TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 107.

CURT MULLER, PLAINTIFF IN ERROR,

vs.

THE STATE OF OREGON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OREGON.

FILED SEPTEMBER 27, 1906.

(20,375.)

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 21, 1907.

1 In the Supreme Court of the United States, —— Term, 1906.

CURT MULLER, Plaintiff in Error,
v.
THE STATE OF OREGON, Defendant in Error.

From the Supreme Court of the State of Oregon.

Hon. R. S. Bean, Chief Justice;
Hon. F. A. Moore, Associate Justice;
Hon. T. G. Hailey, Associate Justice.

Wm. D. Fenton, and E. S. F. McAllister, for Plaintiff in Error.
A. M. Crawford, Attorney General of the State of Oregon; I. H. Van Winkle, Assistant Attorney General of the State of Oregon; John Manning, District Attorney for the Fourth Judicial District of the State of Oregon; and Bert E. Haney, Deputy District Attorney for the Fourth Judicial District of the State of Oregon, for the Defendant in Error.

2 In the Supreme Court of the State of Oregon, *ss:*

THE STATE OF OREGON, Plaintiff and Respondent,
v.
CURT MULLER, Defendant and Appellant.

In obedience to the commands of the within Writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the above entitled cause, with all things concerning the same.

J. J. MURPHY,
Clerk of the Supreme Court of the State of Oregon,
By ARTHUR S. BENSON, *Deputy.*

3 & 4 In the Supreme Court of the State of Oregon.

STATE OF OREGON, Plaintiff and Respondent,
vs.
CURT MULLER, Defendant and Appellant.

Assignment of Errors.

Now comes the above named defendant and files herewith his petition for a writ of error, and says that there are errors in the records and proceedings of the above entitled cause, and for the purpose of having the same reviewed in the Supreme Court of the United States, makes the following assignment:

The Supreme Court of the State of Oregon erred in holding and deciding that Sections 1 and 3 of "An Act to regulate and limit the hours of employment of females in any mechanical or mercantile establishment, laundry, hotel or restaurant: to provide for its enforcement, and a penalty for its violation," passed by the Legislative Assembly of the State of Oregon on February 13, 1903, approved by the Governor of said state on Feb. 19, 1903, and filed in the office of the Secretary of State on Feb. 20, 1903, were valid.

The validity of said sections was denied and drawn in question by the defendant on the ground of their being repugnant to the Constitution of the United States and in contravention thereof.

The said errors are more particularly set forth as follows:

The Supreme Court of the State of Oregon erred in holding and deciding,

(1) That said Sections 1 and 3 of said Act did not abridge the privileges and immunities of citizens of the United States and
5 of this defendant as guaranteed by Section 1 of the Fourteenth Amendment of the Constitution of the United States.

(2) That by the provisions of said Sections 1 and 3 of said Act, the defendant is not deprived of liberty and property without due process of law, as guaranteed by said Fourteenth Amendment to the Federal Constitution.

(3) That the provisions of Sections 1 and 3 of said Act do not deny to the defendant the equal protection of the law.

(4) That the provisions of said Act and the authority exercised thereunder and thereby, authorized to be exercised thereunder, are within the police powers of the Legislature of the State of Oregon.

(5) That the provisions of said Act do not grant special and exclusive privileges to certain citizens which are denied to the defendant and to other citizens of the United States and of the State of Oregon.

(6) That the provisions of said Act are uniform in their operation throughout the state, upon all citizens of the State of Oregon similarly situated.

For which errors the defendant, Curt Muller, prays that the judgment of the Supreme Court of Oregon dated June 26th, 1906, be reversed, and a judgment entered for the defendant, Curt Muller, and for costs.

WM. D. FENTON,
HENRY H. GILFRY,
Attorneys for Defendant, Curt Muller.

6 (Endorsed:) In the Supreme Court of the State of Oregon. State of Oregon, plaintiff-respondent, *vs.* Curt Muller defendant-appellant. Assignment of errors and prayer for reversal. Filed Aug. 27 1906, J. J. Murphy, clerk, by Arthur S. Benson, deputy.

7 In the Supreme Court of the State of Oregon.

STATE OF OREGON, Plaintiff and Respondent,
vs.
CURT MULLER, Defendant and Appellant.

Petition for Writ of Error.

The petition of Curt Muller by Wm. D. Fenton and Henry H. Gilfry, his attorneys, hereby sets forth that on or about the 26th day of June, 1906, the Supreme Court of the State of Oregon made and entered a final judgment herein in favor of the State of Oregon and against Curt Muller, defendant, in which final judgment and the proceedings had prior thereunto in this cause, certain errors were committed to the prejudice of Curt Muller, all of which will more in detail appear from the Assignment of Errors which is filed with this petition.

II.

That the said Supreme Court of the State of Oregon is the highest court of the State of Oregon in which a decision in this suit and this matter could be had.

Wherefore Curt Muller petitions and prays that a Writ of Error from the Supreme Court of the United States may issue in this behalf, to the Supreme Court of the State of Oregon, for the correction of errors so complained of, and that a transcript of record, proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 24th day of August A. D., 1906.

WM. D. FENTON,
HENRY H. GILFRY,
Attorneys for Curt Muller, Def't.

8 [Endorsed:] In the Supreme Court of the State of Oregon. State of Oregon, Plaintiff-Respondent, *vs.* Curt Muller, Defendant-Appellant. Petition for Writ of Error. Filed Aug. 27 1906. J. J. Murphy, Clerk; By Arthur S. Benson, Deputy.

9 In the Supreme Court of the State of Oregon.

STATE OF OREGON, Plaintiff and Respondent,
vs.
CURT MULLER, Defendant and Appellant.

Order.

The above entitled matter coming on to be heard upon the petition f Curt Muller, defendant-appellant herein, for a Writ of Error from ae Supreme Court of the United States to the Supreme Court of the tate of Oregon, and upon examination of said petition and the record

in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter,

It is ordered that a Writ of Error be and is hereby allowed to this court from the Supreme Court of the United States, upon the execution of a bond by said Curt Muller in the sum of $500.00.

Dated this 27th day of Aug., A. D. 1906.

R. S. BEAN,
Chief Justice of the Supreme Court of the State of Oregon.

10 [Endorsed:] In the Supreme Court of the State of Oregon. State of Oregon, Plaintiff-Respondent, *vs.* Curt Muller, Defendant-Appellant. Order allowing writ of error. Filed Aug. 28, 1906. J. J. Murphy, Clerk; by Arthur S. Benson, Deputy.

11 In the Supreme Court of the United States.

CURT MULLER, Plaintiff in Error,
vs.
STATE OF OREGON, Defendant in Error.

Bond.

Know all men by these presents: That I, Curt Muller as principal, and L. T. Gilliland and R. C. Warinner as surety, are held and firmly bound unto the State of Oregon in the sum of $500.00, to be paid to the said state of Oregon, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally, firmly by these presents.

Sealed with our seals and dated this 24th day of August, A. D. 1906.

Whereas the above named plaintiff in error seeks to prosecute his Writ of Error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Oregon.

Now therefore, the condition of this obligation is such that if the above named plaintiff in error shall prosecute his writ of error to effect, and answer all costs that may be adjudged, if he shall fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and effect.

CURT MULLER. [SEAL.]
L. T. GILLILAND. [SEAL.]
R. C. WARINNER. [SEAL.]

Signed, sealed and delivered in the presence of:

R. A. LEITER.
BEN C. DEY.

12 STATE OF OREGON, *County of Multnomah, ss:*

On this 24th day of August, 1906, before me, a Notary Public in and for the State of Oregon, personally appeared Curt Muller, to me known to be the person described in and who executed the foregoing bond, and acknowledged that he executed the same as his free act and deed.

[SEAL.] R. A. LEITER,
Notary Public for Oregon.

My commission expires Sept. 25, 1907.

STATE OF OREGON, *County of Multnomah, ss:*

I, L. T. Gilliland and I, R. C. Warinner, whose names are subscribed as sureties to the within bond, being severally duly sworn, each for himself say: that I am a resident and householder within the State of Oregon; that I am not a counsellor or attorney at law, sheriff, clerk or other officer of any court, and am worth the sum of $1000.00 over and above all my indebtedness and liabilities, exclusive of property exempt from execution.

L. T. GILLILAND.
R. C. WARINNER.

Subscribed and sworn to before me this 24th day of August, 1906.

[SEAL.] R. A. LEITER,
Notary Public for Oregon.

My commission expires Sept. 25, 1907.

I hereby approve the foregoing bond and surety, this 27th day of Aug., 1906.

R. S. BEAN,
Chief Justice of the Supreme Court of the State of Oregon.

13 (Endorsed:) In the Supreme Court of the United States. Curt Muller, Plaintiff in Error, *vs.* State of Oregon, Defendant in Error. Bond. Filed Aug. 28, 1906, J. J. Murphy, Clerk, by Arthur S. Benson, Deputy.

14 In the Supreme Court of the United States.

CURT MULLER, Plaintiff in Error,
vs.
STATE OF OREGON, Defendant in Error.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the Judges of the Supreme Court of the State of Oregon, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Ore-

gon before you, between the State of Oregon, Plaintiff, against Curt Muller, Defendant, a manifest error has happened to the great damage of the said defendant, Curt Muller, as by his complaint appears.

We, being willing that error, if any has been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the said record and proceedings aforesaid, at the City of Washington, D. C., and filed in the office of the Clerk of the United States Supreme Court on or before sixty days from the date hereof, to the end that the record and proceedings aforesaid being then and there inspected, the said United States Supreme Court may cause further to be done therein to correct that error, what of right
15 and according to the laws and customs of the United States of America should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 30th day of August, 1906, and done at the City of Portland, with the seal of the Circuit Court of the United States for the District of Oregon, attached.

[Seal United States Circuit Court State of Oregon.]

J. A. SLADEN,
Clerk of the Circuit Court of the United States,
for the District of Oregon.

Allowed:

A. S. BEAN,
Chief Justice of the Supreme Court
of the State of Oregon.

16 [Endorsed:] In the Supreme Court of the United States Curt Muller Plaintiff in Error *vs.* State of Oregon Defendant in Error Writ of Error Filed Sep. 4 1906 J. J. Murphy, Clerk; By Arthur S. Benson Deputy.

17 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the State of Oregon, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within sixty days from the date hereof, pursuant to a writ of error filed in the office of the clerk of the Supreme Court of the State of Oregon, wherein Curt Muller is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Chief Justice of the Supreme Court of the State of Oregon, this 1st day of September, 1906.

[Seal Supreme Court State of Oregon.]

R. S. BEAN,
Chief Justice of the Supreme Court of the State of Oregon.

Attest:
J. J. MURPHY,
Clerk of the Supreme Court of the State of Oregon.

PORTLAND, OREGON, *Sept. 4th*, 1906.

I, attorney of record for the defendant in error in the above entitled case, hereby acknowledge due service of the above citation, and enter an appearance in the Supreme Court of the United States.

JOHN MANNING, *Dist. Att'y, and*
B. E. HANEY, *Deputy Dist. Att'y,*
Attorneys for State of Oregon.

18 [Endorsed:] In the Supreme Court of the State of Oregon State of Oregon Plaintiff Respondent *vs.* Curt Muller Defendant Appellant Citation on Writ of Error Filed Sept. 5, 1906. J. J. Murphy Clerk By Arthur S. Benson Deputy.

19 *Transcript.*

THE STATE OF OREGON, Plaintiff and Respondent,
v.
CURT MULLER, Defendant and Appellant.

Appeal from the Circuit Court for Multnomah County.

Before Honorable Alfred F. Sears, Jr., Judge.

20 Be it Remembered that heretofore on the 18th day of September, 1905, there was filed in the office of the Clerk of the Circuit Court of the State of Oregon, for the County of Multnomah, an Information in words and figures as follows, to-wit:

In the Circuit Court of the State of Oregon for the County of Multnomah.

THE STATE OF OREGON
vs.
CURT MULLER, Defendant.

Curt Muller, accused by the District Attorney for the Fourth Judicial District of the State of Oregon, for the County of Multnomah, by this information of the crime of requiring a female to

work in a laundry more than ten hours in one day, committed as follows:

The said Curt Muller on the 4th day of September, A. D. 1905, in the County of Multnomah and State of Oregon, then and there being the owner of a laundry known as the Grand Laundry in the City of Portland and the employer of females therein, did then and there unlawfully permit and suffer one Joe Haselbock, he, the said Joe Haselbock, then and there being an overseer, superintendent and agent of said Curt Muller, in the said Grand Laundry, to require a female, to-wit: one Mrs. E. Gotcher, to work more than ten hours in said laundry on said 4th day of September, A. D. 1905, contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Oregon.

21 Dated at the City of Portland, in the county aforesaid, this 18th day of September, A. D. 1905.

JOHN MANNING,
District Attorney.

Witnesses subpœned, sworn and examined before the District Attorney for the State of Oregon:

Bertha Gerhke.
Helen Peterson.
Ester Brooks.
Eunice McLeod.
Mrs. Reeves.
Maud Reeves.
Mrs. E. Gotcher.

22 And afterwards on Thursday the 21st day of September, A. D. 1905, the same being the 15th Judicial Day of said term of Court, there was rendered and entered an Order in words and figures as follows, to-wit:

(Title.)

Now at this time comes the State of Oregon, by H. B. Adams, Deputy District Attorney, and the defendant — T. J. Giesler, his attorney, and an Information having been heretofore, to wit: on the 18th day of Sept. 1905, duly presented to this court by the District Attorney of the Fourth Judicial District of the State of Oregon, for Multnomah county, and filed with the Clerk charging said defendant with the crime of requiring a female to work in a laundry more than ten hours in one day. Said defendant by his attorney waives the reading of the information and pleads that he is not guilty of the crime charged in this Information.

(Signed) ARTHUR L. FRAZER, *Judge.*

23 And afterwards on Monday the 16th day of October, 1905, the same being the 13th Judicial Day of said Term of Court, there was rendered and entered an order in words and figures as follows, to-wit:

(Title.)

Upon motion of the defendant above named and defendant appearing by his attorneys, E. S. J. McAllister and Wm. D. Fenton, and the State of Oregon appearing by B. E. Haney, Deputy Prosecuting Attorney;

It is ordered that the plea of *not* guilty herein heretofore entered may be and the same is now withdrawn, and leave granted to the defendant to file his demurrer to the information herein;

Whereupon said demurrer being now filed, and argued by said counsel;

It is ordered that the same be taken under advisement.

(Signed) ALFRED F. SEARS, JR., *Judge.*

24 And afterwards on the 16th day of October, 1905, there was filed in this court, a demurrer to information in words and figures as follows, to-wit:

(Title.)

Comes now the defendant above named and demurs to the information and for cause of demurrer says that the said information does not state facts and the facts stated are not sufficient to constitute a crime.

That the act under which this information is filed is unconstitutional and void.

E. S. J. MCALLISTER,
WM. D. FENTON,
Attorneys for Defendant.

STATE OF OREGON, *County of Multnomah, ss:*

Due service of the within demurrer is hereby accepted in said county, this 16th day of October, 1905, by receiving a copy thereof, duly certified to as such by Wm. D. Fenton, of Attorneys for Defendant.

JOHN MANNING,
District Attorney, for Plaintiff,
By B. E. HANEY, *Deputy.*

25 And afterwards on Saturday the 20th day of January, A. D. 1906, the same being the 17th Judicial Day of said Term of Court, there was rendered and entered an order in words and figures as follows, to-wit:

(Title.)

The above entitled action having been heretofore argued by the respective attorneys to this action on defendant's demurrer to the Information, and by the court then reserved for further consideration.

And the Court having duly considered all the questions presented, and being now fully advised, it is ordered that said demurrer be and the same hereby is overruled.

(Signed) ALFRED F. SEARS, JR., *Judge.*

26 And afterwards on Tuesday the 23d day of January, A. D. 1906, the same being the 19th Judicial Day of said Term of Court, there was rendered and entered an Order in words and figures as follows, to-wit:

(Title.)

Now at this time comes the State of Oregon, by Bert E. Haney, Deputy District Attorney, and the defendant appearing by E. S. J. McAllister, one of his attorneys, and said defendant having been heretofore duly informed against by the District Attorney, of Multnomah County, State of Oregon, on the 18th day of September, 1905, of the crime of requiring a female to work in a laundry more than ten hours in one day, committed in said county and state, on the 4th day of September, 1905.

And the Court having heretofore, to-wit: on the 20th day of January, 1906, overruled defendant's demurrer to the Information herein, and said defendant at this time by and through his attorney E. S. J. McAllister declined in open court to move or plead to this information herein,

It is therefore Ordered and Adjudged by the court that the defendant Curt Muller pay a fine of Ten ($10.00) Dollars and in default thereof that he be imprisoned in the County Jail of the County of Multnomah, State of Oregon, for a period of five (5) days and that the State do have and recover of and from the defendant Curt Muller its costs and disbursements herein taxed at $—

(Signed) ALFRED F. SEARS, JR., *Judge.*

27 And afterwards on the 27th day of January, 1906, there was filed in this office, a Notice of Appeal in words and figures as follows, to-wit:

In the Circuit Court of the State of Oregon for the County of Multnomah.

THE STATE OF OREGON
vs.
CURT MULLER, Defendant.

To John Manning, District Attorney for the Fourth Judicial District of the State of Oregon, to the Clerk of the above entitled Court, and to the State of Oregon.

You and each of you are hereby notified and you will please take notice that the defendant herein, Curt Muller, hereby appeals to the Supreme Court of the State of Oregon from that certain judg-

ment of conviction and from the whole thereof, rendered against him in the above named court on the 23rd day of January, 1906, in which judgment he was sentenced to pay a fine of $10.00 and from the fine of $10.00 therein imposed.

Dated January 27th, 1906.

CURT MULLER, *Defendant.*
E. S. J. McALLISTER,
WM. D. FENTON,
Attorneys for Defendant.

28 In the Circuit Court of the State of Oregon for the County of Multnomah.

THE STATE OF OREGON
vs.
CURT MULLER, Defendant.

I, Alfred F. Sears, Judge of the Circuit Court of the State of Oregon, County of Multnomah, the court in which the conviction of the above named defendant was had, hereby certify that there is probable cause for the appeal.

ALFRED F. SEARS, JR., *Judge.*

Dated Jan. 27th, 1906.

STATE OF OREGON, *County of Multnomah, ss:*

Due service of the within Notice of Appeal is hereby accepted in Multnomah County, Or., this 27th day of January, 1906, by receiving a copy thereof, duly certified to as such by Wm. D. Fenton, of Attorneys for Defendant.

JOHN MANNING,
Attorney for State of Oregon.
F. S. FIELDS, *Clerk,*
By H. V. BAMFORD,
Deputy Clerk of Circuit Court, Multnomah County.

29 In the Circuit Court of the State of Oregon for the County of Multnomah.

STATE OF OREGON, *County of Multnomah, ss:*

I, F. S. Fields, County Clerk and Clerk of the Circuit Court of the State of Oregon, for the County of Multnomah, do hereby certify that the foregoing copies of Pleadings, Papers, Orders and Journal Entries, constituting the Judgment Roll, together with the Notice of Appeal in the case of The State of Oregon, Plaintiff and Respondent, *vs.* Curt Muller, Defendant and Appellant, have been by me compared with the originals thereof, and that they are true and correct transcripts of such original Pleadings, Papers, Orders, Journal Entries, and Notice of Appeal as the same appear of record and on file at my office and in my custody.

In witness whereof, I have hereunto set my hand and affixed the seal of said Circuit Court the 31st day of January, 1906.

[SEAL.] F. S. FIELDS, *Clerk*,
By H. C. SMITH, *Deputy*.

30 No. —.

In the Supreme Court of the State of Oregon.

Appeal from Multnomah County.

THE STATE OF OREGON, Plaintiff and Respondent,
vs.
KURT MULLER, Defendant and Appellant.

Transcript.

Filed Feb'y 5th, 1906.

J. J. MURPHY, *Clerk*.

31 In the Supreme Court of the State of Oregon.

THE STATE OF OREGON, Respondent,
v.
CURT MULLER, Appellant.

Appeal from the Circuit Court for Multnomah County.

The Honorable Alfred F. Sears, Jr., Judge.

Bert E. Haney, Deputy District Attorney, for the State.
Wm. D. Fenton, for Appellant.
Bean, C. J.
Affirmed.

* * * * * * *

Filed June 26, 1906.

J. J. MURPHY, *Clerk*,
By ARTHUR S. BENSON, *Deputy*.

32 BEAN, *C. J.*:

In 1903 the Legislature passed an act which, among other things, provided that "no female [shall] be employed in any mechanical establishment, or factory, or laundry in this state more than 10 hours during any one day" and that "any employer who shall require any female to work in any of the places mentioned" more than the prohibited time "shall be guilty of a misdemeanor, and upon conviction thereof shall be" punished, etc. Laws Or. 1903, p. 148. The defendant was convicted for a violation of this act by requiring a female to work more than the prescribed time in a laundry. He appeals to this court on the ground that the law is unconstitutional and void,

as violative of the fourteenth amendment to the Constitution of the United States, which provides that no state shall "deprive any person of life, liberty, or property, without due process of law," and of sections 1 and 20 of article 1 of the Constitution of this state, as follows: Section 1. "We declare that all men, when they form a social compact, are equal in rights." And section 20. "No law shall be passed granting to any citizen or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens." The right to labor, or employ labor, on such terms and conditions as may be agreed upon by the interested parties, is not only a liberty, but a property right guarantied to every citizen by the fourteenth amendment to the Constitution of the United States, and cannot be arbitrarily interfered with by the Legislature. Lochner *v.* New York, 198 U. S. 45, 25 Sup. Ct. 539, 49 L. Ed. 937; *Ex parte* Kuback, 85 Cal. 274, 24 Pac. 737, 9 L. R. A. 482, 20 Am. St. Rep. 226; Frorer *v.* People, 141 Ill. 171, 31 N. E. 395, 16 L. R. A. 492; State *v.* Loomis, 115 Mo. 307, 22 S. W. 350, 21 L. R. A. 789; Low *v.* Rees Printing Co., 41 Neb. 127, 59 N. W. 362, 24 L. R. A. 702, 43 Am. St Rep. 670; Seattle *v.* Smyth, 22 Wash. 327, 60 Pac. 1120, 79 Am. St. Rep. 939. But the amendment was not designed or intended to limit the right of the state, under its police power, to prescribe such reasonable regulations as may be necessary to promote the welfare, peace, morals, education, or good order of the people, and therefore the hours of work in employments which are detrimental to health may be regulated by the Legislature. Holden *v.* Hardy, 169 U. S. 366, 18 Sup. Ct. 383, 42 L. Ed. 780.

The right to labor and to contract for labor, like all rights, is itself subject to such reasonable limitations as are essential to the peace, health, welfare, and good order of the community, and, as said by the Supreme Court of the United States: "A large discretion is necessarily vested in the Legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests." Lawton *v.* Steele, 152 U. S. 133, 14 Sup. Ct. 499, 38 L. Ed. 385. In Holden *v.* Hardy, *supra*, the court, referring to the limitations placed by a state upon the hours of workmen in underground mines, said:

33 "These employments, when too long pursued, the Legislature has judged to be detrimental to the health of the employés, and, so long as there are reasonable grounds for believing that this is so, its decision upon this subject cannot be renewed by the federal courts." And in the subsequent case of Gundling *v.* Chicago, 177 U. S. 183, 20 Sup. Ct. 633, 44 L. Ed. 725, the court uses this language: "regulations respecting the pursuit of a lawful trade or business are of very frequent occurrence in the various cities of the country, and what such regulations shall be and to what particular trade, business, or occupation they shall apply, are questions for the state to determine, and their determination comes within the proper exercise of the police power by the state, and unless the regulations are so utterly unreasonable and extravagant in their nature and purpose that the property and personal rights of the citizen are unnecessarily, and in a manner wholly arbitrary, interfered with or destroyed

without due process of law, they do not extend beyond the power of the state to pass, and they form no subject for federal interference." The Legislature may not, therefore, unduly interfere with the liberty of contract, or arbitrarily limit the right of a citizen to enter into such contracts as to him may seem expedient or desirable; but it may prescribe reasonable regulations in reference thereto and limitations thereon to promote the general welfare and guard the public health, and the power of the courts to review such regulations exists only "when that which the Legislature has done comes within the rule that if a statute, purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is beyond all question a plain, palpable invasion of rights secured by the fundamental law." Jacobson *v.* Massachusetts, 197 U. S. 11, 31, 25 Sup. Ct. 358, 49 L. Ed. 643.

Now, the statute in question was plainly enacted, although not so declared therein, in order to conserve the public health and welfare by protecting the physical well-being of females who work in mechanical establishments, factories, and laundries. Such legislation must be taken as expressing the belief of the Legislature, and through it of the people, that the labor of females in such establishments in excess of 10 hours in any one day is detrimental to health and injuriously affects the public welfare. The only question for the court is whether such a regulation or limitation has any real or substantial relation to the object sought to be accomplished, or whether it is "so utterly unreasonable and extravagant" as to amount to a mere arbitrary interference with the right to contract. On this question we are not without authority. Legislation limiting the hours during which women may be employed is in force in several of the states of the Union, and, so far as we are advised, such legislation has everywhere been upheld, except in the state of Illinois. This particular class of legislation was first enacted in Massachusetts, and came before the Supreme Court of that state in Commonwealth *v.* Ham-
34 ilton Mfg. Co., 120 Mass. 383. The law provided that "no minor under the age of eighteen years, and no woman over that age, shall be employed in laboring by any person, firm or corporation in any manufacturing establishment in this commonwealth more than 10 hours in any one day," except in certain cases, and that "in no case shall the hours of labor exceed 60 per week." This law was held valid, the court declaring that it was not in violation of any rights reserved to the individual citizen, because "it merely provides that in an employment, which the Legislature has evidently deemed to some extent dangerous to health, no person shall be engaged in labor more than 10 hours a day or 60 hours a week. There can be no doubt that such legislation may be maintained either as a health or police regulation, if it were necessary to resort to either of those sources for power. This principle has been so frequently recognized in this commonwealth that reference to the decisions is unnecessary." And that the law did not violate the right of the female employé to labor in accordance with her own judgment as to the number of hours she should work, because it merely

prohibited her being employed continuously in the same service more than a certain number of hours during a day or week, leaving her free to work elsewhere as many hours as she might desire. In 1899 the Legislature of Nebraska (Laws 1899, p. 362, c. 107) enacted a law providing that "no female shall be employed in any manufacturing, mechanical or mercantile establishments, hotel or restaurant in this state more than sixty hours during any one week and that ten hours shall constitute a day's labor." This legislation was upheld by the court on the ground that it was a reasonable regulation to promote the public good and to protect the health and well-being of women engaged in labor in the establishments mentioned in the act, and therefore came within the police powers of the state. Wenham *v.* State, 65 Neb. 394, 405, 91 N. W. 421, 58 L. R. A. 825. The court said: "Women and children have always, to a certain extent, been wards of the state. Women in recent years have been partly emancipated from their common-law disabilities. They now have a limited right to contract. They may own property, real and personal, in their own right, and may engage in business on their own account. But they have no voice in the enactment of the laws by which they are governed, and can take no part in municipal affairs. They are unable, by reason of their physical limitations, to endure the same hours of exhaustive labor as may be endured by adult males. Certain kinds of work, which may be performed by men without injury to their health, would wreck the constitutions and destroy the health of women, and render them incapable of bearing their share of the burdens of the family and the home. The state must be accorded the right to guard and protect women, as a class, against such a condition; and the law in question, to that extent, conserves the public health and welfare." In 1901 a similar statute was enacted in the state of Washington, and was held valid by the Supreme Court in State *v.* Buchanan, 29 Wash. 602, 70 Pac. 52, 59 L. R. A. 342, 92 Am. St. Rep. 930, Mr. Justice Dunbar saying: "It is a matter of universal knowledge with all reasonably intelligent people of the present age that continuous standing on the feet by women for a great many consecutive hours is deleterious to their health. It must logically follow that that which would deleteriously affect any great number of women, who are the mothers of succeeding generations, must necessarily affect the public welfare and the public morals. Law is, or ought to be, a progressive science. While the principles of justice are immutable, changing conditions of society and the evolution of employment make a change in the application of principles absolutely necessary to an intelligent administration of government." The case of Ritchie *v.* People, 155 Ill. 98, 40 N. E. 454, 29 L. R. A. 79, 46 Am. St. Rep. 315, is the only decision to which our attention has been called, or which we have been able to find, in which an act of the kind under consideration has been held unconstitutional and void. The case is well considered and ably presented, but is, we think, borne down by the weight of authority and sound reason.

We are of the opinion, therefore, that the act in question is not void because an arbitrary and unwarranted limitation of the right

of contract, but is within the police power of the state. Nor can we concur with counsel that it is an arbitrary and unwarrantable discrimination against persons engaged in the particular businesses or employments specified, because persons in other businesses or callings are not prohibited from requiring or permitting their female employés to work more than 10 hours a day. Nearly all legislation is special in the objects sought to be obtained or in its application, and the general rule is that such legislation does not infringe the constitutional right to equal protection of the laws when all persons subject thereto are treated alike under like circumstances and conditions. *In re* Oberg, 21 Or. 406, 28 Pac. 130, 14 L. R. A. 577; *Ex parte* Northup, 41 Or. 489, 69 Pac. 445. "The discriminations which are open to objection," says Mr. Justice Field, in Soon Hing *v.* Crowley, 113 U. S. 703, 709, 5 Sup. Ct. 730, 28 L. Ed. 1145, "are those where persons engaged in the same business are subjected to different restrictions, or are held entitled to different privileges under the same conditions. It is only then that the discrimination can be said to repair that equal right which all can claim in the enforcement of the laws."

The judgment is affirmed.

36 Be it Remembered that at a regular term of the Supreme Court of the State of Oregon, begun and held at the court room in the City of Salem, on the first Monday, the 5th day of March, 1906, Present: Hon. Robert S. Bean, Chief Justice, Hon. Frank A. Moore, Associate Justice, Hon. Thomas G. Hailey, Associate Justice, and J. J. Murphy, Clerk, the following proceedings were had on Tuesday, the 26th day of June, 1906, the same being the 56th judicial day of said term:

STATE OF OREGON, Respondent,
vs.
CURT MULLER, Appellant.

Appeal from Multnomah County.

This cause having heretofore to-wit: on the 18th day of April, 1906, been argued and submitted by the attorneys for the respective parties above named and by the court then reserved for further consideration and the court having duly considered all the questions presented by the transcript herein and the arguments of the respective attorneys thereon and being now fully advised in the premises finds that there is not error as alleged.

It is therefore considered, ordered and adjudged that the judgment in this cause in the court below rendered be, and the same hereby is in all things affirmed, and that the respondent recover of appellant its costs and disbursements in this court upon the appeal allowed and taxed at $—— to be paid in the first instance by the county of Multnomah.

It is further ordered that the cause be remanded to the said court below for such further proceedings as may be proper and not inconsistent with the opinion herein, and that a judgment be there entered and docketed in accordance herewith.

37 STATE OF OREGON, *County of Marion, ss:*

I, J. J. Murphy, Clerk of the Supreme Court of the State of Oregon, do hereby cer-fy that the foregoing transcript has been by me compared with the original, and that it is a correct transcript therefrom, and the whole of such original as the same appears of record, and in my office and custody.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said Court, at Salem, Oregon, this 26th day of June, 1906.

[SEAL.] J. J. MURPHY, *Clerk.*

38 In the Supreme Court of the State of Oregon.

I, J. J. Murphy, Clerk of the Supreme Court of the State of Oregon, do hereby certify that the foregoing transcript is a full, true and complete copy of the record of said action filed with our said court as the transcript on appeal from the judgment of the circuit court of the state of Oregon for the county of Multnomah from which the said appeal was taken, and is the record upon which said appeal was heard, and the judgment of our supreme court entered thereon the 26th day of June, 1906.

I further certify that the foregoing transcript likewise contains a full, true and correct copy of the judgment of our said supreme court upon the said appeal entered on the said 26th day of June, 1906, and a full, true and correct copy of the opinion of the court filed on said 26th day of June, 1906, and upon which said judgment was entered.

I further certify that the petition for a writ of error in said cause and the endorsement thereon; the bond thereon, its writ of error; the citation and proof of service endorsed thereon, the writ of error, and allowance thereof, all which are attached to the above and foregoing, are the original petition, order, citation and writ of error lodged with and now in my office; and I do certify that the above and foregoing are such original papers so lodged and filed with me; and that the foregoing copy of bond, its approval and endorsements thereon and the assignment of errors and prayer for reversal, is a true and correct copy of such originals lodged and filed with me, and that the foregoing transcript is a true and correct copy of the papers and pleadings filed and of the proceedings had in the above entitled cause in our said court as the same appears of record and on file in my office.

39 I further certify that the cost of the foregoing return to the writ of error is $9.50 and that said amount was paid by Wm. D. Fenton, Esq.

In witness whereof, I have hereunto set my hand and the seal of the Supreme Court of the State of Oregon, at my office in the city of Salem, in said state, this 11th day of September, 1906.

[Seal Supreme Court, State of Oregon.]

J. J. MURPHY,
Clerk of the Supreme Court of the State of Oregon,
By —— ——, *Deputy.*

Endorsed on cover: File No. 20,375. Oregon supreme court. Term No. 107. Curt Muller, plaintiff in error, *vs.* The State of Oregon. Filed September 27, 1906. File No. 20,375.

v. *United States*, 164 U. S. 227; *Insurance Company* v. *Middleport*, 124 U. S. 534; Sheldon on Subrogation, § 240." See also *United States Fidelity Co.* v. *Kenyon*, 204 U. S. 349, 356, 357.

The decree of the Circuit Court of Appeals is

Affirmed.

MULLER, PLAINTIFF IN ERROR, *v.* THE STATE OF OREGON.

ERROR TO THE SUPREME COURT OF THE STATE OF OREGON.

No. 107. Argued January 15, 1908.—Decided February 24, 1908.

The peculiar value of a written constitution is that it places, in unchanging form, limitations upon legislative action, questions relating to which are not settled by even a consensus of public opinion; but when the extent of one of those limitations is affected by a question of fact which is debatable and debated, a widespread and long continued belief concerning that fact is worthy of consideration.

This court takes judicial cognizance of all matters of general knowledge—such as the fact that woman's physical structure and the performance of maternal functions place her at a disadvantage which justifies a difference in legislation in regard to some of the burdens which rest upon her.

As healthy mothers are essential to vigorous offspring, the physical well-being of woman is an object of public interest. The regulation of her hours of labor falls within the police power of the State, and a statute directed exclusively to such regulation does not conflict with the due process or equal protection clauses of the Fourteenth Amendment.

The right of a State to regulate the working hours of women rests on the police power and the right to preserve the health of the women of the State, and is not affected by other laws of the State granting or denying to women the same rights as to contract and the elective franchise as are enjoyed by men.

While the general liberty to contract in regard to one's business and the sale of one's labor is protected by the Fourteenth Amendment that liberty is subject to proper restrictions under the police power of the State.

The statute of Oregon of 1903 providing that no female shall work in certain establishments more than ten hours a day is not unconstitutional so far as respects laundries.

48 Oregon, 252, affirmed.

THE facts, which involve the constitutionality of the statute

of Oregon limiting the hours of employment of women, are stated in the opinion.

Mr. William D. Fenton, with whom *Mr. Henry H. Gilfry* was on the brief, for plaintiff in error:

Women, within the meaning of both the state and Federal constitutions, are persons and citizens, and as such are entitled to all the privileges and immunities therein provided, and are as competent to contract with reference to their labor as are men. *In re Leach*, 134 Indiana, 665; *Minor* v. *Happerset*, 21 Wall. 163; *Lochner* v. *New York*, 198 U. S. 45; *First National Bank* v. *Leonard*, 36 Oregon, 390; II. B. & C. Ann. Codes & Statutes of Oregon, §§ 5244, 5250.

The right to labor or employ labor and to make contracts in respect thereto upon such terms as may be agreed upon, is both a liberty and a property right, included in the constitutional guarantee that no person shall be deprived of life, liberty or property without due process of law. Cooley's Const. Lim. (7th ed.), 889; *Ex parte Kuback*, 85 California, 274; *Seattle* v. *Smyth*, 22 Washington, 327; *Low* v. *Printing Co.*, 41 Nebraska, 127, 146; *Richie* v. *People*, 155 Illinois, 98, 104; *Cleveland* v. *Construction Co.*, 67 Ohio St. 197, 213, 219; *Frorer* v. *People*, 141 Illinois, 171, 181; *Coal Co.* v. *People*, 147 Illinois, 67, 71; *State* v. *Goodwill*, 33 W. Va. 179, 183; *State* v. *Loomis*, 115 Missouri, 307, 316; *In re Morgan*, 26 Colorado, 415; *Lochner* v. *New York*, 198 U. S. 45, 53; *State* v. *Buchanan*, 29 Washington, 603; *State* v. *Muller*, 48 Oregon, 252.

The law operates unequally and unjustly, and does not affect equally and impartially all persons similarly situated, and is therefore class legislation. Cases cited *supra* and *Bailey* v. *The People*, 190 Illinois, 28; *Gulf, Colo. & S. F. Ry. Co.* v. *Ellis*, 165 U. S. 150; *Barbier* v. *Connolly*, 113 U. S. 27; *Soon Hing* v. *Crowley*, 113 U. S. 703; *Ex parte Northrup*, 41 Oregon, 489, 493; *In re Morgan*, 26 Colorado, 415; *In re House Bill 203*, 21 Colorado, 27; *In re Eight Hour Bill*, 21 Colorado, 29.

Section 3 of this act is unconstitutional in this, that it de-

prives the plaintiff in error and his employés of the right to contract and be contracted with, and deprives them of the right of private judgment in matters of individual concern, and in a matter in no wise affecting the general welfare, health and morals of the persons immediately concerned, or of the general public. Cases cited *supra* and *In re Jacobs*, 98 N. Y. 98; *People* v. *Gillson*, 109 N. Y. 389; *Godcharles* v. *Wigeman*, 113 Pa. St. 431, 437; *Ramsey* v. *People*, 142 Illinois, 380.

Conceding that the right to contract is subject to certain limitations growing out of the duty which the individual owes to society, the public, or to government, the power of the legislature to limit such right must rest upon some reasonable basis, and cannot be arbitrarily exercised. *Ritchie* v. *People*, 155 Illinois, 98, 106; *State* v. *Loomis*, 115 Missouri, 307; *Ex parte Kuback*, 85 California, 274; *City of Cleveland* v. *Construction Co.*, 67 Ohio St. 197, 218; *State* v. *Goodwill*, 33 W. Va. 179, 182; *Lochner* v. *New York*, 198 U. S. 48, 57.

The police power, no matter how broad and extensive, is limited and controlled by the provisions of organic law. *In re Jacobs*, 98 N. Y. 98, 108; *People* v. *Gillson*, 109 N. Y. 389; *Civil Rights Cases*, 109 U. S. 11; *Mugler* v. *Kansas*, 123 U. S. 661; Tiedeman on Lim. of Police Powers, §§ 3–86.

Women, equally with men, are endowed with the fundamental and inalienable rights of liberty and property, and these rights cannot be impaired or destroyed by legislative action under the pretense of exercising the police power of the State. Difference in sex alone does not justify the destruction or impairment of these rights. Where, under the exercise of the police power, such rights are sought to be restricted, impaired or denied, it must clearly appear that the public health, safety or welfare is involved. This statute is not declared to be a health measure. The employments forbidden and restricted are not in fact or declared to be, dangerous to health or morals. Cases cited *supra* and *Wenham* v. *State*, 65 Nebraska, 395, 405; Tiedeman on Lim. of Police Power, § 86; 1 Tiedeman, State & Fed. Control of Persons and Property, p. 335–337; *Colon* v. *Lisk*,

153 N. Y. 188, 197; *People* v. *Williams*, 100 N. Y. Supp. 337; *People* v. *Williams*, 101 N. Y. Supp. 562.

Mr. H. B. Adams and *Mr. Louis D. Brandeis* for defendant in error. *Mr. John Manning*, *Mr. A. M. Crawford*, Attorney General of the State of Oregon, and *Mr. B. E. Haney* were on the brief:

The legal rules applicable to this case are few and are well established, namely:

The right to purchase or to sell labor is a part of the "liberty" protected by the Fourteenth Amendment of the Federal Constitution and this right to "liberty" is, however, subject to such reasonable restraint of action as the State may impose in the exercise of the police power for the protection of health, safety, morals and the general welfare. *Lochner* v. *New York*, 198 U. S. 45, 53, 67.

The mere assertion that a statute restricting "liberty" relates, though in a remote degree, to the public health, safety or welfare does not render it valid. The act must have a "real or substantial relation to the protection of the public health and the public safety." *Jacobson* v. *Massachusetts*, 197 U. S. 11, 31. It must have "a more direct relation, as a means to an end, and the end itself must be appropriate and legitimate." *Lochner* v. *New York*, 198 U. S. 45, 56, 57, 61.

While such a law will not be sustained if it has no real or substantial relation to public health, safety or welfare, or that it is an unreasonable, unnecessary and arbitrary interference with the right of the individual to his personal liberty or to enter into those contracts in relation to labor which may seem to him appropriate or necessary for the support of himself and his family, if the end which the legislature seeks to accomplish be one to which its power extends, and if the means employed to that end, although not the wisest or best, are yet not plainly and palpably unauthorized by law, then the court cannot interfere. In other words when the validity of a statute is questioned, the burden of proof, so to speak, is

upon those who assail it. *Lochner* v. *New York*, 198 U. S. 45–68.

The validity of the Oregon statute must therefore be sustained unless the court can find that there is no "fair ground, reasonable in and of itself, to say that there is material danger to the public health (or safety), or to the health (or safety) of the employés (or to the general welfare), if the hours of labor are not curtailed. *Lochner* v. *New York*, 198 U. S. 45, 61.

The Oregon statute was obviously enacted for the purpose of protecting the public health, safety, and welfare. Indeed it declares: that as the female employés in the various establishments are not protected from overwork, an emergency is hereby declared to exist.

The facts of common knowledge of which the court may take judicial notice establish, conclusively, that there is reasonable ground for holding that to permit women in Oregon to work in a "mechanical establishment, or factory, or laundry" more than ten hours in one day is dangerous to the public health, safety, morals or welfare. *Holden* v. *Hardy*, 169 U. S. 366; *Jacobson* v. *Massachusetts*, 197 U. S. 11; *Lochner* v. *New York*, 198 U. S. 481.

Mr. Louis D. Brandeis also submitted a separate brief in support of the constitutionality of the law.[1]

MR. JUSTICE BREWER delivered the opinion of the court.

On February 19, 1903, the legislature of the State of Oregon passed an act (Session Laws, 1903, p. 148), the first section of which is in these words:

"SEC. 1. That no female (shall) be employed in any mechanical establishment, or factory, or laundry in this State more than ten hours during any one day. The hours of work may be so arranged as to permit the employment of females

[1] For an abstract of this brief, see p. 419, post.

at any time so that they shall not work more than ten hours during the twenty-four hours of any one day."

Section 3 made a violation of the provisions of the prior sections a misdemeanor, subject to a fine of not less than $10 nor more than $25. On September 18, 1905, an information was filed in the Circuit Court of the State for the county of Multnomah, charging that the defendant "on the 4th day of September, A. D. 1905, in the county of Multnomah and State of Oregon, then and there being the owner of a laundry, known as the Grand Laundry, in the city of Portland, and the employer of females therein, did then and there unlawfully permit and suffer one Joe Haselbock, he, the said Joe Haselbock, then and there being an overseer, superintendent and agent of said Curt Muller, in the said Grand Laundry, to require a female, to wit, one Mrs. E. Gotcher, to work more than ten hours in said laundry on said 4th day of September, A. D. 1905, contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Oregon."

A trial resulted in a verdict against the defendant, who was sentenced to pay a fine of $10. The Supreme Court of the State affirmed the conviction, *State* v. *Muller*, 48 Oregon, 252, whereupon the case was brought here on writ of error.

The single question is the constitutionality of the statute under which the defendant was convicted so far as it affects the work of a female in a laundry. That it does not conflict with any provisions of the state constitution is settled by the decision of the Supreme Court of the State. The contentions of the defendant, now plaintiff in error, are thus stated in his brief:

"(1) Because the statute attempts to prevent persons, *sui juris*, from making their own contracts, and thus violates the provisions of the Fourteenth Amendment, as follows:

" 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.'

"(2) Because the statute does not apply equally to all persons similarly situated, and is class legislation.

"(3) The statute is not a valid exercise of the police power. The kinds of work proscribed are not unlawful, nor are they declared to be immoral or dangerous to the public health; nor can such a law be sustained on the ground that it is designed to protect women on account of their sex. There is no necessary or reasonable connection between the limitation prescribed by the act and the public health, safety or welfare."

It is the law of Oregon that women, whether married or single, have equal contractual and personal rights with men. As said by Chief Justice Wolverton, in *First National Bank* v. *Leonard*, 36 Oregon, 390, 396, after a review of the various statutes of the State upon the subject:

"We may therefore say with perfect confidence that, with these three sections upon the statute book, the wife can deal, not only with her separate property, acquired from whatever source, in the same manner as her husband can with property belonging to him, but that she may make contracts and incur liabilities, and the same may be enforced against her, the same as if she were a *femme sole*. There is now no residuum of civil disability resting upon her which is not recognized as existing against the husband. The current runs steadily and strongly in the direction of the emancipation of the wife, and the policy, as disclosed by all recent legislation upon the subject in this State, is to place her upon the same footing as if she were a *femme sole*, not only with respect to her separate property, but as it affects her right to make binding contracts; and the most natural corollary to the situation is that the remedies for the enforcement of liabilities incurred are made co-extensive and co-equal with such enlarged conditions."

It thus appears that, putting to one side the elective franchise, in the matter of personal and contractual rights they stand on the same plane as the other sex. Their rights in these respects can no more be infringed than the equal rights of their brothers. We held in *Lochner* v. *New York*, 198 U. S. 45, that

a law providing that no laborer shall be required or permitted to work in a bakery more than sixty hours in a week or ten hours in a day was not as to men a legitimate exercise of the police power of the State, but an unreasonable, unnecessary and arbitrary interference with the right and liberty of the individual to contract in relation to his labor, and as such was in conflict with, and void under, the Federal Constitution. That decision is invoked by plaintiff in error as decisive of the question before us. But this assumes that the difference between the sexes does not justify a different rule respecting a restriction of the hours of labor.

In patent cases counsel are apt to open the argument with a discussion of the state of the art. It may not be amiss, in the present case, before examining the constitutional question, to notice the course of legislation as well as expressions of opinion from other than judicial sources. In the brief filed by Mr. Louis D. Brandeis, for the defendant in error, is a very copious collection of all these matters, an epitome of which is found in the margin.[1]

[1] The following legislation of the States impose restrictions in some form or another upon the hours of labor that may be required of women: Massachusetts: chap. 221, 1874, Rev. Laws 1902, chap. 106, § 24; Rhode Island: 1885, Acts and Resolves 1902, chap. 994, p. 73; Louisiana: § 4, Act 43, p. 55, Laws of 1886, Rev. Laws 1904, vol. 1, p. 989; Connecticut: 1887, Gen. Stat. revision 1902, § 4691; Maine: chap. 139, 1887, Rev. Stat. 1903, chap. 40, § 48, p. 401; New Hampshire: 1887, Laws 1907, chap. 94, p. 95; Maryland: chap. 455, 1888, Pub. Gen. Laws 1903, art. 100, § 1; Virginia: p. 150, 1889–1890, Code 1904, tit. 51A, chap. 178A, § 3657*b*; Pennsylvania: No. 26, p. 30, 1897, Laws 1905, No. 226, p. 352; New York: Laws 1899, § 1, chap. 560, p. 752, Laws 1907, chap. 507, § 77, subdiv. 3, p. 1078; Nebraska: 1899, Comp. Stat. 1905, § 7955, p. 1986; Washington: Stat. 1901, chap. 68, § 1, p. 118: Colorado: Acts 1903, chap. 138, § 3, p. 310; New Jersey: 1892, Gen. Stat. 1895, p. 2350, §§ 66, 67; Oklahoma: 1890, Rev. Stat. 1903, chap. 25, art. 58, § 729; North Dakota: 1877, Rev. Code 1905, § 9440; South Dakota: 1877, Rev. Code (Penal Code, § 764), p. 1185; Wisconsin: § 1, chap. 83, Laws of 1867, Code 1898, § 1728; South Carolina: Acts 1907, No. 233, p. 487.

In foreign legislation Mr. Brandeis calls attention to these statutes: Great Britain: Factories Act of 1844, chap. 15, pp. 161, 171; Factory and Workshop Act of 1901, chap. 22, pp. 60, 71; and see 1 Edw. VII, chap. 22. France, 1848; Act Nov. 2, 1892, and March 30, 1900. Switzerland, Canton

While there have been but few decisions bearing directly upon the question, the following sustain the constitutionality of such legislation: *Commonwealth* v. *Hamilton Mfg. Co.*, 120 Massachusetts, 383; *Wenham* v. *State*, 65 Nebraska, 394, 400, 406; *State* v. *Buchanan*, 29 Washington, 602; *Commonwealth* v. *Beatty*, 15 Pa. Sup. Ct. 5, 17; against them is the case of *Ritchie* v. *People*, 155 Illinois, 98.

The legislation and opinions referred to in the margin may not be, technically speaking, authorities, and in them is little or no discussion of the constitutional question presented to us for determination, yet they are significant of a widespread belief that woman's physical structure, and the functions she performs in consequence thereof, justify special legislation restricting or qualifying the conditions under which she should be permitted to toil. Constitutional questions, it is true, are not settled by even a consensus of present public opinion, for it is the peculiar value of a written constitution that it places in unchanging form limitations upon legislative action, and thus gives a permanence and stability to popular government which otherwise would be lacking. At the same time, when a question of fact is debated and debatable, and the extent to

of Glarus, 1848; Federal Law 1877, art. 2, § 1. Austria, 1855; Acts 1897, art. 96a, §§ 1-3. Holland, 1889; art. 5, § 1. Italy, June 19, 1902, art. 7. Germany, Laws 1891.

Then follow extracts from over ninety reports of committees, bureaus of statistics, commissioners of hygiene, inspectors of factories, both in this country and in Europe, to the effect that long hours of labor are dangerous for women, primarily because of their special physical organization. The matter is discussed in these reports in different aspects, but all agree as to the danger. It would of course take too much space to give these reports in detail. Following them are extracts from similar reports discussing the general benefits of short hours from an economic aspect of the question. In many of these reports individual instances are given tending to support the general conclusion. Perhaps the general scope and character of all these reports may be summed up in what an inspector for Hanover says: "The reasons for the reduction of the working day to ten hours—(a) the physical organization of women, (b) her maternal functions, (c) the rearing and education of the children, (d) the maintenance of the home—are all so important and so far reaching that the need for such reduction need hardly be discussed."

which a special constitutional limitation goes is affected by the truth in respect to that fact, a widespread and long continued belief concerning it is worthy of consideration. We take judicial cognizance of all matters of general knowledge.

It is undoubtedly true, as more than once declared by this court, that the general right to contract in relation to one's business is part of the liberty of the individual, protected by the Fourteenth Amendment to the Federal Constitution; yet it is equally well settled that this liberty is not absolute and extending to all contracts, and that a State may, without conflicting with the provisions of the Fourteenth Amendment, restrict in many respects the individual's power of contract. Without stopping to discuss at length the extent to which a State may act in this respect, we refer to the following cases in which the question has been considered: *Allgeyer* v. *Louisiana*, 165 U. S. 578; *Holden* v. *Hardy*, 169 U. S. 366; *Lochner* v. *New York*, 198 U. S. 45.

That woman's physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence is obvious. This is especially true when the burdens of motherhood are upon her. Even when they are not, by abundant testimony of the medical fraternity continuance for a long time on her feet at work, repeating this from day to day, tends to injurious effects upon the body, and as healthy mothers are essential to vigorous offspring, the physical well-being of woman becomes an object of public interest and care in order to preserve the strength and vigor of the race.

Still again, history discloses the fact that woman has always been dependent upon man. He established his control at the outset by superior physical strength, and this control in various forms, with diminishing intensity, has continued to the present. As minors, though not to the same extent, she has been looked upon in the courts as needing especial care that her rights may be preserved. Education was long denied her, and while now the doors of the school room are opened and her opportunities for acquiring knowledge are great, yet even with that and the

consequent increase of capacity for business affairs it is still true that in the struggle for subsistence she is not an equal competitor with her brother. Though limitations upon personal and contractual rights may be removed by legislation, there is that in her disposition and habits of life which will operate against a full assertion of those rights. She will still be where some legislation to protect her seems necessary to secure a real equality of right. Doubtless there are individual exceptions, and there are many respects in which she has an advantage over him; but looking at it from the viewpoint of the effort to maintain an independent position in life, she is not upon an equality. Differentiated by these matters from the other sex, she is properly placed in a class by herself, and legislation designed for her protection may be sustained, even when like legislation is not necessary for men and could not be sustained. It is impossible to close one's eyes to the fact that she still looks to her brother and depends upon him. Even though all restrictions on political, personal and contractual rights were taken away, and she stood, so far as statutes are concerned, upon an absolutely equal plane with him, it would still be true that she is so constituted that she will rest upon and look to him for protection; that her physical structure and a proper discharge of her maternal functions—having in view not merely her own health, but the well-being of the race—justify legislation to protect her from the greed as well as the passion of man. The limitations which this statute places upon her contractual powers, upon her right to agree with her employer as to the time she shall labor, are not imposed solely for her benefit, but also largely for the benefit of all. Many words cannot make this plainer. The two sexes differ in structure of body, in the functions to be performed by each, in the amount of physical strength, in the capacity for long-continued labor, particularly when done standing, the influence of vigorous health upon the future well-being of the race, the self-reliance which enables one to assert full rights, and in the capacity to maintain the struggle for subsistence. This difference

justifies a difference in legislation and upholds that which is designed to compensate for some of the burdens which rest upon her.

We have not referred in this discussion to the denial of the elective franchise in the State of Oregon, for while it may disclose a lack of political equality in all things with her brother, that is not of itself decisive. The reason runs deeper, and rests in the inherent difference between the two sexes, and in the different functions in life which they perform.

For these reasons, and without questioning in any respect the decision in *Lochner* v. *New York*, we are of the opinion that it cannot be adjudged that the act in question is in conflict with the Federal Constitution, so far as it respects the work of a female in a laundry, and the judgment of the Supreme Court of Oregon is

Affirmed.

BIEN v. ROBINSON, RECEIVER OF HAIGHT & FREESE COMPANY.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 135. Submitted January 27, 1908.—Decided February 24, 1908.

Where the jurisdiction of the Circuit Court is questioned merely in respect to its general authority as a judicial tribunal to entertain a summary proceeding to compel repayment of assets wrongfully withheld from a receiver appointed by it, its power as a court of the United States as such is not questioned and the case cannot be certified directly to this court under the jurisdiction clause of § 5 of the Judiciary Act of 1891.

Where no sufficient reason is stated warranting this court in deciding that the Circuit Court acted without jurisdiction, this court will assume that the Circuit Court acted rightfully in appointing receivers and issuing an injunction against disposition of assets.

The delivery of a check is not the equivalent of payment of the money ordered by the check to be paid, and in this case, the check not having been