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CONSTITUTIONAL LAW—POLICE POWER—PROHIBITION OF MANUFACTURE OF MATTRESSES OF SHODDY—Defendant was indicted, charged and convicted for unlawfully manufacturing mattresses from material made of shoddy under Statute, Sec. 8250, Burns' Ann. St. 1926. The assignment of errors was the overruling of motion to quash indictment and motion for new trial. The defendant complained the statute was unconstitutional as beyond the limit of the police power. *Held,* The statute is constitutional but the case must be reversed, because indictment failed to set out facts charging a public offense. *Weisenberger v. State,* Sup. Ct. of Ind., March 4, 1931, 175 N. E. 238.

An inconsistency seemingly exists between the interpretation of the statute and the indictment. The former was construed liberally and upheld whereas the latter was construed strictly and held faulty. The statute was construed to mean that any manufacture or sale of mattresses made from unsanitary or contaminated shoddy should be a penal offense. The indictment, following the language of the statute made no reference to unsanitary shoddy but charged in general terms. The rules of construction applicable to the two are quite different so that the decisions might be reconciled. Courts will make presumptions in favor of the constitutionality of a statute until the contrary clearly appears. *Hays v. Tippy,* 91 Ind. 102; *State ex rel. Jameson v. Denny,* 118 Ind. 382. The rule of construction of indictments has always been very strict because of public policy in favor of having an accused person apprised of his offense in clear and concise terms. *Bates v. State,* 31 Ind. 72; *Schmidt v. State,* 78 Ind. 41.

To uphold the statute, as construed, the court relies upon the police power. Government possesses three distinctly great powers: police power, taxation and eminent domain. The term police power, better remains undefined concisely, but there are certain attributes that are cognizable: (1) It aims to secure the public welfare; (2) It does so by restraint and compulsion. It has been defined as the inherent right to regulate the enjoyment of property, to maintain public order, to secure rights of citizenship and to prevent the injury to private rights. Freund, Police Power, p. 4; *Western Union Telegraph v. Pendleton,* 95 Ind. 12. The abstract terminology as expressed by the courts have allowed the terms to include and express elastic social, economic and political conditions, so as to be capable of development. The power has several constitutional limitations upon it, the chief of which is the "due process" clause of the 14th Amendment of the Federal Constitution. This has been construed to mean the legislatures can not pass restriction upon property or personal liberty unless there is a social interest to warrant the interference. The chief interests being public health, safety, and morals. *Walter v. Jameson,* 140 Ind. 581; *Chicago v. Anderson,* 182 Ind. 140. The discretion of the Legislature is limited only by the Constitutional provisions for the Courts will not inquire into the expediency of the legislation. *State v. Richcreek,* 167 Ind. 217.

The decision of the Supreme Court of Indiana is only in keeping with the bulk of state legislation upheld in kindred matters of health by the United States Supreme Court. *Jacobson v. Mass.,* 197 U. S. 11 (Vaccination); *California Reduction Co. v. Sanitary Reduction Works,* 199 U. S. 306 (Garbage); *Dent v. West Virginia,* 129 U. S. 114 (Physicians' Examination); *Powell v. Pa.,* 127 U. S. 678 (Oleomargarine); *Atkin v. Kansas,* 191 U. S. 207 (Working Hours). The limit placed on legislation for health seems to have been a minimum wage scale for women. *Adkins v. Children's Hospital,* 261 U. S. 525.

The chief difficulty in rationalizing the cases is not upon the principles set forth, but upon results. The application of the rules to the situation usually brings forth the question whether or not the public health, safety, or morals is endangered and requires the legislation passed. Then the problem arises of gathering reliable information and statistics for the court's assistance in getting a proper aspect of the case. This was very effectively done by Justice Brandeis when appearing as Counsel for the State in *Muller v. Oregon* (208 U. S. 412) dealing with the hours of labor for women. The proper insight into the problems of national policy requires abundant material and profound analysis of the subject matter. *Judicial Determination of Questions of Fact Affecting the Constitutional Validity of Legislative Action,* 38 Har. L. Rev., 6.

In the principal case our court repudiated the doctrine found in dicta of some decisions of the United States Supreme Court, stating that governmental powers are limited by natural rights of persons. *Fletcher v. Peck,* 6 Cranch 87, 135; *Loan Ass'n. v. Topeka,* 20 Wall. 655; *Calder v. Bull,* 3 Dall. 386, 388. There is a definite subscription to the principle that the powers are limited only by the 14th Amendment with the test of reasonableness determinable by the court itself.

The result of the case seems very satisfactory for it allows those rights only to be taken which are needed for protection of health. The evidence

here failed to show that the manufacture or sale of mattresses made from shoddy which was sterilized would in any way lie perilous to the public although they were made from second-hand material. There was no public good to be derived by such a deprivation of personal liberty in seeking a living. *Miller v. Horton*, 152 Mass. 540. R. R. D.