IN THE

SUPREME COURT OF ILLINOIS.

SOUTHERN GRAND DIVISION.

MAY TERM, A. D. 1894.

William E. Ritchie, *Plaintiff in Error,* *vs.* **The People of the State of Illinois,** *Defendant in Error.*	Writ of Error from the Criminal Court of Cook County.

And 8 other cases, Nos. 4 to 11 inclusive.

BRIEF AND ARGUMENT OF DEFENDANT IN ERROR.

STATEMENT.

The plaintiff in error was fined by the magistrate for violating the fifth section of this law, which provides that no female shall be employed in any factory or workshop more than eight hours in any one day. The plaintiff in error appealed the case to the Criminal court of Cook county, and upon trial in that court was convicted and fined, and the case was taken by him to this court by writ of error. It was proved and is admitted by all parties that the plaintiff in error violated section 5 of the law by employing a female in a factory more than eight hours in a day, and the sole defense is the alleged unconstitutionality of the law.

Brief of Points and Authorities of Defendant in Error.

I.

The law is an exercise of the police power of the state.

The police power of the state is "that inherent and plenary power in the state which enables it to prohibit all things hurtful to the comfort, safety and welfare of society."

Am. & Eng. Enc. of Law, Vol. 18, 735.
Lake View v. *Rose Hill Cem. Co.* 70 Ill., 191.
Cole v. *Hall*, 103 Ill., 30.
Fisher v. *People*, 103 Ill., 101.

That the employment of women in factories is a subject of such police power is well recognized in

Cooley on Const. Lim., 745.
Parker & Worthington on Pub. Health & Safety, Sec. 260.
Am. & Eng. Enc. of Law, Vol. 18, 753.
Commonwealth v. *Hamilton Mfg. Co.*, 120 Mass., 385.
Ex Parte C. J. Kubach, 85 Cal., 274.
Territory v. *Ah Lim*, 1 Wash. St., 156.
Munn et al v. *People*, 69 Ill., 80, 92.
People v. *Belletti*, 57 N. W. Rep. (Mich)., 1094.

And by the fact that statutes similar to the one in question have been enacted in a large number of the states of the Union.

II.

The law does not "deprive" either employer or employe of "life, liberty or property without due process "of law," and is, therefore, not in contravention, of either the State or Federal constitutions. The legislature is the judge of the necessity of such laws under the police power.

People v. Bellett, 57 N. W. Rep. (Mich.), 1,094.

Barbier v. *Connelly*, 113 U. S., 27, 31.

People v. *Ewer*, 19 N. Y. S., 933.

Soon Hingo v. *Crowley*, 113 U. S., 703, 709.

Powell v. *Penna*, 127 U. S., 678.

Butchers' Union Slaughter House Co. v. *Crescent City Live Stock Co.*, 111 U. S., 746, 757.

Dent v. *West Va.*, 129 U. S., 114.

Mo. Pac. R. R. v. *McKay*; 127 U. S., 205.

Munn et al. v. *People*, 69 Ill.. 80, 92.

Kennard v. *Louisiana*, 92 U. S., 480.

In re Ah Fong, 3 Sawyers, 144.

Werts v. *Hoagland*, 114 U. S., 606.

Nashville & Chattanooga R. R. Co. v. *Alabama*, 128 U. S.

Commonwealth v. *Hamilton Mfg. Co.*, 120 Mass., 385.

Parker & Worthington on Public Health and Safety, Sec. 260.

Cooley on Const. Lim., 745.

Minneapolis & St. Louis R. R. v. *Herrick*, 127 U. S., 210.
Mo. Pac. R. R. Co. v. *Humes*, 115 U. S., 512.
Presser v. *Illinois*, 116 U. S., 252.
Richmond, Fred. & Potomac R. R. Co. v. *City of Richmond*, 96 U. S. 521.
Powell v. *Commonwealth*, 114 Pa. St., 294, 295.
Braceville Coal Co. v. *People*, 147 Ill., 66.
Frorer v. *People*, 141 Ill., 171.
Ramsey v. *People*, 142 Ill., 380.
Millett v. *People*, 117 Ill., 294.
Ex Parte, C. J. Kuback, 85 Cal., 274.

III.

The provision restricting the employment of women is germane to the subject of the bill, and sufficiently expressed in the title.

O'Leary v. *County of Cook*, 28 Ill., 534, 536.
Cole v. *John Hall*, 103 Ill., 30.
Larned v. *Tiernan*, 110 Ill., 173, 176.
Ex Parte Liddell, 29 P. R., 251; 93 Cal., 633.
State v. *Kingsley*, 18 S. W. (Mo. sup), 994.
State v. *Hannub* (Ala.), 10 So., 752.
Johnson v. *People*, 83 Ill., 431.
Sun Mut. Ins. Co. v. *Mayor*, 8 N. Y., 239.

Prescott v. *City of Chicago*, 60 Ill., 121.
Reg v. *Payne*, L. R. 1 C. C., 27.
Kurtz v. *People*, 33 Mich., 279.
Sutherland Stat. Con., Sec. 88, 278.
Johnson v. *People*, 83 Ill., 436.
Foster v. *Blount*, 18 Ala., 687.
Ellis v. *Murray*, 28 Miss., 129.
Chapman v. *Woodruff*, 34 Ga., 98.

IV.

The presumption is in favor of constitutionality.

In re Walsh, 17 Ill., 161.
Bunn v. *People*, 45 Ill., 397.
Lane v. *Dorman*, 3 Scam., 238.
Wulff v. *Aldrich*, 124 Ill., 591.
Bureau of County Supervisors v. *R. R. Co.*, 44 Ill., 229.
Hawthorne v. *People*, 109 Ill., 302.
People v. *Morgan*, 90 Ill., 558.
People v. *Hazlewood*, 116 Ill., 319.
Nelson v. *People*, 33 Ill., 390.
Quincy v. *Bull*, 106 Ill., 337.
People v. *Hazlewood*, 116 Ill., 319.
Hinze v. *People*, 92 Ill., 406.

ARGUMENT.

I.

The section of the law in question here which provides that women shall not be employed in factories more than eight hours in one day is not unconstitutional in that it regulates certain industries and discriminates between men and women. It is a sanitary measure for the protection of health and morals, and comes under the police power of the state.

"The police power of the state is that inherent and plenary power which enables the state to prohibit all things hurtful to the comfort, safety and health of society, and may be termed 'The law of overruling necessity.'"

Am. & Eng. Enc. of Law, Vol. 18, 753.

Town of Lake View v. *Rosehill Cemetery*, 70 Ill., 191.

Fisher v. *People*, 103 Ill., 101.

Cole v. *Hall*, 103 Ill., 30.

COOLEY in his work on *Constitutional Limitations*, page 745, after reviewing the subject of laws interfering with the liberty of contract, says:

"But here, as elsewhere, it is proper to recognize distinctions that exist in the nature of things, and under some circumstances to inhibit employments to some one class, while leaving them open to others. Some employments, for example, may be admissible for males and improper for females, and regulations recognizing the impropriety and forbidding women to engage in them would be open to no reasonable objection; the same is true of all children, whose employment in mines and factories is commonly and ought always to be regulated."

Parker and Worthington on Public Health and Safety. Sec. 260, say:

"The state may forbid certain classes of persons from being employed in occupations which their age, sex or health renders unsuitable for them, as women and young children are sometimes forbidden being employed in mines and certain kinds of factories. And statutes are perfectly valid which provide that women or minors shall not be employed in laboring, by any person in any manufacturing establishment, more than a certain number of hours in any one day, with reasonable exceptions. Of such laws it has been said that they do not violate any constitutional rights. They do not prohibit any person from working as many hours of the day as he chooses. They merely provide that in an employment which the Legislature deems to some extent detrimental to health, no person shall be engaged above more than the prescribed number of hours per day. There can be no doubt that such legislation may be sustained as proper health regulation."

See Am. and Eng. Enc. of Law, Vol. 18, 753

In this state, in *Cole* v. *Hull*, *supra*, the court, in sustaining a license imposed on all dogs, the proceeds to go to persons whose sheep had been bitten by *any* dogs, said:

"Everything hurtful to the public interest is subject to the police power of the state, and may be brought within its restraining or prohibitory influence. * * * It is known that dogs often impart a most fearful disease to persons injured by them and that they are often most destructive to domestic animals, such as sheep, and the state may well provide such regulations for the keeping of them, as will insure safety, and may, to effectuate that purpose, impose upon the owners or keepers either a license or penalty. There is nothing in the constitution that forbids it."

A law like the one in question, and under a constitution substantially like ours, has been in operation in Massachusetts since 1874, and has been fully sustained by the courts of that state.

In *Commonwealth* v. *Hamilton Manufatturing Company*, 120 Mass., 385, the statute provided:

"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 ten hours in any one day," except in certain cases, and in no case shall the hours exceed sixty per week.

Mary Shirley, a woman over twenty-one years of age, was employed for more than the stated ten hours.

The employer was convicted.

The Supreme court, affirming the judgment, said:

"The learned counsel for the defendant, in his argument, did not refer to any particular clause of the constitution to which this provision is repugnant. The general proposition was that the defendant's act of incorporation (Stat. 1284; Ch. 44), is a contract with the commonwealth and that this act impairs that contract. The contract, it is claimed, is an implied one, that is, an act of incorporation to manufacture cotton and woolen goods, by necessary implication confers upon the corporation the legal capacity to contract for all the labor needful for this work. If this is conceded to the fullest extent, it is only a contract with the corporation that it may contract for all lawful labor. There is no contract that such labor, as was then forbidden by law, might be employed by the defendant, or that the general court would not perform its constitutional duty of making such wholesome laws as the public welfare should demand. The law, therefore, violates no contract with the defendant and the only other question is whether it is in violation of any right, reserved, under the constitution, to the individual citizen.

Upon this question there seems to be no room for debate. It does not forbid any person, firm or corporation from employing as many persons or as much labor as such person, firm or corporation may desire; nor does it forbid any person to work as many hours a day or week as he chooses, it merely provides that in any employment which the legislature has evidently deemed to some extent dangerous to health, no person shall be engaged in labor more than ten hours a day and sixty 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.

It is also said that the law violates the right of Mary Shirley to labor in accordance with her own judgment as to the number of hours she may work. The obvious and conclusive reply to this is, that the law does not limit her right to labor as many hours per day or per week as she may desire. It merely prohibits her being employed continuously in the same service more than a certain number of hours per day or week. Which is so clearly within the power of the legislature that it becomes unnecessary to inquire whether it is a matter of grievance of which this defendant has the right to complain."

The same law has been in operation in New York for a number of years, and has been sustained by the courts of that state, upon the authority of the Massachusetts Supreme court, no case under the New York law having been taken to the Supreme court of that state so far as we have been able to find.

In California, in *ex parte C. J. Kuback*, 85 Cal., 274.

"An ordinance of the city of Los Angeles, making it a misdemeanor for any contractor to employ any person to work more than eight hours a day, or to employ Chinese labor, was declared unconstitutional as a direct infringement of the right of such person to make and enforce their contracts."

The court, however, said:

"It is simply an attempt to prevent certain parties from employing others in a lawful business and paying them for their services, and is a direct infringement of the right of such persons to make and enforce contracts. If the services to be performed were unlawful or against public policy, or the employment were such as might be unfit for certain persons, as for example *females* and *infants*, the ordinance might be upheld as a sanitary or police regulation."

The same principle has very recently been laid down by the Supreme court of Michigan in *People* v. *Bellett*, 57 N. W. Rep., 1094, from the opinion in which we quote further along.

In *Territory* v. *Ah Lim*, 1 Wash. St., 156.

It was held that a statute making it a misdemeanor to smoke or inhale opium was not unconstitutional as being in violation of the right to liberty in the pursuit of happiness. Although an act which should discriminate against any class of persons or against any persons of any particular sect, race, or nation, as for instance, against Chinese would be.

In *Munn et al.* v. *The People*, *69 Illinois*, *80*, *92*, a case in which the constitutionality of a law regulating warehouses and the inspectors of grain was attacked and the law upheld, the court said: "The use of money is a "matter of the greatest public concern, and that it may "be regulated by law has never been positively denied. "Kindred subjects, such as public warehouses, public "mills, the weight and price of bread, and public ferries, "are so connected with the public welfare that a govern- "ment destitute of the power to regulate them—to im- "pose restrictions upon them, as may be deemed neces-

"sary to promote the greatest good of the greatest num-
"ber, would be but the shadow of a government, whose
"blazonry might well be the 'cap and bells' and a 'point-
"less spear.'"

It will be seen that the police power is exercised in the protection of woman on account of her sex and also of her more delicate physique. This distinction between the physical strength and power of endurance of men and women has always been observed, and women protected on account thereof in the law of this state.

The act passed by the Illinois legislature, in 1872, in response to the demand of women—and which opens the occupations to women, expressly excepts military duty, services on juries, and work on the streets and roads. This law of 1872 has been satisfactory to the inhabitants of the state, both male and female, and has been obeyed, for over twenty years; and no court has questioned the power of the legislature pass it. And yet it distinguishes between men and women, and is based wholly on the distinction in sex and difference in physical endurance, just as in the case at bar; and in 1879 our legislature passed, under the police power, "an act providing for the health and safety of per-
"sons employed in coal mines," in which the employment of "females, of any age," in coal mines is prohibited. This act is based on the same distinction between men and women, and recognizes and enforces the police power of the state in making that distinction. It has been acquiesced in for fifteen years; and without it the horrible and disgraceful scenes which shocked the world in the English coal mines thirty years ago would be possible in Illinois to-day. We cite these laws to show how

thoroughly this exercise of the police power of the state in distinguishing between men and women in labor and in the regulation of the employment of women, and based upon the natural and invariable distinction between the sexes, have become a part, not only of our laws, but of our civilization. If the law in question in the case at bar is unconstitutional because it distinguishes between men and women then of course the law which prevents employment of women in the mines of this state, and the laws which exempt and practically prevent women from military duty and from service on juries and from working on the streets and roads are also unconstitutional.

Indeed the constitutionality of laws regulating the employment of women in factories, and their right to a place among the police laws of the American states and European nations has very generally been conceded. To use the language of Judge Cooley, the "distinction (be-"tween man and woman) which exists in the nature of "things has been recognized." The employment of women in factories is limited by law in New York, Michigan, Minnesota, Massachusetts, Connecticut, Rhode Island, Pennsylvania and New Jersey, in Australia, in England, in France, and we believe other European countries, in all of which the hours during which men may labor are left unrestricted. The prohibition of the employment of women in mines is almost universal. The law of New York in regard to the employment of females in factories is similar to that of Massachusetts, and the wisdom and reasoning of the decision of the Massachusetts court in the case of *Commonwealth* v. *Hamilton Manufacturing Company* has been so fully recognized that no attempt has been made in New York to test the

validity of their law beyond the lower courts (where it has been sustained), though it has for many years been upon the statute books. Indeed no law of the nature of the one under discussion has as yet been overthrown.

A glance at a few of the reports of labor bureaus and other public departments will show the philosophy underlying these laws and the necessity for them. These reports are almost all founded upon medical investigations, and will show conclusively that the injury to a girl or a woman in her sexual functions, the breaking down not only of her own health and the shortening of her own life and productive powers, but the injury to society in the form of a physically and often mentally degenerate offspring, for whom society must afterwards care, resulting from such employment, are dangers which the state in the exercise of its police powers should carefully guard against.

In the report of the Bureau of Labor of the State of Massachusetts, of 1875, issued by Carroll D. Wright, the head of the department, the injurious effects of work in factories on females is strikingly illustrated.

See Report, pages 67 to 112.

On page 81 of the report we find these words, in regard to the manufacture of textile fabrics:

"While, with exceptions, it may be fairly consid-
" ered in the average as not an extremely laborious
" employment, either in this country or abroad, for the
" younger portion of the female operatives employed
" therein, in some of its processes in particular, there is a
" degree of toil disproportionate to the condition and
" capacity of those engaged, while the effects of the unre-

" mitting and monotonous character of most of the work,
" can but stand in a direct causative relation to the dis-
" turbances and depressions we have pointed out as
" especially deplorable. It will further be seen that in this
" branch of industry in particular the special influences that
" operate for the production and aggravation of pulmonary
" complaints, exists to a degree that obtains in no other.
" Reviewing the unremitting and monotonous character
" of factory work, as productive of lessened vigor and
" vitality, Messrs. Bridges and Holmes (Report to
" British Board of Local Government, 1874) state that
" ' Light though factory labor, in almost all its depart-
" ' ments, unquestionably is, additional leisure of six
" ' hours per week would tend to increase the vitality
" ' and vigor of the women engaged in it.' We have
" already referred more than once to the unremitting and
" monotonous character of all labor at machines driven by
" steam. If the day's work of a house maid, or even a
" char woman, be closely looked at and compared with
" that of an ordinary mill hand in a card room or spin-
" ning room, it will be seen that the former, though mak-
" ing greater muscular efforts than are ever exacted from
" the latter, is yet continually changing both her occupa-
" tion and her posture, and has very frequent intervals of
" rest. Work at a machine has inevitably a tread-mill
" character about it. Each step may be easy, but it
" must be performed at the exact moment under pain of
" consequences. In hand work and house work there is
" a certain freedom of doing or leaving undone. Mill
" work must be done as if by clock-work."

On page 99 of the report are given the replies of a number of physicians in regard to sewing machine labor

in factories. The answer of one, which is as follows, is characteristic of them all: "Quite a number of cases, in "which pain and lameness in the back and thighs, dys- "pepsia, leucorrhea, vaginitis, and menorrhagia existed, "I have attributed to their use."

These remarks will apply to all factories where foot power is used, and in this state such are in the vast majority.

On page 83 attention is called to the injury to the nerves and health by the constant tension of factory work, the machine-like method of toil, and the accompanying tremendous strain on the female system. Especially does he note this in regard to piece workers (to which class the large majority of factory operators in this state belong), on account of the excitement and "spurring" incident to such employment, where, by the very fact that compensation is dependent upon the amount of work performed, great exertion is stimulated.

The whole report is worthy of perusal, and shows, beyond a question, that the effect on the sexual functions of woman of incessant labor in factories is extremely harmful.

In the report of Messrs. Bridges and Holmes to the British Board of Local Government, in 1874, the opinions of numerous authorities are given. These all tend in the same direction, and a reduction of the hours of labor of women is recommended.

The latest report of the Royal Commission on Labor of England, (see Report Royal Commission on Labor, 1893), after reviewing the whole subject, states that it will not recommend a *universal* eight hours labor day, but does

The fourth annual report of the Commissioners of Labor of the United States (1888) gives the results of an examination of the employment of women in factories in twenty-two of the largest cities of the country, covering a period of four years. It shows that the average age of commencing work in factories for women is fifteen years and four months; that out of a total of 17,427 taken, 15,393 began work between the ages of 11 and 20, only 773 between 21 and 30, 101 between 31 and 40, and only 176 after the age of 40. This shows conclusively that the bulk, we might say practically all, of the work done by females in factories is done just at the ages when such work is most injurious to the female organs and female functions. The same report shows an alarming decrease in the health of the factory operators after four years of work, as measured at the beginning and end of the four years of the investigation. The reports on the city of Chicago give substatially the same results.

See also Second Annual Report of Massachusetts Board of Health, where the death rate in cotton factories is shown to be alarmingly high.

The injurious effect of such employments on woman as a mother and child-bearer are too well known to need further mention.

These laws, for the protection of women in labor, are the result of progress, as are those opening occupations to women. They are the remedies of civilization for abuses which have come down to us from barbarism. You have not to go back a century to find the stage of society where women were treated as if there were no physical difference between them and men; where they worked side by side, in attempted equality, not only with

men, but also with cattle, in the more laborious and even brutal occupations; and you can consult history for the physical, intellectual and moral results of this attempt to reverse a natural law.

II.

The law is not in contravention to the provision of the constitution of the state, which provides that no person "shall be deprived of life, liberty or property, without due process of law," nor to the provision of the constitution of the United States to the same effect. Nor does it deny to any person the equal protection of the law. Due process of law and the equal protection of the laws is defined in the following cases:

Kennard v. *Louisiana*, 92 U. S., 480.
In re Ah Fong, 3 Sawyer, 144.
Wurts v. *Hoagland*, 114 U. S., 606.

It has been decided that there was no deprivation of life, liberty or property without due process of law, in the following cases:

Regulations requiring the examination of physicians and regulating their practice.

Dent v. *West Virginia*, 129 U. S., 114.

Requiring the examination of locomotive engineers.

Nashville & Chattanooga R. R. Co. v. *Alabama*, 128 U. S. (1888).

Fixing the liability of railroads for injury to their employes.

Mo. Pac. R. R. v. *Mackay*, 127 U. S., 205 (1887).

Minneapolis & St. Louis R. R. v. *Herrick*, 127 U. S., 210 (1887).

Requiring the fencing of railroad tracks.

Mo. Pac. R'y. Co. v. *Humes*, 115 U. S., 512 (1885).

The statute of Illinois forbiding the assembling of citizens of the United States to drill or parade, except as therein provided, is not within the prohibition of the 14th amendment.

Presser v. *Illinois*, 116 U. S., 252 (1885).

This whole matter has been very thoroughly discussed in a recent decision handed down by the Supreme Court of Michigan last February.

In *People* v. *Michael Bellet*, 57 N. W. Rep. (Mich.), 1,094. An act prohibiting barbers from plying their vocation on Sunday was declared constitutional, and not objectionable in that it deprived persons of property without due process of law. The court says:

"It is conceded that the state, in the exercise of its police powers, has the right to enact Sunday laws, and that it also has the right to provide for the regulation and restriction of those engaged in an employment, which in and of itself may prove harmful to the community, such as the liquor traffic. But it is contended that the business of conducting a barber shop is not of this class, and that it is in the nature of class legislation to prohibit this business, under more severe penalties than those provided for the conduct of other legitimate business on Sunday. We do not deem the act in question open to such objection. By class legislation we understand such legislation as denies rights to one which are accorded to others, or inflicts upon one individual a more severe penalty than is imposed upon another *in like case* offending. In Cooley

on Constitutional Limitations, page 482, it is said: 'Laws public in their objects may, unless express constitutional provision forbids, be either general or local in their application; they may embrace many subjects or one, and they may extend to all citizens, or be confined to particular classes, as minors or married women, bankers or traders, and the like. * * * The legislature may also deem it desirable to prescribe peculiar rules for the several occupations and to establish distinctions in the rights, obligations, duties and capacities of citizens. The business of common carriers, for instance, or of bankers, may require special statutory regulations for the general benefit, and it may be matter of public policy to give laborers in one business a specific lien for their wages, when it would be impracticable or impolitic to do the same for persons engaged in some other employments. If the laws be otherwise unobjectionable, all that can be required in these cases is that they be general in their application to the class or locality to which they apply; and they are then public in character, and of their propriety and policy the legislature must judge.' In *Liberman v. The State*, 26 Ne., 464, an ordinance of the city prohibited the keeping open of any business house, bank, store, saloon or office, excepting telegraph offices, express offices, hotels, photograph galleries, railroad offices, telephone offices, hotels, restaurants, cigar stores, eating houses, ice cream parlors, drug stores, etc. It was contended that the ordinance was open to the objection that it did not operate upon all citizens alike; that the respondent was compelled to close his place of business on Sunday, while drug stores, tobacco houses and others in competition in business were not required to do so. But the court held the act valid. In the present case it may have been the judgment of the legislature that those engaged in the particular calling were more likely to offend against the law of the state providing for Sunday closing than those engaged in other callings. If so, it became a question of policy as to whether a more severe penalty should not be provided for engaging in that particular business on Sunday than that inflicted upon others who refuse to cease from their labors one day in seven."

Richmond, Fredericksburg & Potomac R. R. Co. v. *City of Richmond*, 96 U. S. 521 (1877).

"Right of a city to prohibit the use of engines on streets." In this case the court lays down the principle in these words: "All property within the city is subject to the legitimate control of the government unless protected by 'contract rights' which is not the case here. Appropriate regulation of the use of property is not 'taking' property within the meaning of the constitutional prohibition."

In *Barber* v. *Connelly*, 113 U. S., 27 (1884). *Soon Hingo* v. *Crowley*, 113 U. S., 703 (1884). *Dent* v. *West Virginia*, 129 U. S., 114 (1888).

"An ordinance prohibiting the hours when laundries shall be closed and prohibiting work therein on Sunday, as a police regulation wholly within the power of state legislation and the Federal tribunals cannot supervise such regulations. They do not deprive persons of property without due process of law, nor deny them the equal protection of the law."

In the case of *Powell* v. *Pennsylvania*, 127 U. S., 678 (1887), the court held that: "The fourteenth amendment to the Constitution was not designed to interfere with the exercise of the police power by the state for the protection of health, the prevention of fraud and the preservation of the public morals." The statue of Pennsylvania of May 21, 1885: "For the protection of the public health and to prevent adulteration of dairy products and fraud in the sale thereof," which *absolutely prohibited* the manufacture or sale of oleomargine or any such articles, neither denies to persons within the jurisdiction of the state the equal protection of the laws, nor deprives persons of their property without that compensation required by law; and is not repugnant in these respects to the fourteenth amendment to the Constitution of the United States.

Powell v. *Pennsylvania*, 127 U. S., 678 (1887).

a public laundry within the prescribed limits, between the hours of ten in the evening and six o'clock in the morning, thereby violating the provisions of section 4 of the said ordinance. The prohibition against labor on Sunday was not involved.

After considering and deciding the first, second, third and fifth points in accordance with the opinion of the court in the case of *Barbier* v. *Connelly*, the court, in considering the fourth point, "*as to whether said section is void on the ground that it deprives a man of the right to labor*," says, at page 709:

"There is no force in the objection that an unwarrantable discrimination is made against persons engaged in the laundry business because persons in other kinds of business are not required to cease from their labor during the same hours at night. There may be no risks attending the business of others, certainly not so great as where fires are constantly required to carry them on. *The specific regulations for one kind of business, which may be necessary for the protection of the public*, can never be the just ground of complain because like restrictions are not imposed upon other business of a different kind. The discriminations which are open to objection are those where persons engaged in the same business are subjected to different privileges under the same conditions. It is only then that the discrimination can be said to impair that equal right which all can claim in the enforcement of the laws."

"The objection that the fourth section is void on the ground that it deprives the right of a man to work at all times is equally without force. However broad the right of every one to follow such calling, and employ his time, as he may judge most conductive to his interests, it must be exercised subject to such general rules as are adopted by society for the common welfare. All sorts of restrictions are imposed upon the actions of men, notwithstanding the liberty, which is guarranteed to each. It is liberty regulated by just and impartial laws. Parties, for example, are free to make any contracts they choose for a lawful purpose, but society says what contracts shall be in writing, and what may be verbally made, and on what

days they may be executed, and how long they may be enforced if their terms are not complied with. So, too, with the hours of labor. On few subjects has there been more legislation. How many hours shall constitute a day's work in the absence of contract; at what time shops in our cities shall close at night, are constant subjects of legislation. Laws setting aside Sunday as a day of rest are upheld, not from any right of the government to legislate for the promotion of religious observances, but from its right to protect all persons from the physical and moral debasement which comes from uninterrupted labor. Such laws have always been deemed beneficient and merciful laws, especially to the poor and dependent, to the laborers in our factories and workshops and in the heated rooms of our cities, and their validity has been sustained by the highest courts of the states."

The court further held, at page 709, that "it is not discriminating legislation in any invidious sense that branches of the same business, from which danger is apprehended, are prohibited during certain hours of the night, whilst other branches involving no such danger are permitted."

See also

Cooley on Constitutional Limitations, 745 *supra.*

Parker and Worthington, Public Health and Safety, Sec. 260, *supra.*

Commonwealth v. *Hamilton Mnfg. Co.*, 120 Mass., 385, *supra.*

Ex Parte C. J. Kuback, 85 Cal., 274, *supra.*

The section (section 5) of the law in question in this case regulates employment in factories and workshops, and provides that women shall not be employed in factories for more than eight hours in one day. It applies to all factories and workshops. All persons engaged in the

same business are treated alike. It will be seen by the foregoing citations and authorities that such a law does not deprive any person of life, liberty or property without due process of law; does not discriminate against anybody and does not deny to any person the equal protection of the law. We do not know of any important case which holds the contrary.

That it is within the power of the legislature to limit the hours of labor of women in factories—that it is within the police power of the state—is established, *as a matter of law*, by the courts in the cases cited on pages ——— of this argument. And, although we have shown that such labor is particularly prejudicial to health, and therefore particularly subject to the restraining influence of the state under its police power, it has not been necessary for us to do so.

The question whether or not the particular employment regulated by the law is unhealthful or dangerous will not be inquired into by the courts; the law being, upon its face, an exercise of the police power, the exclusive right to determine whether it is an employment which needs regulating must be left with the legislature.

COOLEY in his work on Constitutianal Limitations, page 482, says: "Laws public in their object may, unless express constitutional provisions forbids, be either general or local in their application, they may embrace many subjects or one, and they may extend to all citizens, or be confined to particular classes, as minors or married women, bankers or traders, and the like . * * * . The legislature may also deem it desirable to prescribe peculiar rules for the several occupations and to establish distinctions in the rights, obligations, duties and capacities of citizens. The business of common carriers, for instance, or of bankers, may require special statutory regulations

for the general benefit, and it may be matter of public policy to give laborers in one business a specific lien for their wages, whom it would be impracticable or impolitic to do the same for persons engaged in other employments. If the laws be otherwise unobjectionable, all that can be required in these cases is, that they be general in their application to the *class or locality to which they apply;* and they are then public in character and of *propriety and policy the legislature* must judge."

In *Munn* v. *The People*, 69 Ill., 93, the Circuit court in speaking of the law regulating warehouses in this state said:

"The power to legislate in all subjects affecting the great interests of a whole community, must be conceded to exist, and it will not cease to exist until civil government shall be resolved into its original elements. We have nothing to do with the policy of this enactment. That was a question exclusively within the jurisdiction of the general assembly, which, under no circumstances, has the judicial department a right to question or arraign."

In *People* v. *Ewer*, 19 N. Y. S., 933, was a prosecution for exhibiting a female child as a dancer contrary to the statute. The court said: "But says counsel, the legislature cannot go farther, and take from the parent the right to employ a child in a lawful occupation, not indecent or immoral, and not dangerous or injurious to the life, limb, health or morals of the child; and while the nightly exhibition of very young girls as dancers in public theaters, concert halls, and dance houses, may, in many cases, be injurious to their health or morals, nevertheless in this particular case, the nightly exhibition by the defendant of her little girl, as a dancer, in a separate piece, performed in a respectable theatre, could not injure the health or morals of the child; and therefore the above cited provisions of the penal code, which forbid the mother to permit such exhibitions are unconstitutional. * * * But assuming that in this present case, and in some other cases, young girls may be exhibited as dancers without injury to their health or morals, that fact

does not tend to establish that the act in question is unconstitutional. The legislature is vested with entire police power possessed by the people of this state, and in having determined that it is for the best interest of the state and of young girls that they should not be exhibited as dancers before they reach the age of fourteen years its decision is final, and is not subject to review by the courts upon the ground that the law infringes upon the rights of parents in some particular cases."

See also:

People v. *Bellet*, 57 N. W. Rep. (Mich.), 1,094.

Commonwealth v. *Hamilton Mnfg. Co.*, 120 Mass., 385.

Frorer v. *People*, 141 Ill., 385.

Braceville Coal Company v. *People*, 147 Ill., 66.

Millett v. *People*, 117 Ill., 294.

It would be impracticable to admit proof in such cases that the particular occupation did not need regulating, or that the defendant was carrying on his business in such manner as to render it nearly or wholly innocuous; and to leave this an open question would effectually destroy the foundation of the police power of the government. Most vendors of liquors, or opiates, or poisons, or managers of mines, or steam engines, or elevators in buildings, or other employments which are liable to be dangerous or unhealthful, would assert that it was safe in the particular case, or that it did not need regulation; and if this were permitted, the enforcement of a general police regulation by a state or city would be practically impossible. This question is left to the legislative body. We have not been able to find a case where the court has permitted

this question to be inquired into in the trial of an alleged violation of such regulations.

In the case at bar the law is unquestionably an exercise of the police power. The first, second and third sections of the law provide for keeping workshops in a cleanly state, and provide for inspection to ascertain whether they are in a cleanly condition, free from vermin and infectious and contagious matter; and provide for the Board of Health to act in cases where the shops are found to be in an unhealthful condition. The other sections are in the same line, regulating the employment of children and of women in factories and workshops, and providing for the reports of the results of inspections and investigations and abuses, in all these places, and recommendations in regard to the same. In fact the whole scope of the act is plainly within the police power.

A law under this branch of the legislative power is not obnoxious to the objection that it does not regulate all occupations which are dangerous, or which need regulation. It is palpably impossible to apply such rule to laws of this nature. They are regulations, demanded by considerations of public policy. This kind of legislation, whether by state legislatures or city councils, must be progressive; it cannot cover the ground in one act; it must furnish the remedy as the need appears, or the public necessities demand. And the law, in any event, only requires that the regulation should apply to the particular class which is affected in the same manner, as has been held by this court in cases hereinafter cited.

The counsel for the plaintiff in error seem to think that the decisions of this court in *Frorer et al.* v. *The People*, 141 Ill., 171 ("Truck Store" case), *Millett* v. *People*, 117

Ill., 294, *Ramsey* v. *People*, 142 Ill., 380, and *Braceville Coal Co.* v. *The People*, 147 Ill., 166 ("Weekly Wages" case), establish a different rule in this state from the one established by the authorities cited by us. It seems to us, on the contrary, that, in so far as those decisions touch the question involved in the case at bar, they are directly in line with the authorities we have cited. All of those cases —as well as the authorities cited by the court in the opinions—were cases where the court declared acts unconstitutional, which prohibited certain specified parties from doing things which were in no way connected with the regulation or operation of their business; and where they permitted the same things to be done by other parties who were situated toward them in exactly the same way as the prohibited parties. In *Frorer* v. *The People*, the law prohibited miners and manufacturers from keeping a truck store for the sale of supplies to their employes; and the court held that this was in no way a regulation of the process of mining or manufacturing, was entirely independent of the carrying on of the business, and that there was nothing in the keeping of such a truck store which could affect the employers or employes of miners and manufacturers differently from the employers or employes of house builders, or transportation companies, who were not prohibited; and for these reasons, substantially, the law was held to take away, by special legislation, property—right to acquire property—and was unconstitutional. The court says in the decision, page 179:

"In all that relates to mining and manufacturing wherein they differ from other branches of industry, we recognize the supremancy of the general assembly to determine whether any, and, if any, what, statutes shall be enacted for their welfare and that of operatives therein, and

and necessarily affecting them alone. But keeping stores and groceries, or supplies of tools, clothing and food, by whatever name, to sell to laborers in mines and manufactories is entirely independent of mining and manufacturing, and has no tendency in any possible way to affect the mechanical process of mining and manufacturing. The prohibition of the statute operates not directly upon the business of mining and manufacturing, but upon the individual, because of his participation in the business. *It is not imposed for the purpose of rendering mining and manufactnring less perilous or laborious, nor to restrict or regulate the duties of employer and employe in respects peculiar to those industries*"

In the case at bar the law regulates the employment in the operation of the business itself; and it applies to all factories; nobody is omitted who is situated in the same way toward the prohibited thing as the prohibited parties are. There could be no employe who would be injured in the same way, or to the same extent, by working more than eight hours in a day in any other business; neither would the injury to the public be the same. There might be injury in overworking in other occupations, but it could not be the *same*, either in kind or degree.

Again the court say, page 181:

"It is not doubted that laws may be enacted properly, and without infringing this section of the constitution, which, by reason of peculiar circumstances, may affect some persons or classes of persons only, who were not before affected by such restrictions; but in such instances the circumstances must be so exceptional as to leave no others affected precisely the same way upon whom a general law could have effect."

Again on page 185:

"So, under what is denominated the 'police power,' laws may be constitutionally enacted imposing new bur-

dens on persons and property where, in the opinion of the general assembly, the public welfare demands it."
* * *

"In general, all laws whereby one person is prohibited from so using his liberty or property as to injure or endanger the liberty or property of another."

This case certainly seems to us an authority for the rule we are contending for.

In *Braceville Coal Co.* v. *The People*, the law required weekly payment of wages by certain specified corporations. It was held that no reason could be found that would require weekly payments by the corporations specified in the law that would not require the same payments by other corporations not covered by the law; therefore the law must be declared unconstitutional under the decision in *Frorer* v. *The People.* The only other point considered in the case was that the law in question there, applying only to corporations, was obnoxious to the clause in the constitution with reference to creating and amending the charters of corporations. In this case, as in *Frorer* v. *The People*, the court say that the right of every man to pursue his avocation is subject "to the "restraint necessary to secure the common welfare;" and that laws distinguishing against special classes are valid when based upon distinctions or reasons not applicable to those parties not included in its provisions. The same principle is applied in *Millett* v. *The People.* 117 Ill., 294, and in *Ramsey* v. *The People*, 142 Ill. 380; as in *Frorer* v. *The People*, and the *Bracevillle Coal Co.* v. *The People.* As in all these cases the decisions are largely based upon quotations from Judge Cooley's "Constitu- "tional Limitations," and as Judge Cooley says on page 745 of his "Constitutional Limitations" (already quoted

herein), that "some employments for example may be "admissible for males and improper for females, and regu- "lations recognizing the impropriety and forbidding "women to engage in them would be open to no reason- "able objection"—it can hardly be possible that either Judge Cooley or the decisions of this court in those cases, are intended to be in conflict with our position in this argument. Indeed, Judge Cooley lays down the very rule we contend for himself. See this brief page . Again, this court in *Frorer* v. *The People* quote largely from the opinion of the Supreme Court of Massachusetts, in *Commonwealth* v. *Perry*, 139 Mass., 198, in support of the position that laws like those in the *Frorer case* and the *Braceville case* are invalid; but the Supreme Court of Massachusetts in *Commonwealth* v. *Hamilton Manufacturing Co.*, 120 Mass., 385 (hereinbefore quoted), also holds holds that a law like the one in question in the case at bar is valid, and will be enforced.

III.

Title.

The law is not in contravention to the provision of the constitution, which requires that "no act hereafter passed shall embrace more than one subject, and that shall be expressed in the title, but if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed."

The act is entitled "An act to regulate the manufacture of clothing, wearing apparel and other articles."

Counsel for appellants contend that the clause forbidding the employment of females for more than eight hours is not germane to the subject of the act as thus expressed.

In *O'Leary* v. *County of Cook*, 28 Ill., 534, 538, where the bill was entitled, "An Act to incorporate the Northwestern University," and a clause in it forbade the sale of intoxicating liquors within four miles of the university. The bill was held constitutional, the court, by CATON, C. J., said:

"The object of the charter was to create an institution for the education of young men and it was competent for the legislature to embrace within it everything which was designed to facilitate that object. Every provision which was intended to promote the well being of the institution or its students, was within the proper subject-matter of that law. We cannot doubt that such was the single design of this law. Its purpose was to keep far away from the members of the institution the temptation to intemperance and its attendant vices. Although this provision might incidentally tend to protect others residing in the vicinity from the corruption and demoralizing influences of the grog-shop, yet that was not the primary object of the law, but its sole purpose was to protect the students and faculty from such influence. It was designed for the benefit and well being of the institution, and this is the touchstone of the constitutionality of the enactment."

In *Larned* v. *Tiernan*, 110 Ill., 173, 176, the bill was entitled, "An Act to revise the law in relation to criminal jurisprudence." The act provided for penalties, etc., for gambling and also provided that any person who lost money by gambling could sue and recover the same in an action of debt, etc.

The court says:

"It is said that this section gives a civil right and a civil remedy, which is another subject than that of crimes and their punishment, and so not expressed in a title relating to criminal jurisprudence; that there can not be, in such an act, a combination of criminal and civil provisions without making two subjects, and so rendering the act

obnoxious to the constitutional inhibition in question. But wherefore not? There is no authority cited in support of the proposition and it rests upon assertion attempted to be supported upon the idea of there being a difference between criminal and civil proceedings, and between what is punishment and a private recovery for a private benefit. But there is a broader view than that, which is taken by the courts, of this constitutional requirement. It being a not uncommon one, it has been the subject of frequent adjudication and has ever received a liberal construction. The decisions concur in laying down, substantially, the rule that in consistency with that provision, there may be included in an act any means which are reasonably adapted to secure the object indicated by the title." (See the numerous cases cited.) "The only legitimate inquiry here, then, under the adjudications upon this subject, is, as we conceive, what is the provision of this section of the statute in its effect? That if its tendency in effect; be the discouragement and suppression of gambling, then it is germane to the general object of the act—not an independent subject—and it is sufficiently expressed in the title of the act."

In *ex parte Liddell*, 29 P. R., 251 (93 Cal., 633), the bill was entitled, "An Act to establish a state reform school for juvenile offenders and to make an appropriation therefor."

Sec. 16 provided for the committal to such school of, "Any boy or girl, between the ages of ten and sixteen, who had been convicted of an offense punishable by imprisonment in the county jail or penitentiary."

This was held constitutional and not in violation of the constitutional provision that: "Every act shall embrace one subject, which subject shall be expressed in its title."

See *State* v. *Kingsley*, 18 S.W. (Mo. Sup.),

994.

In *State* v. *Hanub* (Ala.), 10 So., 752, the bill was entitled, "An Act to regulate the taking and planting of oysters in the waters of the state."

A provision made it unlawful to ship beyond the state any oyster taken in the waters of the state while it was in shell.

This was held constitutional.

In *Phillip Cole* v. *John Hall*, 103 Ill., 30, the bill was entitled, "An Act to indemnify the owners of sheep in cases of damage committed by dogs."

In this bill there was a provision imposing a license fee on all dogs to whosoever belonging, the funds thus raised to be used to reimburse parties who had suffered damage to their sheep by dogs.

The imposing of this license was held sufficiently germane to the subject expressed in the title of the bill as to be fairly embraced in it, and therefore constitutional.

In *Johnson* v. *People*, 83 Ill., 431, the bill was entitled, "A bill for an act to revise the law in relation to licenses."

There was a provision in the bill imposing restrictions on the sale of liquor to minors. This was held germane to the subject of the bill. sufficiently expressed in the title and constitutional.

A statute which by its title is merely for the incorporation of a railway company may properly embrace provisions authorizing municipal subscription in aid of construction; such a provision is germane to the matter of the charter.

Schuyler County Supervisors v. *R. R. Co.*, 25 Ill., 181.

Abington v. *Cabeen*, 106 Ill., 200.

Virden v. *Allen*, 107 Ill., 505.

In *Sun Mut. Ins. Co.* v. *Mayor, etc.*, 8 N. Y., 239, it is said, the object of constitutional provision is, "That neither the members of the legislature nor the people, should be mislead by the title.'

"The intent of the provision of the legislature was to prevent the union in the same act of incongruous matters and of objects having no connection nor relation. And with this it was designed to prevent surprise in legislation by having matters of one nature embraced in a bill whose title expressed another."

In *Prescott* v. *City of Chicago*, 60 Ill., 121, the act was entitled "An act to amend the charter of the city of Chicago, to create a board of park commissoners, and to

authorize the levy of a tax in West Chicago, and for other purposes."

The provisions of the act extended the city limits and created parks, etc.

It was held constitutional, covered by the words "An act to amend the charter of the city of Chicago."

In *Reg* v. *Payne*, L. R. 1. C. C., 27, the act made it a penal offense to convey to a prisoner in order to facilitate his escape, "any mask, dress or disguise, or any letter, or any other article or thing."

This was held to include a bar.

In *Kurtz* v. *People*, 33 Mich., 279, the rule is laid down as follows:

"The constitutional provision is a very wise and wholesome provision intended to prevent legislators from being entrapped into a careless passage of bills on matters foreign to the ostensible purpose of the statute as entitled but it is not designed to require the body of the bill to be a mere repetition of the title. Neither is it intended to prevent including in the bill such means as are reasonably adapted to secure the objects indicated by the title."

The principle as laid down in the foregoing cases seems to us to fully cover the case at bar. We can form no conception of the operation of manufacturing disassociated from the labor involved. Manufacture is labor. Regulating the hours of labor in the factory is regulating manufacture.

Specific Enumeration.

In answer to the contention that there are specific enumerations both in the title and in the body of the act of manufactured articles followed by general words, and that these general words must refer to articles of the same class as those enumerated, and therefore do not apply to articles such as candy, etc.

The specific enumerations in the *body* of the act only occur in connection with provisions for inspection, etc., for sanitary purposes, which are insections one, two and seven.

Wherever the question of child labor or employment of females is treated of, the words "any manufacturing establishment" and like general words are used, there being no enumeration whatsoever; the case at bar, and all the cases brought under the factory act, raise only the question of employment of females for more than eight hours in a a day, and the only section of the law which prohibits such employment is section 5. There is no specific enumeration in such section. The body of the act therefore unquestionably makes the eight hour question apply to all factories of whatsoever nature. The intention of the legislature isto be derived from the wording of the whole act, not from the title alone. The only contention, therefore, that can be raised is that in the *title* of the act itself there is an enumeration of specific articles followed by the general terms "and other articles," and that therefore, on this ground, the law cannot be made to apply to other articles belonging to a class different than that of the articles enumerated.

I.

The answer to this contention is that the title of an act is for the information of the public and of the legislature and that alone; that the constitutional provision requiring that no act shall embrace more than one subject and that shall be embraced in the title, was designed to prevent the insertion into acts of provisions having no connection therewith, and thus deceiving the public and sleepy legis-

lators. All that was designed was that the act should be referred to in the title in such way as to put the public and the legislators upon inquiry.

Sutherland, in his work on *Statutory Construction*, at section 88, says:

"The title must state the subject of the act for the *purpose of information to members of the legislature and public* while the bill is going through the forms of enactment. It is not required that the title should *be exact and precise.* It is sufficient if the language used in the title, on *a fair construction*, indicates the purpose of the legislature to legislate according to the constitutional provision, so that, making every reasonable intendment in favor of the act, it may be said that the subject or object of the law is expressed in the title. As said by the Supreme court of Illinois, the constitution does not require that the subject of the bill shall be specifically and exactly expressed in the title, which calls attention to the subject of the bill, although in general terms, is all that is required."

When the subject is stated in the title the constitution is so far complied with that no criticism of the mode of statement will affect the validity of the act. The statute is valid in such a case; the degrees of particularity in expressing the subject in the title is left to the discretion of the legislature.

No particular form has been prescribed in the constitution for expressing the subject or purpose of a statute in its title. It need not index the details of the act, nor give a synopsis of the means by which the object of the statute is to be effectuated by the provisions in the body of the act.

Johnson v. *People*, 83 Ill., 436.

It will be seen from these authorities that the rule as to specific enumeration does not apply to titles.

There is a wide difference between the provisions it the body of an act and those in the title. The purpose of the title is to *guide*, to indicate, not to lay down. I can be referred to to aid in the interpretation of the act but the provisions of the act itself govern. The rules applicable to the construction of the body of a statute can in no sense be held applicable to the title, the mere sign post, and we have not been able to find any authorities where they have been so applied.

2.

But even if the same rules of construction should be held applicable to the title, as to the body of an act, yet the specific words exhaust a whole genus the general words must refer to a genus beyond.

Foster re Blount, 18 Alabama, 687.

An act made it an offense for county judges and clerks of county courts to receive any other or greater fees (than certain in the act prescribed) from any guardian, executor, administrator or other person, the court, while recognizing the rule for limiting general words to persons and things *ejusdem generis*, said:

"This is but a rule of construction by which courts are to ascertain the intention of the legislature, and when that is apparent we are bound by it, and can no more disregard the intention of a penal statute than any other.

The court held that the true meaning of the act was to punish as an offense the taking of greater than the prescribed fees from *any person*, whether in matters relating to the administration of estates or other matters."

See *Sutherland on Stat. Con.*, Sec. 280.

Sutherland, in his work on Statutory Construction, Section 278, says:

"But where the result of thus restricting the general words would be that they would have no effect at all, they must be extended to things superior in quality to those enumerated. This naturally proceeds from the rule of construction to give effect to all the words of a statute if possible, so that none will be void, superfluous or redundant. Thus the statute of Marlebridge, 52 Henry III., chapter 19, refers to courts baron or other courts, and it was held that these words extend to the Courts of Record at Westminster, though the act begins with inferior courts; 'for otherwise these general words would be void; for it cannot, according to the general rule, extend to inferior courts, for none be inferior or lower than those that be particularly named.' For the same reason the restriction of general words to things *ejusdem generis* must not be carried to such an excess as to deprive them of all meaning. The enumeration of particular things is sometimes so complete and exhaustive as to leave nothing which can be called *ejusdem generis*. If the particular words exhaust a whole genus, the general words must refer to some larger genus. When a statute of limitation enumerated certain periods for bringing actions for inferior estates and following the enumeration were these words, 'or other action for any lands, tenements or hereditaments, or lease for a term of years,' and under the general words it was sought to bring an action for a higher estate, it was recognized that, as a general rule, a statute, which treats of things or persons of an inferior degree cannot by any general words be extended to those of a superior degree; yet when all those of inferior degree are embraced by the express words used, and there are still general words, they must be applied to things of a higher degree than those enumerated, for otherwise there would be nothing for the general words to operate on. Therefore, these general words were held to include a real action,' citing *Ellis* v. *Murray*, 28 Miss., 129."

See also

Chapman v. *Woodruff*, 34 Ga., 98.

In the case at bar the words "clothing, wearing ap-" parel," in the title exhaust the genus, there are no other manufactures in the same class; the general words, must therefore apply to something beyond, and cover all other manufactures.

IV.

PRESUMPTION OF CONSTITUTIONALITY.

The presumption is in favor of the constitutionality of a statute.

In re Walsh, 17 Ill., 161.
Bunn v. *People*, 45 Ill., 397.

A statute can be declared void as in violation of the constitution only where the violation is clear and plain.

Lane v. *Dorman*, 3 Scam., 238.
Wulff v. *Aldrich*, 124 Ill., 591.

The courts will not declare a statute unconstitutional unless it is clear beyond reasonable doubt that the legislature has transcended its constitutional power.

Bureau County Supervisors v. *R. R. Co.*, 44 Ill., 229.
Hawthorn v. *People*, 109 Ill., 302.

Where it is doubtful whether a statute is in violation of the constitution, the doubt must be solved in favor of its validity.

People v. *Morgan*, 90 Ill., 558.
People v. *Hazlewood*, 116 Ill., 319.

If the court should hold that the act could only refer to articles of the class of clothing and wearing apparel, then of course under the rule requiring a construction in accordance if possible with constitutionality, section 5 would be so construed as to refer only to this class. The other provisions of the law requiring sanitary inspection and forbidding the employment of children under the age of fourteen years, etc, the constitutionality of which are not questioned here, are in any event independent and able to stand alone, and under the words of the constitutional provision itself and the cases of *Nelson* v. *People*, 33 Ill., 390; *Quincy* v. *Bull*, 106 Ill., 337; *Hinze* v. *People*, 92 Ill., 406; and *People* v. *Huzlewood*, 116 Ill., 319 would remain unaffected by any decision rendered in this case.

Even if the section of the factory law in question in this case should be held to apply only to factories for the manufacture of clothing or wearing apparel, still the cases which involve the violation of that section by the employment of females for more than eight hours in factories for the manufacture of clothing or wearing apparel, such as ladies' waists and boots and shoes, should be sustained, and the section held to cover such cases.

As for the necessity of discriminating against the factories for the manufacture of clothing and wearing apparel the legislature, as shown by the authorities cited on page of this brief, was the sole judge. Further than that there is the right, to discriminate against these manufactures under the police power, because they could not be affected in the same way by the act prohibited as other manufactures which are not included within the law; as held by this court in *Frorer* v. *People* and *Braceville Coal Company* v. *People*, *supra*, and by other authorities hereinbefore cited.

Facts.

There was cross-examination by counsel for plaintiff in error of the employe, in some of the cases, to bring out answers that she was not forced to work over-time, and that they worked because they wanted the wages to support themselves and families, etc. They also drew out answers as to the condition of the particular factories. All this testimony was, in our view, incompetent; and when admitted can properly have no bearing on any question in the case. On re-direct examination some of these witnesses testified that they had nothing to do with fixing the hours of labor; that they were fixed by the employers without any consultation with the employes; and they understood that they were expected to comply with them; and they understood that they would be discharged if they refused to comply. This, in the very nature of the case, is probably true in all these cases. It is apparent, therefore, that the supposed "willingness" of the girls to work cuts a very attenuated figure in any aspect.

And again it should be remembered that these girls are subpoenaed to testify against their employers, who are facing them at the trial; that they are losing a day's work every time they are subpoenaed; and that they are testifying all the time with the consciousness that when they return to the factory they may be told that their further services are not required. We are glad to be able to say, however, that in many of these cases these witnesses have bravely and successfully passed even this cruel test.

This kind of testimony does not help the violators of this law, even in a sentimental sense, which seems to be the sense in which they expect to use it. In most cases of sanitary regulation, under the police power, those engaged in violation of the regulation are willing to do so, on account of the apparent and immediate gain, either of money or of unwholesome indulgence. The man to whom intoxicating liquor is sold wants it, so the opium eater wants his dose, and young children, whose parents are greedy for their earnings, are willing to work beyond their strength, until they cripple themselves for life. Women driven by want to desperation insisted upon working in the English mines under unwholesome, immoral, revolting, conditions, until overwhelming public sentiment forced legislation prohibiting such employment. This very fact, that violators of this law tempt women to work beyond their strength by appealing to their necessities, is one of the strongest arguments in favor of the law.

Ashton Cross said. in behalf of the Government in the British Parliament in 1874, when the bill was passed reducing the hours of women in factories to nine, that "It "may be that women wish to work as at present, but in "the long run they will be benefited by shorter hours, and "and in eight or ten years from now they will be better fitted for work."

Parliamentary debates March 5 to May 8, 1874, page 1795.

Again, even if the employes were willing to sacrifice themselves, there is a *public* injury which such laws also prevent. It is against public policy that the health of citizens should be impaired by unwholesome employ-

ment, and one of the most far reaching results, of this nature, is the injury to their children from the overwork of married women in factories, which has been alluded to elsewhere in this argument.

Again, as a matter of fact, the law does not deprive women of an opportunity to labor, in any true sense. All the scientific evidence is one way, viz:—that labor in factories more than eight hours a day deprives the average woman (to say nothing of girls and delicate women) of their health. They break down in a few years; they are deprived of the power to bear children, at least healthy children; their lives are shortened; so that in the end they are in fact *deprived* of labor by a long day; and obtain more labor, and the results of labor, by a short day.

Again, counsel have said that the competition of men who are allowed to work more hours will drive women out of their places. Intelligent women do not claim that they want to, or can, compete with men in the occupations which are peculiarly adapted to men; as in mines, or on the highways, or in heavier muscular work; and no laws, giving them equal, or longer days, will force them to into such occupations. The converse of this is true as to men competing with women in the work adapted to women. A large proportion of the work in factories where women are employed can be done better and more cheaply by women than by men. Men can not compete with them in that kind of work, and never will, even assuming that men will always work ten hours to women's eight. The advantage of the natural adaptation can not be destroyed by extending this kind of protection to women. This has already been

proved. The experience in the states where the law has been in operation for years, as shown by the reports, demonstrates that men are not only not driving women out of woman's work in these factories, but that women are earning more in eight hours than in nine, on account of the sanitary protection afforded by the law. And the result has been the same in this state, under the law in question in this case, where the law is being enforced; as shown by the reports.

The hours of labor of women in factories in England were reduced in 1847 from 12 to 10, and the factory returns in 1870 show that there had been no reduction, in the percentage of female labor employed since the passage of the law. During the same period, under the shorter day, the wages of the women employes increased over 60 per cent., while wages of the male workers increased less than 30 per cent.

Counsel have said that this law would unfavorably affect the interests of manufacturers in their competition with other manufacturers outside of the state. Of course such an objection, by employers, should not be considered at all where a sanitary regulation of employes is in question; but assuming that it could be considered, as a matter of fact, such laws are in the interest of manufacturers as well as employes, as shown by experience where they have been in operation. In England, the law was opposed at first, upon this ground, by an association of a few manufacturers called the "Manufacturers' Association,"—the same sort of an association which is generally formed by a few manufacturers to oppose the law when it first goes into operation. And after the law had been in operation in England for several years, the report-

show a large increase in manufactures in factories where women are employed, since the reduction of hours of labor of women, and a much larger proportion of increase than on the Continent, where women labor is unrestricted.

"Parliamentary Debates," March 5 to May 8, 1874 pages 1,785 to 1,795.

The same effect is reported in this country.

It must not be assumed from the contest made against the law by the individuals who appear in these cases that this law is not being enforced in this state, and obeyed by people affected by it.

Only a few have concluded to contest the law; and it is fair to assume that the others, who are obeying it, are satisfied with it. In some of the cases under the same law, now in this court, there is testimony that the factories are not in a wholesome condition, and that there are children, fourteen and fifteen years of age, working over twelve hours a day, with only two half hours out for luncheons, eaten in the factory, and standing at their work during all these hours; and it is fair to assume that the cases brought here, by the employers, to test the constitutionality of the law, would not be the ones which we would present to the court, nor the worst factories, or even the average ones. It is matter of general information what "sweat shops" are; and under what revolting conditions women were working in them in the city of Chicago.

The reports of the investigations of the legislative committees have made us all familiar with the filth and fetid atmosphere, the interminable hours of labor, the

emaciated women and child-workers, in these factories and the disease-germs which went out in the clothing manufactured there and which retain their vitality long after they leave the factory; all of which features are being so surprisingly modified by this law and by the exceedingly effective inspectors provided for in the law.

Of course, that class of factories—which contains a large proportion of the places affected by this law—will not be presented to this court, so long as a few higher grade factories can be brought here to test the law; but, of course, a decision declaring the law invalid would close up these factories, of all grades, to the investigation of the inspectors appointed under the law, and stop the regulation thereof, and of the labor therein, and would set again in operation all the nefarious and abhorrent features which distinguished the greater number of these places up to the time the law went into effect.

There are nine cases under this law, brought to this court at this term, numbered, in this court, from 3 to 11, inclusive, and all the cases being brought here together.

The following is a brief description of these cases:

William E. Ritchie,
Plaintiff in Error,
vs.
The People of the State of Illinois,
Defendant in Error.
} *No. 3.*

This case is for employing a female, Mollie Fach, age twenty-seven, by the plaintiff in error, in working for him in his factory for the manufacture of paper boxes, making paper boxes; worked nine and three-quarter hours on February 23, 1894; worked for wages, was paid by the piece by the plaintiff in error. She (Mollie Fach) testified that the hours are prescribed by the employer, that she could not work less hours, nor more hours; that she must work according to the hours that are prescribed in the factory; often when business was brisk she worked more than nine and three-quarter hours in the day—into the evening; that as a matter of fact she knew that she had to work according to the rules and hours prescribed in the factory; that she would have to work as much as the other girls in the factory did.

William E. Ritchie,
Plaintiff in Error,
vs.
The People of the State of Illinois,
Defendant in Error.
} *No. 4.*

This case is for employing a female, Lizzie Furlong, aged twenty-seven, by the plaintiff in error, to work for himself in his factory for the manufacture of paper boxes making paper boxes. She testified that she worked nine and three-quarter hours on that day; worked for wages, was paid by the piece, by the plaintiff in error; that the hours were arranged by the employer; that she had nothing to do with fixing the hours of labor; that it is a rule in the factory that when the bell rings the workers stop work; the rule is made by the employer; she don't have anything to do about it; "if a girl would not work up to "those hours she might get a scolding, she would not be "allowed to stay there if she made a habit of it; if she "made a habit of not working those hours she would be "discharged."

Ferdinand Bunte,
Plaintiff in Error,
vs.
The People of the State of Illinois,
Defendant in Error.
} *No. 5.*

This case is for employing a female, Mary Breen, age twenty, by plaintiff in error, in working for him in his factory for the manufacture of candy, making candy; worked nine hours on Feb. 23, 1894; worked for wages, was paid by the week, $3.60 per week, by plaintiff in error. She

testified that she was standing up all day at her work; when she went there she was to work nine hours a day for the $3.60 per week.

Joseph E. Tilt,
Plaintiff in Error,
vs.
The People of the State of Illinois,
Defendant in Error.
} *No. 6.*

This case is for employing a female, Mary C. Sherlock; age twenty-five, by plaintiff in error, in working for himself in his factory for the manufacture of shoes, making shoes; worked ten hours on that day, February 23, 1894, (stopped at half-past five;) worked for wages, paid by piece, by plaintiff in error. She testified that she operates a machine, run by steam power; work requires exercise of her hands, her eyes and her brain; they are are supposed to work full time, nine and one half hours; has worked in that factory two years, and worked same number of hours during that time; the sixty to sixty-five other women there work the same number of hours during that time; machinery is kept running until half-past five, and the women are expected to work for that length of time; if they refuse they don't get back there any more.

Joseph E. Tilt,
Plaintiff in Error,
vs.
The People of the State of Illinois,
Defendant in Error.
} *No. 7.*

This case is for employing a female, Margaret Taylor, aged twenty, by plaintiff in error, in working for him in his factory, for the manufacture of shoes, making shoes;

worked nine and one-half hours (ten hours, with half an hour out for dinner) on that day, February 23, 1894, worked for wages, paid by the hour by plaintiff in error; was forced to work nine and one-half hours on that day, her agreement with her employer provided that she should work that number of hours; was her duty to work those hours under her agreement with Mr. Tilt. (Rec.; .)

Lee Drom,
Plaintiff in Error,
vs.
The People of the State of Illinois,
Defendant in Error.
} *No. 8.*

This case is for employing a female, Mamie Robinson, age fourteen, by plaintiff in error, in working for himself in his factory for the manufacture of wearing apparel, ladies' cloth waists, making such waists; worked eleven and one-half hours February 8, 1894; worked for wages, was paid by the week, by plaintiff in error. The factory inspector testified that the factory occupies the fourth and fifth floors of a block on South Canal street, Chicago, with a laundry room, belonging to the factory, on the front of the fourth floor; that 206 women and girls are employed there; that the light on the fifth floor was good; no windows back of the laundry on the fourth floor, has to be lighted by gas, night and day; fair as to cleanliness; air is very hot on account of gas and laundry; it is extremely hot.

Lee Drom,
Plaintiff in Error,
vs.
The People of the State of Illinois,
Defendant in Error.
} *No. 9.*

This case is for employing a female, Hattie Renfranz, age fourteen, by plaintiff in error, at working for himself in his factory for the manufacture of ladies' cloth waists, making such waists; worked twelve and one-half hours—from half-past seven in the morning till twelve, then half an hour for dinner, and from half-past twelve to half-past eight at night, Feb. 9, 1894; worked for wages, paid by the piece, by plaintiff in error. She testified that she was pressing and ironing waists; had to stand up all of the time; they asked her to work, and she worked. Minnie Keefe testified that she was assistant forelady in this factory. She testified as to the labor of Hattie Renfranz, on Feb. 8, 1894, substantially the same as the testimony of Hattie Renfranz. On the cross-examination by counsel for plaintiff in error, she testified that if one department of the factory worked it was necessary for the others to work; that pressing and ironing waists is not easy work; that about 200 girls are employed in that factory; that on cold days the ventilation in the factory is bad; that the girls are expected to work when asked, but had never seen any one compel them; that if a girl said she did not want to work overtime, she (witness), as her forelady, would have ordered her to work if she possibly could; that if she had said she was not strong enough, she, (witness) could not positively say whether she would have been discharged, but that she might and she

might not. On the re-direct examination the witness testified that when business is brisk they probably run in the evening—up to half past eight or nine—two or three evenings in the week; they are supposed to have half an hour for lunch; must eat in the factory; the girls must pay for it themselves if they send out for it. The factory inspector, Mrs. Stevens, testified the same as in No. 8, with reference to the factory (it is the same factory as in No. 8); also that the factory is crowded and badly ventilated.

Louis Eisendrath,
Plaintiff in Error,
vs.
The People of the State of Illinois,
Defendant in Error.
} *No. 10.*

This is a case for employing a female, Mamie Robinson, age fourteen, working in the factory of Strouss, Eisendrath & Drom, for the manufacture of ladies' cloth waists, in making such waists. It is stipulated and admitted that the said firm is a copartnership, and composed of Emil Strouss, Louis Eisendrath and Lee Drom; that said factory is owned by said copartnership; is located in said Chicago; that said Lee Drom, a member of said firm, employed said Mamie Robinson to work on Feb. 22, 1894, in said factory, for more than eight hours; and that said Lee Drom was the manager of said factory for said firm, and was authorized by the said firm to employ the help in said factory. Said Mamie Robinson testified that she was employed in said factory on the said day eleven and one-half hours (from eight in the morning up to half-past eight in the evening, with half an hour for dinner

and half an hour for supper); was paid by the week; when working at night stands up all the time; that she worked over eight hours every day she worked there; that she was asked to work overtime and she worked.

Emil Strouss,
Plaintiff in Error,
vs.
The People of the State of Illinois,
Defendant in Error.
} No. 11.

This case is for employing Rosa Koeneke, age fourteen, at working in the factory of Strouss, Eisenbath & Drom, for the manufacture of ladies' cloth waists, in making such waists. The stipulations and admissions in this case are the same as in No. 10. Said Rosa Koeneke testified that she was so employed in said factory for eleven and one-half hours—from eight in the morning till 8:30 in the evening, with half an hour out for dinner, and half an hour for supper; worked on a sewing machine.

In cases 3 and 4 the work is making paper boxes, in a factory for such manufacture.

In case 5 the work is making candy, in a factory for such manufacture.

In cases 6 and 7 the work is making wearing apparel—shoes—in a factory for such manufacture.

In cases 8, 9, 10 and 11 the work is making wearing apparel—cloth waists.

In cases 8, 9, 10 and 11 the girls employed were under sixteen (fourteen or fifteen).

In cases 4, 5, 6, 7, 8 and 9 it is testified that the girls are expected by the employers to work over-hours; that the machinery is running, and everybody is expected to work during those hours; that the employers fix the hours; the employes having nothing to do with it, being expected to comply; and in some of the cases that if they do not comply they would be discharged; and, in some of the cases, the girls were employed on the condition that they should work the long hours. The forewoman corroborates this testimony as to employes in a factory employing over 200 women and girls.

In cases 3, 4, 6 and 9 the girls were paid by the piece; and in cases 5, 7, 8, 10 and 11 they are paid by the hour, day or week. We do not see that this cuts any figure. In any case, they work for wages, and are "employed" in violation of the law—as is admitted. Whether they are paid by time or piece, it seems to us, makes no difference.

In cases 8, 9 and 10, the children, fourteen or fifteen years old, worked twelve and one-half hours, with only two half hours out for luncheon (if they had any) eaten in the factory, and standing up through all those hours; one of them ironing and pressing. And in case 11 the girl, age fourteen, was running a sewing machine through the same hours. And the forewoman of the factory testified that the 200 women and girls in the factory worked these hours two or three days in a week, when business was brisk, and they worked every day more than eight hours. This shows that a large proportion of the women covered by this law, are children, undeveloped and delicate, and peculiarly unfit for long hours' work in factories, and engaged in work which only strong women

or men should do, and working continuously, with only two half-hour lunches, for hours which would wreck the health of able bodied adults. We submit that if such children as these must work in such places at all, when they ought to be at school, the least the state can do for them is to limit the hours of employment, so that there may be at least a little margin of the day for education and other necessary purposes. Girls like these are a large proportion of the women covered by this law, and, as has been shown, the older women equally need the protection of the law, and especially those who are, or who are about to be, mothers.

In the cases against Louis Eisendrath and Emil Strouss (Nos. 10 and 11), the defendants are *members of a firm* violating the law. The testimony shows that the factory was owned and operated by the firm; that the help was employed by Lee Drom, a member of the firm, who was manager of the factory for the said firm, and authorized by the other members to employ the help. There is no question but that the defendants, as members of the firm knew the terms of employment, the hours worked and the general rules of the factory, for all members shared in the benefits thereof, and the hours of work had been the same for many months. It is an entirely different case from one in which an occasional drink is sold by a partner to a minor, where the other members of the firm can have, in the nature of things, no control over the acts of their agents.

In Mississippi by statute one partner can be convicted upon a sale of liquor by his associate without his consent

and in his absence. In Arkansas the statute reads: "Anyone who shall sell or be interested in the sale," and it is there held that a partner in a saloon may be convicted for a sale by his copartner, although the defendant was absent at the time and had no knowledge of it.

Whitten v. *State*, 37 Miss., 379.
Robinson v. *State*, 38 Ark., 641.
Walles v. *State*, 38 Ark., 641.

See also

R. S. Ill., Chapt. 43, Sec. 6.

In the case at bar the law is similar to the liquor laws of the several states mentioned—"Any person or *firm*." If the lawmakers had intended that only the active agent in the violation of the law, should be made liable, why the use of the word firm? How could a firm violate a criminal law except through one of its members? A firm does not exist except as it exists in its members. All the members, therefore, must have been intended to be made liable for the violation of the law. The law imposes, substantially, the same liability as the dram shop act (Chap. 43, Sec. 6, Rev. Stat., Ill.), which provides: "Whoever, by himself, his agent, or his servant." If only the person who actually and personally did the employing could be held (no matter how fully authorized by the real party in interest) it would leave a wide opportunity for evading the penalty. Parties could have that done by irresponsible employes. We therefore submit that the judgment of the court below, fining Emil Strouss and Louis Eisendrath should stand.

M. J. Malony, Atty Gen.
JOHN W. ELA.
ANDREW ALEX. BRUCE.
Attorneys for Defendant in Error.