

**Adams Vs. Milwaukee**

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**Court :** US Supreme Court

**Decided On :** May-12-1913

**Appeal No. :** 228 U.S. 572

**Appellant :** Adams

**Respondent :** Milwaukee

**Judgement :**

Adams v. Milwaukee - 228 U.S. 572 (1913)

U.S. Supreme Court Adams v. Milwaukee, 228 U.S. 572 (1913)

**Adams v. Milwaukee**

**No. 247**

**Argued April 23, 1913**

**Decided May 12, 1913**

**228 U.S. 572**

*ERROR TO THE SUPREME COURT*

*OF THE STATE OF WISCONSIN*

## SYLLABUS

The question whether a classification of milk vendors who produce their milk outside of the city to which they send milk deprives such producers of the equal protection of the law when there are different rules for vendors who produce their milk within the city limits has not been so far foreclosed by prior decisions of this Court as to render its discussion unnecessary, and a motion to dismiss is denied.

Whether rules provided to be made by a police ordinance were properly promulgated and whether the officer promulgating them had authority so to do are not federal questions.

Different situations of the objects regulated by a municipal ordinance may require different regulations.

A classification in a municipal ordinance by which vendors of milk drawn from cows outside the city are subjected to different regulations from those to which vendors of milk drawn from cows within the city is not, provided, as in this case, the regulations are reasonable and proper, a denial of equal protection of the law guaranteed by the Fourteenth Amendment, and so *held* as to the milk ordinance of Milwaukee, Wisconsin.

The police power of the state is adequate to protect the people against the sale of impure food such as milk.

An ordinance regulating the sale of food products must be summarily enforced, and the destruction of impure food, such as milk, is the only available and efficient penalty for its violations, and does not deprive the owner of his property without due process of law, and so

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*held* as to the milk ordinance of Milwaukee, Wisconsin. *Lieberman v. Van De Carr*, [199 U. S. 552](#) .

This court does not pass upon question before they have reached a justiciable stage.

As a provision in a municipal ordinance holding health of officers enforcing it harmless for the destruction of offending property "if done in good faith" may be separable, this Court will not determine whether it is an unconstitutional taking of property without due process of law in an action in which it appears that none of plaintiff's goods have been or could be destroyed before the state court has construed the statute in that respect.

144 Wis. 371 affirmed.

The facts, which involve the constitutionality under the due process and equal protection clauses of the Fourteenth Amendment, are stated in the opinion.

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MR. JUSTICE Mc KENNA delivered the opinion of the Court.

Error to review a judgment of the Supreme Court of Wisconsin sustaining the validity of an ordinance of the common council of the City of Milwaukee, regulating the sale of milk.   \*

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The ordinance provides that no milk drawn from cows outside of the city shall be brought into the city, contained in cans, bottles, or packages, unless they be marked with a legible stamp, tag, or impression bearing the name and address of the owner of the cows, and unless such owner shall, within one year from the passage of the ordinance, file in the office of the commissioner of health a certificate of a duly licensed veterinary surgeon or other person given authority by the state Live Stock Sanitary Board to make

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tuberculin tests, stating that such cows have been found free from tuberculosis or other contagious diseases. The certificate is required to give a number which has been permanently attached to each cow and a description sufficient for identification. The certificate must be renewed annually, and must show that the cows are free from tuberculosis or other contagious diseases.

A short time before the ordinance was to go into effect, this suit was brought against the city and Dr. Bading, its health commissioner, to restrain the enforcement of the ordinance. After a hearing, judgment was entered dismissing the complaint, and the judgment was affirmed by the supreme court of the state.

The plaintiff (we shall so call him) alleged that he brought the suit for himself and all other producers of and dealers in pure, wholesome milk, as it involved a question of common interest to many persons. He alleged also the following: he is a farmer, living about 17 miles from Milwaukee, and maintains a large dairy herd of cattle, and is enjoying a profitable dairy business, shipping milk into Milwaukee to certain retail milk dealers in the city. His herd is healthy, so far as he is able to know or judge. He keeps his stables wholesome and clean, and if his cows become sick or affected in any way with any infectious or contagious disease, so far as he is able to learn or discover by giving careful attention to his herd in its feeding and care, he removes such animals immediately. So far as he is able to discover, his herd is absolutely free from disease, and the milk he offers for sale in Milwaukee, or will offer for sale, is and will be, so far as he is able to discover, absolutely pure and wholesome, and all that proves to be impure and unwholesome upon being tested in the usual and customary manner will be withdrawn from sale.

Bading, as Commissioner of Health of the City of Milwaukee, threatens, on and after April 1, 1909, to execute

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the ordinance, and confiscate, forfeit, and destroy all milk shipped by plaintiff and other producers to be sold in Milwaukee contrary to the requirements of the

ordinance unless restrained, and if he does so, irreparable injury will be caused plaintiff and such other producers, and make their business of maintaining a dairy absolutely unprofitable as well as impracticable.

The tuberculin test required by the ordinance is, as plaintiff is informed and believes, wholly unreliable, untrustworthy, and entirely worthless so far as being a guide or protection to the public as to whether or not the cows tested by it are free from the germs of tuberculosis or any other infectious disease.

The milk threatened to be confiscated, shipped to Milwaukee for sale by plaintiff and other producers, when pure and wholesome is not dangerous to public health because, perchance, the owners of the cows producing the milk have not had the cows tested, or have failed to secure the certificate of a veterinary surgeon or other person, as required by the ordinance.

It is alleged that the Constitution of the state and the Fourteenth Amendment of the Constitution of the United States are violated.

A motion to dismiss is made on the ground that the questions in this case, under the decisions of this Court, are so far foreclosed as to make their discussion unnecessary. The motion is overruled.

The particular contention of plaintiff is that the ordinance violates the Fourteenth Amendment to the Constitution of the United States because it discriminates between milk drawn from cows outside of Milwaukee and milk drawn from cows within the city. Therefore the charge is that the ordinance does not affect all persons alike. If we regard the territorial distinction merely, that is, milk from cows outside and milk from cows within the city, there is certainly no discrimination. All producers

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outside of the city are treated alike. Plaintiff identifies himself in interest with all of them, and sues for all of them. He therefore seeks grounds of comparison other than the locality of the dairies, and urges that the discrimination exists in the

difference between the tests to which cows kept outside of the city are subject and the test to which cows within the city are subject.

To sustain his contention, plaintiff in error cites an ordinance of the city which provides that no cows or cattle shall be kept in the city without permit from the commissioner of health, except at places provided or established for purposes of slaughtering, and that the stables and places where such animals may be shall be kept at all times in a cleanly and wholesome condition and properly ventilated, and that no person shall allow any animal to be therein which is affected with any contagious and pestilential disease.

This ordinance was supplemented by various rules made by the health commissioner in regard to cleanliness of the stabling of the animals, keeping from them persons infected or who have been exposed to disease, requiring applications for permits to be accompanied by the certificate of the veterinary surgeon, showing that the animals have been tested by the tuberculin test, and shown by said test to be free from tuberculosis, and that they are not affected with any infectious or contagious disease. If the animals become subsequently infected, they are to be removed from the city, or disposed of in the manner provided by law.

Three contentions are, notwithstanding, made: (1) the rules were promulgated after this suit was begun; (2) the Commissioner had no authority to make the rules; (3) they are radically different rules from the rules as to cows kept outside of the city.

The third contention is the only one that involves a federal question. The others involve local questions only,

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and the supreme court of the state decided that the sale of milk drawn from diseased cows is forbidden within the city; that the health officer may remove a diseased animal to a place where it will not spread infection, and that he may apply any known test to determine whether the animal is afflicted with tuberculosis.

Inspection and care therefore can be applied to the animals within the city, and it is applied also to the milk drawn from such animals. It cannot be applied to animals kept outside of the city. It can only be applied to the milk drawn from them. The court noticed this difference and the difference in the regulations, made necessary by it. "There are brought into Milwaukee," the court said,

"from outside of the city, about 28,000 gallons of milk every day, drawn from more than 10,000 cows. It would be practically impossible to subject this quantity of milk to a microscopic examination, or to subject it to what is called in the evidence the centrifugal test, which would also require the use of a microscope, although not to the same extent. Each animal within the city can be subjected to an individual examination, a microscopic test of samples of its milk, an inspection as to its condition of health, and the tuberculin test applied directly under the orders of the health Commissioner. This is a sufficient basis for separate legislation relating to milk shipped into the city. There are other regulations covering the sale of milk drawn from cows kept within in the city."

We concur in the conclusion of the court. The different situations of the animals require different regulations. Cows kept outside of the city cannot be inspected by the health officers; they can be inspected by a licensed veterinary surgeon, and a certificate of the fact and the identity of the cows and the milk authenticated as required by the ordinance. The requirements are not unreasonable; they are properly adaptive to the conditions. They are not discriminatory; they have proper relation to the purpose

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to be accomplished. That purpose and the necessity for it we cannot question. *Jacobson v. Massachusetts*, [197 U. S. 11](#) ; *Laurel Hill Cemetery v. San Francisco*, [216 U. S. 358](#) ; *Mutual Loan Co. v. Martell*, [222 U. S. 225](#) ; *Purity Extract & Tonic Co. v. Lynch*, [226 U. S. 192](#) ; *Crossman v. Lurman*, [192 U. S. 189](#) ; *New Orleans Gas Light Co. v. Drainage Commission*, [197 U. S. 453](#) .

In *St. John v. New York*, [201 U. S. 633](#) , we said that, in considering the classification of a law, not only its final purpose must be regarded, but the means of its administration. The case is quite in point. There, regulations were attacked as discriminating between producing and nonproducing vendors of milk with a view to securing its freedom from adulteration, and adulterated milk was defined by law to be that to which something was added or from which the cream was removed or was naturally deficient, or taken from cows fed on certain things or when in certain conditions. The regulations were directed to the inspection of samples of milk from the entire herd. A producing vendor could exempt himself from the penalties of the law by proving that his milk was in the same condition as when it left the herd. The nonproducer had not that privilege. St. John, who was a nonproducing vendor, offered to prove such fact as to the milk he offered for sale, but the proof was rejected and he was convicted of violating the law. The conviction was sustained against his attack of discrimination in the law. In that case, as in this, a disregard of the regulations was sought to be justified by the assertion of the purity of the milk offered for sale.

Plaintiff also contends that the provision of the ordinance which requires milk that does not conform to its requirements to be confiscated, forfeited, and immediately destroyed, takes his property without due process of law.

To sustain his contention, he assumes the purity of his milk, though it has not been tuberculin tested, and then

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asserts that

"milk of this kind cannot be confiscated and destroyed simply because it is not accompanied with a certificate of a veterinary surgeon or of some person authorized by the Live Stock Sanitary Board of the State of Wisconsin, as provided by said ordinance, certifying that the tuberculin test has been applied."

But plaintiff overlooks the allegation of his complaint. His allegation is not that his cows are free from infectious or contagious disease, but only "so far as he is able

to learn or discover." And the allegation of his willingness to withdraw tainted milk from sale depends upon the same contingent knowledge or information. He overlooks also the findings of the courts against the sufficiency of his information, and their demonstration of the necessity of the tests established by the ordinance. But even if the necessity of the tests be not demonstrated and the beliefs which induced them may be disputed, they cannot be pronounced illegal. In *Laurel Hill Cemetery v. San Francisco*, [216 U. S. 358](#) , we expressed the deference which must be accorded to local beliefs, saying that we would not overthrow an exercise of police power based on them to protect health merely because of our adherence to a contrary belief. It will be observed, therefore, that the contention of plaintiff is without foundation, and that the ordinance is not an arbitrary and unreasonable deprivation of property in a wholesome food, but a regulation having the purpose of and found to be necessary for the protection of the public health.

The police power of the state must be declared adequate to such a desired purpose. It is a remedy made necessary by plaintiff's acting in disregard of the other provisions of the ordinance -- that is, failing to have his cows tested and their milk authenticated, as prescribed. The city was surely not required to let the milk pass into consumption and spread its possible contagion. This seems to be the alternative for which plaintiff contends, and might occur. All milk produced outside of the city had amounted, the

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supreme court said, to 3,500 eight-gallon cans daily. Criminal pains and penalties would not prevent the milk from going into consumption. To stop it at the boundaries of the city would be its practical destruction. To hold it there to await judicial proceedings against it would be, as the supreme court said, to leave it at the depots,

"reeking and rotting, a breeding place for pathogenic bacteria and insects during the period necessary for notice to the owner and resort to judicial proceedings."

We agree with the court that the destruction of the milk was the only available and efficient penalty for the violation of the ordinance. The case therefore comes within the principle of the cases we have cited, and of *Lieberman v. Van De Carr*, [199 U. S. 552](#) . In other words, as the milk might be prohibited from being sold at the discretion of the Board of Health, and even prohibited from entering the city ( *Reid v. Colorado*, [187 U. S. 137](#) ), a violation of the conditions upon which it might be sold involves as a penalty its destruction. Plaintiff sets up his beliefs and judgment against those of government, and attempts to defeat its regulations, and thereby makes himself and his property a violator of the law. In *North American Storage Co. v. Chicago*, [211 U. S. 306](#) , [211 U. S. 315](#) , we said, by Mr. Justice Peckham, that food which is not fit to be eaten,

"if kept for sale or in danger of being sold is 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."

And it was decided that in such case the food could be seized and destroyed, and that a provision for a hearing before seizure and condemnation was not necessary. It was also decided that the owner of the food had his remedy against the arbitrary action of the health officers.

It is, however, said that plaintiff is precluded from such remedy because the ordinance expressly provides that the health officers "shall be held harmless in damages" for

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their acts "if done in good faith." It may be that that portion of the ordinance is separable if invalid. The supreme court of the state said it was not necessary to pass upon the provision. What view it might entertain it did not clearly express. In determining the validity of the provision, the court said that it "must assume that the ordinance is otherwise valid," and that it could not presume that plaintiff would disregard the ordinance held by it "to be valid, or place his property in a condition to invite its destruction." "Self-inflicted damage," the court added, "is not

recoverable." The open judicial inquiry is in such case: "was the damage self-inflicted?" In other words, as we understand the court, a question upon that portion of the ordinance has not yet reached a justiciable stage. There is certainly no destruction of the milk impending. Indeed, according to the allegations of the complaint, there is a threat only, to be executed if plaintiff should take milk into the city, which, though he alleges he is anxious to do, he may not do.

*Judgment affirmed.*

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"No person shall bring into the City of Milwaukee for sale, either by wagon, cart, train, or any other kind of vehicle, or keep, have, or offer for sale or sell in said city, any milk or cream drawn from cows outside of said city, contained in cans, bottles, or packages, unless such cans, bottles, or other packages containing such milk or cream for sale, shall be marked with a legible stamp, tag, or impression, bearing the name of the owner of such cows from which such milk was drawn, giving his place of business, including the name of city, street, and number, or other proper address, and unless the owner or owners of such cows shall, within one year from the passage of this ordinance, file in the office of Commissioner of health, a certificate of a duly licensed veterinary surgeon, or of any other person given authority by the state Live Stock Sanitary Board to make tuberculin tests, stating that such cows have been tested with tuberculin and found free from tuberculosis or other contagious diseases. Such certificate shall give a number which has been permanently attached to each cow, and a description sufficiently accurate for identification, stating the date and place of such examination, and such certificate shall be good for one year from date of its issuance. Such certificate, however, must be renewed annually and filed in the office of the Commissioner of health, and each such certificate shall show in each case that the animals from which such milk was drawn are free from tuberculosis or other contagious diseases. All milk and cream from sick and diseased cows, or cows fed on refuse or slops from distilleries, or vinegar factories, unless such refuse or slops be mixed with other dry sanitary grain or food to a consistency of a thick mush, or other than good wholesome food, or milk that is dangerous, or that may affect or be detrimental to

life or health, or that has been adulterated, or is below the standard fixed by 17 of this chapter, or which does not conform to all other provisions of this chapter, shall, upon discovery thereof, be confiscated, forfeited, and immediately destroyed by or under the direction of the Commissioner of health, bacteriologist, or officer detailed, who shall, if done in good faith, be held harmless in damage therefor, in any suit or demand made."

Ordinance of March 30, 1908, 24.

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