IN THE

Supreme Court

OF THE

STATE OF ILLINOIS.

December Term, 1909.

W. C. RITCHIE & COMPANY, ET AL.,
Appellees,

v.

JOHN E. W. WAYMAN AND EDGAR T. DAVIES,
Appellants.

Appeal from the Circuit Court of Cook County.

HON. RICHARD S. TUTHILL, *Judge Presiding.*

BRIEF AND ARGUMENT FOR JOHN E. W. WAYMAN, ONE OF THE APPELLANTS.

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STATEMENT.

Bill filed in the Circuit Court of Cook County on the Chancery side, by Appellees, and against Edgar T. Davies as State Factory Inspector and John E. W. Wayman as State's Attorney for Cook County, and is

brought on behalf of W. C. Ritchie, an Illinois Corporation, Anna Kusserow, and Dora Windeguth, and all others similarly situated. The bill avers that the corporation is engaged in the business of manufacturing and selling paper boxes, paper box machinery, etc., and that the other complainants are in the company's employment, and their various and long continued service in such employment; the nature and details of such business, and the necessity of keeping the females employed for more than ten hours in one day during certain seasons, and that it is impossible for the company to fill its contracts during the rush seasons unless the females are permitted to work more than ten hours a day during such season; that W. C. Ritchie is the general manager of said company, and that he, with the knowledge and consent of the company has recently allowed an adult female of the age of more than eighteen years to work in the factory of the company for more than ten hours in one day; that the defendant Davies as Chief Factory Inspector, and the defendant Wayman have instituted proceedings

against Ritchie and the company for the violation of the statute, which is set forth in full as follows:

"An Act to regulate and limit the hours of employment of females in any mechanical establishment, or factory or laundry in order to safeguard the health of such employes; to provide for its enforcement and a penalty for its violation.

"SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That no female shall be employed in any mechanical establishment or factory, or laundry in this State, more than ten hours during any one day. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than ten hours during the twenty-four hours of any day.

"SEC. 2. Any employer who shall require any female to work in any of the places mentioned in section 1 of this Act, more than the number of hours provided for in this Act, during any day of twenty-four hours, or who shall fail, neglect or refuse so to arrange the work of females in his employ that they shall not work work more than the number of hours provided for in this Act, during any one day, or who shall permit or suffer any overseer, superintendent or other agent of any such employer to violate any of the provisions of this Act, shall be guilty of

a misdemeanor and upon conviction thereof shall be fined for each offense in a sum of not less than $25 or more than $100.

"SEC. 3. The State Department of Factory Inspection shall be charged with the duty of enforcing the provisions of this Act, and prosecuting all violations thereof.

"SEC. 4. All Acts and parts of Acts in conflict herewith are hereby repealed."

The bill charges that the act is void and unconstitutional and totally invalid in that:

(a) It violates Section 2 of Article II of the Constitution of 1870 of the Commonwealth of Illinois, as it deprives citizens of liberty and property without due process of law.

(b) It is an illegal restriction upon the right of the people to contract, as it prohibits both employer and employe from employing or being employed for longer than ten hours in any one day.

(c) It takes away the constitutional right of the individual to contract.

(d) It is unequal, discriminatory and unjust and purely class legislation, as there exists no reason why

said Act should apply to the business of your complainants and not to the business of all others in this State.

(e) It is purely arbitrary restriction upon the fundamental rights of some of the citizens of this commonwealth to control their own time and faculties, as it substitutes the judgment of the Legislature for the judgment of the employer and employe in a matter about which they are competent to agree with each other.

(f) It interferes with the inherent and inalienable right of the citizen to make private contracts.

(g) It is contrary to the police power of the State.

(h) It is void for ambiguity, as the term "mechanical establishment" is ambiguous and of purely comparative significance.

(i) It violates Section 14 of Article II of the Constitution of 1870.

(j) It is unequal in its operation, for it imposes a penalty on the employer and imposes no penalty on the employe for precisely the same offense.

(k) It is unequal, discriminatory and unjust because it restricts an employe from working more than ten hours a day no matter if she may be employed in more than one establishment.

(l) It is void because beyond the power of the Legislature to enact.

The prayer of the bill is that the defendants be enjoined from enforcing said law as against the complainants.

Defendants filed a general demurrer to the bill. The complainants moved for an injunction; the Court overruled the demurrer and permanently enjoined the defendants. The Court by its order, found that the law in question violates Section 2, Article II of the Constitution of the State of Illinois; that it is purely class legislation and an illegal restriction on the part of the people to contract, and beyond the power of the Legislature to enact, and that by its enforcement against the complainants, the complainants' business will be irreparably damaged. The defendants are, by this order, enjoined and restrained, and are ordered to refrain from enforcing against the complainants and against all others who are interested

in, and who will be affected by, the determination of the questions, and who may intervene in these proceedings; any of the provisions of the act. To this order the defendants excepted and elected to stand by their demurrer and prayed an appeal, which was allowed without bond.

The errors relied upon by appellants for reversal of said decree is the overruling of the demurrer and the granting of the Writ of Injunction.

BRIEF.

I.

The act of the State of Illinois approved June 15, 1909, Session Laws, p. 212, entitled "An Act to regulate and limit the hours of employment of females in any mechanical establishment or factory, or laundry, etc.," is a legitimate exercise of the police power of the State, is not class legislation, and is not in violation of the Fourteenth Amendment of the Constitu-

tion of the United States, nor of Section 2 of Article II, or Section 22, Article IV of the Constitution of Illinois.

Muller v. *Oregon*, 208 U. S., 412;
State v. *Muller*, 48 Ore., 252;
Comm. v. *Hamilton Mfg. Co.*, 120 Mass., 383;
Comm. v. *Beatty*, 15 Penn. Supr. Crt., 5;
Wenham v. *State*, 65 Neb., 394;
State v. *Buchanan*, 29 Wash., 602;
Walker v. *Saurinet*, 92 U. S., 90;
Holden v. *Hardy*, 169 U. S., 366.

II.

The police power of the State, while not susceptible of exact comprehensive definition, has been described by this Court as that inherent or plenary power which enables the State to prohibit all things hurtful to the comfort, safety and welfare of society, and may be termed the law of overruling necessity.

City of Chicago v. *Gunning System*, 214 Ill., 628;

City of Chicago v. *Bowman Dairy Co.*, 234 Ill., 294.

III.

The doctrine of Stare Decisis is inapplicable.

Wells on Stare Decisis, 581;

Pratt v. *Brown*, 3 Wis., 609.

ARGUMENT.

This appeal involves the constitutionality of an act of the General Assembly of the State of Illinois, approved June 15, 1909. The act is entitled,

> "An Act to regulate and limit the hours of employment of females in any mechanical establishment or factory or laundry in order to safeguard the health of such employes; to provide for its enforcement, and a penalty for its violation."

Section 1. Provides,

> "That no female shall be employed in any mechanical establishment or factory or laundry in this State, more than ten hours during any one day. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than ten hours during the twenty-four hours of any day."

Sec. 2. Provides the penalty, and

Sec. 3. Charges the enforcement of the law on department of factory inspection.

The validity of the statute is assailed upon the ground that it is in contravention of Sec. 2, Art. II of the Constitution which provides that no person shall be deprived of life, liberty or property without due process of law. We do not dispute the proposition that the right of entering into contracts is such a property right as is sought to be protected by this provision of the Constitution, but contend that this measure is a reasonable health regulation, and is a legitimate, lawful exercise of the police power of the State. This power has not been, nor is it susceptible of an exact, comprehensive definition. As said by this and many other courts, it is that inherent or plenary power which enables the State to prohibit all things hurtful to the comfort, safety and welfare of society, and may be termed the law of overruling necessity.

City of Chicago v. *Gunning System*, 214 Ill., 628;

City of Chicago v. *Bowman Dairy Co.*, 234 Ill., 294.

By virtue of this power, various trades, occupations and professions have been prohibited and regulated. By it the practice of law, and dentistry and medicine are regulated, as also the sale of cigarettes, milk, bread and intoxicating liquor, oleomargarine and other articles of food. In view of the thorough and elaborate treatment by this Court in the cases last cited, and others, it would serve no good purpose to extend the argument. Each case must stand or fall by its own merits or demerits. We deem it only necessary to call to the attention of the Court those decisions in which like legislation has been adjudicated.

This statute is a verbatum copy of the Oregon statute, which was upheld by the Supreme Court of that State in the case of

State v. *Muller,* 48 Oregon, 252,

which was affirmed in

Muller v. *Oregon,* 208 U. S., 412.

One of the grounds upon which the decision is rested, is stated at page 422, as follows:

> "The two sexes differ in structure of body, in the functions to be performed by each, in the

> amount of physical strength, in the capacity for long continued labor, particularly when done standing, the influence of vigorous health upon the future well being of the race, the self reliance which enables one to assert full rights, and in the capacity to maintain the struggle for subsistence. *This difference justifies a difference in legislation, and upholds that which is designed to compensate for some of the burdens which rest upon her.*"

This decision was rendered in 1907, by a unanimous court, upon a review of all of the prior decisions. The decision of the Supreme Court of Oregon proceeds along the same lines, citing as does the Supreme Court of the United States, the decision in

Comm. v. *Hamilton Mfg. Co.*, 120 Mass., 383;

Wenham v. *State*, 65 Neb., 394;

State v. *Buchanan*, 29 Wash., 602.

In both courts the case of

Ritchie v. *The People*, 155 Ill., 98,

was cited, and both courts say this is the only decision holding a contrary view. We quote from the decision of the Supreme Court of Oregon, p. 257:

> "While the principles of justice are immutable, changing conditions of society and the evol-

> ution of employment make a change in the application of principles absolutely necessary to an intelligent administration of government."

This particular class of legislation was first enacted in Massachusetts, and came before the Supreme Court of that state in

> *Comm. v. Hamilton Mfg. Co.*, 120 Mass., 383, (*Supra*).

The Massachusetts statute was enacted in 1874. The decision was rendered in 1876. Its validity was sustained by all the courts through which it passed. The statute in that case provides that no woman over the age of 18 years shall be employed in labor by any person, etc., in *any* manufacturing establishment, more than ten hours in any one day. The Court, speaking of the statute, say at page 384:

> "It merely provides that in an employment which the Legislature has evidently deemed to some extent dangerous to health, no persons shall be engaged in labor more than ten hours a day, or sixty hours a week. There can be no doubt that such legislation may be maintained, either as a health or police regulation, if it were necessary to resort to either of those sources for power."

This legislation came before the court in Pennsylvania in 1900.

Comm. v. *Beatty,* 15 Penn. Superior Crt., 5.

The statute provides that no adult woman shall be employed at labor in certain specified occupations for more than twelve hours in one day. This act was held to be a valid exercise of the police power of the State. The decision has never been reversed. The opinion is well considered. The Ritchie decision was there cited, as also the Massachusetts decision. The Court holds that adult females are, as children are, wards of the State, and subject to legislative restriction as are children. We quote from page 19:

> "Adult females are as a class as distinct as minors, separated by natural conditions from all other laborers, and are so constituted as to be unable to endure physical exertion and exposure to the extent and degree that is not harmful to adult males; and employments which under favorable conditions are not injurious, are rightly limited as to time by this statute, so as not to become harmful by prolonged engagements."

The Court here takes judicial notice of conditions which make such legislation necessary. We quote from page 14:

> "It is a matter of history in our State, that this Act of Assembly is the result of extended legislative examination into the management of our varied industrial institutions, which has been conducted by legislative committees, and through our factory and mine inspection bureaus."

We submit that your Honors should accord the same credit to the wisdom of the Legislature and the labors of our various investigating committees.

Such legislation was before the Supreme Court of Nebraska in 1902, in

Wenham v. *State*, 65 Neb., 394.

The statute is practically the same as the one here under consideration, excepting that the inhibition is against *employing* females for more than ten hours in one day, and not against *requiring* the female to work.

The reasoning of the Court sustains the act in question as a valid exercise of the police power. After

deciding that the act is not class legislation, the Court takes up the provision of the Constitution that no person shall be deprived of life, liberty or property without due process of law. Quoting from the opinion in

Walker v. Saurinet, 92 U. S., 90 at p. 402,

> "The right of contract itself is subject to certain limitations which the state may lawfully impose in the exercise of its police power, and this power has been greatly expanded in its application in the past century, owing to the enormous increase in the number of occupations which are dangerous, or so far detrimental to the health of the employes therein as to require special protection for their well being."

The Court cites with approval the Massachusetts decision, a decision which this Court in the Ritchie case refused to follow, but it is evident from the reasoning of the Court, that no different conclusion would have ben reached had the cited decision not been known to the Court. In referring to the wisdom of crediting the Legislature with having acted

upon a consideration of existing conditions, the Court (page 404) say,

> "The members of the Legislature come from no particular class. They are elected from every portion of the State, and come from every avocation and from all the walks of life. They have observed the conditions with which they are surrounded, and know from experience what laws are necessary to be enacted for the welfare of the communities in which they reside."

Speaking of the relation of women to the law, the Court (p. 405), say,

> "Women and children have always, to a certain extent, been wards of the State. Women in recent years have been partly emancipated from their common law disabilities. They are unable by reason of their physical limitations, to endure the same hours of exhaustive labor as may be endured by adult males. Certain kinds of work which may be performed by men, without injury to their health, would wreck the constitutions and destroy the health of women, and render them incapable of bearing their share of the burdens of the family and the home. The State must be accorded the right to guard and protect women, as a class, against such a condition; and the law in question, to that extent, conserves the public health and welfare."

The statute of the state of Washington, enacted in 1901, is that no female shall be employed in any mechanical or mercantile establishment, laundry, hotel or restaurant more than ten hours during one day. The validity of this statute was assailed in

State v. *Buchanan*, 29 Wash., 602, (1902).

The act was held to be a legitimate exercise of the police power. The Court here reviews the authorities and text writers, and refuses to follow the conclusion or reasoning of the Ritchie case. And here we divert to note an error of the Washington court in its observation to the effect that the decision in the Ritchie case had been approvingly noted *In re Jacobs*, 98 N. Y., 98; which latter case was decided ten years before the Ritchie case. The Ritchie case has never been cited with approval. The reasoning of the Washington court is as is the reasoning of the other court, that women are not sui juris, but are like children, so far as protection by the law is concerned; that the physical well being of women requires that the strong arm of the law should be extended to pre-

vent the degeneration of those who are to come after us. In

Holden v. *Hardy,* 169 U. S., 366,

an act of the state of Utah limiting the period of employment of workmen in underground mines or refining metals, to eight hours a day, was held to be a legitimate exercise of the police power.

The decision in

People v. *Williams,* 189 N. Y., 131,

decided in 1907, will be cited by our adversaries as an authority to sustain their contention that the act involved here is not constitutional. In our opinion that case does not sustain their view, but, reading between the lines, it sustains our view. The statute there in question provides, that no female shall be permitted to work in *any* factory before six in the morning or after nine o'clock in the evening, or for more than ten hours in any one day. A woman was found at work in Williams' factory after 9 in the evening. Williams was indicted, was found guilty and the judgment being arrested the People appealed. The indictment and the evidence were confined to the

fact of working after nine o'clock, and this is the only feature before the court and the only one passed upon by the court. The act was passed in 1903, we have been unable to find any case in which the inhibition of this statute against employing women for more than ten hours in one day was brought into question. It occurs to us, if it were not that the concensus of opinion of the profession in New York that the ten hour feature was valid, the act would have been assailed on that ground. We should suppose that in many instances proceedings have been instituted to enforce violations of the ten hour feature of this statute. "It is to be observed," says the Court (p. 134),

> "That it is not a regulation of the *number of hours of labor* for working women; the enactment goes far beyond this. It attempts to take away the right of a woman to labor before six o'clock in the morning, or after nine o'clock in the evening, without any reference to other considerations. If the inhibition of the section in question had been framed to prevent the ten hours of work from being performed at night, or to prolong them beyond nine o'clock in the evening, it might more readily be appreciated that the health of women was the matter of legisla-

> tive concern. That is not the effect, nor the sense, of the provision of the section with which, alone we are dealing; it was not the case upon which this defendant was convicted."

It should be noted that by this statute women are not to be allowed to work in *any* factory before six or after nine, and this regardless of the nature of the work, hence the court concluded that this was not a health regulation, and was not intended as such, therefore, not the exercise of the police power of the State. It is not to be supposed that a Court which had held as a valid health law, under the police power of the State, a law which restricted the hours of labor for the male employes of bakers, would hold invalid a law restricting the hours of labor of women in laundries and mechanical establishments. That the Court did not intend to decide upon the restriction of the hours, is further manifest, from the omission in the opinion, of any allusion to the decisions, which were cited in the briefs bearing upon that feature. We are well persuaded that the Court of Appeals of New York would uphold such a statute as the one now before us.

Twenty of the states have in recent years enacted legislation restricting the hours of labor of women. As these data, as also the data showing the effect on women of long hours of labor are found in the briefs of the other counsel in the case, it would serve no good purpose to repeat them here. A summary of these are found in the note to the decision of the U. S. Supreme Court in the Muller case. These data are in pamphlet form, and were gathered and published by Mr. Louis D. Brandeis of the Boston bar. They abundantly support Prof. Fruend, in his observation that it is the concensus of opinion that ten hours is the reasonable regulation. The Supreme Court of the United States, and the other courts availed themselves of this information. In fact we find them using the exact language in some instances.

We thus see that every court, called upon for a decision, has without hesitation held that women are not Sui Juris, that they are wards of the State as children are, and has upheld like legislation. Is the decision of this Court in *Ritchie* v. *People* (*Supra*), an exception. We do not think so. The statute under consideration in the Ritchie case, as

construed by the Court prevented women from contracting for employment in certain occupations, for more than eight hours in one day, while the present statute bars the employer from requiring her to work more than ten hours in one day, a marked difference, we submit. This deprivation of the right of contracting,—clearly a property right,—is the consideration, which tainted that statute; that is all that it was necessary for the Court to decide, and all that the Court did decide. The Court did not hold or intend to be understood as holding that the Legislature was without power to regulate the employment of women, for we find the Court citing with approval (p. 113) the following from Cooley on Constitutional Limitations,

> "some employments may be admissible for males, and improper for females; and regulations recognizing the impropriety, and forbidding women engaging in them, would be open to no reasonable objection."

If, however, the decision in that case shall be read to the effect, that the law cannot regulate and restrict the hours of employment of women, as concededly it may in the case of children, then we sub-

mit that the decision is in conflict with all of the decisions rendered either before or after that decision; and we further submit that the decision of the Court would, have been different had it been supplied with the elaborate data now before us, showing the deleterious effect of long hours upon women. Our submission in this respect is upheld in the observation of the Court (p. 114).

> "There is no reasonable ground—at least none which has been made manifest to us in the argument of counsel,—for fixing upon *eight* hours in one day as the limit within which women can work without injury to her physique, and beyond which if she work, injury will necessarily follow."

From the cases we have cited and the data furnished, there seems to be a general concensus of opinion that ten hours factory labor, is a reasonable maximum for women, and that the observance of that limitation is required by the care for their physical welfare.

Freund, Police Power, p. 300.

The eight hour day is not a requirement of public health, but is designed as a measure to raise the social and economic standard of the working classes.

Wells Recent Economic Changes, p. 438.

This Court therefore, very wisely, in the Ritchie case, declined to regard eight hours as a reasonable regulation, but should not hesitate to regard ten hours as reasonable.

To sustain the validity of the statute here under discussion, it is not necessary for the court to overrule its decision in the Ritchie case.

If, however, it be necessary to do so, the Court can readily find its justification in the altered conditious of the times, and the light afforded by the legislation and the uniformity of decisions rendered since that decision was made. That decision does not lay down a rule of property, the unsettling of which might be fraught with injury to those who had shaped their conduct, in reliance thereon. The overruling of that decision would operate upon the future and not the past. The doctrine of Stare Decisis should not stand in the way. The indisposition of the courts to inter-

fere with previous adjudications does not require us to shut our eyes upon all improvements in the science of the law, or require us to be stationary, while all around is in progress. Perhops no general rule can be laid down on the subject. The circumstances of each particular case, the extent of influence upon contracts, and interests, which the decisions may have had, whether it may be only doubtful or clearly against principle, whether sustained by some authority, or opposed to all, these are all matters to be judged of whenever the court is called on to depart from a prior determination.

Wells on Stare Decisis, p. 581;
Pratt v. *Brown,* 3 Wis., 609.

When a question arises involving important private or public rights, extending through all coming time, which has been passed upon on a single occasion, and which decision can in no just sense, be said to have been acquiesced in, it is not only the right, but the duty of the court, when properly called upon, to re-examine the question involved, and again subject them to judicial scrutiny.

Pratt v. *Brown,* 3 Wis., 609.

It is our desire to waive any question that may be raised as to the jurisdiction of the court of chancery. It is our earnest desire that this court,—regardless of the technicalities of procedure,—should set at rest all questions concerning the validity of a statute which has attracted the attention of the profession and students of social economy throughout the country.

CONCLUSION.

In conclusion we most earnestly submit that this Court should reverse the decision of the circuit court and remand the cause to that court with instructions to dissolve the injunction and dismiss the bill.

All of which is respectfully submitted.

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