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A COURT OF PREVENTION: THE MUNICIPAL TERM COURT OF THE CITY OF NEW YORK

W. BRUCE COBB¹

Our present laws relating to fire protection, health, safe and sanitary housing, and factory and employment evils, represent steps in human progress filled with the greatest importance to the community, especially to those amongst the laboring portion of the population. These laws represent struggles for better living conditions, greater comfort, safety, and health, that can be traced back to the days when evils existed which are now regarded as little less than barbaric. What is more, it is not many generations, and in some cases, not many years, since these reforms were secured. Some, such as fire protection, represent the efforts of the insurance underwriters and civic bodies to protect property, as well as the public-spirited interested in the conservation of life. Others, such as health and tenement house reform, reflect the efforts of earnest pioneers for the public good which developed into great popular movements which secured the needed legislation. The same may be said of factory and employment evils, wherein the humane and progressive employer joins hands with organized labor in promoting the welfare of the worker.

This great mass of legislation has grown up, and though ever changing, has assumed a definite form and substance. Various agencies have become charged with the execution of these laws. These agencies are the various state and city departments, such as the labor department, the department of education, fire department, health department, tenement house department, building department, and license department. Unless these departments function vigorously, thoroughly, and impartially, just to the extent that they fail will the laws under which they operate become failures. If the department charged with the administration and enforcement of any of these laws is lax, corrupt, or the prey of politics, or any of its inspectors or agents are so affected, then do the people suffer, not only in their material welfare, but in their respect for law. Thus, the enforcement of the law, resting on official honesty and public support, is undermined and impaired.

On the other hand, the administrative departments may be ever so efficient and yet in the last analysis their real effectiveness must

¹City Magistrate, New York City.

depend upon the courts. This is because the department itself has no power to punish, and unless recourse be had to the courts, their powers are futile and their efforts fruitless. The backbone of every law is the fearlessness and impartiality with which the courts impose its penalties. Under the old order of law enforcement in New York City, the prosecutions of the various state and city departments were mixed into the jumble of about twenty-three District Magistrates' Courts and the cruel congestion and enforced haste of disposition in the Court of Special Sessions—always in the ever present atmosphere of crime in its varied and even disgusting and debasing forms. The inspectors and prosecuting officers had to journey from court to court over a wide stretch of territory. The litigants, often decent people and in striking contrast to the criminal class, were forced to go into courts which existed almost entirely for purely criminal business. The cases came up before a great variety of judges and magistrates, men of widely varying temperament and disposition, and who in the pressure of the daily grind could become little skilled or give scant attention to the many difficult and complex problems presented.

Under those conditions and through the foresight and initiative of Mr. Lawrence Veiller, former deputy commissioner of the Tenement House Department of the City of New York and Secretary of the Committee on Criminal Courts of the Charity Organization Society and a member of that committee, the Municipal Term Court was planned. Once the plan has taken shape the necessary legal powers were secured from the legislature. The plan was then put into execution and the court, organized under the able and experienced supervision of Hon. Charles W. Appleton, its first magistrate, took form and crystallized the policies which have given it its unique character. It is a *term* or a separate session of the Magistrates' Court, with power to hear and try complaints made by state and city departments, except the police when appearing officially as complainants. Upon its creation all other Magistrates' Courts were deprived of jurisdiction over complaints officially made by such departments or by citizens. Thus, what is pre-eminently a departmental court has been brought into existence, centralizing court prosecutions by departments and centralizing judicial responsibility in the trial of these important complaints. The significance of this court in our great scheme of municipal government can be estimated only when we realize the importance of the departments which depend upon it for justice. Almost every major branch of the city government, except the police, lay their complaints before it.

In order to insure uniformity of treatment and disposition of cases, not more than two magistrates are assigned to rotate in this court. As it is now constituted, a certain day of the week is allotted to each department, so that on the proper departmental day the prosecuting officer representing that department may be present, as well as its inspectors and agents, and all cases of a similar nature are disposed of the same day.

So far has this new order been successful, that not one word of serious complaint has come from any of the city departments in the history of the court. On the one hand it has become a veritable bulwark of the people in protecting them not only from the oppression, imposition and exploitation of others, but from their own shortcomings as well. On the other hand, it has given to the offender, whether property owner, labor employer, or other citizen, a recourse to a special tribunal presided over by a judge trained to an understanding of his problems. Similarly, the court views the department complaining with a full realization of its purpose, its powers and its meaning to the community.

It may be well here to emphasize the general character of the cases that are heard in this court. They typify that intangible thing known as the police power which was long ago read into our national and state constitutions and which represents the inherent sovereign right of the nation and state to legislate and regulate for the benefit of the health, morals, safety and comfort of its members. It was early discovered that the enforcement of these so-called police regulations involved quite different ideas and principles than the enforcement of the ordinary criminal law. In crimes, such as murder, burglary and larceny, the element of moral turpitude and of criminal intent is ever present and a necessary part of the crime. On the other hand it has been found that in order to secure a diligent compliance with these so-called police laws or regulations, it is necessary in the great mass of cases to disregard the intent of the doer. Though the cases over which the Municipal Term Court has jurisdiction are criminal in form, they may be termed more properly acts or omissions affecting the ordinary daily routine of the average citizen in relation to the living conditions which surround him and which affect his health, safety and comfort. To prove an evil intent in these cases would be in the great majority impossible.

The excuse, "I did not know," "I did not mean to," is met with the answer, "Mr. Citizen, the duty upon you was to find out before you acted." "Mr. Citizen, the law told you what was wrong and

even if you intended to do right, in violating the law you did a wrong." Again, the man who fails to carry out a departmental order to build a fire escape, install a sprinkler or clean a bakery, says, "I don't kill anybody; I don't allow people to be careless; I don't intend any harm," is met with the answer, "You obey the law of 'don'ts,' but you disobey the law of 'do.' This law says you shall build fire escapes or install sprinklers or keep your place clean. You have failed to do it. Therefore you are guilty."

It is better, for instance, that employers hiring child labor should be held strictly to account for every violation than to permit the law to be weakened or undermined by plausible excuses and explanations and to burden the prosecution with the almost impossible task of showing guilty knowledge in every case. In fact, to do so would destroy the very purpose for which the law was created. Hence, it is that a man is often made liable and punished for the acts of his employes, which he had neither ordered nor had knowledge of. Though this may at times seem unjust, it nevertheless shows the employer that he cannot delegate the responsibility which the law puts upon him. He, therefore, is more vigilant and awakens greater care in his subordinates.

Indeed, many of these offenses so completely lack moral turpitude that they were until recently prosecuted by civil actions in which penalties were recovered in a court of civil jurisdiction, where motive did not become an issue.

However, when done with intent to injure or with a bad heart, many of the offenses prosecuted in this court are as reprehensible as some of the greater crimes. The element or moral turpitude naturally aggravates the offense and adds to the penalty, while good intent often mitigates it and lessens the punishment:

It is only when one comes into close contact with the work of the Municipal Term Court that he realizes its full significance and its effect upon the community. If one attends the court on a Monday, he finds every case having to do with some form of fire prevention. He will find a group of offenders, mostly ignorant foreigners, who seem to be somewhat sternly dealt with for slyly smoking a cigarette or cigar in a factory, perhaps at the noon hour when work has ceased. The defendant may be a habitual smoker and after hours of toil may crave a smoke, and in the midst of his work "take a few puffs." He will appear in court and probably tell some dismal tale of how he was made overwrought and anxious by family troubles, or how he had a toothache, the agonies of which he could soothe by his pipe or

cigar. We may be on the point of according him considerable sympathy, until we picture to ourselves some great factory building, the interior of which is ablaze and its unfortunate workers trapped; a panic ensues and despite fire escapes, fireproofing and modern construction the inmates are crushed, suffocated, or hurl themselves from the windows into eternity. In short, fining a "smoker" is a preventive measure to reduce risk.

Again, around the fourth of July, we will find some storekeeper who has a large stock of inflammable fire works, a careless handling of which would mean an almost instant conflagration; on another occasion perhaps it is a paint shop, where, with its accumulation of oils and abundance of alcohol, insufficient precautions have been taken; or a commercial concern handling rugs or inflammable fibers in large quantities and under unsafe conditions; or a dyeing establishment using volatile and highly inflammable substances without proper safeguard; or a garage or repair shop with an undue storage of gasoline with non-fireproof surroundings; or, finally, it may be a place where moving picture films are stored, the inflammable character of some of which has resulted in numerous fierce fires and shocking casualties. Again, there will come to the bar the owner of some factory, store, hotel, or theatre who has failed to comply with the department regulation prescribing fire sprinklers, interior alarms, hose, hand extinguishers, means of exit and the like, want of which might produce some fearful blaze. In other words, every time we go into an office in a great business building, every time we go into a large store to purchase something, every time we spend a night at a hotel, every time we attend the theatre or a great assembly hall, or even when we lie ill in the hospital, the fire prevention laws and regulations have provided means for our personal safety; and it is not until there is some great theatre fire, school house burned, or a factory consumed, with its attendant loss of property, and perhaps a hideous toll of human lives, that it can be realized what the activities in this direction mean and what the responsibilities of the Municipal Term Court are.

Again, if the citizen attend upon health day, he will find an extraordinary range of offenses. Some shifty-eyed storekeeper is at the bar for adulterating his milk or cream. He tries to make the judge believe that it is a mere accident. Another, is a small restaurant keeper, who had a row of dirty milk cans in front of his store; another a driver of a milk wagon who was dipping his milk from one can into another in the dusty street. He usually says he "only did it to accommodate a customer." Sometimes the offender is a man who is

doing this to steal milk for himself or to sell it, leaving a watered product for his employer's customers. If such be the case he is most rigorously dealt with. The next culprit may be the wholesale fish dealer with fish that had been kept too long and which it is apparently his intention to dispose of with profit. Again, it may be some packing house or butcher who has decayed or unwholesome meats in the refrigerator; again it may be some wholesale or commission merchant endeavoring to dispose of doubtful fruit and vegetables at a bargain to entice push-cart dealers to buy them, and who would in turn vend them amongst the population. Next comes the proprietor of a delicatessen store who had purchased at an underwriter's sale a quantity of canned goods which, by reason of heat or other cause, have bulged or sprung, with the result that there may be a leak or the contents spoiled. The next may be the corner grocer on whose shelf may be packages of cereals infested with weevils, or who may have a box of prunes that are wormy. Finally comes the confectioner who may be a manufacturer and who may use impure materials or tolerates disgusting methods in his factory, or he may conduct a small store and dispense soft drinks with artificial or coal tar fruit flavors that may menace the health or even lives of young school children.

In one case an aged denizen of the East Side with long beard "was charged with bottling lemon and strawberry soda in his bedroom," and the board of health inspector showed with great pride a bottle of lemon soda in which complacently swam the remains of several bed bugs. The next in order may be an egg dealer for a wholesaler, or one who keeps a small shop. He is found to have a quantity of bad eggs, "rots and spots." He has them under such circumstances that it appears likely he is about to sell them to some cheap baker in order that they may be used for cakes or pies. Next in the procession is the proprietor of a restaurant. His place is dirty and ill-kept; perhaps the inspector goes in, marches straight to his ice box and finds therein some slimy and foul chops. He consults the bill of fare and then finds that they are the only chops on the premises. Despite the offender's protestations that he was saving them for the dog or that some irresponsible employe had put them there, a heavy fine accompanied by a stinging rebuke, is usually meted out.

An elderly druggist next presents himself, charged with vending rhubarb and soda from which the component ingredient of glycerine is almost entirely lacking on account of its high price. Another man has misbranded his drugs and medicines so as to deceive the customer into believing that he or she is getting a genuine article. Another in-

dividual has a fake consumption of infantile paralysis cure, and stern is the penalty dealt out to him. Another man manufactures gaudily labeled hair tonics which contain wood alcohol that will destroy the tissues and perhaps ultimately affect the brain.

Lastly comes a group of delinquents charged with a great variety of nuisances and conditions prejudicial to life and health. One, a lodging house keeper, has a foul and dirty building. Another one has a stable in unsanitary condition, another a lot littered with disgusting materials. Still another, who resides in the upper regions of Manhattan or The Bronx, rejoices in a choice collection of pig stys kept in such condition that his neighbors loudly complain. Next, may come conditions relating to bad ventilation, overcrowding, bad plumbing and drainage, dead and diseased animals, noisome or offensive trades and slaughter houses. A brass foundry fumes may be emitting noxious gases from its chimneys or vend-pipe and these flow into the open windows of the tenement houses; or a fur dealer may comb and dust dirty furs, to his neighbor's annoyance.

In 1918 the court took jurisdiction of violation of the new "anti-heating ordinance" requiring landlords to furnish sufficient heat.

The city at the present time presents an extraordinary condition. The great mass of our citizens reside in apartment houses where there is a central heating plant and where it is understood that the landlord is to furnish a certain degree of heat during certain months of the year. In most cases there exist no leases, but only month to month tenancies. Building conditions have been such that it has been extremely difficult for a tenant to move and secure quarters elsewhere, and with this there have been many increases in rent. There have been, unfortunately, here and there, unscrupulous landlords who have taken advantage of these conditions in order to save the cost of fuel to the detriment of the comfort and health of the occupants of such apartments, and who have, when the tenants complain, immediately evicted them. There have been a number of convictions in this court where landlords have been heavily fined. This condition has been to some extent fostered by the growing practice of land-owners leasing a whole building to a speculator for a fixed guaranteed return, thus placing the speculative tenant of the whole in a position where he has every incentive to extract every possible bit of revenue out of the property, since every cent saved is clear gain.

As these conditions have inflicted hardship upon innocent men, women and children, this court invites the continued and increasing vigilance of the health department in this field so that the guilty may be

brought to book and the landlord who banks his fire and ignores his helpless tenants may receive his just due.

On Wednesday are prosecuted cases having to do with violation of the tenement house law. To those whose memory reaches back to the time of the old-style tenement and the horrible conditions that prevailed in many parts of New York City, the work of the court will have a deep significance. If one can picture to himself the foul, unsanitary, overcrowded tenement, liable to every visitation from fire and smallpox, what the reform movements for better housing and tenement house changes have brought about will become evident. If he can picture to himself the dirty halls, the remote and primitive toilet facilities, the single tap of water on each floor in a public hall, the lack of windows, the lack of courts and airspace, the inside rooms devoid of air and light, and sheltering some hopeless consumptive spreading germs to all the inmates, then he will realize not only what the work of the tenement house department has meant, but how necessary the work of the Municipal Term Court is to prevent any sliding back from present standards. One defendant may be charged with not supplying sufficient water for the top floors. He urges that the pipes have burst because of freezing weather and that he has remitted part of the rent until such time as he might get a plumber. On the other hand, it may be shown that he has so maintained the premises through many months and had been indifferent to all complaints and to the danger to the health of the tenants. Another offender may not have painted his fire escapes, allowing them to rust and become unsafe. Another may have divided up what was designed as one apartment into two without proper authority for alteration. Another may have allowed his premises to fall into a shocking state of disrepair.

On Wednesday afternoon the department of licenses prosecutes its cases, notably those having to do with second-hand and junk dealers, vegetable and fruit stands, billiard and pool parlors and bowling alleys. Usually the offender here has violated the law in doing business without securing a proper license. He may have been quietly carrying on a business of a junk dealer or second-hand dealer in connection with his other activities and not being licensed or under regulation, temptation would be strong to become a "fence" or receiver of stolen goods. Another offender, an Italian who has a prosperous fruit stand, so prosperous that it will not accommodate all his stock, increases the size of it until perhaps he occupies twice the legal amount of space. Then, too, are heard prosecutions of the building depart-

ment, such as running unsafe elevators, and cases against unregistered plumbers.

In order that the offenders may not have to go into the district courts, particularly the women, offenses against the park ordinances come to this court. These occur almost entirely in the summer time and comprise such things as walking on and littering the lawns with papers, fruit skins and peanut shells, annoying animals in the "Zoo," drinking alcoholic liquors in the park, pulling up and carrying away plants, shrubs and the like.

One of the most important functions of the Municipal Term Court is the work done on Thursday, when the parents are arraigned for violations of the compulsory education law. While in the other work that the court does there are great opportunities for constructive thought and decision, there is no work that reaches so far into the lives of the poor people, the ignorant people and the misguided people of our community. So much is constantly being done in an effort to reform somebody who has gone wrong and violated the code of civilization, and vast sums of money are being spent daily to assist and elevate these people, but in the work of enforcing the compulsory education law we are able to learn definitely of the environment of a great mass of little children in this city, who are forming their ideas of life and are being molded into good, bad, or indifferent citizens. All the opportunities that are presented for reforming the adult are here present, opportunities to work out a reformation in parents who have no realization, or at least a very scant realization, of their responsibility of parenthood.

This offense springs from a variety of causes, such as lack of parental control or indifference, and from desire to utilize the services of the child. This latter may be a purely selfish desire to capitalize its labor, or to relieve heart-rending poverty and family misery.

In many cases a fine of a dollar or so suffices to correct the situation; in a few, actual imprisonment, where it is a matter of brazen defiance of our educational requirements for the young. On the other hand, all reasonable efforts of the parents may have failed and the child is then classed as a truant and dealt with in the Children's Court.

Where poverty and illness afflict the home, it becomes most difficult to enforce the law and to see that the child has that most precious of American birthrights, a good common school education.

There are many parents with high ideals and ambition for their children, but who are absolutely prevented through poverty or sickness or disease, or a combination of all, to give to their children not only

the opportunities that they themselves desire to give, but the privileges that the State of New York demand shall be given to these children. We have a statutory command that the child shall be kept in school until it has reached a certain age or grade. It is one thing to tell a parent to send to school a child who has no shoes on his feet in the middle of the winter and another thing to get the child there. It is one thing to tell a child to go to school if it has a ragged and torn coat and quite another thing to induce that child to go to school.

If the court, out of compassion for the parents, suspends sentence, it generally merely evades the problem and leaves an unchanged condition. If it compels the child to go to school, it may thereby inflict untold hardship on some widowed mother who cannot, with her scanty earnings, keep the home together, or deprive some invalid of urgent care of needed watching while others of the family circle are at work.

We are now on the eve of a great revival of interest in educational matters, especially in dealing with our huge foreign population. As part of this there has sprung up a demand from progressive sources that all children are to be kept in school until they are sixteen. This would do away with the issuance of working papers or employment certificates to children between fourteen and sixteen who qualify in health and scholarship under the present laws. Some persons advocate the doing away with vacation working permits as well.

It is the experience of the two magistrates who have sat in this court since its foundation in April, 1915, that if such reforms are made these must go hand in hand with them:

(a) Either paid scholarships or home aid for families, which, by reason of poverty or illness combined with poverty, are unable to dispense with the child's earnings or home assistance; and

(b) Wholesome organized vocational training combined with recreation schools in the summer-time, since it is often better that a child in this city should be gainfully employed at some light and healthful occupation in the summer than be turned loose to seek idly its own diversions in the city streets and parks. And this applies particularly to boys and girls from fourteen to sixteen years of age.

To the writer it has always seemed an abhorrent condition that the law would place a person in a situation where he is compelled to do something which he is financially unable to do and force him to jail or to be a recipient of private charity in order to comply with the mandates of the law. While it is a wonderful and necessary

thing to see that our children have proper education, it is not right that the State of New York should force on the lists of private charity organizations those who are so unfortunate as to be unable to obey the law, and it seems that the state itself should take charge of these scholarships, providing for them and administering them, instead of leaving the matter to private charities.

Boys may legally be licensed to sell newspapers, but even this is fraught with many abuses to the detriment of the child, as the many prosecutions in this court of parents of newsboys bear ample witness. These lads, often ragged and dirty, vend their papers at late hours of the night, or without permits in order to get money to patronize the "movies," and frequently invade public places of questionable repute.

If the state does too much for the child, it may be that parental control may be further weakened and unscrupulous parents be moved to evade their responsibilities. On the other hand, if the parent cannot or will not comply, even if punished, then the state must assume in a large measure the parental role. This approximates improper guardianship, an ever present problem in the Children's Court. The problem needs to be handled not only in accord with progressive ideals, but in the light of actual social and economic conditions as well.

Finally, there is the deficient or feeble-minded child. It is physically able to attend school and it is not insane. It may become a reasonably useful member of society under proper guidance and restraint. It may, however, be quite incapable of absorbing the three "Rs" and even in so-called "backward classes" it may be a sheer waste of time to try to instruct it. These cases arise every now and then and present great difficulty, especially as not to make such a child attend school means it is going to be idle with a chance to do mischief or else have its labor exploited.

Much credit is due the board of health physicians who attend on compulsory education day and greatly assist the court in ascertaining the physical ability of the child to attend school, or its age, which is often in doubt in the case of the foreign born. The court also records its appreciation of the able, tactful handling of cases by the division supervisor in charge of prosecutions, and the human interest and helpful work done by the attendance officers in the cases of the poverty-stricken and unfortunate. In this connection valuable service is rendered by a representative of the Big Sisters, who do such praiseworthy work in the Children's Court.

On Friday there are tried the cases prosecuted by the labor department or state industry organization which arise in New York

City. It is not many years since the public was profoundly stirred by the Triangle fire and the locked doors which prevented the factory workers from reaching a means of exit. Since that day the law has been amended and the provisions against locked doors have been rigorously enforced. This is an offense which clearly shows the distinction between a police regulation and a true crime. It would indeed be rare to find a case where a factory proprietor would purposely keep the doors locked. On the other hand it requires keen supervision to see that a careless employe may not fail of his duty. For instance, if the person charged with opening the doors arrives late or forgets, it may seem hard that a vigilant owner should be substantially fined. But this is the one thing that keeps the owners and proprietors alert, namely, the knowledge that they will surely be fined whether they have a good excuse or not. To listen to individual cases and to hear the defendant explain why the door happened to be locked at the time of the inspector's visit is often most convincing. On the other hand to give the slightest opportunity for evasion or carelessness might result in the loss of scores of lives.

Another frequent class of cases is the child labor case. Here are presented every degree from the cruel and ignorant parent who regards his children as mere chattels, to be used to maintain himself, up to the case of a good-hearted corner grocer who employs some well-grown boy at the behest of his widowed mother to do a few light errands. The former offender is the sort who will not hesitate at driving a delicate child to the performance of all kinds of hard tasks, perhaps at unusual hours, and should be dealt with with an iron hand. The soft-hearted grocer, on the contrary, must be dealt with leniently, though given to understand that he must not again disobey the law. Frequently a large, strong boy may misrepresent his age and get employment in a factory. If a child under sixteen is unable to secure a certificate of employment by virtue of reaching the proper grade in school and obtaining his fifteenth year, it is the fault of the employer that he does not exact such a certificate, and the fine follows even though the employer may have acted through his foreman or some subordinate. Other items that come very close to the welfare of the factory-working population are the hours of labor, night work for women, the crowding of dangerous machinery, days of rest, overcrowding, and other reforms that it has taken years to put into statute law. It is not long since we knew the old-fashioned "sweat shop" or the evils of tenement-made goods, and the laws against these come within the special province of this court. It was not always realized

what horrors attended certain occupations, as where phosphorus was used or lead fumes permeated the atmosphere. Occupational diseases from these and other causes have presented sources of misery of incalculable extent, and it is this court which is charged with the punishment of those who disregard the beneficent laws made to correct what we now regard as atrocities.

It will thus be seen that the Municipal Term Court has become an indispensable adjunct to the enforcement of all the multifarious offenses that enter into its jurisdiction. In the year 1918 there were a total of 7,151 cases in Manhattan and 3,603 in Brooklyn disposed of, or 10,754 in all; in 1919, 6,729 in Manhattan and 4,513 in Brooklyn, or 11,242 in all disposed of. These evidence the manifold activities of our complex municipal life and the struggle of our population for better living conditions. On the other hand, it is not the function of this court to be unduly severe with the property owner who may have to spend thousands of dollars to make his premises comply with the tenement house or labor law. If he only manifests a reasonable willingness to comply with a lawful regulation, he is usually given a suitable time in which to do the necessary work or to make the necessary alterations. If he does so diligently he often is not punished at all and at the same time the purpose of the law is carried out. Should the owner, however, manifest a defiance of the law and indifference to the welfare of his tenants, then he is punished promptly and vigorously.

In judging of the work of the Municipal Term Court it is not only necessary that one should become acquainted with its daily routine and the subject matter of its jurisdiction, but that he should likewise use his powers of perception so as to clearly view what all these various activities mean and for what they stand in our social fabric. It might be well to call it the Court of Prevention, for after all its chief object is to prevent the infliction of ruin and misery, rather than to inflict punishment or retribution after the deed is done and the wrong irrevocably inflicted. It is better to have a few fines for locked doors than one Triangle fire. It is better to spend millions upon sprinklers for buildings than to have a human holocaust. It is better to punish scores of dealers for selling rotten foods than allow the jeopardizing of the health of thousands. It is in this great function of prevention that the highest achievement of this court lies.