AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 7: The Republican Era – Individual Rights/Property/Due Process

**North American Cold Storage Co. v. City of Chicago, 211 US 306 (1908)**

*The Chicago municipal code provided that any person storing food for human consumption anywhere other than a human dwelling had a duty to “preserve and keep such article of food supply in a clean and wholesome condition” and empowered food and meat inspectors to enter such premises “at any time of any day, and to forthwith seize, condemn, and destroy any such putrid, decayed, poisoned, and infected food, which any such inspector may find in and upon said premises.” In October 1906, North American Cold Storage Company received 47 barrels of poultry “in good condition and wholesome for human food” from a wholesaler and was commissioned to keep the barrels in cold storage for up to three months in a cold storage facility in Chicago. That same day, city inspectors appeared and demanded that the barrels be delivered to them for purpose of being destroyed. In response, the city shut down the facility until the barrels were produced.*

*The company sought an injunction in federal court blocking the city from seizing the barrels of poultry and otherwise preventing the operation of the company’s business. The trial court dismissed the suit for want of jurisdiction, and the company appealed to the U.S. Supreme Court. The Supreme Court held in an 8-1 decision that the company had properly presented a federal question of whether it had a constitutional right under the due process clause of the Fourteenth Amendment to a judicial hearing before property in its facility was condemned and destroyed. But the Court went on to find that the city was not constitutionally obliged to provide legal proceedings before destroying property for the sake of protecting public health. It was constitutionally sufficient for the courts to be available for a suit for damages after the fact if the state had acted improperly in declaring property to be a nuisance and subject to seizure and destruction.*

JUSTICE PECKHAM, delivered the opinion of the Court.

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The action of the defendants, which is admitted by the demurrer, in refusing to permit the complainant to carry on its ordinary business until it delivered the poultry, would seem to have been arbitrary and wholly indefensible. Counsel for the complainant, however, for the purpose of obtaining a decision in regard to the constitutional question as to the right to seize and destroy property without a prior hearing, states that he will lay no stress here upon that portion of the bill which alleges the unlawful and forcible taking possession of complainant's business by the defendants. . . .

The general power of the state to legislate upon the subject embraced in the above ordinance of the city of Chicago, counsel does not deny. *California Reduction Co. v. Sanitary Reduction Works* (1905). Nor does he deny the right to seize and destroy unwholesome or putrid food, provided that notice and opportunity to be heard be given the owner or custodian of the property before it is destroyed. We are of opinion, however, that provision for a hearing before seizure and condemnation and destruction of food which is unwholesome and unfit for use is not necessary. The right to so seize is based upon the right and duty of the state to protect and guard, as far as possible, the lives and health of its inhabitants, and that it is proper to provide that food which is unfit for human consumption should be summarily seized and destroyed to prevent the danger which would arise from eating it. The right to so seize and destroy is, of course, based upon the fact that the food is not fit to be eaten. Food that is in such a condition, if kept for sale or in danger of being sold, is in itself a nuisance, and a nuisance of the most dangerous kind, involving, as it does, the health, if not the lives, of persons who may eat it. A determination on the part of the seizing officers that food is in an unfit condition to be eaten is not a decision which concludes the owner. The ex parte finding of the health officers as to the fact is not in any way binding upon those who own or claim the right to sell the food. It a party cannot get his hearing in advance of the seizure and destruction, he has the right to have it afterward, which right may be claimed upon the trial in an action brought for the destruction of his property; and in that action those who destroyed it can only successfully defend if the jury shall find the fact of unwholesomeness, as claimed by them. *Lawton v. Steele* (1894). . .

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*Miller v. Horton* (MA 1891) is in principle like the case before us. It was an action brought for killing the plaintiff's horse. The defendants admitted the killing, but justified the act under an order of the board of health, which declared that the horse had the glanders, and directed it to be killed. The court held that the decision of the board of health was not conclusive as to whether or not the horse was diseased, and said that: “Of course there cannot be a trial by jury before killing an animal supposed to have a contagious disease, and we assume that the legislature may authorize its destruction in such emergencies without a hearing beforehand. But it does not follow that it can throw the loss on the owner without a hearing. If he cannot be heard beforehand he may be heard afterward. The statute may provide for paying him in case it should appear that his property was not what the legislature had declared to be a nuisance, and may give him his hearing in that way. If it does not do so, the statute may leave those who act under it to proceed at their peril, and the owner gets his hearing in an action against them.”

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Complainant, however, contends that there was no emergency requiring speedy action for the destruction of the poultry in order to protect the public health from danger resulting from consumption of such poultry. It is said that the food was in cold storage, and that it would continue in the same condition it then was for three months, if properly stored, and that therefore the defendants had ample time in which to give notice to complainant or the owner and have a hearing of the question as to the condition of the poultry; and, as the ordinance provided for no hearing, it was void. But we think this is not required. The power of the legislature to enact laws in relation to the public health being conceded, as it must be, it is to a great extent within legislative discretion as to whether any hearing need be given before the destruction of unwholesome food which is unfit for human consumption. If a hearing were to be always necessary, even under the circumstances of this case, the question at once arises as to what is to be done with the food in the meantime. Is it to remain with the cold storage company, and, if so, under what security that it will not be removed? To be sure that it will not be removed during the time necessary for the hearing, which might frequently be indefinitely prolonged, some guard would probably have to be placed over the subject-matter of investigation, which would involve expense, and might not even then prove effectual. What is the emergency which would render a hearing unnecessary? We think when the question is one regarding the destruction of food which is not fit for human use the emergency must be one which would fairly appeal to the reasonable discretion of the legislature as to the necessity for a prior hearing, and in that case its decision would not be a subject for review by the courts. As the owner of the food or its custodian is amply protected against the party seizing the food, who must, in a subsequent action against him, show as a fact that it was within the statute, we think that due process of law is not denied the owner or custodian by the destruction of the food alleged to be unwholesome and unfit for human food without a preliminary hearing. . . .

Even if it be a fact that some value may remain for certain purposes in food that is unfit for human consumption, the right to destroy it is not, on that account, taken away. The small value that might remain in said food is a mere incident, and furnishes no defense to its destruction when it is plainly kept to be sold at some time as food. . . .

*Affirmed*.

JUSTICE BREWER dissents