50 Sides

No. 61.

The State of Maryland

vs.

Louis Hyman

Full Bench.

Opinion by

McSherry, Chf. Jdg.

To be reported.

Filed February 19, 1904

This is an appeal by the State of Maryland from the Criminal Court of Baltimore City. It is a case wherein Louis Hyman was indicted for a violation of the Act of 1902, Chapter 101. The title of that Act is in these words: "An act to add four additional sections to Article 27 of the Code of Public General Laws title 'Crimes and Punishments' subtitle, 'Health, Workshops and Factories, Sweating system' as the same was amended by chapter 302 of the Acts of 1894, and Chapter 467 of the Acts of 1896; said four additional sections to be known respectively as sections 149EE, 149FF, 149GG, 149HH, and to come in immediately after section 149D of the Article." The indictment contains five counts. The first count charges that the appellee, Hyman, unlawfully did use and cause to be used a certain room and apartment in a certain tenement and dwelling house by other than the immediate members of the family then living therein for the manufacture of coats, vests, trousers, etc., contrary to the provisions of the above mentioned Act of Assembly. The second count charges that the appellee, Hyman, did unlawfully use a certain room and apartment in a certain tenement and dwelling house for the manufacture of coats, vests, trousers, etc., he, the said 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 aforesaid Act of Assembly etc. The third count alleges that the appellee, Hyman, being then and there a part of the family unlawfully did use a certain room and apartment in a certain tenement and dwelling house for the manu-

facture of coats, vests, trousers, etc., 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 said statute. The fourth count charges that the appellee, Hyman, in a certain room and apartment in a certain rear building in the rear of a tenement and dwelling house unlawfully did work at and hire and employ divers persons to work at making coats, vests, trousers, etc., 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 provisions of the statute etc. And the fifth count charges that the appellee, Hyman, employing divers persons in a certain tenement and dwelling house to make and wholly and partially finish coats, vests, trousers, etc., failed to keep a register of the names and addresses of all persons to whom such work was given to be made, contrary to the form of the Act of Assembly etc. To this indictment, and to each count thereof, the appellee interposed a demurrer and upon hearing the demurrer was sustained, the indictmentwas on motion quashed and the traverser was discharged. Thereupon the State took this appeal.

The question which is thus presented is one not only of importance but of considerable interest and when reduced to its final analysis, it is whether the Act under which the indictment was framed is a constitutional exercise of the legislative power of the General Assembly. To determine that question it will be

necessary to briefly summarize the provisions of that statute.

It will be observed at the outset that the act is ostensibly one intended for the preservation and the protection of the public health and safety. It is incorporated in the Code under the subtitle "Health" and its provisions were designed to promote the public health and welfare. By section 149EE, it is in substance provided that no room or apartment in any tenement or dwelling house shall be used except by the immediate members of the family living therein, which shall be limited to husband and wife, their children, or the children of either, for the manufacture of coats, vests, trousers, etc. That no room or apartment in any tenement or dwelling house shall be so used by any family or part of a family 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 shall not be granted until an inspection of the premises has been made by the inspector or his assistant named by the Chief of the Bureau of Industrial Statistics and such permit may be revoked by the 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. That no person, firm, or corporation shall work or hire or employ any person to work in a room or apartment in any building, rear building, or building in the rear of a tenement or dwelling house, at making in whole or in part any of the articles of wearing apparel mentioned above, without first obtain-

ing a written permit from the Chief of the Bureau of Industrial Statistics stating a maximum number of persons allowed to be employed therein. That the said permit shall be posted in a conspicuous place in the room, or one of the rooms to which it relates. That every person, firm or corporation, contracting for the manufacture of any of the articles mentioned above or giving out the incomplete materials from which they or any of them are to be made, or to be wholly or partially finished, or employing persons in any tenement or dwelling house or other building to make wholly or partially finish the articles above mentioned shall keep a written register of the names and addresses of all persons to whom such work is given to be made or with whom they may have contracted to do the same. By section 149FF, it is provided that the Chief of the Bureau of Industrial Statistics or his assistant or any inspector shall have authority to enter any room, factory or place where any goods are manufactured into wearing apparel,for the purpose of inspection. And that the person, firm or corporation owning or controling or managing such places shall furnish access to, or information in regard to, such places to the said Chief of the Bureau of Industrial Statistics or his deputies at any and all reasonable times while work is being carried on. By section 149GG, it is provided that the Chief of the Bureau of Industrial Statistics shall appoint two deputies and assistants whose duties it shall be to make such inspection of the tenements and dwelling houses, factories, work shops, mills and

such other places as he may designate. By section 149HH, it is declared that every person, firm or corporation, who shall in any manner violate the provisions of the preceeding sections and who shall refuse to give such information and access to the Chief of the Bureau of Industrial Statistics or his deputies, or who shall fail to secure such permit as provided, shall, upon conviction, in any Court of competent jurisdiction be fined or imprisoned or both as in said section prescribed.

It is insisted by the appellee, and we presume that it was held by the Court below, that these provisions of the statute were unconstitutional and, therefore, void, because they were arbitrary and unreasonable. It is obvious that the statute was passed in furtherance of the protection of the health of the community. Its enactment was an exercise by the General Assembly of the police power of the State. What is and what is not within the limits of the police power has been a source of prolific discussion both in the Federal and in the State Courts. One of the legitimate and most important functions of civil government is acknowledged to be that of providing for the welfare of the people by making and enforcing laws to preserve and promote the public health, the public morals, and the public safety. Civil society can not exist without such laws and they are therefore justified by necessity and sanctioned by the right of self preservation. The power to enact and enforce them is lodged by the people with the government of the State, qualified only by such conditions as

to the manner of its exercise as are necessary to secure the individual citizen from unjust and arbitrary interference. With respect to its internal police, the authority of each of the States is supreme and exclusive. Whilst by the Federal Constitution the separate and independent States surrendered or transferred to the General Government which they established, such powers as were deemed to be necessary to enable it to provide for the common defence and to promote the general welfare of the people of the United States; the States themselves reserved complete and sovereign control over their own internal affairs. Accordingly the Supreme Court,has stated, as an "impregnable position" that the States of the Union have the same undeniable and unlimited jurisdiction over all persons and things within their respective territorial limits as any foreign nation has, where that jurisdiction is not surrendered or restrained by the Federal Constitution; and that by virtue of this, it is not only the right but the bounden and solemn duty of the State to advance the safety, happiness and prosperity of its people, to provide for their general welfare by any and every act of legislation, which may be deemed to be condusive to these ends; and that all these powers which relate to merely municipal legislation, or what may properly be called, internal police are not surrendered or restricted; and that, consequently, in relation to these the authority of a State is complete, unqualified and exclusive; and, finally, that amongst these powers are inspection laws, quarantine laws, health laws of every description as well as laws for regulating internal commerce of

the State and to prevent the introduction or enforce the removal of prohibited articles of commerce. City of New York vs. Miln, 11 Peters 102. Every holder of property, said Chief Justice Shaw in Commonwealth vs. Alger, 7 Cush. 84, "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 controling power vested in them by the constitution may think necessary and expedient." This power said the Supreme Court in Holden vs. Hardy, 169 U. S. 366 legitimately exercised can neither be limited by contract nor bartered away by legislation; or, as said by the same Court in Stone vs. Miss., 101 U. S. 816, no legislature can bargain away the public health or the public morals. The people themselves cannot do it much less their servants. Government is organized with the view of their preservation and cannot divest itself of the power to provide for them. And so again in N. O. Gas Light Co. vs. La. Light Co., 115 U. S. 650, it was said the constitutional prohibition upon State laws impairing the obligation of contracts does not restrict the power of the State to protect the

public health and public morals nor the public safety as the one or the other may be involved in the execution of such contract. The exercise of the police power being for the promotion of the public good is superior to all considerations of private right or interest, and by virtue of it the State may lawfully impose upon the exercise of private rights such burdens and restraints as may be necessary and proper to secure the general health and safety. P. &. W. on Public Health and Safety, sec. 12. The holder of property is bound to know that through agencies other than ~~their~~ his own his property may become an occasion of injury to the public and that in such event it is subject to reasonable regulation in the interest of the public. "Any other doctrine would strike at the root of all police regulations" Id. In the case of the State vs. Broadbelt, 89 Md. 565, this Court had occasion to go into an examination of the police power of the State in reference to regulations respecting dairies and we need not repeat what was there so recently said with reference to the extent of the police power of the commonwealth. That the power is broad, comprehensive and far reaching will not be questioned or gainsaid. In the very nature of the case it must be so. It is, as said by Mr. Chief Justice Taney, in the License Cases, 5 How. 583, "the power of sovereignty, the power to govern men and things within the limits of its dominion." It is a power that necessarily belongs to the legislative department of the State government. It is for that co-ordinate branch to determine whether particular things or acts

are or are not dangerous to the public health, the public safety, and the public morals and when that Branch of the government has spoken the subject must be considered as closed, unless the Judicial Department has a revisory jurisdiction; and that brings us to the question whether the Courts have such a jurisdiction and if they have what are its legitimate limits?

This inquiry presents the pivotal point of the case. It may be said in the language of the Supreme Court in Mugler vs. Kansas, 123 U. S. 625, "if a statute purporting to have been enacted to protect the public health, the public morals or the public safety, has no real or substantial relation to those objects or is a palpable invasion of rights secured by the fundamental law, it is the duty of the Court to so adjudge and thereby give effect to the constitution." Running through all the cases, both Federal and State, is the doctrine that if the measure designed for, or purporting to concern, the protection or preservation of the public health, morals or safety, is one which has a real and substantial relation to the police power, then no matter how unreasonable nor how unwise the measure itself may be, it is not for the judicial tribunals to avoid or vacate it upon those grounds. Numerous illustrations of this principle are furnished in reported cases. "For it must now be considered as an established principle of law in this country, that there are no limits whatever to the legislative powers of the States, except such as are prescribed in their own Constitutions or in that of the United States; conse-

quently, that the Courts, in the performance of their duty to confine the legislative department within the constitutional limits of its power, cannot nullify and avoid a law, simply because it conflicts with the judicial notions of natural rights or morality or abstract justice." Parker & Worth. Pub. H. & Saf. sec. 8, and cases cited in note 2. We may also refer to Deans vs. Baltimore, 80 Md. 173, where an ordinance provided that if milk failed, when inspected by one of the local milk inspectors, to be of a certain quality it should be summarily seized and forfeited; and this Court held that the ordinance was a legitimate exercise of the police power though it involved the destruction of property without judicial procedure. In Holden vs. Hardy, supra, a statute of the State of Utah limiting hours of labor in mines was held valid as an exercise of the police power. In Railroad Co. vs. Paul, 173 U. S. 404, a statute requiring immediate payment of wages to discharged employees was held to be valid. In Detroit Railway vs. Osborne, 189 U. S. 383, it was held that restrictions placed upon electrical cars and not upon other vehicles used on the public streets was a legitimate exercise of the police power. A striking illustration of what may be done, and validly done, under the police power is furnished in the case of the Boston Beer Co. vs. Mass., 97 U. S. 25. The Boston Beer Company was incorporated by the legislature of Massachusetts in 1828 for the purpose of manufacturing malt liquors in all their varieties. In 1869 the Prohibitory Liquor law of Massachusetts was

passed. Under the last named Act a citation was issued requiring the Boston Beer Company to appear in the Municipal Court of Boston and show cause why the liquors in its possession should not be forfeited. The Beer Company appeared and the trial resulted in a judgment of forfeiture. An appeal was taken to the Superior Court where judgment was again rendered for the Commonwealth; whereupon the record was transmitted to the Supreme Judicial Court of the State which affirmed the action of the Superior Court and remanded the case to the latter Court where final judgment was entered declaring the liquors forfeited. To that judgment a writ of error was prosecuted and the proceedings thus reached the Supreme Court of the United States. In the last named tribunal the judgment of the State Court was affirmed. In the course of the opinion reported in 97 U. S., it was said: "The plaintiff in error was incorporated 'for the purpose of manufacturing malt liquors in all their varieties,' it is true; and the right to manufacture, undoubtedly, as the plaintiff's counsel contends, included the incidental right to dispose of the liquors manufactured. But although this right or capacity was thus granted in the most unqualified form, it cannot be construed as conferring any greater or more sacred right than any citizen had to manufacture malt liquor; nor as exempting the Corporation from any control therein to which a citizen would be subject, if the interests of the community should require it. If the public safety or the public morals require the discontinuance of any manufacture or traffic,

the hand of the Legislature cannot be stayed from providing for its discontinuance, by any incidental inconvenience which individuals or corporations may suffer. All rights are held subject to the police power of the State." Following the same current of decision is the case of Kidd vs. Pearson, 128 U. S. 1. It was there said in dealing with a law of Iowa which authorized the abating as a nuisance of a distillery used for the unlawful manufacture and sale of intoxicating liquors, that "a State has the right to prohibit or restrict the manufacture of intoxicating liquors within her limits; to prohibit all sale and traffic in them in said State; to inflict penalties for such manufacture and sale; and to provide regulations for the abatement as a common nuisance of the property used for such forbidden purposes; and that such legislation by a State is a clear exercise of her undisputed police power, which does not abridge the liberties or immunities of citizens of the United States, nor deprive any person of property without due process of law, nor in any way contravenes any provision of the Fourteenth Amendment of the Constitution of the United States." See also Austin vs. Tenn., 179 U. S. 343; where a statute prohibiting the sale of cigarettes after they had been taken from the original packages was upheld as within the police power. See also Vol. 9, Rose's Notes to United States Reports 524-525.

There is a class of cases which must be distinguished from those which hold that

the unreasonableness of a police regulation adopted by the Legislature furnishes no ground for the Courts to strike it down. The distinction is plain and simple. The Legislature being the sole depository of the law making power, it is not for Courts of justice to say that a given enactment passed in virtue of the police power, and having a direct relation to it, is void for unreasonableness, because if Courts undertook to exercise such an authority they would in effect exert a veto on legislation. But whenever power has been delegated by the Legislature to a municipal corporation to adopt and promulgate ordinances for the protection of the public health, morals or safety, the reasonableness of the measures enacted by the municipality is a feature to which the Courts look to see whether the measure is within the power granted; and they do this upon the assumption that the legislature did not intend to empower the municipality to enact unreasonable or oppressive ordinances. Thus in Radecke's case, 49 Md. 229, where an ordinance of Baltimore City, which permitted the Mayor to revoke any license previously granted to erect a steam-engine, was under review, this Court said after alluding to quite a number of cases: "While we may not be willing to adopt and follow many of these cases, and while we hold that this power of control by the Courts is one to be most cautiously exercised, we are yet of opinion there may be a case in which an Ordinance passed under grants of power like those we have cited, is so clearly unreasonable, so arbitrary, oppressive or partial, as to raise the presumption that

the Legislature never intended to confer the power to pass it, and to justify the Courts in interfering and setting it aside as a plain abuse of authority. In applying the doctrine of judicial control to this extent, we contravene no decisions in our own State and impose no unnecessary restraints upon the action of municipal bodies." The ordinance was set aside as a plain abuse of the authority delegated by the Legislature to the municipality. But when dealing with an Act of Assembly on this subject we have no such situation to confront us. If the act has a real and substantial relation to the police power no inquiry as to its unreasonableness can arise, because it is the judgment of the law-makers and not of the Courts which must control; and if in the judgment of the former the thing be reasonable, all inquiry on that ground by the latter is foreclosed.

Tested by the principles hereinbefore announced we find nothing in the Act of 1902 which indicates that its design, its purpose or its details have not a real and substantial relation to the police power. It may be conceded that some of these provisions, if harshly administered may be or become, oppressive, but it by no means follows that the law itself is therefore not a legitimate exercise of the police power. It is not to be assumed that the public functionary will act in an oppressive or unlawful manner. Discretion must be reposed somewhere. If an official should transcend the legitimate limits of the authority with which the statute clothes him, the injured party is not without redress. Laws are

to be upheld rather than stricken down. Every intendment must be made by the Courts in favor of the constitutionality of a statute. County Commissioners vs. Meking, 50 Md. 39; Cooley, Con. Lim. 216. It is a cardinal rule that where one construction of the statute would make it valid and another would make it unconstitutional, Courts will follow the former rather than the latter interpretation, for the reason that it will not be presumed the Legislature intended to pass an invalid act. Temmick vs. Owings, 70 Md. 251; Gordon vs. M. & C. C., 5 Gill. 241.

Taking now in detail the five counts of the indictment, it is clear, we think, that the first count contains an allegation that the appellee was violating the health regulation prescribed by the statute. It alleges that he was using a certain tenement and dwelling house for the manufacture of coats, vests, and other garments by other than immediate members of his family. We suppose that it is a matter of which a Court may take judicial notice that the manufacture of wearing apparel in improperly ventilated, unsanitary and overcrowded apartments will likely promote the spread of, if it does not engender, disease, and it is obviously within the police power of the State to regulate the number of persons who may be employed in any tenement or other establishment, where this manufacturing is carried on so that the public health may be conserved. What has just been said is equally applicable to the second count and we need not further discuss it. The third count has relation to a provision of the Code existing prior to the adop-

tion of the Act of 1902. By section 149C of Article 27 of the Code, of which the Act of 1902 is an amendment, it was required that at least four hundred cubic feet of clear space should be allowed in each room for each occupant in manufacturing establishments, and the Act of 1902 required that a permit should be secured from the Chief of the Bureau of Industrial Statistics setting forth the number of persons allowed to be employed in each room. The number thus employed was, of course, regulated by the amount of air surface to which under Sec. 149C. employees were entitled. The failure to procure such a permit is the charge alleged in the third count. It certainly requires no discussion to show that such a regulation is strictly and essentially a health regulation. The overcrowding of factories and the inhalation of impure air, where there is not sufficient surface afforded to each employee are obviously calculated to produce or foster disease, and the manufacture of articles of wearing apparel in overcrowded rooms or apartments, under these conditions, is unquestionably liable to spread contamination. The fourth count of the indictment need not be further considered. What has been said in reference to the third is sufficient to support the fourth. The fifth count charges that the appellee did not keep a written register of the names and addresses of all persons to whom work was given to be made. If it is important, as we have said it was, that these overcrowded, and unhealthy, and unsanitary tenement houses should be subject to the inspection and control of some designated health officer, it goes without saying, that the provision would be of little avail if the

proprietor could give out the work to others without keeping a register of their names and addresses, because the health officer without the aid of such register would be unable to trace the localities where the work was being done. The whole scheme of the Act appears to us to be in furtherance of the protection and preservation of the public health and whatever criticisms may be made upon the method of its enforcement, no convicting reason has been suggested to show that its terms have not a real and a substantial relation to the subject of the police power of the State.

The statute invades no private right of property and does not confer upon any official either arbitrary or unrestricted power. It certainly does not in terms expressly do either. It has no relation to homes where manufacturing of the enumerated articles is not carried on. The whole tenor of the enactment distinctly indicates that its provisions are aimed at and are intended to apply to tenements and other buildings where the garments specified are manufactured for sale; and that it has no relation to homes or places where apparel not manufactured for sale may be made. Nor does the statute clothe the officers its provisions allude to with arbitrary power. As well might it be said that a police officer who is authorized to summarily seize property which could only be put to an illegal or criminal use, acted arbitrarily in making such a seizure before a judicial adjudication condemned the thing seized. This Court has emphatically said in Police Coms. vs. Wagner, 93 Md. 191, "that the State has power to pass such laws as are nec-

essary to protect the health, morals or peace of society; and where the summary seizure, or even the destruction, of the offending thing is necessary for the public safety, may authorize that to be done, and such laws are not incompatible with those constitutional limitations which declare that no person shall be deprived of his property without due process of law." In the case just cited the alleged arbitrary seizure of a slot-machine by the police authorities of Baltimore City was upheld as being within the legitimate exercise of the police power of the State. In the earlier case of Ford vs. the State, 85 Md. 465, the traverser was indicted under the Act of 1894 ch. 310 for having in his possession lists or slips of lottery or policy drawings. That was a thing which the statute prohibited, even though the accused party did not know what the lists or slips were or that they were prohibited articles. The statute was upheld as a legitimate exercise of the police power in the face of the contention that its provisions arbitrarily created an indictable offence where there was not only a total absence of criminal intent but a complete ignorance on the part of the traveser as to what the lists or slips were.

An officer, who, under pretext of executing the sweat-shop statute, would assume to exert an arbitrary or unwarrantable power, would be answerable for his misconduct, just as would be any other trespasser. Rightly interpreted we find no imperfections in the statute assailed in this case.

Entertaining the views we have expressed we must reverse the judgment appealed from and award a new trial.

Judgment reversed with costs and new trial awarded.