IN THE

SUPREME COURT OF ILLINOIS.

SOUTHERN GRAND DIVISION.

MAY TERM, A. D. 1894.

Case	No.	
William E. Ritchie, *Plaintiff in Error*, *vs.* The People of the State of Illinois, *Defendant in Error*.	Two Cases. Nos. 3 and 4.	Error to Criminal Court, Cook County.
Ferdinand Bunte, *Plaintiff in Error*, *vs.* The People of the State of Illinois, *Defendant in Error*.	No. 5.	
Joseph E. Tilt, *Plaintiff in Error*, *vs.* The People of the State of Illinois, *Defendant in Error*.	Two Cases. Nos. 6 and 7.	
Lee Drom, *Plaintiff in Error*, *vs.* The People of the State of Illinois, *Defendant in Error*.	Two Cases. Nos. 8 and 9.	
Louis Eisendrath, *Plaintiff in Error*, *vs.* The People of the State of Illinois, *Defendant in Error*.	No. 10.	
Emil Strouss, *Plaintiff in Error*, *vs.* The People of the State of Illinois, *Defendant in Error*.	No. 11.	

INVOLVING CONSTITUTIONALITY OF ACT OF LEGISLATURE OF ILLINOIS, OF JUNE 17TH, 1893, KNOWN AS "THE EIGHT HOUR LAW."

BRIEF AND ARGUMENT ON BEHALF OF PLAINTIFFS IN ERROR,

BY

MORAN, KRAUS & MAYER,
ATTORNEYS FOR PLAINTIFFS IN ERROR.

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MAY IT PLEASE THE COURT:

The records which this court is asked to review upon writs of error in the above cases, are those in which the plaintiffs in error were prosecuted and convicted for violation of an act of the legislature of Illinois entitled "An "Act to regulate the manufacture of *clothing*, *wearing ap-* "*parel and other articles* in this state, and to provide for "the appointment of state inspectors to enforce the same, "*and to make an appropriation therefor*," which act was approved June 17, 1893, and took effect July 1, 1893.

Section 1 of that act provides: "That no room or rooms, apartment or apartments in any tenement or dwelling house used for eating or sleeping purposes shall be used for the manufacture in whole or in part, of *coats*, *vests*, *trousers*, *knee-pants*, *overalls*, *cloaks*, *shirts*, *ladiess' waists*, *purses*, *feathers*, *artificial flowers or cigars*, except by the immediate members of the family living therein. Every such workshop shall be kept in a cleanly state, and shall be subject to the provisions of this act; and each of said articles made, altered, repaired or finished in any of such workshops shall be subject to inspection and examination, as hereinafter provided, for the purpose of ascertaining whether *said articles, or any of them, or any part thereof*, are in a cleanly condition and free from vermin and any matter of an infectious and contagious nature; and every person so occupying or having control of any *workshop as aforesaid* shall within fourteen days from the taking effect of this act, or from the time of beginning of work in any *workshop as aforesaid*, notify the board of health of the location of *such workshop*, the nature of the work there carried on, and the number of persons therein employed."

Section 2 provides that: "If the board of health of any city, or said state inspector, finds evidence of infectious or contagious diseases present in *any workshop* or in goods manufactured or in process of manufacture therein, and if said board or inspector shall find *said shop* in an unhealthy condition, or the clothing and materials used therein to be unfit for use, said board or inspector shall issue such order or orders as the public health may require, and the board of health are hereby enjoined to condemn and destroy all such infectious and contagious articles."

Section 3 provides that: "Whenever it shall be reported to said inspector or to the board of health or either of them, that *coats, vests, trousers, knee-pants, overalls, cloaks, shirts, ladies' waists, purses, feathers, artificial flowers or cigars*, are being transported to this state having been previously manufactured in whole or part under unhealthy conditions, said inspector shall examine *said goods* and the condition of their manufacture, and if upon such examination *said goods or any of them* are found to contain vermin or to have been made in improper places or under unhealthy conditions, he shall make report thereof to the board of health or inspector, which board or inspector shall thereupon make such order or orders as the public health shall require, and the board of health are hereby empowered to condemn or destroy all such articles."

Section 4 provides that: "No child under fourteen years of age shall be employed in *any manufacturing establishment, factory, or workshop within this state.* It shall be the duty of every person, firm or corporation or agent or manager of any corporation employing children, to *keep a register in which shall be recorded the name, birth-place, age and place of residence of every person em-*

plsyed by him, them or it, *under the age of sixteen years*, and it shall be unlawful for any person, firm or corporation, or any agent, or manager of any corporation to hire or employ in any manufacturing establishment, factory or workshop any child over the age of fourteen years, and under the age of sixteen years, unless there is first provided and placed on file an affidavit, made by the parent or guardian, stating the age, date and place of birth of said child; if said child have no parent or guardian, then such affidavit shall be made by the child, which affidavit shall be kept on file by the employer, and which said register and affidavit shall be produced for inspection on demand by the inspector, assistant inspector or any of the deputies appointed under this act. The factory inspector, assistant inspector and deputy inspectors shall have power to demand a certificate of physical fitness from some regular physician of good standing in case of children who may appear to him or her physically unable to perform the labor at which they may be engaged, and shall have power to prohibit the employment of any minor that cannot obtain such a certificate."

Section 5 provides that: "*No female shall be employed in any factory or workshop more than eight hours in any one day or forty-eight hours in any one week.*"

Section 6 provides that: "Every person, firm or corporation, agent or manager of a corporation *employing any female in any manufacturing establishment, factory or workshop, shall post and keep posted in a conspicuous place in every room where such help is employed, a printed notice stating the hours for each day of the week between which work is required of such persons*, and in every room where children under sixteen years of age are employed a list of their names, ages and place of residence."

Section 7 provides that: "The words 'manufacturing establishment,' 'factory' or 'workshop' wherever used in this act, *shall be construed to mean any place where goods or products are manufactured or repaired, cleaned or sorted*, in whole or in part, *for sale or for wages;* whenever any house, room or place is used for the purpose of carrying on any process of making, altering, repairing or finishing for sale or for wages, *any coats, vests, trousers, knee-pants, overalls, cloaks, shirts, ladies' waists, purses, feathers, artificial flowers or cigars, or any wearing apparel of any kind whatsoever* intended for sale, it shall within the meaning of this act be deemed *a workshop* for the purposes of inspection. And it shall be the duty of every person, firm or corporation to keep a complete list of all such *workshops* in his, their or its employ, and such list shall be produced for inspection on demand by the board of health or any of the officers thereof, or by the state inspector, assistant inspector, or any of the deputies appointed under this act."

Section 8 provides that: "Any person, firm or corporation who fails to comply with any provision of this act shall be deemed guilty of a misdemeanor and on conviction thereof, shall be fined not less than $3 nor more than $100 for each offense."

SECTION 9 provides that "The Governor shall, upon the taking effect of this act, *appoint a factory inspector, at a salary of fifteen hundred dollars per annum, an assistant factory inspector, at a salary of one thousand dollars per annum, and ten deputy factory inspectors, of whom five shall be women, at a salary of seven hundred and fifty dollars per annum each. The term of office of the factory inspector shall be four years*, and the assistant factory inspector and the deputy factory inspectors shall hold office

during good behavior. Said inspector, assistant inspector and deputy inspectors shall be empowered to visit and inspect, at all reasonable hours, and as often as practicable, *the workshops, factories and manufacturing establishments in this state where the manufacture of goods is carried on.* And the inspectors shall report in writing to the Governor, on the fifteenth day of December, annually, the result of their inspections and investigation, together with such other information and recommendations as they may deem proper. And said inspectors shall make a special investigation into alleged abuses in any of such workshops whenever the Governor shall so direct, and report the result of the same to the Governor. It shall also be the duty of said inspector to enforce the provisions of this act, and to prosecute all violations of the same before any magistrate or any court of competent jurisdiction in the state."

SECTION 10 provides "that *the following named sums, or so much thereof as may be necessary, respectively, for the purposes hereinafter named, be and are hereby appropriated.*

First. Twenty thousand dollars for the salaries of inspector, assistant inspector and the ten deputy factory inspectors, as hereinbefore provided.

Second. The sum of eight thousand dollars to defray traveling expenses and other necessary expenses incurred by said inspector, assistant factory inspector or deputy inspectors while engaged in the performance of their duties, not to exceed four thousand dollars in any one year."

SECTION 11 provides that "the auditor of public accounts is hereby authorized and directed to draw warrants

on the state treasurer for the sums herein specified, upon the presentation of proper vouchers, and all sums herein appropriated shall be paid upon monthly pay-rolls, duly certified by the inspector, and the state treasurer shall pay the same out of the proper funds in the treasury not otherwise appropriated. Such warrants shall be drawn in favor and payable to the order of the person entitled thereto."

In each of the present cases the prosecution was for an alleged violation of section 5 of the above act. In each case the defense is that the law under which the prosecution was instituted, is unconstitutional and void. The unconstitutionality of the act is asserted upon the following grounds:

1st. The act is unconstitutional both in form and structure.

2d. The act violates the Constitution by placing unwarranted restrictions upon the individual's right to contract.

In considering these objections, it will be proper to note the facts attending each particular case.

In *Ritchie* v. *People*, No. 3, (Term calendar) the complaint charges that on the 23d day of February, 1894, plaintiff in error employed one Mollie Fach, an adult female of the age of more than eighteen years, at work in a factory, *making paper boxes, for more than eight hours during said day.* That said work consisted exclusively of making paper boxes, and that the wages for said work were fixed and determined by *the number of boxes* manufactured by said Mollie Fach. (Rec., 3.) At the trial she testified that she was employed in said factory and engaged in the manufacture of paper boxes, and was paid *$2.50 per hundred for making such boxes.* That

the work was light, and that witness was *not compelled to work more than eight hours*, but voluntarily did so, in order that *she might make more boxes, and thereby earn more money;* that she was twenty-seven years old, unmarried and supported herself; that she voluntarily worked more than eight hours per day, because she desired to earn more money. (Rec., 13, 14.)

In *Ritchie* v. *People*, No. 4, (Term calander) the complaint charges that plaintiff in error is the manager of a factory or work-shop in which paper boxes are manufactured; that *Lizzie Furlong is an adult female;* that for more than eight hours on the 23d day of February, 1894, plaintiff in error employed said Lizzie Furlong in said factory in the manufacture of paper boxes, and that for said labor, plaintiff in error paid said Lizzie Furlong wages which were fixed and determined at so much per hour. (Rec., 3.)

At the trial, Lizzie Furlong testified that she was employed by plaintiff in error, and worked in said factory; that she *she was unmarried and twenty-seven years of age;* that *her salary was fixed by the week* and that she worked nine and three-quarter hours per day; that she could work less hours *but would receive less pay;* that *she was willing and desired to work nine and three-quarter hours per day in order that she might earn the wages to which that amount of labor would entitle her;* that if she worked only eight hours *she could not earn sufficient to support herself so well.* (Rec., 13–16.)

In *Bunte* v. *People*, No. 5, (Term calendar) the complaint charges that plaintiff in error is the manager of a factory in which candies are manufactured; that on the 23d day of February, 1894, plaintiff in error employed

one Mary Breen in said factory for more than eight hours; that said Mary Breen is an adult female, and was employed in said factory in the wrapping of peanut candy, for wages, which were fixed and determined at so much per hour. (Rec., 3.)

At the trial Mary Breen testified that she was employed by plaintiff in error, and worked in his candy factory; that *she was unmarried* and *twenty* years of age; that on February 23, 1894, she worked nine hours in said factory; that the hours of labor are from 8 A. M. to 12 M., and from 12:30 P. M. to 5:30 P. M.; that she was paid by the week; that *if she worked less hours she received less pay; that she desired to work nine hours, as she needed all the money she could earn for the support of her family;* that *before* the law changed the number of hours to eight, *she was receiving $5.50 a week;* that *when the hours were reduced from ten to eight she received only $3.60 a week.* (Rec., 18, 19.)

In *Tilt* v. *People*, No. 6 (Term calender), the complaint charges that plaintiff in error is the manager of a factory in which boots and shoes are manufactured; that Mary Collins Sherlock is an adult female; that on the 23d day of February, 1894, plaintiff in error employed said Mary Collins Sherlock to work in said factory for more than eight hours; that while employed in said factory it was the duty of said Mary to put eyelets into shoes, for which she was paid wages which were fixed and determined by the number of pairs of shoes into which she inserted said eyelets. (Rec., 3.)

At the trial she testified that she was employed at the factory of plaintiff in error, and was there engaged in "eyeletting" shoes; that she was unmarried and *twenty-five* years of age; that she was paid so much per case of

twelve pairs of shoes for the work; that she worked nine and one-half hours per day, and did on February 23, 1894; that she earns about twelve dollars per week; that *the more hours she worked the more shoes she could eyelet; that she desired to work more than eight hours per day in order that she might earn more money, and obtain a better living.* (Rec., 13, 14, 15, 16.)

In *Tilt* v. *People*, No. 7 (term calendar), the complaint charges that plaintiff in error, is the manager of a factory in which boots and shoes are manufactured; that Margaret Taylor is an adult female; that on the 23d day of February, 1894, plaintiff in error employed said Margaret Taylor in said factory for more than eight hours; that for the work performed by said Margaret, she was paid wages, which were fixed and determined at so much per hour. (Rec., 3.)

At the trial, said Margaret Taylor testified that she was employed in said factory, and while so employed was engaged in fitting shoes; that she was unmarried and *twenty* years of age; that she worked nine and a half hours per day, and did so work on February 23, 1894; that *her wages were measured by the number of hours she worked;* that by working nine and a half hours per day, she could earn about $3 per day; that she desired to work more than eight hours per day; since *if she worked less hours, she would earn less wages*, and could not support herself so well. (Rec., 13, 14, 15.)

In *Drom* v. *People*, No. 8, (Term calendar), the complaint charges that on the 22d day of February, 1894, plaintiff in error did employ one Mamie Robinson, in a certain factory wherein wearing apparel is manufactured, for more than eight hours; that said Mamie Robinson is a female of more than fourteen years of age, and was em-

ployed in the stock-room of said factory, and was engaged in splitting garments; that for said work, said Mamie Robinson was paid wages which were fixed and determined at so much per day. (Rec., 3.)

In *Drom* v. *People*, No. 9 (Term calendar), the complaint charged that on the 9th day of February, 1894, plaintiff in error employed one Hattie Remfrenz, a female of the age of fourteen years, for more than eight hours in the factory where wearing apparel is manufactured; that while working in said factory said Mamie Robinson was engaged in pressing and ironing ladies' waists, for which she was paid wages which were *fixed at so much for each waist which she pressed and ironed.* (Rec., 3.)

At the trial, Hattie Remfranz testified that she was employed by plaintiff in error; that she worked in his factory, and was employed in pressing and folding ladies waists; that on February 9, 1894, she worked from 7:30 A. M. till 8:30 P. M., with half an hour for lunch: that the regular hours for work were from 7:30 A. M. till 5:30 P. M., with half an hour for lunch. (Rec., 13, 14, 15.)

In *Eisendrath* v. *People*, No. 10 (Term calendar), the complaint charges that Emil Strouss, Louis Eisendrath and Lee Drom, as partners, own a factory in which wearing apparel is made; that on the 8th day of February, 1894, Louis Eisendrath, plaintiff in error, employed one Mamie Robinson, a female of the age of fourteen years, to work in said factory for more than eight hours; that said Mamie Robinson, while so employed in said factory, was engaged in the stock room of said factory, and for such work was paid wages which were measured and determined at so much per day. (Rec., 3.) At the trial she testified that she was employed in said factory assisting the splitters; that her regular hours of work

were from 8 A. M. to 12 M., and from 12:30 to 5:30 P. M; that on February 22, 1894, she worked overtime; on that day she worked till 8:30 P. M. with half an hour for supper; that for her work in said factory she was paid by the week; that *she was allowed half a day when she worked overtime;* that she had worked overtime but two or three times; that *she desired to work more than eight hours so that she might earn more money.* (Rec., 13, 21.)

In *Strouss* v. *People*, No. 11 (Term calendar), the complaint charges that *plaintiff in error is a member of the firm* of Strouss, Eisendrath & Drom, who own and operate a factory in which wearing apparel is manufactured; that Rosie Koenecke is a female of the age of fourteen years; that on the 22d day of February, 1894, Emil Strouss, Louis Eisendrath and Lee Drom employed said Rosie Koenecke in their said factory for more than eight hours; that said Rosie Koenecke, while employed in said factory was engaged in operating a sewing machine in the making of wearing apparel; that for such work she was paid wages, which were fixed and determined at so much per garment. (Rec., 3, 4.)

At the trial Rosie Koenecke testified that she was employed in the factory of Emil Strouss, Louis Eisendrath and Lee Drom; that on February 22, 1894, she worked from 8 A. M till 12 M., then took half an hour for lunch, then worked till 5:30 P. M., then took half an hour for supper, then worked till 8:30 P. M.; that she was engaged in hemming ladies' shirt waists and was *paid therefor by the piece;* that the regular hours were from 8 A. M. to 12 M. and from 12:30 P. M. to 5:30 P. M.; that *she was not obliged to work overtime or more than eight hours per day, but desired to do so in order that she might earn more money.* (Rec., 11, 12, 13, 14, 15.)

While, as has been seen, from the foregoing statements some of the cases here presented differ from each other in respect to the facts charged in the complaints, and shown in evidence, yet they are identical in that each is a prosecution for an alleged violation of section 5, of the act of June 17, 1893, entitled:

"AN ACT TO REGULATE THE MANUFACTURE OF "CLOTHING, WEARING APPAREL AND OTHER ARTICLES IN "THIS STATE, AND TO PROVIDE FOR THE APPOINTMENT "OF STATE INSPECTORS TO ENFORCE THE SAME, AND TO "MAKE AN APPROPRIATION THEREFOR."

If that act is, as we contend unconstitutional, no prosecution thereunder can be sustained, and the judgment of conviction in each of the above cases, must be reversed.

The grounds of the invalidity of the act, are, as we have stated:

1st. *The act is unconstitutional both in form and structure.*

2d. *The act places unwarranted restrictions upon the individual's right to contract.*

These propositions will be considered in their order.

I.

THE ACT IS UNCONSTITUTIONAL BOTH IN FORM AND STUCTURE.

Section 13 of article 4 of the Constitution of 1870, provides 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."

So far as they affect the present inquiry, the provisions of the above section may be thus stated: 1st. No act shall embrace more than one subject. 2d. The subject of every act must be expressed in the title.

Let the act in question, be considered in the light of these provisions.

Section (1) prohibits the manufacture of certain articles of wearing apparel, cigars and purses, in any tenement, apartment houses, or living rooms, except by the families living therein; requires that such apartments, tenements, houses and living rooms shall be kept clean, and makes the same subject to inspection.

Section (2) provides that if upon inspection any workshop shall be found to contain evidences of infection or contagious diseases, the state inspector or board of health shall make such order as the public health requires; and that if any of the clothing or materials or clothing used therein are found to be unfit for use, the same shall be destroyed.

Section (3) provides that whenever it shall be reported to the state inspector, or to the Board of Health, that certain articles of wearing apparel, cigars or purses which have been manufactured in whole or in part under unhealthy conditions, *are being transported into this state* said inspector shall examine such goods, *and the condition of their manufacture*, and if upon such examination, such goods are found to contain vermin or *have been made in improper places* or under unhealthy conditions he shall report to the board of health who shall thereupon make such order as the public health shall require, and they are empowered to condemn and destroy all such articles.

Section (4) provides that no child under fourteen years of age shall be employed in any manufacturing establishment, factory or workshop within this state; requires every person, firm or corporation, agent or manager of any corporation employing children, to keep a register in which shall be recorded the name, age, place of residence of every child employed and who is under the age of sixteen years; makes it unlawful for any factory to employ any child *over* the age of fourteen years and *under* the age of sixteen years, without first procuring and placing on file an affidavit of the parent or guardian of such child, stating the age, date and place of birth of such child; gives factory inspector authority to inspect register and affidavit, and demand certificate of physical fitness as to any child who may appear unable to perform the labor required.

Section (5) *provides that no female shall be employed in any factory or workshop more than eight hours in any one day, or forty-eight hours in any one week.*

Section (6) requires every person, firm, corporation, agent or manager of a corporation employing any female in any manufacturing establishment, factory or workshop, to post and keep posted, in a conspicuous place in every room where such help is employed, a printed notice of the hours between which work is required, and in every room where children under sixteen years of age are employed, a list of their names, ages and places of residence.

Section (7) defines "manufacturing establishment" "factory" or "workshop" to be *any place where goods or products are manufactured or repaired, cleaned or sorted in whole, or part, for sale or* for wages. And provides that whenever any house, room or place is used for the purpose of carrying on any process of making, alter-

ing, repairing or finishing for sale or for wages, any coats, vests, trousers, knee-pants, overalls, cloaks, shirts, ladies' waists, purses, feathers, artificial flowers or cigars, *or any wearing apparel of any kind whatsoever*, intended for sale, it shall, within the meaning of the act be deemed a workshop, for the purposes of inspection.

Section (8) provides that any person, firm or corporation failing to comply with any provision of the act, shall be guilty of a misdemeanor, and on conviction, subject to a fine of not less than three nor more than one hundred dollars for each offense.

Section (9) authorizes the governor to appoint one factory inspector, whose term of office shall be four years, and whose salary shall be $1,500 per year; one assistant factory inspector, whose term of office shall be during good behavior, and whose salary shall be $1,000 per year; and ten deputies, five of whom shall be women, and who shall hold office during good behavior, with a salary of $750 per year. This section also defines the duties of the inspector, assistant and deputies.

Section (10) appropriates $28,000 to *pay the salaries* and traveling expenses of the inspector, assistant and deputies.

Section (11) prescribes the manner in which the appropriation shall be drawn.

This court has gone very far to sustain legislation, where the attack was on the ground that the subject of the act was not expressed in the title. Against such an attack it is possible that, among the prior decisions of the court, a precedent might be found to sustain the act here considered. If it be held that the subject of this act is sufficiently indicated by the title, it cannot be held that

the act embraces but a single subject. The title to the act in question, and the act itself disclose at least three distinct subjects.

1st. Regulating the manufacture of clothing, wearing apparel *and other articles.*

2d. Creating the offices of factory inspector, assistant factory inspector, and deputy factory inspectors, fixing their salaries and terms of office, and empowering the Governor to fill the same by appointment.

3d. Making an appropriation to pay the salaries and traveling expenses of the factory inspector, his assistant and deputies.

In *People* v. *Nelson*, 133 Ill., 565, Mr. Justice BAILEY, speaking for this court, at page 573, says: "If "the act embraces two subjects, and both are expressed "in the title, *the entire act must be declared void*, as in that "case the proviso that if any subject is embraced in the "act which is not expressed in the title the act shall be "void only as to so much as is not so expressed, can have "no application if two subjects are both embraced in the "act and expressed in the title; *we cannot elect between "them so as to preserve one and reject the other, but the "entire act must fall by reason of being in contravention "of the constitutional limitation.*"

True, in the above case, this court sustained an act entitled, "*An Act to Create Sanitary Districts and to re-"move obstructions in the Desplaines and Illinois rivers.*" But the decision of the court was placed upon the theory that cleaning the channels of the rivers might promote, and be logically connected with the creation of sanitary districts; that the former was a part of the scheme for the accomplishment of the latter. There was no constitutional objection to the act being so framed. But in the pres-

ent case the act seeks to regulate the manufacture of clothing, wearing apparel *and other articles*, creates offices for the enforcement of such regulation, empowers the governor to fill those offices, *and makes an appropriation for the payment of the salaries of those officers.*

Section 16 of Article 4, of the Constitution of 1870, provides, that: "The General Assembly shall make no "appropriation of money out of the treasury in any pri- "vate law. Bills making appropriations for the pay of "members and officers of the general assembly, *and "for the salaries of the officers of the government shall "contain no provision on any other subject.*"

It is therefore clear that the theory upon which this court sustained the act involved in *People* v. *Nelson, supra*, can not be invoked to sustain the act here considered. The Constitution expressly forbids that any act which appropriates money for the *payment of salaries of government officers* shall contain any other provision.

It can not, and probably will not be questioned that the offices created by the present act, are government offices; and that the inspector, his assistant, and deputy, for the payment of whose salaries the appropriation is intended are "government officers."

In *The United States* v. *Maurice*, 2 Brock., 103, Chief Justice MARSHALL says: "An office is defined to be a "public charge or employment, and he who performs the "duties of the office, is an officer. Although an office is "an employment, it does not follow that every employ- "ment is an office. A man may certainly be employed to "do an act, or perform a service, without becoming an "officer. *But if the duty be a continuing one, which is "defined by rules prescribed by the government, and not by*

"*contract, which an individual is appointed by government*
"*to perform, who enters upon the duties appertaining to*
"*his station without any contract defining them, if these*
"DUTIES *continue, though the* PERSON *be discharged, it seems*
"*very difficult to distinguish such a charge or employment*
"*from an office, or the person who performs the duties*
"*from an officer.*"

This definition was recognized and adopted by this court in

Bunn v. *People*, 45 Ill., 397,
Wilcox v. *People*, 90 Ill., 186,
People v. *Morgan*, 90 Ill., 558,

and is the basis of section 24, article 5 of the Constitution of 1870, which declares: "An office is a public position "created by the constitution or law, continuing during "the pleasure of the appointing power, or for a fixed time, "with a successor elected or appointed."

In *State* v. *Hyde*, 121 Ind., 20, the Supreme court of Indiana declared that an "inspector of mineral oils" (very like in characteristics of office and power, to the factory inspector) is a state officer.

There can be no doubt that the factory inspector and his assistants are officers of the government.

Throop on Officers, Chap. 1.
Trimble v. *People*, 34 Pac. Rep., 981 —— (Col. Nov., 1893.)
19 Am. & Eng. Ency. Law, pp. 382 to 390.
U. S. v. *Perkins*, 116 U. S., 483.

There is here presented, therefore, an act for the accomplishment of at least, two distinct purposes, both of which are expressed in the title, and which the Constitution declares shall not be united and embraced in one act.

Applying, then, Section 13 of Article 4, as construed in *People* v. *Nelson, supra*, the whole act must be held void, since it embraces two distinct subjects, both of which are expressed in the title. This conclusion results from the application of the plain provisions of the Constitution itself,—provisions so plain and clear in their application, as to render further argument or citation of authority a work of supererogation. The conclusion is irresistible—no stretch of the rule of "liberal construction" can avoid its force.

II.

SECTION 5 OF THE ACT PLACES UNWARRANTED RESTICTIONS OPON THE INDIVIDUAL'S RIGHT TO COTRACT.

Art. 14 of the Amendments to the Federal Constitution, Sec. 1, provides: "No state shall make or enforce "any law which shall abridge the privileges or immu- "nities 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 law."

Art. 2, Sec. 1, of the Constitution of Illinois provides: "All men are by nature free and independent, and have "certain inherent and inalienable rights; among these "are life, liberty and the pursuit of happiness. To se- "cure these rights and the protection of property, gov- "ernments are instituted among men, deriving their just "powers from the consent of the governed."

Section 2 provides: "No person shall be deprived of "life, liberty or property without due process of law."

Section 1,977 of the Revised Statutes of the United

States contains this further provision: "*All persons* within the jurisdiction of the United States shall have the same right in every state and territory, to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishments, pains, penalties, taxes, licenses and exactions of every kind and no other."

The act in question deprives every female, be she adult or minor, of the right to work more than eight hours in any one day or forty-eight hours in any one week, in *any* factory or workshop. The term "factory" or "workshop" is defined by section 7 of the act as *any* "*place where goods or products are manufactured or repaired, cleaned or assorted, in whole or part, for sale or wages.*" It is thus seen that the term "factory" is made to include almost every place where woman follows any of the callings to which she is by nature peculiarly adapted. Every place in which millinery or dresses are made, or where sewing is conducted, as well as the lighter trades, such as candy making, paper box making and the like, becomes a factory. The law therefore debars those women who have fitted themselves for these particular branches of industry, from contracting in a manner similar to those who have fitted themselves for other industries.

The courts, not only of the United States, but of every state in the Union, have in every instance sought to keep inviolate the constitutional provisions above quoted.

Mr. Justice BRADLEY, in his dissenting opinion in the Slaughter-house cases, 16 Wallace, page 113, uses language not in conflict with the majority opinion, and says:

"And in my judgment, the right of any citizen to fol-
"low whatever lawful employment he chooses to adopt
"(submitting himself to all lawful regulations), is one of
"his most valuable rights and one which the legis-
"lature of a state cannot invade, whether restrained
"by its own constitution or not. * * * The
"people of this country brought with them to its shores,
"the rights of Englishmen, the rights which have been
"wrested from English sovereigns at various periods of
"the nation's history. One of these fundamental rights
"was expressed in these words found in the Magna
"Charta: 'No freeman shall be taken or imprisoned, or
"be disseized of his freehold or liberties or free customs,
"or be outlawed or exiled or any other wise destroyed,
"nor will we pass upon him or condemn him, but by
"lawful judgment of his peers or by the law of the land.'
"English constitutional writers expound this article as
"rendering life, liberty and property inviolable except by
"due process of law. * * * Blackstone classifies these
"fundamental rights under three heads as the absolute
"rights of individuals, to wit: the right of personal se-
"curity, the right of personal liberty, and the right of
"private property. * * * For the preservation, ex-
"ercise and enjoyment of these rights, the individual cit-
"izen, as a necessity, must be left free to adopt such
"calling, profession or trade as may seem to him most
"conducive to that end. Without this right he cannot
"be a freeman. This right to choose one's calling is an
"essential part of that liberty which it is the object of
"government to protect, and a calling, when chosen, is a
"man's property and right. Liberty and property are not
"protected where these rights are arbitrarily assailed.

"The Declaration of Independence lays the foundation

"of our national existence upon the broad proposition: "That all men are created equal; that they are endowed "by their Creator with inalienable rights, and among "these are life, liberty and the pursuit of happiness. "Rights to life, liberty and property are equivalent to "life, liberty and the pursuit of happiness. * * * In "my view, the law which prohibits a large class of citi- "zens from adopting a lawful employment or from fol- "lowing a lawful employment previously adopted, *does "deprive them of liberty as well as property, without due "process of law.*"

"This right of choice is a portion of their liberty; their "occupation is their property."

Mr. Justice SWAYNE, in his dissent in the same case, was also of the view that the Louisiana act in question violated this unquestioned right, and says: "Life is the "gift of God, and the right to preserve it is the most "sacred of the rights of man. Liberty is freedom from "all restraints, but such as are justly imposed by law. "Property is everything which has an exchangeable "value, and the right of property includes the right to "dispose of it according to the will of the owner. *Labor "is property, and as such, merits protection*"

In the case of *State* v. *Loomis*, 115 Mo., 307 (also reported 21 Lawyers Reports, annotated 789 with valuable note), the court by BLACK, J., in declaring a law making it a misdemeanor for any corporation, person or firm engaged in manufacing or mining, to issue in payment of the wages of its laborers, any order, check, memorandum, etc., payable otherwise than in lawful money of the United States, uses the following language at page 315: "There can be "no doubt but legislation may regulate the business of

" mining or manufacturing so as to secure the health and
" safety of the employes, but that is not the scope of the
" two sections of the statute now in question. They
" single out those persons who are engaged in carrying
" on the pursuits of mining and manufacturing, and say
" to such persons, you cannot contract for labor payable
" alone in goods, wares and merchandise. The farmer,
" the merchant, the builder and the numerous contractors
" employing thousands of men, may make such contracts,
" but you cannot. They say to the mining and manufac-
" ing employes, though of full age and competent to con-
" tract, still you shall not have the power to sell your
" labor for meat and clothing alone as others may.

" It will not do to say these sections simply regulate pay-
" ment of wages, for that is not their purpose. They un-
" dertake to deny to the persons engaged in the two de-
" signated pursuits, the right to make and enforce the most
" ordinary every day contracts—a right accorded to all other
" persons. This denial of the right to contract is based up-
" on a classification which is purely arbitrary, because the
" ground of the classification has no relation whatever to
" the natural capacity of persons to contract. Now, it may
" be, that instances of oppression have occurred and will
" occur, on the part of some mine owners and manufact-
" urers, but do they not occur quite as frequently in other
" fields of labor? Conceding that such instances may and
" do occur, still that furnishes no reasonable basis for de-
" priving all persons engaged in the two lawful and neces-
" sary pursuits, of the right to make and enforce every day
" contracts.

" Liberty, as we have seen, includes the right to contract
" as others may, and to take that right away from a class of
" persons following lawful pursuits, is simply depriving

"such persons of a time-honored right which the constitu-
"tion undertakes to secure to every citizen. Applying the
"principles of constitutional law before stated, we can come
"to no other conclusion than this, that these sections of the
"statute are utterly void. They attempt to strike down
"one of the fundamental principles of constitutional
"government. If they can stand, it is difficult to see an
"end to such legislation, and the government becomes one
"of special privileges, instead of a compact 'to promote
"the general welfare of the people.'"

The same principle has been announced and adhered to in New York. An act prohibiting the manufacture of cigars in tenement houses was declared unconstitutional, in the case of *In re.* Jacobs, 98 N. Y., 98. The court at page 105, says: "The constitutional guaranty
"that no person shall be deprived of his property with-
"out due process of law, may be violated without the
"physical taking of property for public or private use.
"Property may be destroyed or its value may be annihi-
"lated; it is owned and kept for some useful purpose,
"and it has no value unless it can be used. Its capability
"for enjoyment and adaptability to some use are essential
"characteristics and attributes without which property
"cannot be conceived; and hence any law which destroys
"it or its value, or takes away any of its essential attrib-
"utes, deprives the owner of his property.

"The constitutional guaranty would be of little worth
"if the legislature could, without compensation, destroy
"property or its value, deprive the owner of its use, deny
"him the right to live in his own house, or to work at
"any lawful trade therein. * * *

"So, too, one may be deprived of his liberty and his
"constitutional rights thereto violated without the actual

"imprisonment or restraint of his person. Liberty, in its
"broad sense, as understood in this country, means the
"right, not only of freedom from actual servitude, im-
"prisonment or restraint, but the right of one to use his
"faculties in all lawful ways, *to live and work where he*
"*will, to earn his livelihood in any lawful calling*, and to
"pursue any lawful trade or avocation. All laws, there-
"fore, which impair or trammel these rights, which limit
"one in his choice of a trade or profession, or confine
"him to work or live in a specified locality, or exclude
"him from his own house, or restrain his otherwise law-
"ful movements (except as such laws may be passed in
"the exercise by the legislature of the police power,
"which will be noticed later), are infringements upon his
"fundamental rights of liberty, which are under consti-
"tutional protection."

In the case of *People* v. *Gilson*, 109 N. Y., 389, the law prohibiting the sale or disposal of any article of food or any offer or attempt to do so, upon any representation or inducement that anything else will be delivered as a gift, prize, premium or reward to the purchaser, was declared unconstitutional and void. Says the court, at page 398: "The following propositions are firmly established
"and recognized: A person living under our constitution
"has the right to adopt and follow such lawful industrial
"pursuit, not injurious to the community, as he may see
"fit. The term 'liberty,' as used in the constitution, is
"not dwarfed into mere freedom from physical restraint
"of the person of the citizen, as by incarceration, but is
"deemed to embrace the right of man to be free in the
"enjoyment of faculties with which he has been endowed
"by his Creator, subject only to such restraints as are
"necessary to the common welfare. * * * *It* (*the*

"*legislation*) *is evidently of that kind which has been so*
"*frequent of late, a kind which is meant to protect some*
"*class in the community against the fair, free and full*
"*competition of some other class*, the members of the
"former class, thinking it impossible to hold their own
"against such competition, and, therefore, flying to the
"legislature to secure some enactment which shall operate
"favorably to them, or unfavorably to their competitors
"in the commercial, agricultural, manufacturing or pro-
"ducing fields."

In the case of *Godcharles* v. *Wigeman*, 113 Pa. St., 431, the store order act was held unconstitutional and void because it attempted to prevent persons who were *sui juris*, from making their own contracts.

The court, at page 437, says:

"The first, second, third and fourth sections of the act
"of June 29, 1881, are utterly unconstitutional and void,
"inasmuch as by them an attempt has been made by the
"legislature to do what, in this country, cannot be done;
"that is, *prevent persons who are sui juris from making*
"*their own contracts.* The act is an infringement alike
"of the rights of the employer and the employe. *More*
"*than this, it is an insulting attempt to put the laborer*
"*under a legislative tutelage, which is not only degrading*
"*to his manhood, bnt subversive of his rights as a citizen*
"*of the United States.* He may sell his labor for what
"he thinks best, whether money or goods, just as his
"employer may sell iron or coal; and any and every law
"that proposes to prevent him from so doing, is an in-
"fringement of his constitutional privileges, and conse-
"quently vicious and void."

The case of *Commonwealth* v. *Perry*, 155 Mass., 117, involved an act that provided that no employer should impose

a fine upon an employe engaged at weaving or withhold his wages for imperfections that might arise during the process of weaving, and was held unconstitutional.

The court, at page 121, says:

"There are certain fundamental rights of every citizen "which are recognized in the organic law of all our free "American States. A statute which violates any of "these rights is unconstitutional and void, even though "the enactment of it is not expressly forbidden. * * * "The right to acquire, possess and protect property, in-"cludes the right to make reasonable contracts which "shall be under the protection of the law. The manu-"facture of clothing is an important industry essential to "the welfare of the community. There is no reason why "men should not be permitted to engage in it. Indeed, "the statute before us, recognizes it as a legitimate busi-"ness, into which anybody may freely enter. The right to "employ weavers and to make proper contracts with them "is therefore protected by our constitution; *and a statute "which forbids the making of such contracts or attempts "to nullify them, or impair the obligation of them, vio-"lates fundamental principles of right which are expressly "recognized in our constitution.*

To the same effect, also, see

Ex parte Sing Lee, 31 Pacific Rep., 245.
State v. *Goodwillie*, 33 W. Va., 179.
State v. *F.C. Coal & Coke Co.*, 33 W. Va., 188.
Leep v. *St. Louis, I. M. & S. Ry. Co.*, 25 South W. Rep., 75 (Supreme Ct. of Ark., February 3, 1894).

This court, however, has committed itself so thoroughly to the doctrine contended for that it is unnecessary to

cite any additional cases outside of this state on the question.

In *Millett* v. *People*, 117 Ill., 294, this court held so much of the act of 1885, providing for the weighing of coal at the mines as provides that all contracts for the mining of coal in which the weighing of the coal as provided for in that act shall be dispensed with, null and void, and in violation of the constitution. In that case, this court, at page 301, says (quoting from COOLEY, Const. Lim.): "Every one has a right
" to demand that he be governed by general rules, and a
" special statute that singles his case out as one to be
" regulated by a different law from that which is applied
" in all similar cases, would not be legitimate legislation,
" but an arbitrary mandate, unrecognized in free govern-
" ment. Mr. Locke has said of those who make the
" laws: 'They are to govern by promulgated, established
" laws, not to be varied in particular cases, but to have
" one rule for rich and poor—for the favorite at court and
" the countryman at plough.' And this may justly be
" said to have become a maxim in the law by which may
" be tested the authority and binding force of
" legislative enactments." And, again the same authority says: "The doubt might also arise whether
" a regulation made for any one class of citizens, en-
" tirely arbitrary in its character, and restricting their
" rights, privileges or legal capacities in a manner
" before unknown to the law, could be sustained. Distinc-
" tions in those respects should be based upon some reason
" which renders them important, like the want of capacity
" in infants and insane persons; but, if the legislature should
" undertake to provide that *persons* following some speci-
" fied lawful trade or employment should not have capacity

"to make contracts, or to receive conveyances, or to build "such houses as others were allowed to erect, or in any "other way to make such use of their property as was "permissible to others, it can scarcely be doubted that the "act would transcend the due bounds of legislative power, "even if it did not come in conflict with express constitu- "tional provisions. The man or the class forbidden the "acquisition or enjoyment of property in the manner per- "mitted to the community at large, would be deprived of "*liberty* in particulars of primary importance to his or their "pursuit of happiness." A little further down, on page 302, the court quoting from *Wally's Heirs* v. *Kennedy*, 2 Yerg., 554, says:

"The rights of every individual must stand or fall by "the same rule or *law* that governs every other member "of the body politic, or land, under similar circumstances; "and every partial or private law which directly pro- "poses to destroy or affect individual rights, or does the "same thing by affording remedies leading to similar con- "sequences, is unconstitutional and void. Were it other- "wise, odious individuals or corporate bodies would be "governed by one law, the mass of the community and "those who made the law, by another; whereas a like "general law, affecting the whole community equally, "could not have been passed." * * *

"What is there in the condition or situation of the "laborer in the mine to disqualify him from contracting "in regard to the price of his labor, or in regard to the "mode of ascertaining the price? And why should the "owner of the mine, or the agent in control of the mine, "not be allowed to contract in respect to matters as to "which all other property owners and agents may con- "tract? Undoubtedly, if these sections fall within the

"police power, they may be maintained on that ground;
"but it is quite obvious that they do not. Their require-
"ments have no tendency to insure the personal safety of
"the miner, or to protect his property, or the property of
"others. They do not meet Dwarris' definition of po-
"lice regulations. They do not have reference to the
"comfort, the safety or the welfare of society. (Potter's
"Dwarris on Statutes, 458.) In *Austin* v. *Murray*, 16
"Pick., 121, it was said: 'The law will not allow the
"rights of property to be invaded under the guise of a
"police regulation for promotion of health, when it is
"manifest that such is not the object and purpose of the
"regulation."

At page 304, of the same case the court says:

* * * "but we do not think that the General As-
"sembly has power to deny to persons in one kind of busi-
"ness the privilege to contract for labor, and to sell their
"products without regard to weight, while at the same
"time allowing to persons in all other kinds of business
"this privilege, there being nothing in the business itself
"to distinguish it in this respect from any other kind of
"business; and we deny that the burden can be imposed
"on any corporation or individual not acting under a
"license, or by virtue of a franchise, of buying property,
"and hiring labor merely to furnish public statistics,
"unless upon due compensation to be made therefor."

In *Frorer* v. *People*, 141 Ill., 171,

141 Ill. 171

the truck-store act of 1891 was under consideration by this court, and was declared unconstitutional for the same reasons.

The court says at page 179:

"The prohibition of the statute operates not directly upon
"the business of mining and manufacturing, but upon the

" individual because of his participation in that business.
" It is not imposed for the purpose of rendering mining
" and manufacturing less perilous or laborious, not to re-
" strict or regulate the duties of employer or employe in
" respects peculiar to those industries, but for the sole
" purpose of imposing disabilities in contracting as to
" tools, clothing and food—matters about which all labor-
" ers must contract, and as to which all laborers in every
" other branch of industry are permitted to contract with
" their employers, without any restriction. * * *

" If the general assembly may thus deprive some per-
" sons of substantial privileges allowed to other persons
" under precisely the same conditions, it is manifest that
" it may, upon like principle, deprive still other persons of
" other privileges in contracting, which, under precisely
" the same circumstances, are enjoyed by all but the pro-
" hibited class. *And it can hardly be admissible that the*
" *legislative determination that the facts are such as to*
" *warrant this discrimination is conclusive, for that would*
" *make the General Assembly omnipotent, since, if that*
" *were so, there could be nothing but its own discretion to*
" *control its action in regard to every liberty enjoyed by the*
" *citizen, and it might find that the public welfare required*
" *that society should be divided into an indefinite number of*
" *classes, each possessing or being denied privileges in con-*
" *tracting and acquiring property, as favoritism or caprice*
" *might dictate.*

" The privilege of contracting is both a liberty and a
" property right, and if A is denied the right to contract
" and acquire property in a manner which he has hither-
" to enjoyed under the law, and which B, C and D are
" still allowed by the law to enjoy, it is clear that he is
" deprived of both liberty and property to the extent that

"he is thus denied the right to contract. Our constitu-
"tion guarantees that no person shall be deprived of life,
"liberty or property without due process of law. (Art.
"2, Sec. 2.) And says Cooley: 'The man or the class
"forbidden the acquisition or enjoyment of property in
"the manner permitted the community at large, would
"be deprived of liberty in particulars of primary import-
"ance to his or their pursuit of happiness.' Cooley's
"Const. Lim. (1st Ed.), 393; *People* v. *Otis*, 90 N. Y., 48;
"*People* v. *Gillson*, 109 *id.*, 398. 'Due process of law'
"does not mean a statute passed for the purpose of work-
"ing the wrong. Cooley's Const. Lim. (1st Ed.), 253.
"These words are held to be synonymous with the words
"'law of the land.' (*Ibid*, 352, 353.) 'And this means
"general public law, binding upon all the members of the
"community under all circumstances, and not partial or
"private laws, affecting the rights of private individuals
"or classes of individuals.' *Millett* v. *People*, 117 Ill.,
"294, and authorities cited.

"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 instan-*
"*ces the circumstances must be so exceptional as to leave*
"*no others affected in precisely the same way upon whom*
"*a general law could have effect.*"

At page 185, the court says:

"So, under what is denominated the 'police power,'
"laws may be constitutionally enacted imposing new
"burdens on persons and property, and restricting per-
"sonal rights of enjoyment of property, where in the
"opinion of the General Assembly, the public welfare de-

the coal on pit cars before it is screened, and to pay on such weights, was held unconstitutional. This court, by Mr. Justice BAILEY says, at page 384:

"In the recent case of *Frorer* v. *The People*, 141 Ill., 171,
" we had occasion to consider another statute passed by
" the same Legislature, and involving, in the main, the
" same constitutional principles as the one now before us,
" and reached the conclusion that the statute in question
" in that case is unconstitutional and void. That statute
" made it unlawful for any person, company, corporation
" or association engaged in any mining or manufacturing
" business, to engage in, or be interested, either directly
" or indirectly, in the keeping of a truck-store, or the
" controlling of any store, shop or scheme for the fur-
" nishing of supplies, tools, clothing, provisions or grocer-
" ies, to his, its or their employes, while engaged in
" mining or manufacturing. We held that said statute was
" a prohibition, not only upon the employer engaged in
" mining or manufacturing, but also upon his employes,
" and took from both the right and liberty belonging to
" all other members of the community to enter into such
" contracts, not contrary to public policy, as they may
" see fit; that the legislature had no power to deprive
" one class of persons of privileges allowed to other per-
" sons under like conditions; that the privilege of con-
" tracting is both a liberty and a property right, pro-
" tected by that provision of the constitution which guar-
" antees that no person shall be deprived of his liberty or
" property without due process of law, and that if one
" person is denied the right to contract and acquire prop-
" erty in the manner which he has hitherto enjoyed under
" the law, he is deprived of both liberty and property, to
" the extent that he is thus deprived of the right to con-
" tract.

"We are of the opinion that the same rule, in sub-
"stance, laid down in the Frorer case, applies here, and
"we need, therefore, do little more than refer to what is
"said in the opinion in that case. The statute now be-
"fore us, in like manner with the one under considera-
"tion there, attempts to take from both employer and
"employe engaged in the mining business, the right and
"the power of fixing by contract the amount of wages,
"the employe is to receive, and the mode in which such
"wages are to be ascertained. The statute makes it
"imperative, where the miner is paid on the basis of the
"amount of coal mined, whatever may be the wishes or
"interests of the parties, that the coal shall be weighed
"on the pit-cars before being screened, and that the
"compensation shall be computed upon the weight of the
"unscreened coal.

"In all other kind of business involving the employ-
"ment of labor, the employer and employe are left free
"to fix by contract the amount of wages to be paid and
"the mode in which such wages shall be ascertained and
"computed. This is justly regarded as a very important
"right, vitally affecting the interests of both parties. To
"the extent to which it is abridged, a property right is
"taken away. There is nothing in the business of coal
"mining which renders either the employer or employe
"less capable of contracting in respect to wages than in
"any of the other numerous branches of business in which
"laborers are employed under analogous conditions.
"There is no difference, at least in kind, so far as this
"matter is concerned, between coal mining, on the one
"hand, and other varieties of mining, quarrying stone,
"grading and constructing railroads, and their operation
"when constructed, manufacturing in all its departments,

" the construction of buildings, agriculture, commerce,
" domestic service, and an almost infinite variety of other
" avocations requiring the employment of laborers, on the
" other hand. Upon what principle, then, can those en-
" gaged in coal mining be singled out and subjected to
" restrictions of their power to contract as to wages,
" while those engaged in all these other classes of busi-
" ness are left entirely free to contract as they see fit?
" We think the attempt of the legislature to impose such
" restrictions is clearly repugnant to the constitutional
" limitation above referred to, and therefore void."

In *Braceville Coal Co.* v. *People* 147 Ill., 66, the court had under consideration the act of 1891 providing for the weekly payment of wages by corporations, and held the same unconstitutional, as depriving certain corporations of the right of liberty and property without due process of law. This court, by Mr. Justice SHOPE, says, at page 70:

" There can be no liberty, protected by government,
" that is not regulated by such laws as will preserve the
" right of each citizen to pursue his own advancement
" and happiness in his own way, subject, only, to the re-
" straints necessary to secure the same rights to all others.
" The fundamental principles upon which liberty is based,
" in free and enlightened government, is equality under
" the law of the land. It has accordingly been every-
" where held, that liberty, as that term is used in the con-
" stitution, means not only freedom of the citizen from
" servitude and restraint, but is deemed to embrace the
" right of every man to be free in the use of his powers
" and faculties, and to adopt and pursue such avocation
" or calling as he may choose, subject only to the re-
" straints necessary to secure the common welfare.

"Property, in its broader sense, is not the physical
"thing which may be the subject of ownership, but is
"the right of dominion, possession and power of dis-
"position which may be acquired over it; and the right
"of property preserved by the constitution is the right
"not only to possess and enjoy it, but also to acquire it
"in any lawful mode, or by following any lawful indus-
"trial pursuit which the citizen, in the exercise of the
"liberty guaranteed, may choose to adopt. Labor is
"the primary foundation of all wealth. The property
"which each one has in his own labor is the common
"heritage, and, as an incident to the right to acquire
"other property, the liberty to enter into contracts by
"which labor may be employed in such way as the
"laborer shall deem most beneficial, and of others to em-
"ploy such labor, is necessarily included in the constitu-
"tional guaranty."

Then, after quoting from the Frorer case, the cour continues, at page 72:

"It is undoubtedly true that the people, in their repre-
"sentative capacity, may, by general law, render that
"unlawful, in many cases, which had hitherto been law-
"ful. But laws depriving particular persons or classes
"of persons of rights enjoyed by the community at large,
"to be valid, must be based upon some existing distinction
"or reason not applicable to others not included within
"its provisions. (Cooley's Const. Lim., 391.) And it is
"only when such distinction exists that differentiate, in
"important particulars, persons or classes of persons
"from the body of the people, that laws having operation
"only upon such particular persons or classes of persons
"have been held to be valid enactments. In the Millett case
"we held that it was not competent, under the constitu-

"tion, for the legislature to single out operators of coal "mines, and impose restrictions, in making contracts for "the employment of labor, which were not required to "be borne by other employers. And in the Frorer case, "a law singling out persons, corporations or associations "engaged in mining and manufacturing, and depriving "them of the right to contract as persons, corporations "and associations engaged in other business or vocation "might lawfully do, was in violation of the constitution, "and void. So in *Ramsey* v. *The People*, 142 Ill., 380, "'An act to provide for the weighing in gross of coal "hoisted from mines,' approved June 10, 1891, was held "unconstitutional and void for the same reason.

"The act under consideration applies not to all cor-"porations existing within the state, or to all that have "been or may be organized for pecuniary profit under "the general incorporation laws of the state. There is no "attempt to make a distinction between corporations and "individuals who may employ labor. The slightest con-"sideration of the act will demonstrate that many corpora-"tions that may be and are organized and doing business "under the laws are not included within the designated "corporations. No reason can be found that would require "weekly payments to the employes of an electric railway "that would not require like payment by an electric "light or gas company; to a corporation engaged in "quarying or lumbering that would not be equally ap-"plicable to a corporation engaged in erecting, repairing "or removing buildings or other structures; to mining "that would not exist in respect of corporations engaged "in making excavations and embankments for roads, "canals, or other public or private improvement of like "character; that will apply to a street or elevated railway

"that will not make it equally important in other modes "of transportation of freight and passengers. The public "records of the state will show, and it is a matter of com- "mon knowledge, that very many corporations have "been organized and are doing business in this state, "which necessarily employ large numbers of men, that "are not included within the act under consideration.

"The restriction of the right to contract affects not "only the corporation, and restricts its right to contract, "but that of the employe as well. We need not repeat "the argument of the Frorer case upon this point. An "illustration of the manner in which it affects the em- "ploye, out of many that might be given, may be found "in the conditions arising from the late unsettled finan- "cial affairs of the country. It is a matter of common "knowledge that large numbers of manufactories were "shut down because of the stringency in the money "market. Employers of labor were unable to continue "production, for the reason that no sale could be found "for the product. It was suggested, in the interest "of employes and employers as well as in the "public interest, that employes consent to accept "only so much of their wages as was actually necessary "to their sustenance, reserving payment of the balance un- "til business should revive, and thus enable the factories "and workshops to be open and operated with less present "expenditure of money. Public economists and leaders "in the interest of labor suggested and advised this "course. In this state and under this law no such con- "tract could be made.

"The employe who sought to work for one of the "corporations enumerated in the act, would find himself "incapable of contracting as all other laborers in the

"state might do. The corporations would be prohibited
"from entering into such a contract, and if they did so,
"the contract would be voidable at the will of the em-
"ploye, and the employer subject to a penalty for mak-
"ing it. The employe would, therefore, be restricted
"from making such a contract as would insure to him
"support during the unsettled condition of affairs, and
"the residue of his wages when the product of his labor
"could be sold.

"The employes would, by the act, be practically un-
"der guardianship, their contracts voidable, as if they
"were minors; their right to freely contract for, and to
"receive the benefit of their labor, as others might do,
"denied them. * * * We need not extend this
"opinion by further discussion. The right to contract
"necessarily includes the right to fix the price at which
"labor will be performed, and the mode and time of pay-
"ment. Each is an essential element of the right to
"contract, and whosoever is restricted in either, as the
"same is enjoyed by the community at large, is deprived
"of liberty and property. The enactment being uncon-
"stitutional, there is no law authorizing the judgment
"of the County court, and it will accordingly be re-
"versed."

The language contained in these cases is susceptible of no other construction than that any act which deprives one class of persons of certain rights and permits another class of persons to exercise those rights, is in violation of the fundamental principles of our Constitution. The act under discussion certainly falls within this inhibition. By the act in question the employer of female labor, in other industries than those of manufacturing may employ such labor under such terms and for such time as he sees fit;

but it cannot be contended that the employer of labor in a factory is in any different position from the employer of labor in a retail shop. On the contrary, the evidence in all the cases before this court affirmatively shows that the places denominated factories, are well ventilated, well lighted and supplied with all the conveniences and comforts necessary for the health and prosperity of those working therein. Will this court assume that because a place is called a factory, therefore such place is not fitted for the employment of females, when other places, perhaps much worse in their surroundings and conditions, *are* fitted for female labor?

We now call the attention of the court to a case in which an eight-hour law was under consideration We refer to *ex parte* Kuback, 85 California, 274. The council of the city of Los Angeles passed an ordinance providing that eight hours labor should constitute a legal day's work in all cases, where the same was performed under the authority of any ordinance or contract of the city, and under the direction of any officer of the city; and that it should be unlawful for any contractor to demand or contract for more than eight hours labor in one day, from any person in his employ, with the promise that such person working over eight hours, should receive a sum for said day's work more than that paid for a legal day's work. In declaring the ordinance unconstitutional, the court, at page 275, says:

"It is claimed in support of the petition that this ordinance was unconstitutional and void. We think this objection is well taken. 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 their contracts. If the services to be performed
" were unlawful or against public policy, or *the employ-*
" *ment were such as might be unfit* for certain persons, as,
" for example, females or infants, the ordinance might be
" upheld as a sanitary or police regulation, but we cannot
" conceive of any theory upon which a city could be justi-
" fied in making it a misdemeanor for one of its citizens
" to contract with another for services to be rendered, be-
" cause the contract is that he shall work more than a
" limited number of hours per day."

The eight-hour law was also under consideration by Judge REED in the District court, in Kansas in September, 1893. In his opinion he says:

"If prior to this enactment, employer and employe could
" enter into a lawful contract as citizens of the United
" States, which they most certainly could, then how
" could any legislature of a state annul this right guar-
" anteed by the Federal Constitution, unless it fell within
" the principle of police regulation." (26 Chicago Legal News 47.)

We come now to a consideration of the question as to whether the enactment of section 5 of the act of 1893 falls within the police powers of the legislature. Tiedeman, Limitation of Police Power, Sec. 3, p. 12, says: " But in
" such a case the regulation must fall within the enforce-
" ment of the legal maxim, *sic utere tuo, ut alienum*
" *non laedas*. ' Powers which can only be justified on
" this specific ground (that they are police regulations) and
" which would otherwise be clearly prohibited by the con-
" stitution, can only be such as are clearly necessary to the
" safety, comfort and well-being of society, or so impera-
" tively required by the public necessity, as to lead to the

"rational and satisfactory conclusion that the framers of the "constitution could not, as men of ordinary prudence and "foresight, have intended to prohibit their exercise in the "particular case, notwithstanding the language of the pro-"hibition would otherwise include it.' And in all such "cases it is the *duty of the courts to determine whether "the regulation is a reasonable exercise* of a power, "which is generally prohibited by the constitution. 'It "is the province of the law-making power to determine "when the exigency exists for calling into exercise the "police power of the state, but what are the subjects of "its exercise is clearly a judicial question.'"

The police power, no matter how broad and extensive, is not above the constitution.

In re Jacobs, 98 N. Y., 108, the court, at page 110, says:

"Generally it is for the legislature to determine what "laws and regulations are needed to protect the public "health and secure the public comfort and safety, and "while its measures are calculated, intended, convenient "and appropriate to accomplish these ends, the exercise "of its discretion is not subject to review by the courts. "But they must have some relation to these ends. Un-"der the mere guise of police regulations, personal "rights and private property cannot be arbitrarily in-"vaded, and the determination of the legislature is not "final or conclusive. If it passes an act ostensibly for "the public health, and thereby destroys or takes away "the property of a citizen, or interferes with his personal "liberty, then it is for the courts to scrutinize the act and "see whether it really relates to and is convenient and "appropriate to promote the public health. It matters "not that the legislature may in the title to the act, or in

" its body, declare that it is intended for the improvement " of the public health. Such a declaration does not con- " clude the courts, and they must yet determine the fact " declared, and enforce the supreme law. * * * " Such legislation may invade one class of rights to-day " and another to-morrow, and if it can be sanctioned under " the constitution, while far removed in time, we will not " be far away in practical statesmanship from those ages " when governmental prefects supervised the building of " houses, the rearing of cattle, the sowing of seed and the " reaping of grain, and governmental ordinances regulated " the movements and labor of artisans, the rate of wages, the " price of food, the diet and clothing of the people and a " large range of other affairs long since in all civilized " lands regarded as outside of governmental functions. " Such governmental interferences disturb the normal " adjustments of the social fabric, and usually derange " the delicate and complicated machinery of industry, " and cause a score of ills while attempting the removal " of one."

In *People* v. *Gillson*, 109 N. Y., p. 389, it was also held to be the duty of the court to decide whether or not the legislature had properly exercised its discretion in the matter of police power. Nor can the state legislature, even in the exercise of a police or health regulation, attack rights conferred upon individuals by the United States constitution.

See the

Civil Rights Cases, 109 U. S., p. 11, *et seq.*

In the matter of Mary Maguire, 57 Cal., 604, there was presented to the court the validity of an ordinance

by the supervisors of the City of San Francisco, making it a misdemeanor for any person to employ a female to wait on any person in any place where malt or spiritous liquors were sold, and also making it a misdemeanor for any female to wait on any such person. The court, in declaring the ordinance unconstitutional and invalid said, (page 606): "The language of the ordinance is plain, and "its meaning unmistakable. It leaves nothing for con-"struction. *The words employed in this ordinance in-"capacitate a woman from following the business for "which the petitioner was fined, and disable her from "doing so. This being so, she is disqualified by the "ordinance under consideration from pursuing a business "lawful for men.* We are compelled to adopt this, or "admit that while the legislature cannot disqualify a per-"son on account of sex from following a lawful business "by direct enactment, it may by indirection accomplish "the same end by forbidding, under a penalty, the pro-"secution of such business. Such legislation as that just "above indicated could only be considered an evasion of "the constitutional provision. Such an enactment would "be as much a violation of the paramount law as one "disqualifying by express words. A woman offending "would be liable to the penalty for every day she was so "employed. This would usually be considered as dis-"abling, as imposing a disqualification, and therefore as "disqualifying.

"But it is further contended that the inhibition or "disqualification is not on account of sex, but on account "of its immorality; that such employment of a woman is "of a vicious tendency, and hurtful to sound public mor-"ality, and that this only is the object and design of the "ordinance. It is not contended that such business is

" *malum in se*, but of a hurtful and immoral tendency. It
" may be admitted that such is its object and design, but
" this object is aimed to be accomplished by an ordinance
" which precludes a woman from a lawful business. It
" is said that the presence of women in such places has
" this tendency. If men only congregate, this tendency
" does not exist in so hurtful a degree; at any rate, it has
" not been regarded as so hurtful, and has not fallen as
" yet under the legislative ban. So that it comes at last
" to this, that the preclusion and disqualification is on ac-
" count of sex. As we have in effect said above, the at-
" tempt is thus made to do that by indirection which can-
" not be done directly. The organic law of the land
" annuls all such enactments."

See also to the same effect the opinion of FIELD, Justice, in *How* v. *Numan*, 5 Sawyer, 552, in which the court uses the following language:

" For, the power of police regulation as exercised by
" the states, extends only to a just regulation of rights
" with a view to the due protection and enjoyment of all
" and does not require of anyone that which is justly and
" properly his own.

" In our country hostile and discriminating legislation
" by a state against persons of any class, sect, creed or
" nation, in whatever form it may be expressed, is for-
" bidden by the fourteenth amendment to the constitution.
" * * * It further declares that no state shall deprive
" *any person* " (dropping the distinctive term citizen) " of
" life, liberty or property without due process of law, nor
" deny to any person the equal protection of the law. * * *
" This inhibition upon the state, applies to all the instru-
" mentalities and agencies employed in the administration
" of the government. * * * The equality of pro-

" tection thus assured to every one * * * implies
" that no charges or burdens shall be laid upon him which
" are not equally borne by others."

Tiedeman on Limitation of Police Power, section 178, says:

" Laws, therefore, which are designed to regulate the
" terms of hiring in strictly private employments, are un-
" constitutional, because they operate as an interference
" with one's natural liberty, in a case in which there is
" no trespass on private right, and no threatening injury to
" the public. * * * The law can never create social
" forces. * * * A privilege or disability given to
" me, or imposed upon another, and not common to all,
" is oppression."

In *ex parte* Whitwell, 32 Pacific Rep., 870 (Cal.), DE-HAVEN, Judge, says:

" But it is not true, when such (police) power is
" exerted for the purpose of regulating a useful business
" or occupation, the legislature is the exclusive judge as
" to what is a reasonable and just restraint upon the con-
" stitutional right of the citizen to pursue any trade."

~~To the same effect is *Mugler* v. *Kansas*, 123~~ U. S., 661.

Cooley in his work on Constitutional Limitation, Sixth Ed., 606, 607, says: " All that the federal authority can
" do is to see that the states do not, under cover of this
" (police) power, invade the sphere of national sover-
" eignty, obstruct or impede the exercise of any authority
" which the constitution has confided to the nation, or de-
" prive any citizen of rights garanteed by the federal
" constitution."

Further on the same author at page 744, says: " The
" general rule undoubtedly is that any person is at liberty

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" to pursue any lawful calling, and to do so in his own " way, not encroaching upon the rights of others. This " general right cannot be taken away. It is not com- " petent, therefore, to forbid *any person* or *class of per* " *sons* whether citizens, resident aliens offering their ser- " vices in lawful business, or to subject others to penalties " for employing them."

We have seen that in order to fall within the police powers of the state, the enactment must be reasonable. It certainly cannot be contended that the section now before this court is reasonable; it in no way limits the kind or class of work in which females are to be employed. The essential elements with respect to the health of females are entirely lacking. It deprives woman of the right to work for more than eight hours in one day at those particular callings for which she is best fitted by nature. It takes away from her the right to sew, to mend, to make clothes, to make candies, to do all those acts for which she is better fitted than man is.

It can no longer be doubted that women have equal rights with men to the protection of the Constitution, and these fundamental rights, certainly, in view of the decisions cited *supra*, include the right to work as they choose.

The section under which the convictions were had is, on its face, not a health regulation. In order to make it such, this court would need hold that *no* woman can work more than eight hours in one day. It does not prescribe any particular kind of work which might be dangerous to the health of woman, and it does not limit employment to any particular place or places wherein the performance of work might be dangerous to the health of woman.

The fourteenth amendment of the United States constitution protects "*any person.*"

Section 1977 of the Revised Statutes of the United States protects "*all persons*"; and our state Constitution is equally broad.

It may not be amiss, in this connection, to call the attention of the court to the status of the legislation in this state on this subject before the present law was enacted. Up to that time, the law stood as follows:

Starr & Curtis Statutes, Vol. 1, chap. 48: "On and "after the 1st day of May, 1867, eight hours of labor "between the rising and the setting of the sun, in all me- "chanical trades, arts or employments and other classes of "labor by the day, except in farm employments, shall con- "stitute and be a legal day's work, *where there is no* "*special contract or agreement.*

"This act shall not apply to or in any way affect labor "or service by the month or week, nor shall any person "be prevented by anything herein contained from work- "ing as many hours over-time or extra hours as *she* or "he may agree, and shall not in any sense be held to ap- "ply to farm labor. All acts or parts of acts inconsist- "ent with the provisions of this act are hereby repealed. "This act shall be deemed a public act, and be in force "from and after its passage. No person shall be pre- "cluded or debarred from any occupation, profession or "employment (except military) on account of sex."

* * *

Here we notice a proper degree of care exercised by the legislature so as not to interfere with or infringe upon the rights guaranteed by the Constitution. In the present law, however, there is an entire lack of such care.

34 N. E. Rep

The Supreme court of Indiana, in a case recently decided, *in re* Leach, 34 N. E. Rep., 641, says concerning the rights of women:

Sex

"Whatever the objections of the common law of England there is a law higher in this country and better suited to the rights and liberties of American citizens; that law which accords to every citizen the natural right to gain a livelihood by intelligence, honesty and industries in the arts, the sciences, the professions or other vocations. Before the law, this right to a choice of vocations can not be said to be denied or intended to be abridged on account of sex. Certainly the framers of our constitution intended no such result, and surely the legislature entertained no such purpose. Bearing in mind these inalienable rights, it is not possible for us to believe that the constitution was adopted and the legislature enacted in reliance upon any supposed rule of the common law which would exclude women from the enjoyment of any such rights. * * *

"Citizenship belongs to women, and it will not be denied that they are within the letter and spirit of this provision."

Woman

The Supreme court of the United States, in *Minor* v. *Happersett*, 21 Wall., at page 165, says (opinion by Chief Justice WAITE): "There is no doubt that women may be citizens. They are citizens, and by the fourteenth amendment 'all persons born or naturalized in the United States and subject to the jurisdiction thereof,' are expressly declared to be 'citizens of the United States, and of the state wherein they reside.' But, in our opinion, it did not need this amendment to give them that position. Before its adoption the constitution of the United States did not

"in terms prescribe who should be citizens of the "United States or of the several states, yet they were "necessarily such citizens without such provision. There "cannot be a nation without a people. The very idea "of a political community such as a nation is implies an "association of persons for the promotion of their gen- "eral welfare. Each one of the persons associated be- "comes a member of the nation formed by the associa- "tion. He owes it allegiance and is entitled to its pro- "tection. Allegiance and protection are in this connec- "tion reciprocal obligations. One is a compensation for "the other—allegiance for protection and protection for "allegiance."

The court proceeds to state reasons showing that women are citizens, and then says:

"From this it is apparent that from the commence- "ment of the legislation upon this subject alien women "and alien minors could be made citizens by naturaliza- "tion, and we think it could not be contended that this "could be done if it had not been supposed native wo- "men and native minors were all citizens by birth. But "if more is necessary to show that women have always "been considered as citizens, the same as men, abundant "proof is to be found in the legislative and judicial his- "tory of the country."

The court, then at great length reviews the legislative and judicial history of the country as relating to woman's citizenship, and says:

"Other proof of like character might be found but cer- "tainly more cannot be necessary to establish the fact "that sex has never been made one of the elements of "citizenship in the United States; in this respect men "have never had an advantage over women. The same

"laws precisely apply to both. The fourteenth amend-
"ment did not affect the citizenship of women any more
"than it did of men, and, in this particular, therefore, the
"rights of Mrs. Minor do not depend upon the amend-
"ment. She has always been a citizen from her birth,
"and entitled to all the privileges and immunities of citi-
"zenship. The amendment prohibited the state of which
"she is a citizen from abridging any of her privileges and
"immunities as a citizen of the United States, but it did
"not confer citizenship upon her; that she had before its
"adoption."

Of what value then are the various laws that have been enacted for the benefit of woman, for the purpose of placing her on an equality with man with respect to her rights over property and her rights to contract, if the legislature can step in and under the guise of the police power deprive her of the very means of exercising those rights. What becomes of our Married Woman's Act? In order to bring this regulation under what is known as the police power it would certainly be necessary to have it to apply to *all* women. It is an unjust discrimination to enact that the woman who happens to be a dressmaker or a milliner shall be prohibited from working more than eight hours a day when her neighbor who happens to have chosen as her calling that of a bookkeeper or stenograper is not so prohibited.

In view of the grounds upon which this court has decided the former cases already referred to, it becomes distinctively class legislation of the most aggravating kind. Unless it can fairly be said that this law is reasonable and is necessary for the welfare of the community, then the courts have the right to question the justness and the reason of the law passed.

See *ex parte* Whitwell, *supra.*
Matter of *Mugler* v. *Kansas, supra.*
In re Jacobs, *supra.*
People v. *Gilson, supra.*

We have been able to find, after most dilligent search, but one case in the books, the conclusion of which makes against our contention. The case is that of *Commonwealth* v. *Hamilton Mnfg. Co.*, 120 Mass., 383. It was decided May 6, 1876. The case has never been cited or referred to in subsequent decisions, either in Massachusetts, or in any other state. The decision is based upon a law of Massachusetts, approved May 8, 1874, and contained in its Session Laws of 1874, page 145. The act is short and both in form and structure not like that of this state. It is entitled: "An Act to regulate the "hours of labor in manufacturing establishments," and provides as follows:

"Section 1. No minor under the age of eighteen years "and no woman over that age shall be employed in labor-"ing by any person, firm or corporation in any manufact-"uring establishment in this commonwealth more than "ten hours in any one day, except when it is necessary "to make repairs to prevent the stoppage or interruption "of the ordinary running of the machinery; provided, "however, that a different apportionment of the hours of "labor may be made for the sole purpose of giving a "shorter day's work for one day of the week, but in no "case shall the hours of labor exceed 60 per week."

Section 2 provides that "Any such person, firm or "corporation which wilfully employs any minor or woman "or which wilfully has in its employment any minor or "woman contrary to the provisions of this act * * *

" shall for each offense be punished by a fine not exceed-
" ing fifty dollars * * * no building or premises
" used solely for the purpose of a dwelling shall be
" deemed a manufacturing establishment within the mean-
" ing of this act."

In *Commonwealth* v. *Hamilton Mnfg. Co.*, the defendant demurred to the complaint upon two grounds:

First, that the statute is unconstitutional and void, and,

Second, that the defendant corporation having a charter prior to the passage of the statute, the latter, so far as it applied to the defendant, violated the obligation of contract created by defendant's charter.

The decision of the court is by Justice Lord, and covers barely a page. All that the court says in reference to the question under review is as follows:

" The only other question is whether it (the statute) 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 a week as he chooses.* (*Sic.*)
" It merely provides that in an employment which the
" legislature has evidently deemed to some extent dan-
" gerous to health, no person shall be engaged in labor
" more than ten hours a day or sixty hours a week.
" There can be no doubt that such legislation can 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 un-
" necessary. (We can find no case in Massachusetts

" which justifies the statement 'that reference to the de-
" cisions is unnecessary.') It is also said that the law
" violates the right of Mary Shirley to labor in accord-
" ance with her own judgment as to the number of hours
" she shall 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 shall desire.* It does not in
" terms forbid her laboring in any particular business or
" occupation as many hours per day or per week as she
" shall 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 un-
" necessary to inquire whether it is a matter of grievance
" of which this defendant has the right to complain. Judg-
" ment affirmed."

We fail to comprehend the force of the argument of the learned court. If it be a crime to employ an adult female for more than ten hours per day, how can it be contended that such law " does not limit her right to labor " as many hours per day or per week as she shall de-
" sire"?

With all due deference to the Supreme court of Massachusetts, the law in question *does* amount to a prohibition against the laborer, because it makes the employment a misdemeanor. This doctrine has been squarely announced by Mr. Justice FIELD, of the United States Supreme court, in

Baker v. *Portland*, 5 Sawyer, 566.

To the same same effect is *State* v. *Loomis*, 115 Mo., 307, 315, (decided March 25, 1893.)

In *Commonwealth* v. *Perry*, 155 Mass., 117, already

referred to and decided September 28, 1891, that court held a statute of that state which provides that "no employer shall impose a fine upon an employe engaged "at weaving or withhold his wages in whole or in part "for imperfections that may arise during the process of "weaving," as in conflict with the constitution, and with the first article of the declaration of rights which secures to all "the right of acquiring, possessing and protecting "property."

The reasoning in that case seems to us a departure from that used in *Commonwealth* v. *Hamilton Mnfg. Co.*, and the latter case is not even referred to in the former.

It is to be observed that in Massachusetts there is a constitutional provision (Article 4, Chap. 1, Sec. 1) to the effect that the legislature may "make, ordain and establish all manner of wholesome and reasonable orders, "laws, statutes and ordinances, directions and instructions, "either with penalties or without, so as the same be not repugnant or contrary to this constitution, *as they shall "judge to be for the good and welfare of this commonwealth, and for the government and order thereof, and "of the subjects of the same.*"

It will thus be seen that great latitude is expressly given by the constitution of Massachusetts to the legislature of that state, and the latter is held to have been made the sole judge of what laws are "for the good and "welfare of the commonwealth." See dissenting opinion of Justice Holmes, in *Commonwealth* v. *Perry*, *supra*.

In the absence, however, of such a constitutional provision as that which makes the legislature the judge of what is "for the good and welfare of" the state and "for "the government and order thereof and of the subjects

"of the same," the courts are designated (as we have already pointed out) as the proper forum in which to pass upon the justness and reasonableness of the law passed by the legislature.

> *Ex parte* Whitwell, 32 Pac. Rep. (Calif.), 870.
>
> Matter of McGuire, 57 Calif., 610, 611.
>
> *Mugler* v. *Kansas*, 123 U. S., 661.
>
> *In re* Jacobs, 98 N. Y., 108.

The interests of labor and capital *are not opposed, but identical*, and each share in the gains of the other by fixed, natural, economic and necessary laws *which cannot be resisted or varied by any legislative contrivance.*

Labor is but a commodity, and, like all commodities, tts value is governed by the elementary rule of demand and supply. Its value can be increased only in one of two ways: either by the increase of the fund to be applied to its payment, known as the wages fund; or by the decrease in the number employed.

The fallacy of the argument that one may by legislation raise the price of wages may be further illustrated by the fact that the wealth of a community, the employer's profits in that community, and all sources of income, spring from the products of labor, and that if we limit this product, there is so much less, both for the employer and the employed to draw from.

Whether the shortening of a person's hours of work, be he man or woman, is a benefit to that person, *depends partly upon the character of the person, and partly upon the means by which the shortening of hours is accomplished.* It has been strenuously urged by the supporters of section 5, of the act under consideration, that

one of the main benefits of the statute will be the improvement of the social and physical condition of the laboring woman. They have, however, failed to consider the effect of such legislation upon the earning capacity of woman, and, likewise, whether, from a practical standpoint, the laboring woman would be able to live upon the wages she could earn under the eight-hour legal day. To better illustrate the effect of this legislation, we insert a short extract from the report of the Bureau of Labor Statistics of Illinois for 1892. The statistics taken are those of six manufacturing industries, viz: *manufacturing candy, clothing, paper-boxes, shirts, shoes and underwear.* We have selected these branches because they are more particularly involved in the cases under consideration. Upon examination, it will be found, that in each of the above industries, if the eight-hour law is enforced the laboring woman of Illinois will be unable to earn sufficient wages to meet her ordinary necessities upon a basis of living equal to her present condition, with one exception; and it may be interesting to note that in the single branch of industry in which her income is not less than her cost of living, she will be able to save but $1 per year.

Again, it has been urged that nine and one-half or ten hours' work per day for a woman is too much, and that upon grounds of public policy, section 5 of the statute should be strenuously enforced.

From the annexed table it will be seen that after a period of work, ranging in time from three to ten years, in which woman has had to toil from nine to ten hours per day, her condition of health is quite as good, if not better, than at the beginning of her period of employment.

Condition of the Working Women by Industries.

Earnings and Expenses.

Industry.	Work Hours.	Average Yearly Earnings.	Average Weekly Earnings.	Weekly earnings by Piece. Price.	Expenses.	Reduced to eight hours earnings would be:	Expenses would exceed income.	Reduce comforts, luxuries, etc.
Candy	10	$225	$4 32	$4 68	$225	$180 50	$44 50	20%
Clothing	9	287	5 51	6 19	254	265	1	*
Paper Boxes	9½	252	4 84	4 95	251	210	41	15
Shirts	9	318	6 11	6 30	307	283	24	11 1/9
Shoes	9¾	338	6 50	7 08	332	227 24	54	10 2/5
Underwear	8½	256	4 02	5 76	253	241	12	5 4/5

* Reduce savings 97%

Health.

	Number.	Condition of health at Beginning of work.				No. of Years.	Present Condition of Health.		Daily hours work.
		Good.	Fair.	Delicate.	Bad.	—	Impaired.	Unimpaired.	
Candy	96	84	11	1	—	5	3	93	10
Clothing	44	41	3	—	—	7	1	43	9
Paper Boxes	149	108	33	8	—	4	1	148	9½
Shirts	65	65	—	—	—	10	—	65	9
Shoes	225	189	32	3	1	6	36	188	9¾
Underwear	38	38	—	—	—	3	1	37	8½

This movement, which would restrict the contract of employment between the employer and the employed, *will have the effect, primarily, of lessening wages.*

By reason of restrictive legislation of the kind here questioned, the *product of each employer will be diminished; the cost of production of the respective commodities will obviously be enhanced*, and the employed, as the consumer, will be the first one to pay the penalty for his or her dearly bought leisure.

The proper length of time for a man or woman to work *is the time he or she has fixed upon as* what his or her necessities, aims or desires require. When a third party intervenes to decide this question for the employed, be it Congress, legislature or trades unions, just then does the employed lose recognition in the scale of civilization. Whether he chooses to work twelve hours a day and have money in purse, or eight hours a day and have leisure; whether he will pass his youth in toil with the hope of a middle and old age in dignity, honor and repose, or surrender the prospects of rising in the world for the sake of present ease, is a problem which he himself is best able to solve.

It will not be out of place to here quote a pertinent section of Henry Fawcett's Manual of Political Economy, 7th Ed., at page 600, wherein, speaking of the factory acts of England, he says:

"The factory acts, as are well-known, *limit the hours of the labor of women*, young persons and children in certain industries. *Interference with the hours of labor of adults cannot, however, be justified*, * * * and all attempts to extend the application of the factory acts so far as they concern adult women * * * *should be most steadily resisted.* Whenever it is proposed to place legal or other restrictions upon the industry of women, it

should be remembered that every avenue of employment which is closed, directly causes a great number of women to be crowded into those employments which are still left open, and wages, low enough already, are still further depressed."

The effect of this restrictive legislation may be put thus:

1st. A general lessening of the hours of labor will curtail its productiveness.

2d. Competition will be keener and machinery will largely take the place of manual labor.

3d. Wages will decline.

4th. It will tend to pauperize the poor.

5th. It will encroach, both upon the liberty of the workman as well as upon the rights of his employer.

6th. It will cause industries to seek other fields wherein they may compete upon an equal footing with industries of other states.

7th. It will reduce the wages of male laborers. In factories men and women work side by side. There is division of labor as well as diversity of pursuits. To reduce the hours of labor of women necessarily forces a reduction of the hours of work of the male co-laborer.

The enforcement of this law is fraught with the utmost difficulty. It does not and cannot accomplish what its most hopeful supporters may desire. It is impossible to regulate or control economic conditions. This law, instead of being based upon the constitutional freedom and liberty which is the boast of our government, is based on an entire deprivation of such liberty. It springs from the seeds of paternalism and socialism, both of which have no place in our government, where the lib-

erty of the person is the foundation stone upon which all of our institutions are built. The moment that this liberty is restricted or impaired or infringed upon by law, just at that moment is the whole structure undermined. Our courts are constituted for the purpose of keeping inviolate those fundamental rights guaranteed to every one by the Constitution of the United States and of our state; and in fulfilling the duties imposed upon them the courts should not and cannot sanction any infringement or impairment of those rights, because a legislature swayed and influenced by motives and ideas foreign to our government, has seen fit to place upon the statute book a law odious in form and contrary in principle to the very fountain head of the happiness and prosperity of this nation.

We respectfully ask for a reversal of all of the judgments of the Criminal Court of Cook county.

Respectfully submitted.

MORAN, KRAUS & MAAER,
Attys. for Plffs. in Error.