# TENEMENT CIGAR-MAKING

## *THE LAW AGAINST IT DECLARED UNCONSTITUTIONAL.*

### A COURT OF APPEALS DECISION BASED ON THE FACT THAT THE TITLE OF THE ACT IS DEFECTIVE.

ALBANY, N. Y., Jan. 29.—The Court of Appeals decided to-day that the act prohibiting the manufacture of cigars in tenement-houses in New-York City was unconstitutional. The opinion was given by Judge Finch and is concurred in by all the Judges. The question came before the court on a test case, David A. Paul having been committed by a Police Justice in New-York for manufacturing cigars or preparing tobacco in No. 375 East Eighth-street, a tenement-house, occupied by more than three families living independent of one another in rooms in the house, which at the time were occupied by David A. Paul and his family as a dwelling. The case was argued in the Court of Appeals last December by the Hon. William M. Evarts for the appellant and the Hon. Samuel Hand for the respondent. Judge Finch in his opinion states that Paul was committed for a violation of section 1 of the law, which reads:

"The manufacture of cigars or preparation of tobacco in any form in any rooms or apartments which in the City of New-York are used as dwellings for the purpose of living, sleeping, or doing any household work therein is hereby prohibited."

Judge Finch confines himself to a consideration of the point that the section is unconstitutional because of a defect in the title within the provisions of section 16, Article III. of the State Constitution. The Judge says the title of the act is "An act to improve the public health by prohibiting the manufacture of cigars or the preparation of tobacco in any form in the tenement-houses of said City." It is not denied that the act is local. Since its operation is limited to the City of New-York, and, being such, it is said it relates to two distinct subjects, only one of which is mentioned in the title. "We think," says the court, "the objection is well founded. The subject referred to in the title is the manufacture of cigars in tenement-houses. These houses as a known and distinct class are recognized and defined by law. They are apt to be ill-ventilated, unclean, and packed full of inmates and to become centres or radiating points of contagious disease. As such they might become the proper subjects of sanitary regulation in the interest of public health. To such regulation in one specific respect the title of the bill fairly relates, but no one would suspect from such title that the bill also undertook to regulate the occupation of every dwelling-house in the City. Two new crimes are created by the act. One of them has relation to the tenement-houses alone, the other to the dwellings of the whole City. One of them is committed by a mode of occupying rooms in a tenement-house; the other by manufacturing cigars in any family rooms. The two offenses are unlike, different, and entirely distinct and separate. The latter is not at all stated in the title, because that is narrowed so that it does not embrace it. Practically, the narrow, specific title is confined entirely to tenement-houses, a class of buildings known to and defined by the law, and operated as a fraud and deception upon the people of the City. In Harris vs. The People, (59, New-York, 600,) citing also The People vs. The Supervisors of Chautauqua, (43, New-York, 10,) it was declared to be one definite object of the constitutional provision to advise the public and the locality and the representatives of the locality and of other parts of the general purpose of the bill, so that those interested might be on their guard as to the whole or as to the details of the bills. The citizens of New-York, jealous of interference with their homes, reading the title of this bill, would be deceived, misled, and thrown off their guard. Assuming that the measure proposed related to the sanitary condition of crowded tenement-houses, each citizen would take no heed and find in the end that his own dwelling-house had been regulated. Where the title is such that it gives no hint of the real object of the enactment, where it furnishes no particle of truthful information, and he who reads it is not bound to know or suspect that the actual enactment does or may exist, and where, as a consequence, the title is misleading and deceptive, it is safe and right to apply the constitutional prohibition. Most of the cases in which the question has arisen have been the precise reverse of the one before us. They have been those in which the title was so broad and general that a multitude of various details could be fairly deemed embraced within it. The title here is not broad, but narrow, not general, but specific, not reasonable and fair, but deceptive and misleading. Nobody would infer, and nobody was bound to imagine, that under a title relating to tenement-houses alone there was enacted in its first section a law affecting not tenement-houses as such, but all the dwelling-houses in the City, a law as to which the title not only did not refer, but by its narrow term affirmatively and positively excluded it."

The court continues: "Nor is section 1 of the act before us saved by the doctrine which we have several times applied, that if a local act contains a subject which is properly expressed in the title it is valid as to that subject although invalid as to a subject not expressed, for the doctrine applies only when there are two or more subjects, some expressed and some not expressed, while in section 1 there is but one subject, and that not expressed in the title at all. Nor will it do to avoid the difficulty by saying that, as the phrase 'dwelling' includes within it tenement-house, we may hold the section good as to a part of its meaning and repudiate it as to the balance, for that in this case would be an act of legislation. The constitutional provision deals with the law itself as it came from the Legislature. We cannot change and narrow its terms to save it. The section must stand or fall just as it was enacted, and without reference to extrinsic facts developed in cases under it. But all the reasons for holding it not within the title culminate in this—that the title not only failed to express the subject of the section, but, by its frame and phrase, expressly and affirmatively excluded that subject: for when it professed to relate to tenement-houses, it substantially declared that it did not relate to dwelling-houses generally, which was precisely the one subject to which it did relate. Where the title thus deceives and misleads the constitutional provision should apply if it is ever to be enforced. For this reason we hold section 1 to be unconstitutional, and that being so, it follows that the relator is held for an alleged crime which did not exist and which he could not commit, and that he should be discharged. It is not necessary to consider further the effect of this conclusion upon the remaining sections of the act, nor the very grave and serious argument upon the question whether the act as a whole is within the police power of the State, and capable of being sustained under the Constitution. These questions should be reserved for an occasion, if it shall arise, when their determination is essential and necessary to the conclusion to be reached. The order appealed from is reversed and the relator discharged."

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The law prohibiting the manufacture of cigars in tenement-houses in this City, except on the ground floor, which the Court of Appeals has now declared unconstitutional, was passed by the Legislature of last year, and went into operation on Oct. 1. Its passage was secured largely by the influence of the trades-unions, who claimed that the effect of making cigars in tenement-houses was to cheapen the price of labor. At the time when the law went into effect there were 127 apartment-houses in the City where cigars were made, and 1,964 families, consisting of 7,924 persons, were engaged in this industry.

On Oct. 1 Mr. Paul was arrested for violating the law, and the manufacturers combined to make this a test case. Mr. Paul was examined before Police Justice Patterson and held. His counsel, ex-Judge A. J. Dittenhoefer, then procured writs of habeas corpus and certiorari from Judge Barrett, of the Supreme Court, and the question of the constitutionality of the law was argued. It was contended that while the Legislature had an undoubted right in the exercise of what is known as the police power of the State to prohibit any business which was injurious to the public health, it could not, under the pretense of exercising this right, stop a business which was not deleterious to the health of the community, and which, if detrimental at all, affected only the persons engaged in it. It was claimed that on the face of the bill it was shown that the business was not considered by the Legislature to be detrimental to public health, because the law allowed it to be carried on on the ground floor, and what was unhealthy up stairs could certainly not be less so down stairs. Judge Donohue had decided in a civil case that the law was constitutional, and Judge Barrett dismissed the writs and remanded Mr. Paul. An appeal was then taken to the General Term of the Supreme Court, where the decision of Judge Barrett was affirmed, without argument, and with the consent of counsel on both sides, and the case was at once taken to the Court of Appeals, where the Supreme Court decisions have just been reversed. The case was argued in the Court of Appeals by the Hon. William M. Evarts, ex-Judge Dittenhoefer, and Morris S. Wise for Mr. Paul, and by ex-Judge Samuel Hand, Thomas S. Allison, and ex-Assistant District Attorney Vincent for the people. In addition to the claim that the law was unconstitutional, it was urged that the making of cigars in tenements was not detrimental to the health even of those engaged in the business. A resolution passed by the Board of Health on Jan. 29, 1883, while the bill was before the Assembly, was presented to the court, stating that "it is the opinion of this board that the health of the tenement population is not jeopardized by the manufacture of cigars in such houses," and that this bill "is not a sanitary measure, and has not the approval of this board."

The result of the enforcement of the law was to stop the manufacture of cigars in tenement-houses in this City and to transfer the business to Brooklyn and other places on Long Island. It is probable, now that the highest court has declared the law void, that the industry will return to New-York. Samuel Josephs, of the firm of Samuel Josephs & Co., No. 324 East Sixty-third-street, who employs between 300 and 400 men, said yesterday that he would remove his business from Long Island to this City again as soon as the remittitur is sent down from the Court of Appeals. The manufacturers are jubilant over the decision, a remarkable feature of which is the rapidity with which it was obtained. The law went into effect on Oct. 1, and in less than four months it has been passed upon by the highest court of the State, something almost unprecedented in the history of the law's delay.

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