AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 6: Civil War and Reconstruction – Individual Rights/Personal Freedom and Public Morality

**Haverty v. Bass, 66 ME 71 (ME 1876)**

*A Maine statute required the municipal officers of a town to remove individuals infected with dangerous diseases to an isolation house, provided it can be done without great danger to the infected person. It also provided that a justice of the peace could issue a warrant requiring the removal of such an infected person to an isolation house. In 1873, the mayor of Bangor, Maine, directed a police officer and city doctor to take a small child from her mother and isolate her in the city hospital. The child was believed to be infected with small pox. The family barred the door to their house, and the police had to use force to enter the home and remove the child.*

*Joseph Bass, the child’s father, brought a civil suit against the city officials in state court for trespass and sought damages. The city officials responded that their actions were authorized by the statute, but Bass contended that the city officers could remove an infected person only after receiving a judicial warrant. The state supreme court unanimously held in favor of the power of the city officials to act without judicial proceedings. City officials had constitutional authority to intrude on individual rights in order to protect public health, so long as their actions were not done out of malice.*

Judge [PETERS](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0183411701&originatingDoc=I215b0bc634f411e9bc5c825c4b9add2e&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)&analyticGuid=I215b0bc634f411e9bc5c825c4b9add2e).

. . . .

The power committed to municipal officers by § 1, is, in the terms of the statute, unconditional. It is not qualified by any other section. On the contrary, enlarged powers are given to such officers by other provisions in chapter fourteen. Thus, by § 29, when the small pox breaks out in a town, they are to provide hospitals for the sick and infected; they shall cause the sick and infected “to be removed” thereto, unless their condition will not admit of it without imminent danger; they may make a hospital of any man’s house, where a sick or infected person is found (if deemed best,) subject to hospital regulations; and the municipal officers must act “immediately,” and with “all possible care” for the public safety. And so, in our opinion, § 5 was designed, not to cripple and impair the powers conferred upon town officers under § 1, but to make such powers more effectual. It gives municipal officers extra means wherewith to execute the authority entrusted to them. It enables them to command the services of others. It might be difficult to obtain the necessary assistance, in an undertaking so hazardous to health. But, by means of a warrant, they can compel executive officers to act. They can remove a sick person without the aid of a warrant, or they can use that instrumentality to enforce obedience to their commands, if a resort to such means of assistance becomes necessary. We do not perceive how it could be of importance to the sick man, whether a warrant was obtained or not. It would be the merest form in the world, as far as he is concerned. There is no provision for any examination by the justices, nor for notice to any parties to be heard, nor could any appeal be had. . . .

It is very clear and well settled that the statutes are not obnoxious to the objection of unconstitutionality, which is the other point argued by the plaintiffs. It is unquestionable, that the legislature can confer police powers upon public officers, for the protection of the public health. The maxim *salus populi suprema lex* is the law of all courts and countries. The individual right sinks in the necessity to provide for the public good. The only question has been, as to the extent of the powers that should be conferred for such purposes. We do not think that personal injuries need be apprehended from the action of officers in cases of this kind. Experience probably shows that communities and individuals are not promptly enough aroused to the dangers that beset them in such emergencies. If an injury is inflicted upon a person by the malice of the public servants, he has a remedy for it. And the petition for *habeas corpus* is always open to him. Further words, however, upon a policy, so universally regarded as a just one, are unnecessary. *Preston v. Drew* (ME 1852).