

WEAVER v. PALMER BROS. CO., 270 U.S. 402 (1926)

Mr. Justice BUTLER delivered the opinion of the Court.

Appellee is a Connecticut corporation, and for more than 50 years it and its founders have manufactured comfortables in that state, and have sold them there and in other states. An act of the Legislature of Pennsylvania regulates the manufacture, sterilization, and sale of bedding. Section 2 provides:

'No person shall employ or use in the making, remaking, or renovating of any mattress, pillow, bolster, feather bed, comfortable, cushion, or article of upholstered furniture: (a) Any material known as 'shoddy,' or any fabric or material from which 'shoddy' is constructed; (b) any secondhand material, unless, since last used, such secondhand material has been thoroughly sterilized and disinfected by a reasonable process approved by the commissioner of labor and industry; (c) any new or secondhand feathers, unless such new or secondhand feathers have been sterilized and disinfected by a reasonable process approved by the commissioner.'

The act took effect January 1, 1924. Appellant is charged with its enforcement. Appellee brought this suit to enjoin the enforcement of the act on the ground that, as applied to the business of appellee, it is repugnant to the due process clause of the Fourteenth Amendment.

The question is whether the provision purporting absolutely to forbid the use of shoddy in comfortables violates the due process clause. Legislative determinations are entitled to great weight; but it is always open to interested parties to show that the Legislature has transgressed the limits of its power. The burden is on the attacking party to establish the invalidating facts.

For many years prior to the passage of the act comfortables made in appellee's factories had been sold in Pennsylvania. In 1923 its business in that state exceeded \$558,000, of which more than \$188,000 was for comfortables filled with shoddy. About 5,000 dozens of these were filled with shoddy made of new materials, and about 3,000 dozens with secondhand shoddy. New material from which appellee makes shoddy consists of clippings and pieces of new cloth obtained from cutting tables in garment factories; secondhand shoddy is made of secondhand garments, rags, and the like. Comfortables made of secondhand shoddy sell at lower prices than those filled with other materials.

Appellant claims that, in order to protect health, bedding material should be sterilized. The record shows that, for the sterilization of secondhand materials from which it makes shoddy, appellee uses effective steam sterilizers. There is no controversy between the parties as to whether shoddy may be rendered harmless by disinfection or sterilization. While it is sometimes made from filthy rags, and other materials that have been exposed to infection, it stands undisputed that all dangers to health may be eliminated by appropriate treatment at low cost. The act itself impliedly determines that proper sterilization is practicable and effective. It permits the use of secondhand materials and new and secondhand feathers when sterilized, and it regulates

processes for such sterilization.

There was no evidence that any sickness or disease was ever caused by the use of shoddy, and the record contains persuasive evidence that the transmission of disease-producing bacteria is almost entirely by immediate contact with infected persons; that such bacteria perish rapidly when separated from human or animal organisms; and that there is no probability that such bacteria or vermin likely to carry them survive after the period usually required for the production of shoddy, and the manufacture and the shipping of comfortables. This evidence tends strongly to show that in the absence of sterilization or disinfection there would be little, if any, danger to the health of the users of comfortables filled with shoddy, new or secondhand; and confirms the conclusion that all danger from the use of shoddy may be eliminated by sterilization.

The state has wide discretion in selecting things for regulation. But the number and character of the things permitted to be used in such manufacture properly may be taken into account in deciding whether the prohibition of shoddy is a reasonable and valid regulation or is arbitrary and violative of the due process clause. Shoddy-filled comfortables are useful articles for which there is much demand; and it is a matter of public concern that the production and sale of things necessary or convenient for use should not be forbidden. They are to be distinguished from things that the state is deemed to have power to suppress as inherently dangerous.

Here it is established that sterilization eliminates the dangers, if any, from the use of shoddy. As against that fact, the provision in question cannot be sustained as a measure to protect health; and the fact that the act permits the use of numerous materials, prescribing sterilization if they are secondhand, also serves to show that the prohibition of the use of shoddy, new or old, even when sterilized, is unreasonable and arbitrary.

Nor can such prohibition be sustained as a measure to prevent deception. In order to ascertain whether the materials used and the finished articles conform to its requirements, the act expressly provides for inspection of the places where such articles are made, sold or kept for sale. Every article of bedding is required to bear a tag showing the materials used for filling and giving the names and addresses of makers and vendors, and bearing the word 'second-hand' where there has been prior use, and giving the number of the permit for sterilizing and disinfecting where secondhand materials or feathers are used for filling. Obviously, these regulations or others that are adequate may be effectively applied to shoddy-filled articles.

The constitutional guaranties may not be made to yield to mere convenience. The business here involved is legitimate and useful; and, while it is subject to all reasonable regulation, the absolute prohibition of the use of shoddy in the manufacture of comfortables is purely arbitrary and violates the due process clause of the Fourteenth Amendment.

Mr. Justice HOLMES (dissenting).

If the Legislature of Pennsylvania was of opinion that disease is likely to be spread by the use of

unsterilized shoddy in comfortables I do not suppose that this Court would pronounce the opinion so manifestly absurd that it could not be acted upon. If we should not, then I think that we ought to assume the opinion to be right for the purpose of testing the law. The Legislature may have been of opinion further that the actual practice of filling comfortables with unsterilized shoddy gathered from filthy floors was widespread, and this again we must assume to be true. It is admitted to be impossible to distinguish the innocent from the infected product in any practicable way, when it is made up into the comfortables. On these premises, if the Legislature regarded the danger as very great and inspection and tagging as inadequate remedies, it seems to me that in order to prevent the spread of disease it constitutionally could forbid any use of shoddy for bedding and upholstery.