md. 142.
Hardesty vs. Taft, 23 Md. 530.
Baltimore vs. O'Neill, 63 Md. 344.
O'Neill vs Register, 75 Md. 425.
Knell vs. Briscoe, 49 Md. 414.
State vs. Carrick, 70 Md. 586.
Roth vs. Shupp, 94 Md. 55.

The right of the Legislature to adopt stringent measures to stamp out the evils incident to the unregulated manufacture of clothing in sweatshops can not, however, in any way depend upon the enquiry whether there is or not any civil or criminal remedy against the executive officer for the malicious or corrupt abuse of the power given him.

The State refers to and relies upon the very able Brief filed at the January Term 1903, in this Court, by Attorney General Rayner, State's Attorney McLane, Mr. Jacob M. Moses and Mr. John Phelps, in the case of State vs. Legum, being case No. 43 at the January Term, 1903 of this Court.

Respectfully submitted,

WILLIAM S. BRYAN, JR.,
Attorney-General,
JACOB M. MOSES,
For the State.

61

STATE OF MARYLAND

vs.

LOUIS HYMAN.

IN THE

COURT OF APPEALS

OF MARYLAND.

JANUARY TERM, 1904.

GENERAL DOCKET,

No. 10.

—o—

SUPPLEMENTARY BRIEF FOR APPELLANT,

Filed with the Consent of the Attorney General.

Arbitrary power will not be presumed to be granted to an official. It cannot be conferred by mere implication. In order to confer arbitrary power upon an official, the language of the Statute most clearly show such an intention upon the part of the Legislature. If such an intention cannot be gathered from the Statute, then it is clear that such powers are not conferred.

Now, what is the "arbitrary power" which this Act is supposed to confer upon the Chief of the Bureau? It is (according to the opinion of the late Judge Ritchie) that, "so far as any restraint is to be found in the Act, he (the chief) gives or refuses the permit as he pleases."

Let us see what powers and duties the Act confers upon the Chief and his deputies:

1. The Chief must appoint two assistants whose duty it shall be to make inspections of the tenements and factories, etc. (Sec. 149 GG).

2. Authority is conferred upon the Chief and his assistants to enter any room in any tenement, etc., *where any goods are manufactured, for the purpose of inspection.* The persons controlling such places must furnish access and information to the said Chief or assistants *at any reasonable time while work is being carried on* (Sec. 149 FF.).

3. The Chief shall not grant a permit until after an inspection of the premises (Sec. 149 EE).

4. He must state in said permit the maximum number of persons allowed to be employed in such room (Sec. 149 EE).

5. He may revoke said permit at any time the health of the community, or those employed or living upon the premises may require it (Sec. 149 EE).

6. *Semble.* He may withhold a permit for the same reasons that he may revoke one previously granted.

Now which of these powers is an arbitrary or unreasonable power?

Surely not No. 1, nor No. 2, because it simply authorizes him to enter any room where and while manufacturing is going on, for the pnrpose of inspection. Health inspectors have this right, and it has never been questioned. Nor No. 3, which compels him to inspect or have inspected the premises before granting the permit. Nor No. 5, which confers no greater power than the quarantine laws, which have been upheld by all the Courts of the land. (Deems' Case, 80 Md. 175).

It is true that powers 4 and 6 are more liable to abuse than the others, but they are not on that account arbitrary or unreasonable. They are the only powers the exercise of which may offend the applicant for a permit. To say that the Chief of the Bureau may be influenced by corrupt

or partisan considerations in granting or withholding permits is no argument against the law, any more than it would be against the law creating the Health Department of Baltimore City and clothing the Health Commissioner and his inspectors with powers equally as broad and even more far reaching, or against the law creating the Liquor License Commissioners of Baltimore City and clothing them with the power to grant and withhold licenses, with no right of appeal, although the right of personal liberty and private property is involved.

Discretion must be lodged somewhere, and it is too much to expect that it will not be sometimes abused. But danger of abuse will not be permitted to defeat salutary legislation. Laws are seldom, if ever, perfect in their operation, and in government, as in business and every other field of activity, experience and time are the truest and safest teachers.

Respectfully submitted,

JACOB M. MOSES,

Attorney for Appellant.

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FILED JANUARY 15, 1904.

THE STATE OF MARYLAND,

vs.

LOUIS HYMAN.

IN THE

Court of Appeals

OF MARYLAND.

January Term, 1904.

GENERAL DOCKET,

No. 10.

BRIEF FOR APPELLEE.

The Appellee was indicted for violating what is known as "the Sweat Shop Law," the five counts in the Indictment being based upon Chapter 101 of the Act of 1902.

Demurrers were filed to all the counts in the indictment, the demurrers being sustained by the Court, a motion to quash the indictment was made, the motion was granted the indictment quashed, and from the rulings of the Court this appeal taken.

The sole question presented by the Record is the constitutionality of the Chapter 101 of the Act of 1902, and the Appellee contends that the provisions of the Act violate the rights of the citizen as guaranteed by Section one of the 14th Amendment to the Constitution of the United States and the 23rd Article of the Bill of Rights of Maryland.

THE ACT PROVIDES.

That in no room or apartment in any tenement or dwelling house shall be used:

For the manufacture of coats, vests, trousers, knee-pants, overalls, cloaks, shoes, hats, caps, capes, suspenders, jerseys, blouses, waists, waistbands, underwear, neckwear, furs, fur trimmings, fur garments, shirts, purses, artificial flowers, cigarettes or cigars; except by the immediate members of the family living therein, and such family is limited to husband and wife, their children or the children of either.

That neither such family, nor any member thereof shall use any such room or apartment, without first having obtained a permit from the Chief of the Bureau of Industrial Statistics, stating the maximum number of persons which he may allow to be employed therein:

That such permit shall not be granted until after an inspection of the premises:

And such permit may be revoked by said Chief at any time when (in his judgment) the health of the community, or those employed, or living, in such room or apartment, may require;

The Chief of the Bureau and his deputies have the right at all reasonable times to enter any rooms or apartments, where any goods are being manufactured, for the purpose of inspection, and the persons in control are required to furnish access thereto;

The penalty for any violation of the law is a fine not exceeding $100, or imprisonment not exceeding one year or both.

Other provisions of the Act prescribe certain conditions upon which any person or corporation may hire or employ others to work at making the articles referred to; requiring a like permit, revokable in like manner, and also requiring all persons or corporations contracting for the manufacture of any of these articles in question, or

giving out materials out of which they are to be made, to keep a register of the persons with whom they contract, or to whom they give out such materials.

The statute applying to every tenement or dwelling house in the State of Maryland, and the subject matter of the Act being an attempted sanitary regulation of the manufacture of certain articles, consisting chiefly of wearing apparel, in the houses of the people who make them, the first inquiry is, what is meant by the constitutional guarantees referred to.

The Liberty mentioned in the 14th Amendment to the Constitution means not only the right of the Citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the Citizen to be free in the enjoyment of all his faculties, to be free to use them in all lawful ways, to live and work where he will, to earn his livelihood by any lawful calling, to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be necessary and essential to his carrying out to a successful conclusion the purposes above mentioned.

Allgeyer vs. Louisiana, 165 U. S., 589.
In Re. Jacobs, 98 N. Y., 98.
People vs. Marx, 99 N. Y., 387.
Long vs. State, 74 Md., 565–572.
Luman vs. Hutchins, 90 Md., 25.
Singer vs. State, 72 Md., 464.
State vs. Broadbelt, 89 Md., 565.
Butchers Co. vs. Crescent City Co., 111 U. S., 746–757.
Lawton vs. Steele, 152 U. S., 136–8.
In Re Sing Lee, 96 Cal., 354.
In Re Hong Wah, 82 Fed. Rep., 623.
Bailey vs. People, 190 Ill., 28–37.
Ritchie vs. People, 155 Ill., 98.
Tiedeman S. & F. Control, secs. 120–147.

The Act absolutely prohibits the manufacture of any of the enumerated articles by ANYBODY, unless a permit is first obtained; And under what circumstances may a permit be demanded as a matter of right by a citizen from the Chief of the Bureau of industrial statistics? The Act utterly fails to provide any standard or regulations which are to govern the citizen in the manufacture of the articles enumerated, or, the said Chief in the issuance, withholding or revoking of the permit, except THE JUDGMENT of the said Chief of the Bureau of Industrial Statistics, in other words, none of the enumerated articles may be manufactured in any house in this State, even when they are for the USE OF THE FAMILY ALONE, unless a permit is first had and obtained from said Chief, whose power to issue or withhold the permit is absolutely uncontrolled by anything contained in the act itself.

(2.) Only a husband, wife, their children or the children of either, under the provisions of the act, may manufacture any of the articles enumerated, AFTER HAVING OBTAINED A PERMIT, all others are expressly excluded, the parents of a husband or wife, the brothers and sisters of a husband or wife and all collateral relatives of either living in the same house or visiting there are *absolutely prohibited* from the manufacture of any of the enumerated articles, *even though they are intended for their own* personal use, or the use of the husband, wife, or *their children or the children of either*.

(3) The employment of a seamstress in any home in the State for the manufacture of any of the enumerated articles is absolutely prohibited by the Act.

(4.) If a husband's wife be an invalid, and his children too young to make their own garments, he must either purchase or have them made outside his home, under the prohibition of the Act, no relative can make

them for him in his home nor can he employ ANYONE else to come to his home and make them.

WHAT THE ACT DOES NOT FORBID.

(1.) Chewing and smoking tobacco, candy and other articles of like nature, not being under the ban of the Act, may be made in tenements or dwelling houses.

(2.) The Act does not prohibit the manufacture of ladies' skirts, although ladies' waists come under the ban of the Act, presenting the anomaly of allowing the manufacture of that portion of a woman's dress called skirts, ANYWHERE, but prohibiting the manufacture of that portion of a woman's dress called waist, except under the conditions prescribed by the Act.

The manufacture of the articles enumerated, is not only a lawful calling, but is universally known to be a necessary and useful occupation, and it is a matter of common knowledge, that its prosecution under ordinary conditions is not injurious to the health of the public, or those engaged in it, and an Act which arbitrarily prohibits their manufacture even UNDER THE MOST FAVORABLE SANITARY CONDITIONS is an unjust and unlawful discriminating in restraint of trade.

City of Chicago vs. Netcher, 183 Ill., 104.
Le Blanc vs. Mayor, etc., 106 La., 680.
Long vs. State, 74 Md., 565–572.
City of Denver vs. Back, 26 Colo., 530.
State vs. Granneman, 132 Mo., 326.
Ex-Parte Leo Gentzseh, 112 Cal., 468.
Eden vs. People, 161 Ill., 296.
In Re Fee Toy, 26 Fed. Rep., 611.
In Re Sam Kee, 31 Fed. Rep., 680.
City of Janesville vs. Carpenter, 77 Wis., 298.
In Re Sing Too Quau, 43 Fed, Rep., 359.
Ex-Parte Patterson (Texas), 51 L. R. A., 654.

Bailey vs. People, 190 Ill., 28.
Noel vs. People, 187 Ill., 587.

It may be argued by the State that the preceding sections of the sub-title of the article under which this act has has been placed, furnish the necessary rules or standard by which the chief is to be governed in his inspections; the only regulation, (exclusive of those which apply to factories, manufacturing establishments, and workshops, which have no application here, as the act of 1902 specifically alludes to tenements and dwelling houses) is in relation to the number of cubic feet, and if that were intended, how easy it would have been for the Legislature to have said that the preceding legislation shall apply to tenements and dwelling houses, instead of framing entirely new legislation. The Act is, and was intended to be, applicable to entirely separate and distinct conditions from any other, is complete in itself, and should be so construed; it must stand or fall upon its own strength or weakness, and the mere fact that it is found in that particular company, is no standard for construction; it had to be placed somewhere; but "very little reliance can be placed upon the heading under which it may be found."

State vs. Popp, 45 Md., 432.
Dundalk Co. vs. Smith Et. Al., (Ct. App. Jan. Term 1903) D. R. April 20th, 1903.

The Act deprives the citizen of his property, without due process of law, in that he is prevented from using the same in the prosecution of a lawful trade or occupation, in a lawful manner, when the same is not a menace to the public health, and where it is not used for purposes dangerous to the public safety or morals.

The provisions of the Act are unjust and unreasonable, oppressive and burdensome, arbitrary and unnecessary for the public welfare, and although by the enacting clause, its object might be supposed to be the preservation of the public health, the Act itself prescribes no

conditions as to cleanliness, no regulations as to sanitation, no rules to control the issuance of the permit which is a pre-requisite to the making of any of the enumerated articles BY ANYBODY. And the entire question of proper sanitary conditions is left to determination of the Chief of the Bureau of Industrial Statistics, without prescribing any rules or standard for his guidance or control in granting or refusing permits, or the revoking of the permits which may be granted.

ARBITRARY POWER VESTED IN CHIEF OF BUREAU OF INDUSTRIAL STATISTICS.

A permit is not to be granted by the Chief of the Bureau until after an inspection of the premises has been made.

Neither the Chief of the Bureau of Industrial Statistics nor his Assistant are required to be sanitary experts by the Act of 1902, or any prior legislation. A college President or a Coal heaver, a ward politician or a Bank Clerk may be appointed to these positions, and there is nothing in the Act to prohibit it, nor is anything contained in the act creating that bureau (1892, Chap. 29), requiring it.

The houses of the thousands of our citizens who are employed in the manufacture of the various articles enumerated in the Act, are opened by the Act of 1902 for the purpose of inspection.

As to the character and extent of that inspection; as to the conditions that should obtain before a permit is issued, THE ACT IS ABSOLUTELY SILENT.

As to the requirements necessary for the safety of the health of the community or those employed or living in any room or apartment in any tenement or dwelling house, the violation of which will cause a revocation of a permit already granted, again the Act is silent, the only provision as to the revocation of a permit already

granted, being, "such permit may be revoked by said Chief of the Bureau of Industrial Statistics at any time the health of the community or those employed or living therein may require it."

Absolutely no conditions are laid down by the Act with which these thousands of our people must comply before they can pursue the occupation by which they earn their livelihood and support those dependant upon them; as to those working in their homes, no requirements are mentioned, no standard is provided, their right to pursue their usual vocations, lawful in itself, in a lawful manner in their own homes, is left solely and entirely to the arbitrary determination of the Chief of the Bureau of Industrial Statistics, without any rules to guide or control his action, or by which the uniform and impartial exercise of his power may be secured, this right to earn their livelihood is subject to the undirected and uncontrolled power of this Chief of the Bureau, and placed at the risk of his incapacity, favoritism, caprice and oppression, so far as any restraint is to be found in the Act, he gives, refuses and revokes the permits as he pleases.

"A statute which clothes a single individual with such power, hardly falls within the domain of law."

Mayor vs. Cadeke, 49 Md., 217–235.
Yick Wo vs. Hopkins, 118 U. S., 356–372.
Noel vs. People, 187 Ill., 589.
Schaezlein vs. Cabannis, 135 Cal., 466.
Bostock vs. Sams, 95 Md., 400.
In Re Jacobs, 98 N. Y., 98.

The constitutionality of a law is to be tested not by what has been done under it, but by what may by its authority be done.

Ullman vs. Mayor & C. C., 72 Md., 587.

It would be difficult, if not impossible, to crowd into so short a statute any more or greater violations of that

principle so essential to a free government, of equal, general and standing Laws.

City of Janesville vs. Carpenter, 77 Wisconsin 303.

The Act is void as a whole, all its substantial provisions are so related to and dependant upon each other that the legislature could have had but one main object or system in view, and without the provisions which are invalid the act would not have been passed.

If a statute attempts to accomplish two or more objects and is void as to one, it may still be in every respect complete and valid as to the other.

But if its purpose is to accomplish a single object only and some of its provisions are void, the whole must fail unless sufficient remains to effect the object without the aid of the invalid portion, and if they are so mutually connected with and dependant on each other as, conditions, considerations or compensations for each other as to warrant the belief that the legislature intended them as a whole, and if all could not be carried into effect, the legislature would not pass the residue independently, then if some parts are unconstitutional all must fail.

Cooley Const Lim, 6 Ed. p. 211.

In Commonwealth vs. Perry, 155 Mass., 121, the Court said: The manufacture of cloth is an important industry * * * there is no reason why men should not be engaged in it * * * the right to employ weavers, and to make proper contracts with them, is therefore protected by our Constitution; and a statute which forbids the making of such contract, or to nullify them, or impair the obligations of them, violates fundamental principles of right which are expressly recognized in our Constitution."

Godcharles vs. Wigman, 113 Pa. St., 431.

State vs. Goodwill, 33 W. Va., 179.

State vs. Loomis, 115 Mo., 307.

People Ex. Rel. Rodgers vs. Coler, 166 N. Y., 14.
People Ex. Rel. Treat vs. Coler, 166 N. Y., 146.

It is true that, in order to secure and promote the public welfare, the State creates Boards of Health, as an instrumentality or agency FOR THE PURPOSE, and invests them with the power to adopt ordinances, by-laws, rules and regulations necessary to secure the objects of its organization. While it is true that the character or nature of such boards is administrative only still, the powers conferred upon them by the Legislature, in view of the great public interest confided to them, have always received from the courts a liberal construction; and the rights of the Legislature to confer upon them the power to make REASONABLE RULES, by-laws and regulations, is generally recognized by the authorities.

When these boards duly adopt rules or by-laws by virtue of legislative authority, such rules or by-laws, within the respective jurisdictions, have the force and effect of a law of the Legislature.

It is true that such laws or regulations *must be reasonable*, and Boards of Health cannot enlarge or vary, by operation of such rules, the powers conferred upon them by the legislature, and any rule or by-law which is in conflict with the State's Organic Law, or opposed to the fundamental principals of Justice would be invalid.

Such measures must have some relation to the end in view, for, under the guise of the Police Power, personal rights and those pertaining to private property will not be permitted to be arbitrarily invaded by the legislative department.

If the legislature, in the interest of the Public Health, enacts a law, and thereby interferes with the personal rights of an individual, destroys or impairs his liberty or property, it then, under such circumstances, becomes the duty of the Courts to review such legislation, and determine whether it in reality relates to, and is appro-

priate to secure, the object in view, and in such an examination the Court will look to the substance of the thing involved, and will not be controlled by mere forms.

Blue vs. Beach, 155 Ind., 121.
State vs. Burdge, 95 Wis., 390.
State vs. Julow, 129 Mo., 163.
Matter of Pell, 171 N. Y., 48–51.
Cotting vs. Kansas City, 183 U. S., 79–93.
Cleaveland vs. Clemen & Bro. (Ohio 1903), 65 N. E. Rp., 885.
Street vs. Varney, (Ind 1903) 66 N. E. Rep., 895.
People vs. Orange, Etc. (N. Y. Ct. App. April 28, 1903), New York Law Journal, May 4, 1903.

The Act is unreasonable, arbitrary and oppressive, it interferes with the right of the citizen to pursue unmolested a lawful calling in a lawful manner, it invades the privacy of the home, and, without due process of Law, it deprives the citizen of the free and profitable use of his property, and infringes upon his right of personal liberty. The Act of 1902, Chapter 101, is unconstitutional and void and the Demurrers were properly sustained.

Respectfully submitted,

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