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Constitutional Law-Police Power--Removal of Garbage--Statutory Construction

CONSTITUTIONAL LAW—POLICE POWER—REMOVAL OF GARBAGE—STATUTORY CONSTRUCTION—Appellant, Jansen Farms, Inc., collected from the Claypool Hotel Restaurant, the Thompson's Restaurant, and the Union Depot Restaurant, all the material left from the tables, and preparation of the food for the tables, by virtue of purchase from the owners. The material was deposited in special containers, which were kept free from flies and insects and emitted no noxious odors. These containers were collected daily, at a time when their collection by truck did not interfere with traffic. They were hauled to appellant's farm, two miles from the city, where appellant had erected a modern sanitary hog feeding plant, which is free from unpleasant odors, and there the contents were fed to appellant's hogs. In addition to this service, appellant recovered and restored to the owners the silverware inadvertently placed in the containers with the refuse material. Appellant's hogs were sold to an anti-hog cholera serum manufacturing plant. It was claimed that appellant's hogs produced a superior serum due to the mineral elements and vitamines in this material fed to his hogs.

Appellee, the City of Indianapolis (Sanitary District) maintains a garbage collection service, and a reduction plant, and produces and sells garbage grease and tankage. Appellee threatened to arrest appellant for collecting garbage, and to collect such material itself without payment to the restaurant owners. Appellee had not prior thereto collected it and the owners refused to permit it to do so.

Appellee brought an action to restrain appellant from collecting, hauling away, or disposing of any garbage found within the sanitary district of Indianapolis, which acts were alleged to be in violation of Sec. 10608 *Burns' Annotated Statutes*, 1926. Appellant filed a cross-complaint seeking an injunction to prevent appellee from interfering with its collection of food products, left from the tables, purchased from certain restaurants. Judgment was given for appellee on both the complaint and the cross-complaint. Appellant moved for a new trial alleging that judgment was not sustained by the evidence, and contrary to law. The motion was overruled. Appeal.

Held, judgment reversed with directions to grant a new trial. *Jansen Farms, Inc. v. City of Indianapolis* (Sanitary District), Sup. Ct., Ind., April 22, 1930, 171 N. E. 199.

The court in so deciding held the statute constitutional, on the grounds that though there was a property right in garbage as defined by the statute,

the statute was an exercise of the police power, and that therefore, though it provided for the collection of garbage without remuneration, it was not an appropriation of property without due process of law. It is justified as an exercise of police power on the grounds that there is a reasonable necessity; that is, there is a social interest in prompt disposal of garbage for the protection of health; and that in order to protect that interest it is expedient to have a system of collection and disposal. The authorities support this as a proper exercise of police power. See *Walker v. State*, 140 Ind. 591; *Spencer v. City of Medford*, 276 Pac. 1114 (Oregon); *City of Grand Rapids v. Devries*, 123 Mich. 570, 82 N. W. 269; *State ex rel. Mooch v. City of Cincinnati*, 120 Ohio St. 500, 166 N. E. 583.

The basis for the reversal of the judgment was that the material in question was not garbage within the statutory definition. Burn's Rev. St., 1926, sec. 10608. The court declared that construing that statute strictly, this material was not garbage, and that it would not extend the statutory definition of "refuse from the kitchen."

It decided that the removal in a sanitary manner of certain food material which were not waste or refuse, in other words, not kitchen refuse, from cooking food according to the statutory definition of garbage, was not sufficient evidence to support the judgment. It bases this on the fact that improved sanitary methods, and increase in value of such materials have made them become a valuable product instead of waste, and that not being waste or refuse matter, they do not come within the statutory definition.

The case of *Bishop v. Tulsa*, 21 Okla. Crim. Rep. 457, 209 Pac. 228, was cited on that proposition. In that case, like materials were termed by-products, and held not to be garbage. In that case, however, the restaurant owner, by drying out and mixing with meal bran and oats, made a hog-food which was placed in cans for sale. The court announced that by-products cared for in such a manner as not to interfere with public or private rights amounted to a private property right of the owner that could not be abrogated or destroyed by police regulations.

In the ordinary use of the word "garbage," or kitchen refuse from cooking food as it is defined by statute in Indiana, the materials involved in this case would be included. In 27 *Corpus Juris* 1107, garbage is defined as any worthless offensive matter, offal, refuse animal and vegetable matter from a kitchen. In *Dupoint v. Dist. of Col.*, 20 App. (D. C.) 477, it is regarded as refuse of animal and vegetable food stuffs. In *Valley Springs Hog Ranch v. Plagmann*, 282 Mo. 1, 220 S. W. 1, it is considered to be refuse matter from household or hotel kitchens. These are essentially the same as our statutory definition, yet in those cases material of the same character as that in the principal case was determined to be garbage. In *People v. Gardmer*, 199 U. S. 325, the court said that it would take judicial knowledge of the fact that table refuse, when dumped into receptacles for that purpose, may speedily ferment and emit noisome odors, calculated to affect the public health. The inconvenience or loss suffered by the owner is presumed to be compensated in the common benefit, secured by the regulation. In the case of the *City of Rochester v. Gulberlett*, 33 N. Y. Supp. 541, where the same materials were involved, and also the point of construction of a statutory definition, an opposite result to that

of the principal case was reached, and the material determined to be garbage. The court there said, "While an ordinance, such as this under consideration is to be strictly construed, it is nevertheless to be construed according to the fair and usual meaning of its language in the light of the purpose of its enactment. If such material as is here shown to be collected is not garbage, bones, and kitchen refuse (st. provision), it is difficult to understand what it is. Unquestionably, the word 'garbage' involves rejection for all purposes. It has been rejected as food. It is more or less mingled, so that it is objectionable to human sensibilities, as well as unfit for human consumption. The court is not unmindful of the fact that refuse of the kind is usually noisome and disgusting, both in appearance and odor, and that the word 'garbage' carries to the ordinary mind the idea of filth; but if refuse of this character is not held to be garbage until fermentation sets in, then the very object of the ordinance would be defeated, and a reasonable and proper precaution in the interests of the inhabitants of the city brought to naught. Who could say when fermentation to an objectionable extent took place."

If, in the principal case, the statutory definition of garbage had been construed according to the fair and usual meaning of its language in the light of the purpose of its enactment, it is a logical conclusion that the material in question here would be encompassed as garbage. There was a rejection for human consumption, materials subject to rapid fermentation, a potential danger to social interests and welfare, in fact, all of the dangers of the situation that prompt the enactment of such statutes are present.

The mere fact that it works an individual hardship or that in a particular case, no nuisance or danger exists due to sanitary methods should not outweigh the considerations which motivated the passage of the statute, namely, that there is a social interest in the preservation of public health; that all people who gather such materials as constitute garbage are not sanitary in their methods, thereby endangering the health of the inhabitants of the city, and that it is easier to observe sanitation through one agency than by supervision and restriction of many individual agents or property owners. The material in question in this decision is free from the restriction placed on garbage, and remains a source of dissemination of disease. The effect, therefore, is not that of refusal to extend the statutory definition of garbage, but rather to place a limitation on it.

The court announced a rule of law in regard to regulation of garbage disposal that is sound both on principle and authority; but after doing so, in the light of the authorities cited, it seems that it placed too narrow an interpretation on the statutory definition of garbage, thereby in effect nullifying the very rule it announced. The rejected food materials from restaurant kitchens present a greater danger from nuisance and injury to the public health, due to the quantity of the material and the large number of people who pass in the vicinity of the restaurants, than does the waste material to which the court limited the term garbage. H. N. F.