No. VN

IN THE

# Supreme Court of Illinois.

DECEMBER TERM, A. D. 1909.

W. C. RITCHIE & COMPANY, an Illinois Corporation, W. E. RITCHIE, ANNA KUSSEROW and DORA WINDEGUTH,
*Appellees,*

*vs.*

JOHN E. W. WAYMAN, as State's Attorney for Cook County, and EDGAR T. DAVIES, Chief State Factory Inspector of the State of Illinois,
*Appellants,*

Appeal from Circuit Court, Cook County.

Hon. Richard S. Tuthill, Judge Presiding.

## BRIEF AND ARGUMENT FOR APPELLEES.

HAYNIE & LUST,
*Solicitors for Appellees.*

WM. DUFF HAYNIE,
*Of Counsel.*

**Appellees desire to argue this case orally.**

GUNTHORP-WARREN PRINTING CO., CHICAGO

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| **W. C. RITCHIE & COMPANY, an Illinois Corporation, W. E. RITCHIE, ANNA KUSSEROW and DORA WINDEGUTH,** *Appellees,* *vs.* **JOHN E. W. WAYMAN, as State's Attorney for Cook County, and EDGAR T. DAVIES, Chief State Factory Inspector of the State of Illinois,** *Appellants,* | Appeal from Circuit Court, Cook County. Hon. **Richard S. Tuthill,** Judge Presiding. |

## STATEMENT.

MAY IT PLEASE THE COURT:

This is a proceeding, restraining the enforcement of the statute commonly known as the Ten Hour Law, on the ground that it is unconstitutional and void. A bill was filed for an injunction, to which the defendants demurred, and the court having made a finding in favor of the bill, entered decree in accordance therewith and the defendants elected to stand by their demurrer and appealed to this court.

In view of the position hereafter taken by counsel for appellees, it is necessary to bring to the atten-

tion of the court some facts, omitted in the statement of counsel for appellants, but which are alleged in the bill and we assume that by the general demurrer of the defendants they must be admitted as true.

The bill shows that the appellee, W. C. Ritchie & Company, has been in the paper box manufacturing business since 1866 and has been continuously in operation since then, and that its business experience during that period of time has been such that it is impossible for it to comply with the contracts which it must make during the so-called "rush seasons" unless its female employes, as well as its male employes, at times work longer than ten hours a day during such seasons. (Abst., 20, 21.) The bill shows that the "rush seasons" begin in August and last over the New Year holidays and then quiet down for a few weeks and start in again about the 15th of February and last for about eight weeks thereafter and that during the "rush seasons" the demands of business during that time fix the conditions of work of the employes, and that it is wholly beyond the power of the employer to in any way anticipate the demands of its customers for such period. (Abst., 19, 21.) The bill cites several instances of this (Abst., 15-17), and shows that there is dependent upon the business of the appellee, W. C. Ritchie & Co., about seventeen distinct lines of business, such as the jewelry, candy, millinery, perfumery, etc., businesses, and that during the "rush seasons" the orders from these businesses exceed by more than twenty-five per cent. the volume at any other time during the year, and that in

accordance with the contracts, which are made contingent upon prompt delivery, it is necessary to swell the normal work of certain departments of the factory, in what are known, for instance, as the glue workers' and wrapping machine department, as much as fifty per cent. and that it is impossible to do so other than by running the factory more than ten hours a day and that if the factory is not run for a longer period of time than that, the orders will be cancelled and the business irreparably damaged.

The bill sets forth *facts* showing that it is impossible to get enough employes, so that it will not be necessary to work longer than ten hours a day (Abst., 13-15) and sets forth notices which are posted in the factory and which provide for a reward to be given to employes who bring in other employes during the "rush seasons" and so on. This shows the situation concerning the employer.

The women who are parties to the bill, have been paper box workers, one for thirty-two years and one for sixteen years. A description of the kind of work performed by the employes is set forth on (Abst., 8), being an enumeration of the motions which must be gone through in making a box, and which is there shown to be not less than eleven. A description of the factory follows, which shows that the building is clean and sanitary, and many other facts, which are too lengthy to be referred to in this statement, of the care taken of employes and the manner in which they are treated and their satisfaction with their treatment. The abstract, pages 11, 12, shows that the women complainants are the

heads of families, one of a family consisting of four members, and the other of two, who are dependent upon them for support and that they have grown accustomed to working so much overtime during the "rush seasons" and to adjust their expenses in accordance therewith.

The position taken by the appellees is that Section 1 of the act in question is identically similar to Section 5 of the act, declared unconstitutional in the Ritchie Case, 155 Ill., 98, and that that section being unconstitutional, the whole act must fall with it. It is also contended that the whole act is unconstitutional, because it takes property without due process of law, as it is an arbitrary and unauthorized restriction upon the right of contract, and that 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.

It is also contended that the act is class legislation, as there is no reason why it should apply to the specified businesses and not to that of any others in the state, and that it is not a proper exercise of the police power, as it is not directed to subjects which are proper to be regulated by so-called health measures, under the police power, and that the police power cannot override the constitution. As the argument of both appellants rests solely upon the police power of the state, their briefs are answered under IX of our argument. It is further contended that the act is unconstitutional as embracing a subject not referred to in the title of the act and outside its scope. It is also contended that the act is

ambiguous and void, as the offenses which it prescribes are not defined with that certainty which is required of them by the law, and that furthermore, Section 2 is unconstitutional, because it imposes a criminal liability upon an employer for the act of an agent, who exercises his own independent judgment and discretion and should be made responsible for his own acts.

Judge Tuthill, of the Circuit bench, after exhaustive argument, upheld the view of the appellees and issued the injunction. The decree is quite lengthy and we refer to it for the findings of the trial court.

# BRIEF.

## A.

THE SO-CALLED TEN HOUR LAW IS UNCONSTITUTIONAL AND VOID.

### I.

IT TAKES PROPERTY WITHOUT DUE PROCESS OF LAW, AS IT DEPRIVES THOSE UPON WHOM IT OPERATES OF A VALUABLE PROPERTY RIGHT GUARANTEED THEM BY THE CONSTITUTION OF THIS STATE.

*People* v. *Ritchie*, 155 Ill., 98.
*People* v. *Williams*, 189 N. Y., 131.
*Burcher* v. *People*, 41 Col., 495.
*In re Maguire*, 57 Cal., 604.
*Mathews* v. *People*, 202 Ill., 389.
*Glover* v. *People*, 201 Ill., 545.
*Bailey* v. *People*, 190 Ill., 28.
*Eden* v. *The People*, 161 Ill., 296.
*Gillespie* v. *People*, 188 Ill., 176.

### II.

THE LAW IS VOID BECAUSE IT ARBITRARILY MAKES THE EMPLOYER CRIMINALLY RESPONSIBLE FOR THE ACTS OF ANOTHER WHO EXERCISES HIS OWN DISCRETION, AND HENCE DEPRIVES HIM OF DUE PROCESS OF LAW.

*Camp* v. *Rogers*, 44 Conn., 291.
*Colon* v. *Lisk*, 47 N. E., 302.
*People* v. *O'Brien*, 18 N. E., 692.

*Towle* v. *Mann*, 53 Ia., 42.
*Ohio Ry. Co.* v. *Lackey*, 78 Ill., 55.
*Beilenberg* v. *The Ry. Co.*, 20 Pac., 314.
*Ham* v. *McClaws*, 1 Bay, 93.

## III.

THE LAW IS VOID BECAUSE IT VIOLATES THE CONSTITUTION, AS IN THE SUBJECT-MATTER OF THE ACT AN ENTIRELY NEW AND DISTINCT ACT IS MADE A CRIMINAL OFFENCE, WHICH THERETOFORE WAS LAWFUL, AND SUCH ACT IS NOT EMBRACED IN THE TITLE OF THE STATUTE.

*Milne* v. *People*, 224 Ill., 125.
*People* v. *McBride*, 234 Ill., 146.

## IV.

THE LAW IS VOID FOR AMBIGUITY, BECAUSE IT DOES NOT DEFINE THE DEFENSES WITH THAT CERTAINTY WHICH THE LAW REQUIRES.

## V.

THE STATUTE IS VOID BECAUSE THE PENALTIES ENFORCED FOR ITS VIOLATION ARE SO ENORMOUS AS TO AMOUNT TO A CONFISCATION OF PROPERTY, AND IT IS THE SETTLED LAW THAT WHERE THE PENAL FEATURE OF A LAW IS SO SEVERE, HAVING REGARD TO THE NATURE OF THE REGULATION, AS TO INTIMIDATE PROPERTY OWNERS FROM ENJOYING THEIR RIGHTS AND FROM RESORTING TO THE COURTS FOR DEFENSE TO THEIR SUPPOSED RIGHTS, IT IS HIGHLY UNREASONABLE AND IS A DEFIANCE OF THE EQUAL PROTECTION OF THE LAW.

*Bonnett* v. *Vallier*, 116 N. W., 885.

*Central of Georgia Ry. Co.* v. *Railroad Commission*, 161 Fed., 925.

*Ex parte Young*, 209 U. S., 123.

*Ex parte Wood*, 155 Fed., 190.

*Hunter* v. *Wood*, 28 Sup. Ct., 472.

*Consolidated Gas Co.* v. *New York*, 157 Fed., 849.

*Cotting* v. *Stock Yards*, 183 U. S., 79; 22 Sup. Ct., 30.

## VI.

THE LAW IS VOID BECAUSE IT TAKES FROM THE STATE'S ATTORNEY AND FROM THE ATTORNEY GENERAL POWERS CONFERRED UPON THEM BY THE STATUTES OF ILLINOIS, ITS CONSTITUTION AND THE COMMON LAW.

*Hunt* v. *Chicago & Dummy R. R. Co.*, 20 Ill. App., 282.

*Chicago Mut. Life, etc., Assn.* v. *Hunt*, 127 Ill., 257.

*Attorney General* v. *Newberry Library*, 150 Ill., 229.
*Hunt* v. *Roller Skater Rink Co.*, 143 Ill., 118.
*Rex* v. *Austin*, 9 Price, 142.
*Attorney General* v. *Brown*, 1 Swanst, 294.
*Rex* v. *Wilkes*, 4 Burr, 2570.

## VII.

THE LAW IS VOID BECAUSE IT IMPOSES AND GIVES TO AN ILLEGALLY CONSTITUTED BODY THE AUTHORITY TO MAKE UNLAWFUL INVESTIGATIONS AND TO INVADE THE RIGHT TO PERSONAL SECURITY AND LIBERTY.

*Consolidated Coal Co.* v. *Miller*, 236 Ill., 149.
*Loan Assn.* v. *Keith*, 153 Ill., 609.

## VIII.

THE LAW IS VOID BECAUSE IT IS AN ARBITRARY, UNYIELDING AND INFLEXIBLE DECLARATION OF THE LEGISLATURE, NOT ADAPTED TO VARYING CONDITIONS AND IS, THEREFORE, UNCONSTITUTIONAL.

## IX.

THE ACT IS NOT SUSTAINABLE AS A POLICE REGULATION.

*People* v. *Ritchie*, 155 Ill., 98.
*People* v. *Steele*, 231 Ill., 340.
*Glover* v. *The People*, 201 Ill., 545.
*Booth* v. *People*, 186 Ill., 43.
*Ruhstrat* v. *People*, 185 Ill., 133.
*City of Belleville* v. *Turnpike Co.*, 234 Ill., 428.
*Burcher* v. *The People*, 41 Col., 495.

## X.

IT IS CLASS LEGISLATION, FOR IT MAKES AN ACT PROHIBITIVE TO ONE CLASS OF PERSONS, WHICH IT SANCTIONS IN ANOTHER, WITH NO VALID REASON FOR SUCH DISTINCTION EXISTING.

*Ritchie* v. *People*, 155 Ill., 98.
*Burcher* v. *People*, 41 Col., 495.
*People* v. *Williams*, 189 N. Y., 131.
*In re Maguire*, 57 Cal., 604.
*Frorer* v. *The People*, 141 Ill., 171.
*Braceville Coal Co.* v. *People*, 147 Ill., 66.
*Massie* v. *Cessna*, 239 Ill., 352.
*City of Belleville* v. *Turnpike Co.*, 234 Ill., 428.
*Mathews* v. *The People*, 202 Ill., 389.
*Bessette* v. *The People*, 193 Ill., 334.
*Bailey* v. *The People*, 190 Ill., 28.
*Millet* v. *People*, 117 Ill., 294.
*Harding* v. *People*, 160 Ill., 459.
*Eden* v. *People*, 161 Ill., 296.
*City of Chicago* v. *Netcher*, 183 Ill., 104.
*Gillespie* v. *People*, 188 Ill., 176.
*Ruhstrat* v. *People*, 185 Ill., 133.
*In re Day*, 181 Ill., 73.
*Adams* v. *Brenan*, 177 Ill., 194.
*Carrollton* v. *Bazzette*, 159 Ill., 284.

# ARGUMENT.

## A.

### THE SO-CALLED TEN HOUR LAW IS UNCONSTITUTIONAL AND VOID.

### I.

IT TAKES PROPERTY WITHOUT DUE PROCESS OF LAW, AS IT DEPRIVES THOSE UPON WHOM IT OPERATES OF A VALUABLE PROPERTY RIGHT GUARANTEED THEM BY THE CONSTITUTION OF THIS STATE.

*People* v. *Ritchie,* 155 Ill., 98.
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*Mathews* v. *People,* 202 Ill., 389.
*Glover* v. *People,* 201 Ill., 545.
*Bailey* v. *People,* 190 Ill., 28.
*Eden* v. *The People,* 161 Ill., 296.
*Gillespie* v. *People,* 188 Ill., 176.

In *Ritchie* v. *The People,* 155 Ill., 98, a statute practically identical with the one under discussion came before this court for review. In that case the statute prohibited the employment of a female for more than eight hours in any one day or forty-eight hours in any one week. Section 5 of the act was attacked as unconstitutional. That section reads as follows:

> "No female shall be employed in any factory or work shop more than eight hours in any one day or forty-eight hours in any one week."

That section is practically identical with Section 1 of the present act, which provides as follows:

> "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."

It will be seen, therefore, that the first sentences of this section is word for word almost the same as Section 5 of the Act of 1893 discussed in the Ritchie case. As will be hereafter shown, the other sections of the Ten Hour Law, taken by themselves, we believe to be unconstitutional, but they will be discussed further on.

Now in the Ritchie case one of the greatest courts that ever set on the Supreme bench of Illinois,—a court composed of Justices Wilken, Craig, Magruder, Bailey, Baker, Phillips and Carter—unanimously declared Section 5 unconstitutional and held that since it could not be separated from the rest of the statute the whole act must fall. The state was represented by Maurice T. Maloney, the greatest Attorney General that ever represented Illinois, (with all due deference to the learned Attorney General in the case at bar), a man who made the corporation law of this state and whose briefs in the great cases against the Pullman Company, the Distilling Company and the Milk Trust have become classics for corporation lawyers to follow, those cases which he won for the state being to-day leading cases in all the vast mass of corporate litigation which have arisen since. He

was assisted by John W. Ela, A. A. Bruce, T. J. Scofield and M. L. Newell, all of whom were eminent counsel. Moran, Kraus & Mayer, whose senior partner, Judge T. A. Moran, sat on the Appellate bench for a number of years, and who argued the case orally, appeared for the plaintiff in error. We confidently assert that there has never been a case presented in the Supreme Court of this state where more eminent counsel appeared on each side and where a more eminent court heard the argument. An examination of the briefs in that case, as reported in the Official Reports, and also on file in this court, will show how thoroughly and completely every point that could have been was raised and how clearly and forcefully it was met. The result of the case was an opinion by Mr. Justice Magruder of twenty-two printed pages in length, holding Section 5 unconstitutional and void. That case has become one of the great constitutional expressions of this court and has been cited by this court more than any constitutional decision that has ever been handed down in this state, and has been unanimously approved and followed in the following cases:

*Vogel* v. *Pekoc,* 157 Ill., 339, 347.
*City of Carrollton* v. *Bazzett,* 159 Ill., 284, 294.
*Eden* v. *The People,* 161 Ill., 296, 305.
*Dixon* v. *The People,* 168 Ill., 179, 190.
*Hudnall* v. *Ham,* 172 Ill., 76, 83.
*Bobel* v. *The People,* 173 Ill., 19, 25.
*Adams* v. *Brenan,* 177 Ill., 194, 200.
*In Re Day,* 181 Ill., 73, 80.
*Boehm* v. *Hertz,* 182 Ill., 154, 156.

*Ruhstrat* v. *The People*, 185 Ill., 133, 142, 147.
*Booth* v. *The People*, 186 Ill., 43, 48, 49.
*Gillespie* v. *The People*, 188 Ill., 176, 183.
*Fiske* v. *The People*, 188 Ill., 206, 210.
*Bailey* v. *The People*, 190 Ill., 28, 33, 36.
*Price* v. *The People*, 193 Ill., 114, 118.
*Bessette* v. *The People*, 193 Ill., 334, 345, 350.
*Union Traction Co.* v. *City of Chicago*, 199 Ill., 484, 520.
*Glover* v. *The People*, 201 Ill., 545, 548.
*Mathews* v. *The People*, 202 Ill., 389, 401, 403, 410.
*Christy* v. *Elliott*, 216 Ill., 31, 45.
*O'Brien* v. *The People*, 216 Ill., 354, 374.
*Milne* v. *The People*, 224 Ill., 125, 128.
*Rouse* v. *Thompson*, 228 Ill., 522, 534.
*The People* v. *Steele*, 231 Ill., 340, 345, 346.
*The People* v. *McBride*, 234 Ill., 146, 168.
*City of Bellville* v. *The Turnpike Co.*, 234 Ill., 428, 437.
*Massie* v. *Cessna*, 239 Ill., 352, 358.

Aside from these citations, this case has been quoted, with approval, many times in our Appellate Court. The peculiar thing to be noted about the number of times that this case has been cited and followed in this court is that, with the exception of four times, when it was quoted to the effect that the body of the act could not embrace a subject not within the title, it has been cited squarely on the merits on every other occasion, and in many of them the statute under discussion in the Ritchie case cited and

the doctrine there laid down, as applied to other legislation of similar character, reaffirmed, and the case has never been doubted, limited or in any particular modified and we believe shows conclusively that this court should adhere and follow that case in the one at bar.

We will hereafter quote some of the language that this court has used in approving the Ritchie case, but we first wish to call the court's attention to the manner in which the court disposed of Section 5 of that act.

The court said, p. 102 to 109:

> "The main objection urged against the act, and that to which the discussion of counsel on both sides is chiefly directed, relates to the validity of section 5. It is contended by counsel for plaintiff in error, that that section is unconstitutional as imposing unwarranted restrictions upon the right to contract. On the other hand, it is claimed by counsel for the People, that the act is a sanitary provision, and justifiable as an exercise of the police power of the State.
>
> "Does the provision in question restrict the right to contract? The words, 'no female shall be employed,' import action on the part of two persons. There must be a person who does the act of employing, and a person who consents to the act of being employed. Webster defines employment as not only 'the act of employing,' but 'also the state of being employed.' The prohibition of the statute is, therefore, two-fold, first, that no manufacturer, or proprietor of a factory or workshop, shall employ any female therein more than eight hours in one day, and, second, that no female shall consent to be so employed. It thus prohibits employer and employe from uniting their minds, or agreeing, upon any longer service during one day than eight hours.

In other words, they are prohibited, the one from contracting to employ, and the other from contracting to be employed, otherwise than as directed. 'To be employed' in anything means not only the act of doing it, but also to be engaged to do it; to be under contract or orders to do it.' (*United States* v. *Morris*, 14 Pet., 464.) Hence, a direction, that such person shall not be employed more than a specified number of hours in one day, is at the same time a direction, that such person shall not be under contract to work for more than a specified number of hours in one day. It follows, that section 5 does limit and restrict the right of the manufacturer and his employe to contract with each other in reference to the hours of labor.

"Is the restriction thus imposed an infringement upon the constitutional rights of the manufacturer and the employe? Section 2 of article 2 of the constitution of Illinois provides, that 'no person shall be deprived of life, liberty or property, without due process of law.' A number of cases have arisen within recent years in which the courts have had occasion to consider this provision, or one similar to it, and its meaning has been quite clearly defined. The privilege of contracting is both a liberty and property right. (*Frorer* v. *The People*, 141 Ill., 171.) Liberty includes the right to acquire property, and that means and includes the right to make and enforce contracts. (*The State* v. *Loomis*, 115 Mo., 307.) The right to use, buy and sell property and contract in respect thereto is protected by the constitution. Labor is property, and the laborer has the same right to sell his labor, and to contract with reference thereto, as has any other property owner. In this country the legislature has no power to prevent persons who are *sui juris* from making their own contracts, nor can it interfere with the freedom of contract between the workman and the employer. The right to labor or employ labor, and make contracts

in respect thereto upon such terms as may be agreed upon between the parties, is included in the constitutional guaranty above quoted. (*State* v. *Goodwill*, 33 W. Va., 179; *Godcharles* v. *Wigeman*, 113 Pa. St., 431; *Braceville Coal Co.* v. *The People*, 147 Ill., 66.) The protection of property is one of the objects for which free governments are instituted among men. (Const. of Ill., Art. 2, Sec. 1.) The right to acquire, possess and protect property includes the right to make reasonable contracts. (*Commonwealth* v. *Perry*, 155 Mass., 117.) And when an owner is deprived of one of the attributes of property, like the right to make contracts, he is deprived of his property within the meaning of the constitution. (Matter of Application of Jacobs, 98 N. Y., 98.) The fundamental rights of Englishmen, brought to this country by its original settlers and wrested from time to time in the progress of history from the sovereigns of the English nation, have been reduced by Blackstone to three principal or primary articles 'the right of personal security, the right of personal liberty, and the right of private property.' (I Blacks. Com., marg. page 129.) The right to contract is the only way by which a person can rightfully acquire property by his own labor. 'Of all the "rights of persons" it is the most essential to human happiness.' (*Leep* v. *St. L., L. M. & S. Ry. Co.*, 58 Ark., 407.)

"This right to contract, which is thus included in the fundamental rights of liberty and property, cannot be taken away 'without due process of law.' The words: due process of law,' have been held to be synonymous with the words: 'law of the land.' (*The State* v. *Loomis, supra; Frorer* v. *The People, supra.*) Blackstone says: 'The third absolute right, inherent in every Englishman, is that of property, which consists in the free use, enjoyment and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land.' (1 Black

Com., page 138; *Ex parte Jacobs*, 98 N. Y., 98.) *The 'law of the land' is '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. *The People*, 117 Ill., 294.) *The 'law of the land' is the opposite of 'arbitrary, unequal and partial legislation.'* (*The State* v. *Loomis, supra.*) *The legislature has no right to deprive one class of persons of privileges allowed to other persons under like conditions. The man, who is forbidden to acquire and enjoy property in the same manner in which the rest of the community is permitted to acquire and enjoy it, is deprived of liberty in particulars of primary importance to his pursuit of happiness. If one man is denied the right to contract as he has hitherto done under the law, and as others are still allowed to do by the law, he is deprived of both liberty and property to the extent to which he is thus deprived of such right. To line with these principles, it has been held that it is not competent, under the constitution, for the legislature to single out owners and employers of a particular class, and provide that they shall bear burdens not imposed on other owners of property or employers of labor, and prohibit them from making contracts which other owners or employers are permitted to make.* (*Millett* v. *The People, supra; Frorer* v. *The People, supra; Ramsey* v. *The People*, 142 Ill., 380.)

"We are not unmindful, that the right to contract may be subject to limitations growing out of the duties which the individual owes to society, to the public or to the government. These limitations are sometimes imposed by the obligation to so use one's own as not to injure another, by the character of property as affected with a public interest or devoted to a public use, by the demands of public policy or the necessity of protecting the public from fraud or injury,

by the want of capacity, by the needs of the necessitous borrower as against the demands of the extortionate lender. But the power of the legislature to thus limit the right to contract must rest upon some reasonable basis, and cannot be arbitrarily exercised. It has been said that such power is based in every case on some condition, and not on the absolute right to control. Where legislative enactments, which operate upon classes of individuals only, have been held to be valid, it has been where the classification was reasonable, and not arbitrary. (*Leep* v. *St. L., L. M. & S. Ry. Co., supra; The State* v. *Loomis, supra.*)

"Aplying these principles to the consideration of section 5, we are led irresistibly to the conclusion, that it is an unconstitutional and void enactment. While some of the language of the act is broad enough to embrace within its terms the manufacture of all kinds of goods or products, other provisions are limited to the manufacture of 'coats, vests, trousers, knee-pants, overalls, cloaks, shirts, ladies' waists, purses, feathers, artificial flowers or cigars, or any wearing apparel of any kind whatever.' The act is entitled 'An Act to regulate the manufacture of clothing, wearing apparel and other articles,' etc. Under the rule of construction heretofore laid down by this court, that general and specific words, which are capable of an analogous meaning, being associated together, take color from each other, so that the general words are restricted to a sense analogous to the less general, it would seem that the general words: 'and other articles;' should be restricted to a meaning analogous to the meaning of the words: 'clothing, wearing apparel;' and, consequently, that they would only embrace articles of the same kind as those expressly enumerated. (*First Nat. Bank of Joliet* v. *Adam*, 138 Ill., 483; *Misch* v. *Russell*, 136 id., 22.) But whether this is so, or not, we are inclined to regard the act as one which is partial

and discriminating in its character. If it be construed as applying only to manufacturers of clothing, wearing apparel and articles of a similar nature, we can see no reasonable ground for prohibiting such manufacturers and their employes from contracting for more than eight hours of work in one day, while other manufacturers and their employes are not forbidden to so contract. If the act be construed as applying to manufacturers of all kinds of products, there is no good reason why the prohibition should be directed against manufacturers and their employes, and not against merchants, or builders, or contractors, or carriers, or farmers, or persons engaged in other branches of industry, and their employes therein. Women, employed by manufacturers, are forbidden by section 5 to make contracts to labor longer than eight hours in a day, while women employed as saleswomen in stores, or as domestic servants, or as bookkeepers, or stenographers, or typewriters, or in laundries, or other occupations not embraced under the head of manufacturing, are at liberty to contract for as many hours of labor in a day as they choose. The manner, in which the section thus discriminates against one class of employers and employes and in favor of all others, places it in opposition to the constitutional guaranties hereinbefore discussed, and so renders is invalid.

"But aside from its partial and discriminating character, this enactment is a purely arbitrary *restriction upon the fundamental right of the* citizen to control his or her own time and faculties. 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. It assumes to dictate to what extent the capacity to labor may be exercised by the employe, and takes away the right of private judgment as to the amount and duration of the labor to be put forth in a speci-

fied period. When the legislature thus undertakes to impose an unreasonable and unnecessary burden upon any one citizen or class of citizens, it transcends the authority entrusted to it by the constitution, even though it imposes the same burden upon all other citizens or classes of citizens. General laws may be as tyrannical as partial laws. A distinguished writer upon constitutional limitations has said, that general rules may sometimes be as obnoxious as special, if they operate to deprive individual citizens of vested rights, and that, while every man has a right to require that his own controversies shall be judged by the same rules which are applied in the controversies of his neighbors, the whole community is also entitled, at all times, to demand the protection of the ancient principles which shield private rights against arbitrary interference, even though such interference may be under a rule impartial in its operation. (Cooley on Cons. Lim., 5 ed., top page 434, marg. page 355; *Bank of Columbia* v. *Okely*, 4 Wheat., 235.) Section 1 of article 2 of the constitution of Illinois provides as follows: '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 secure these rights and the protection of property, governments are instituted among men, deriving their just powers from the consent of the governed.' Liberty, as has already been stated, includes the right to make contracts, as well with reference to the amount and duration of labor to be performed, as concerning any other lawful matter. Hence, the right to make contracts is an inherent and inalienable one, and any attempt to unreasonably abridge it is opposed to the constitution. As was aptly said in *Leep* v. *St. L., L. M. & S. Ry. Co., supra:* 'Where the subject of contract is purely and exclusively private, unaffected by any public interest or duty to person, to society

or government, and the parties are capable of contracting, there is no condition existing upon which the legislature can interfere for the purpose of prohibiting the contract, or controlling the terms thereof.'

"An instance of the care, with which this right to contract has been guarded, may be found in chapter 48 of the Revised Statutes of this State, where an Act, passed in 1867, makes eight hours of labor to certain employments a legal day's work, *'where there is no special contract or agreement to the contrary;'* and the second section of which Act contains the following provisions: 'nor shall any person be prevented by anything herein contained from working as many hours overtime or extra hours as he or she may agree.' "

The court continued, p. 110:

"But it is claimed on behalf of defendant in error, that this section can be sustained as an exercise of the police power of the state. The police power of the state is that power which enables it to promote the health, comfort, safety and welfare of society. It is very broad and far reaching, but is not without its limitations. Legislative acts passed in pursuance of its must not be in conflict with the constitution, and must have some relation to the ends sought to be accomplished; that is to say, to the comfort, welfare or safety of society. Where the ostensible object of an enactment is to secure the public comfort, welfare or safety, it must appear to be adapted to that end; it cannot invade the rights of person and property under the guise of a mere police regulation, when it is not such in fact; and where such an act takes away the property of a citizen or interferes with his personal liberty, it is the province of the courts to determine whether it is realily an appropriate measure for the promotion of the comfort, safety and welfare of society. (*Lake View* v. *Rosehill*

*Cem. Co.*, 70 Ill., 191; *In Re Jacobs*, 98 N. Y., 98; *The People* v. *Gillson*, 109 id., 389.)

"There is nothing in the title of the Act of 1893 to indicate that it is a sanitary measure. The first three sections contain provisions for keeping workshops in a cleanly state and for inspection to ascertain whether they are so kept. But there is nothing in the nature of the employment contemplated by the act which is in itself unhealthy, or unlawful, or injurious to the public morals or welfare. Laws restraining the sale and use of opium and intoxicating liquor have been sustained as valid under the police power. (*Ah Lim* v. *Territory*, 1 Wash., 156; *Mugler* v. *Kansas*, 123 U. S., 623.) Undoubtedly, the public health, welfare and safety may be endangered by the general use of opium and intoxicating drinks. But it cannot be said that the same consequences are likely to flow from the manufacture of clothing, wearing apparel and other similar articles. 'The manufacture of cloth is an important industry, essential to the welfare of the community.' (*Commonwealth* v. *Perry, supra.*) We are not aware that the preparation and manufacture of tobacco into cigars is dangerous to the public health. (*In re Jacobs, supra.*)

"It is not the nature of the things done, but the sex of the persons doing them, which is made the basis of the claim that the act is a measure for the promotion of the public health. It is sought to sustain the act as an exercise of the police power upon the alleged ground, that it is designed to protect woman on account of her sex and physique. It will not be denied that woman is entitled to the same rights, under the constitution, to make contracts with reference to her labor as are secured thereby to men."

The court continued, p. 112:

"As a citizen, woman has the right to acquire and possess property of every kind. As a 'person,' she has the right to claim the bene-

fit of the constitutional provision that she shall not be deprived of life, liberty or property without due process of law. Involved in these rights thus guaranteed to her is the right to make and enforce contracts. The law accords to her, as to every other citizen, the natural right to gain a livelihood by intelligence, honesty and industry in the arts, the sciences, the professions or other vocations. Before the law, her right to a choice of vocations cannot be said to be denied or abridged on account of sex. (*In re Leach*, 134 Ind., 665.)"

The court continued, p. 113:

"Section 5 of the Act of 1893 is broad enough to include married women and adult single women, as well as minors. As a general thing, it is the province of the legislature to determine what regulations are necessary to protect the public health and secure the public safety and welfare. But inasmuch as sex is no bar, under the constitution and the law, to the endowment of woman with the fundamental and inalienable rights of liberty and property which include the right to make her own contracts, the mere fact of sex will not justify the legislature in putting forth the police power of the state for the purpose of limiting her exercise of those rights, unless the courts are able to see, that there is some fair, just and reasonable connection between such limitation and the public health, safety or welfare proposed to be secured by it. (*The People* v. *Gillson, supra.*)

"Counsel for the people refer to statements in the text books, recognizing the propriety of regulations, which forbid women to engage in certain kinds of work altogether. Thus, it is said in Cooley on Constitutional Limitations, that '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.' (5th ed.,

page 745.) Attention is also called to the above mentioned Act of March 22, 1872, which makes an exception of military service, and provides that nothing in the act shall be construed as requiring any female to work on streets, or roads, or serve on juries. But, without stopping to comment upon measures of this character, it is sufficient to say that what is said in reference to them has no application to the Act of 1893. That act is not based upon the theory, that the manufacture of clothing, wearing apparel and other articles is an improper occupation for women to be engaged in. It does not inhibit their employment in factories or workshops. On the contrary, it recognizes such places as proper for them to work in by permitting their labor therein during eight hours of each day. The question here is not whether a particular employment is a proper one for the use of female labor, but the question is whether, in an employment which is conceded to be lawful in itself and suitable for woman to engage in, she shall be deprived of the right to determine for herself how many hours she can and may work during each day. There is no reasonable ground—at least none which has been made manifest to us in the arguments of counsel—for fixing upon eight hours in one day as the limit within which woman can work without injury to her physique, and beyond which, if she work, injury will necessarily follow. But the police power of the state can only be permitted to limit or abridge such a fundamental right as the right to make contracts, when the exercise of such power is necessary to promote the health, comfort, welfare or safety of society or the public; and it is questionable whether it can be exercised to prevent injury to the individual engaged in a particular calling. The Court of Appeals of New York, in passing upon the validity of an act 'to improve the public health by prohibiting the manufacture of cigars

and preparation of tobacco in any form in tenement houses,' etc., has said: 'To justify this law it would not be sufficient that the use of tobacco may be injurious to some persons, or that its manipulation may be injurious to those who are engaged in its preparation and manufacture but it would have to be injurious to the public health.' (*In re Jacobs, supra.*) Tiedeman, in his work on Limitations of Police Power, says: 'In so far as the employment of a certain class in a particular occupation may threaten or inflict damage upon the public or third persons, there can be no doubt as to the constitutionality of any statute which prohibits their prosecution of that trade. But it is questionable, except in the case of minors, whether the prohibition can rest upon the claim that the employment will prove hurtful to them. * * * There can be no more justification for the prohibition of the prosecution of certain callings by women, because the employment will prove hurtful to themselves, than it would be for the state to prohibit men from working in the manufacture of white lead because they are apt to contract lead poisoning, or to prohibit occupation in certain parts of iron smelting works, because the lives of the men so engaged are materially shortened.' ''

We believe comment on this case to be superfluous in view of the exhaustive and forceful logic of the court.

*People* v. *Williams*, 189 N. Y., 131, is a case almost identical with that of the Ritchie case, decided in 1895 by this court. In the Williams case the defendant was arrested and convicted for violating the provisions of Sections 77 and 3841 of the Penal Code of New York. The later made it a misdemeanor for any person not to comply with the provisions of the labor law of New York, relating to

factories, and the defendant was convicted for a violation of Section 77 of that law, which was entitled: "Hours of labor of minors and women" and provided as follows:

> "No minor under the age of eighteen years, and no female shall be employed, permitted or suffered to work in any factory in this state before six o'clock in the morning, or after nine o'clock in the evening of any day; or for more than ten hours in any one day except to make a shorter work day on the last day of the week; or for more than sixty hours in any one week, or more hours in any one week than will make an average of ten hours per day for the whole number of days so worked."

The facts, as taken from the opinion of the court, p. 133, are as follows:

> "The information and the proof were that a female, named Katie Mead, over twenty-one years of age, was found by the factory inspector at work in a book binding establishment, in the City of New York, at twenty minutes after ten o'clock in the evening. There was no complaint with respect to the character, or construction, of the building and the defendant's guilt was rested, solely, upon his failure to observe the provision of the statute against a female being at work after nine o'clock in the evening. If the inhibition against employing a female in any factory after that hour was a valid act of legislation, then the defendant came within its operation and he was amendable to punishment. After the defendant had been found guilty, the trial court granted his motion in arrest of judgment and discharged him; holding that the legislative enactment was unconstiutional. The justices of the Appellate Division, in the first department, by a divided vote, have affirmed the order of the trial court."

The court held that under the laws of New York

men and women stood alike in their constitutional rights and that there existed no warrant for making any discrimination between them with respect to the liberty of person, or of contract. It was claimed that the law could be justified as an exercise of the police power of the state, having for its purpose the general welfare of the state in a measure for the preservation of the health of the female citizens;—the same contention exactly, as is raised in this case. The court held that it was not a police regulation. The court said that while courts have gone very far in upholding legislative enactments, framed clearly for the welfare, comfort and health of the community, and that while a wide range in the exercise of the police power of the state should be conceded, an adult female citizen could not be arbitrarily debarred from working at any time of the day or night.

The court said, p. 135:

> "In this section of the labor law, it will be observed that women are classed with minors under the age of eighteen years; for which there is no reason. The right of the state, as *parens patriae,* to restrict, or to regulate, the labor and employment of children is unquestionable; but an adult female is not to be regarded as a ward of the state, or in any other light than the man is regarded, when the question relates to the business pursuit or calling. She is no more a ward of the state than is the man. She is entitled to enjoy, unmolested, her liberty of person, and her freedom to work for whom she pleases, where she pleases and as long as she pleases, within the general limits operative on all persons alike, and shall we say that this is valid legislation, which closes the doors of a

factory to her before and after certain hours? I think not."

The court then concluded, p. 136:

> *"So I think, in this case, that we should say, as an adult female is in no sense a ward of the state, that she is not to be made the special object of the exercise of the paternal power of the state and that the restriction, here imposed upon her privilege to labor, violates the constitutional guarantees. In the gradual course of legislation upon the rights of a woman, in this state, she has come to possess all of the responsibilities of the man and she is entitled to be placed upon an equality of rights with the man.*
>
> "It might be observed that working in a factory in the night hours is not the only situation of menace to the working woman; but such occupation is, arbitrarily, debarred her."

Now that law, which was there under discussion, is in some respects a less onerous law than the one presented here for consideration. That law permitted employment between the early morning and up to nine o'clock at night to the extent of ten hours a day, and it attempted to prohibit women from working in the early morning hours and hours which were late at night, when naturally the body needs repose, and one would think that that law would be more of a health regulation than the one presented here. We wish to call attention particularly, to the court's reasoning in that case, the court there saying, that woman was not a ward of the state or a dependent; that she was not to be classed with the idiot, the lunatic or the minor, but stands free and equal with her brother on all questions, save only that of suffrage, and that the constitution is for her a protection and a safeguard against ill-advised

methods of legislation, just as much as it is for the millionaire employer. In this case there was cited those cases which are relied upon the appellants, namely, the cases in Massachusetts, Oregon, Nebraska, Pennsylvania and Washington, and there was cited for the defendant the case of *Ritchie* v. *The People,* and it was upon that decision that the court declared the law there in question as unconstitutional and void. The two greatest manufacturing and industrial states of the Union,—New York and Illinois—have, therefore, declared these laws unconstitutional, and this court should consider carefully before it will reverse those decisions and follow the opinions of the far western states, such as Oregon and Washington, who combined do not employ in the whole state as many females as are employed in one small office building in the City of Chicago.

In *Burcher* v. *The People,* 41 Col., 495, decided December 2, 1907, an Act of the Colorado Legislature (Session Laws, 1903, Chap. 138) entitled "An act to prescribe and regulate the hours of employment for women and children in mills, factories, manufacturing establishments, shops, stores and any other occupation which may be deemed unhealthful or dangerous," came up for construction. By the Laws of 1901, Chap. 109, an amendment was made to the state constitution, which provided that "The General Assembly shall provide by law and shall prescribe suitable penalties for the violation thereof, for a period of employment not to exceed eight hours within any twenty-four * * * for persons employed in any underground mines or other under-

ground workings * * * or other branch of industry or labor that the General Assembly may consider injurious or dangerous to health, life or limb." The act under construction prohibited the employment of women for more than eight hours a day in any mill, factory, manufacturing establishment or store where such labor requires them to stand upon their feet.

The court discussed the constitutionality of this law from two aspects:—

1st. Whether under the constitution the legislature had the power to pass this act; and

2nd. Whether it was within the police power of the state.

The court found that it was not and said, p. 503:

> "It must be borne in mind, as the attorney general must concede, that under our constitution the right of contracting for one's labor is reserved and guaranteed to every citizen. It is subject to no restraint except where the public safety, health, peace, morals or general welfare demands it, and then only where the legislative department of the state government, in the exercise of its police power, *selects a proper subject for its exercise and prescribes reasonable and appropriate regulations.* In the absence, therefore, of a legitimate exercise by the General Assembly of this power by a declaration to the contrary, the defendants might lawfully by contract require a woman to work more than eight hours per day in their laundry."

As we will point out under IX, *infra*, the act is clearly class legislation, but it is also obnoxious as an unlawful confiscation of one's right to labor, and the right to enjoy and acquire the fruits of one's labor, not only by forbidding employment, but by

making it a criminal offense to pursue a lawful business, built up and in accordance with the laws of the state in accordance with methods theretofore lawful.

## II.

THE LAW IS VOID BECAUSE IT ARBITRARILY MAKES AN EMPLOYER CRIMINALLY RESPONSIBLE FOR THE ACTS OF ANOTHER, WHO EXERCISES HIS OWN DISCRETION, AND HENCE DEPRIVES HIM OF DUE PROCESS OF LAW.

*Camp* v. *Rogers*, 44 Conn., 291.
*Colon* v. *Lisk*, 47 N. E., 302.
*People* v. *O'Brien*, 18 N. E., 692.
*Towle* v. *Mann*, 53 Ia., 42.
*Ohio Ry. Co.* v. *Lackey*, 78 Ill., 55.
*Beilenberg* v. *The Ry. Co.*, 20 Pac., 314.
*Ham* v. *McClaws*, 1 Bay, 93.

In the case of *Camp* v. *Rogers*, 44 Conn., 291, it was held that a statute of Connecticut which provided that the driver of any vehicle meeting another on the public highway who should neglect to turn to the right and thereby drive against the vehicle so met and injure its owner or any person in it, or the property of any person, should pay to the party injured treble damages, and that

> "*The owner of the vehicle* so driven shall, if the driver is unable to do so, pay such damages, to be recovered by writ of *scire facias.*"

The court said, p. 296:

> "If the construction, which the plaintiff contends should be given to the statute upon which her right to recover must depend is correct, then there can be no case in which the owner of a

vehicle would not be liable, not only for the actual damage caused by a violation of the statute on the part of any person driving it, but for the threefold and punitive damages given by the statute against the driver. If the owner of a vehicle should leave it, with his horse attached to it, at a post by the side of the street, and in his absence a thief or trespasser should take it, and by reckless driving damage a horse or carriage that he happened to meet, the owner would be liable. So if one lends his vehicle to a friend, and he again lends it to a stranger, the owner would be liable, not only for any damage done by the stranger in driving it, but even by the servant of the stranger. Indeed we should have this strange anomaly—that if my neighbor borrows my carriage and is riding in its with his servant and the latter wilfully neglects to turn to the right and injures a team that he meets, *while my neighbor would not be liable as master, because the act of his servant was wilful, I* should yet be liable as owner, and that too with no right to indemnity from the master. Such a result is in itself so absurd as to show, either that the statute ought not to be construed as to produce it, or that, if this be a correct construction, it is so far void, either as manifestly against natural justice, or as violating that article of the constitution which forbids the taking away of any person's property 'without due process of law.' If such a law, so construed, were to be held valid, then a law that should by a merely arbitrary rule make one man liable for the debts of another would be valid. Indeed there is no limit that could be put to the most arbitrary acts of the legislature in making one man liable for the acts of another.

"As to the meaning of the expression 'due process of law,' as used in many of the constitutions of the states of the Union, Cooley, in his Constitutional Limitations, p. 355, says: 'We have met in no judicial decision a statement that

embodies more tersely and accurately the correct view of the principle we are considering, than the following from an opinion of Mr. Justice Johnson of the Supreme Court of the United States: "The good sense of mankind has at length settled down to this—that these words were intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice." ' Again, he says, (p. 358) speaking of the cases where courts of equity order the property of one man to become vested in another: 'In these cases the courts proceed in accordance with the "law of land," and the right of one man is divested by way of enforcing a higher and better right in another.' Again he says (p. 175): 'The bills of rights in the American constitutions forbid that parties shall be deprived of property except by the law of the land; but if the prohibition had been omitted, a legislative enactment to pass one man's property over to another would nevertheless be void.' In *People* v. *Morris*, 13 Wend., 328, it is said that 'vested rights of the citizen are sacred and inviolable against the plentitude of power in the legislative department.' In *Ham* v. *McClaws*, 1 Bay (So. Car.), 93, it is laid down that 'statutes passed against the plain and obvious principles of common right and common reason are null and void, so far as calculated to operate against those principles;' and in *Morrison* v. *Barksdale*, Harper, 101, that 'if absurd consequences, or those manifestly against common reason, arise collaterally out of a statute, it is *pro tanto* void.' And see *Welch* v. *Wadsworth*, 30 Conn., 150."

In the case of *Beilenberg* v. *Montana Union Railway Co.*, (Mont., 1889), 20 Pac., 314, it was held that a statute that provided that every railroad corporation within the territory which should damage or kill

any horse by running against it with an engine, should be liable to the owner for its value, was unconstitutional and void, for attempting to impose a liability upon such corporation without any negligence or breach of duty on its part, and for imposing upon it a liability for the negligent acts of others. The court held that the statute was unconstitutional as depriving the railroad company of its property without due process of law.

In the case of *The Railway Co.* v. *Lackey*, 78 Ill., 55, it was held that an act was unconstitutional which made railroad companies liable for all expenses of the coroner's inquest, and the burial of all persons who might die on its cars or who might be killed by collision. The court said, p. 57:

> "It may, very pertinently, be asked, why this distinction? On what principle is it that railroad corporations, without any fault on their part, shall be compelled to pay charges which, in other cases, are borne by the property of the deceased, or, in default thereof, by the county in which the accident occurred?
>
> "An examination of the section will show that no default, or negligence of any kind, need be established against the railroad company, but they are mulcted in heavy charges if, notwithstanding all their care and caution, a death should occur on one of their cars, no matter how caused, even if by the party's own hand. Running of trains by these corporations is lawful, and of great public benefit. It is not claimed that the liability attaches for a violation of any law, the omission of any duty or the want of proper care and skill in running their trains. The penalty is not aimed at anything of this kind. We say penalty, for it is in the nature of a penalty, and there is a constitutional inhibition against imposing penalties where no law has been vio-

lated or duty neglected. Neither is pretended in this case, nor are they in the contemplation of the statute. A passenger on the train dies from sickness. He is a man of wealth. Why should his burial expenses be charged to the railroad company? There is neither reason nor justice in it; and if he be poor, having not the means for a decent burial, the general law makes ample provision for such cases. As argued by the counsel for appellant, the law attempts to place what is properly a public burden upon these corporations, which should be borne by all alike, and discharged out of public funds raised by equal and uniform taxation."

In the case of *Foule & Roper* v. *Mann*, 53 Ia., 42, it was held (syllabus):

"Section 3058 of the Code, providing that the claimant or purchaser of any property, for the seizure or sale of which an indemnity bond has been taken and returned by the officer, shall be barred of any action against the officer levying on the property, and shal be confined to an action on the bond as his only remedy, in so far as it prohibits one claiming to be the owner from maintaining an action for the recovery of the specific property taken, is unconstitutional and void, its effect being to deprive him of his property without due process of law, and compel him, even if he establishes his ownership, to accept instead its market value."

In the case of *Colon* v. *Lisk* (N. Y., 1898), 47 N. E., 302, a statute provided a penalty for confiscating a boat which was found disturbing oyster beds. The court said, p. 303:

"* * * it at once becomes obvious that this statute may be employed to confiscate to the state the entire property of an individual for the commission of a trespass upon the property of another, however slight, and this, too, although

> the owner is guiltless of any intended or actual wrong. If valid, we see no reason why the largest and most valuable vessel sailing on the waters of the state may not be sold under it, and the price arbitrarily transferred to the state, although the measure of any offense committed is but the disturbance or removal of a single buoy or stake, and that by some person for whose act neither the owner, nor the person in possession is responsible, or could in any manner control."

The law under discussion makes the employer criminally responsible for the acts of his superintendent or manager in permitting women to work overtime. No matter how wide the discretion or how great the confidence imposed in the superintendent or in the manager, yet the employer is liable to enormous penalties if the factory is run more than ten hours a day. No matter how many executive officers may intervene, no matter if the manager or the superintendent should direct that the girls should not work longer than ten hours a day, yet if a foreman in whom is reposed the greatest confidence or who has the largest discretion allows his girls to work overtime, the employer is responsible.

The foreman or other agent is not responsible nor liable for such act, but it is the employer, no matter how innocent, who is made the scapegoat and who must suffer the penalty.

## III.

THE LAW VOID BECAUSE IT VIOLATES THE CONSTITUTION, AS IN THE SUBJECT-MATTER OF THE ACT AN ENTIRELY NEW AND DISTINCT ACT IS MADE A CRIMINAL OFFENSE, WHICH THERETOFORE WAS LAWFUL, AND SUCH ACT IS NOT EMBRACED IN THE TITLE OF THE STATUTE.

*Milne* v. *People*, 224 Ill., 125.
*People* v. *McBride*, 234 Ill., 146.

In *Milne* v. *The People*, 224 Ill., 125, the title to an act was "An Act for the punishment of crimes against children." The body of the act made it a felony for any person who should endeavor to take any indecent liberties with a child or who should entice a child into any room for the purpose of taking any such liberties with it and who should wilfully commit any lewd act upon the body of such child with the intent of arousing its passions. This court said, p. 128:

> *"The act now under consideration creates a felony which hitherto did not exist in Illinois, and makes it punishable by imprisonment in the penitentiary from one to twenty years. There is nothing in the title of this act that gives any hint that a new offense is to be created or any intimation as to the acts which shall constitute such offense. The title is 'An act for the punishment of crimes against children.' One reading this title would have no conception of what might be expected in the body of the act. There are very few, if any, crimes against persons that may not be committed against a child, and the title to this act would be as appropriate to, and as suggestive of, any crime which might be committed upon a child as it is of the offense declared in the body of the act. If the title read,*

*'An act to define and punish crimes against children,' the word 'define' would suggest that some offense was to be created and defined and a definition of some offense that already exists was to be inserted. But in our opinion the title of this act as it was passed does not contain an expression, even in the most general terms, of the body of the act, and that the act is for that reason violative of section* 13 *of article* 4 *of our constitution."*

In the case presented the title to the act is "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." There is in this title not the slightest indication that the legislature has made an employer liable for the acts of his employes, who are entitled to exercise their independent judgment in permitting female employes to work overtime and, therefore, the act is unconstitutional in this respect.

## IV.

THE LAW IS VOID FOR AMBIGUITY, BECAUSE IS DOES NOT DEFINE THE DEFENSES WITH THAT CERTAINTY WHICH THE LAW REQUIRES.

Section 1 of the act provides that no female shall be employed in any mechanical establishment for more than ten hours during the day. We confess that we cannot understand what is meant by mechanical establishment or factory. It is very evident that one person might think that a place where fertilizer was

manufactured was a mechanical establishment or factory and yet another one might think to the contrary. One person might think that a theater was a mechanical establishment; another would think to the contarry. We do not know whether mechanical establishment means an establishment where machinery is manufactured or where produce is manufactured by the use of machinery. If the latter, to what extent must the machinery be used to constitute a mechanical establishment? Is a department store a mechanical establishment because machinery is used in operating it? Is an office building a mechanical establishment because machinery is used to heat it and to run the elevators? The principle of law is so well settled, that a statute must be clear, certain and definite in all its parts in order to be capable of enforcement, and we do not believe that either the term "mechanical establishment" or "factory" is capable of such precise definition as the law requires. Concerning the term "factory" we must confess that while in some respects the term "factory" is more understood than that of "mechanical establishment," and less open to ambiguity, yet there are a great many cases which one person might think a factory and the other might not so regard it, and as the factory inspector is charged with the enforcement of the law, he must determine what falls under this classification, and as his determination on that subject is practically final, a statute should be held unconstitutional, which will allow different public officials, as they occupy their positions, to express different views upon what constitutes an offense under the act.

## V.

THE STATUTE IS VOID BECAUSE THE PENALTIES ENFORCED FOR ITS VIOLATION ARE ENORMOUS AND IT IS THE SETTLED LAW THAT WHERE THE PENAL FEATURE OF A LAW IS SO SEVERE, HAVING REGARD TO THE NATURE OF THE REGULATION, AS TO INTIMIDATE PROPERTY OWNERS FROM ENJOYING THEIR RIGHTS AND FROM RESORTING TO THE COURTS FOR DEFENSE TO THEIR SUPPOSED RIGHTS, IT IS HIGHLY UNREASONABLE AND IS A DEFIANCE OF THE EQUAL PROTECTION OF THE LAW.

*Bonnett* v. *Vallier*, 116 N. W., 885.

*Central of Georgia Ry. Co.* v. *Railroad Commission*, 161 Fed., 925.

*Ex parte Young*, 209 U. S., 123.

*Ex parte Wood*, 155 Fed., 120.

*Hunter* v. *Wood*, 28 Sup. Ct., 472.

*Consolidated Gas Co.* v. *New York*, 157 Fed., 849.

*Cotting* v. *Stock Yards*, 183 U. S., 79; 22 Sup. Ct., 30.

In *Central of Georgia Ry. Co.* v. *Railroad Commission of Alabama*, 161 Fed., 925, the Rate Act of the State of Alabama was involved, which imposed heavy penalties upon the carrier for violation of its provisions. The court said, p. 962:

> "The carrier, in a day's business, if it does not observe the rates, will necessarily commit several thousand violations of the statutes, for each of which he is subject to a fine of not exceeding $2,000; and his employes, who knowingly engage in any violation of the rates, are subject to a fine of not less than $100 nor more than $500 for each offense. * * * Under such conditions,

> nonconformity to the rates for a single day would result in the forfeiture of the carrier's property worth many millions of dollars, and subject his servants and employes to arrest and imprisonment, preventing the carrier from discharging his duties to individuals and the public. The inevitable outcome of the situation thus brought about by the legislation, if the rates be unreasonable and respondents' contention be correct, is that the carrier must at once observe the statutes, and thereby be deprived of property without just compensation, or else, in order to avoid the taking of his property, must refuse to obey the statutes, and thereby assume the frightful burden and costs of defense of a multitude of indictments in the law courts, in different places, at the same time, which, even if successful, would entail as great losses as the injury resulting from obedience to the statute, and, in addition, be forced to wager his entire property upon the successful outcome of his defense at law. Under this deliberately planned system of laws for enforcing the rate legislation and hampering the defenses thereto, the carrier, no matter what course he takes, is confronted with ruin."

and held the statute unconstitutional on that ground.

In *Consolidated Gas Co.* v. *City of New York*, 157 Fed., 849, a statute of the State of New York, which fixed the prices of gas, subjected the gas company to a maximum penalty of $1,000 for every violation of the provisions, respecting equipment, pressure, or rates of charges as therein fixed. The court held the statute unconstitutional and void, because the penalties were so enormous as to practically amount to a confiscation of the property of the gas company.

In *Cotting* v. *Godard*, 22 Sup. Ct., 30, the court said, p. 39:

"Do the laws secure to an individual an equal protection when he is allowed to come into court and make his claim or defense subject to the condition that, upon a failure to make good that claim or defense, the penalty for such failure either appropriates all his property, or subjects him to extravagant and unreasonable loss? Let us make some illustrations to suggest the scope of this thought.

"Suppose a law were passed that if any laboring man should bring or defend an action and fail in his claim or defense, either in whole or in part, he should in the one instance forfeit to the defendant half of the amount of his claim, and in the other be punished by a fine equal to half of the recovery against him, and that such law by its terms applied only a laboring men, would there be the slightest hesitation in holding that the laborer was denied the equal protection of the laws? The mere fact that the courts are open to hear his claim or defense is not sufficient, if upon him, and upon him alone, there is visited a substantial penalty for a failure to make good his entire claim or defense. Take another illustration: Suppose a statute that every corporation failing to establish its entire claim, or make good its entire defense, should as a penalty therefor forfeit its corporate franchise, and that no penalty of any kind except the matter of costs was attached to like failures of other litigants, could it be said that the corporations received the equal protection of the laws? Take still another illustration: Suppose a law which, while opening the doors of the courts to all litigants, provided that a failure of any plaintiff or defendant to make good his entire claim or entire defense should subject him to a forfeiture of all his property or to some other great penalty; then, even if, as all litigants were treated alike, it could be said that there was equal protection of the laws, would not such burden upon all be adjudged a denial of due process of law? Of

course, these are extreme illustrations, and they serve only to illustrate the proposition that a statute (although in terms opening the doors of the courts to a particular litigant) which places upon him as a penalty for a failure to make good his claim or defense a burden so great as to practically intimidate him from asserting that which he believes to be his rights is, when no such penalty is inflicted upon others, tantamount to a denial of the equal protection of the laws. It may be said that these illustrations are not pertinent because they are of civil actions, whereas this statute makes certain conduct by the stock yards company a criminal offense, and simply imposes punishment for such offense; that it is within the competency of the legislature to prescribe the penalties for all offenses, either those existing at common law or those created by statute; and, further, that although the penalties herein imposed may be large, yet obedience to a statute like this can only be secured by large penalties; for otherwise the company, being wealthy and powerful, mighet defiantly disregard its mandates, trusting to the manifold chances of litigation to prevent any serious loss from disobedience. A penalty of a dollar on a large corporation, whose assets amount to millions, would not be very deterrent from disobedience. It is doubtless true that the state may impose penalties such as will tend to compel obedience to its mandates by all, individuals or corporations; and if extreme and cumulative penalties are imposed only after there has been a final determination of the validity of the statute, the question would be very different from that here presented. But when the legislature, in an effort to prevent any inquiry of the validity of a particular statute, so burdens any challenge thereof in the courts that the party affected is necessarily constrained to submit rather than take the chances of the penalties imposed, then it becomes a serious question whether the

party is not deprived of the equal protection of the laws."

In this case the statute provided a punishment for charging excessive rates for the delivery of cattle, for the first offense of not more than $100, for the second offense of not less than $100 nor more than $200 and so on. The court reviewed the statute to see whether the section contemplated a separate offense with a separate penalty for each excessive charge per head or whether it contemplated a single penalty for a violation of the statute in respect to the entire number of stock received in one shipment. The court said that the difference was significant. Taking the total number shipped to the Stock Yards in the year 1896, it amounted to an average of about 15,000 head per day. The question was, whether in that case an excessive charge for each head would mean 15,000 violations of the statute. If so, as after the third offense the fine could not be less than $1,000 for each offense, a single day's penalties would aggregate at least $15,000,000. If the penalty attached simply to the charge for each shipment as a single act, the burden, though large, might not be deemed excessive, but if it attached to that for each particular head of stock, the penalties became enormous. The court held that the construction of the statute provided for a penalty for each head and used language which has just been cited *supra*.

Now in the case presented, it appears that there are employed in the factory of the complainant, W. C. Ritchie & Company, seven hundred and fifty women. During the "rush seasons" the bill sets out they must all work overtime. That would make the

appellee liable to a daily fine of $150,000. It will be noted that the penalty imposed is not a penalty for the mere working of the business more than ten hours a day or is not a mere collective fine imposed for each day that employes work overtime, but it is a penalty imposed for the individual working overtime of each individual female employed in the establishment. When the court considers that the last census shows that there were 250,000 women engaged in gainful occupations in the State of Illinois, that there are subject to this act in this state over 100,000 women, if they were all to work overtime, it would impose upon the employers of this state a liability for a daily fine of $25,000,000, which is a penalty so enormous as to fairly stagger the imagination. We think in all fairness, that the act is arbitrary and unreasonable. As it imposes a fine for each individual woman required to work overtime, it is clearly a confiscation of property and unconstitutional.

Section 2 of the act provides:

> "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 more than the number of hours provided for in this act during any one day, or who shall eprmit 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 not less than $25 or more than $100."

The court knows that in corporations there is the

president and the general manager and then the various sub-managers and superintendents and division superintendents and then finally the foreman, who has the personal duty of supervising the work of the employes, although the president may have given specific orers that the employer does not desire the women employes to work more than ten hours a day, yet if the foreman permits his employes to work overtime, the employer is absolutely guilty of an offense under this act, although in every way innocent. We submit that it is unconstitutional that this liability be imposed upon the employer, and that enormous penalties be cumulated against one who may be entirely innocent of wrong doing.

In *Bonnett* v. *Vallier,* (Wis., 1908), 116 N. W., 885, a law prescribed the maner in which tenement houses should be erected and provided for a penalty of not less than $10 nor more than $200 for each day that the violation should continue.

The court said, p. 891:

> "It will be noted that a person may unintentionally violate some one or any number of provisions and upon demand being made upon him by the authority charged with the duty of enforcing the law, however much he may think he is not at fault as to any particular matter, he is made guilty of a second offense if he fails to comply, and in case of a prosecution being commenced against him as to any such violation, and, we repeat, there may be many, and there be an entire absence of any bad intent, he will become guilty of a third offense, if he resists prosecution by standing trial, and the situation as to him will apply to all concerned with him, regardless of any intent to disobey the law or to unreasonably resist its enforcement. Further, upon

its being determined judicially that any violation has occurred, and we again repeat there might be many, and without bad intent, no time is given to remedy the departure from the law; every day of the continuance will be counted and penalty upon penalty may be imposed till the violation shall be effected regardless of the diligence of the guilty person to remedy the wrong, and even regardless, as to many persons that might be guilty, of the possibility of their being competent to remedy the wrong at all. It is thus not difficult to see how under the law a person of moderate means, though acting in the best of good faith and with diligence, might, in the construction of a single building of moderate dimensions, have penalties accumulated against him to an enormous amount and be so menaced by the fact that every failure to comply with the law would add to the load and every instance of an application to the courts by way of attack or defense, regardless of good faith in the matter, would further add thereto so that no one but a man of courage would take the chance of building a structure affected by the act, especially in portions of the state where expert assistance in the matter is either not obtainable at all or obtainable without such expense as to render the act prohibitory.

" * * * The effect of it would be to take property without due process of law, to violate section 9, art. 1, of the State Constitution guaranteeing to every person a certain remedy in the law for all injuries or wrongs which he may receive in his person, property or character, and violates every principle of civil liberty entrenched in the constitution."

## V I.

THE LAW IS VOID BECAUSE IT TAKES FROM THE STATE'S ATTORNEY AND FROM THE ATTORNEY GENERAL POWERS CONFERRED UPON THEM BY THE STATUTES OF ILLINOIS, ITS CONSTITUTION AND THE COMMON LAW.

*Hunt* v. *Chicago & Dummy R. R. Co.*, 20 Ill. App., 282.

*Chicago Mut. Life, etc., Assn.* v. *Hunt*, 127 Ill., 257.

*Attorney General* v. *Duberry Library*, 150 Ill., 229.

*Hunt* v. *Roller Skater Rink Co.*, 143 Ill., 118.

*Rex* v. *Austin*, 9 Price, 142.

*Attorney General* v. *Brown*, 1 Swanst, 294.

*Rex* v. *Wilkes*, 4 Burr, 2570.

Section 1 of Article V of the Constitution provides that the executive department shall consist of a Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, Treasurer, Superintendent of Public Instruction and Attorney General and that they shall perform such duties as may be prescribed by law.

Section 2 of Article VI provides that the State's Attorney shall be elected in and for each county and whose term of office shall be four years.

Now the duties of the Attorney General at common law were very numerous and complex, but as a general thing he was the attorney for the sovereign power and represented the state in its prosecution, and was the proper person to prosecute those who menaced the welfare of the state.

*Hunt* v. *Chicago & Dummy Ry. Co.*, 20 Ill. App., 283, is the leading case in this country on the duties and offices of the Attorney General, and in that case our Appellate Court said, p. 287:

> "In England the office of attorney general has existed from a very early period, and has been vested by the common law with a great variety of duties in the administration of government. The attorney general was the law officer of the crown and the only legal representative in the courts. * * * Upon the organization of governments in this country, most if not all of the commonwealths which derive their system of jurisprudence from England adopted the office of attorney general as it existed in England, as a part of the machinery of their respective governments. The prerogatives which pertain to the crown in England are here vested in the people, and the necessity for the existence of a public officer charged with the protection of public rights and the enforcement of public duties by proper proceedings in the courts of justice, is just as imperative here as there. The duties of such an office are so numerous and varied that it has not been the policy of the legislature to attempt the difficult task of enumerating them exhaustively, but they have ordinarily been content, after expressly defining such as they have deemed the most important, to leave the residue as they exist at common law, so far as applicable to our jurisprudence and system of government.
>
> "In case of each of the successive territorial governments of the territories of which Illinois formed a part before its admission into the Union as a State, the office of attorney general existed, and our investigation, so far as we have been able to carry them, bring us to the conclusion that it was a common law office, having powers and duties analogous to those of the attorney general of England, so far as applicable,

with the addition of such duties as were imposed by territorial legislation. The constitution of 1818 recognized the existence of the office, by disqualifying the person holding it from becoming a member of the general assembly, but made no provision as to the nature of his duties or the mode of his appointment. The office, however, was continued by the general assembly substantially as it had previously existed, the election being made by that body, until the adoption of the constitution of 1848. That constitution recognized the existence of the office in the same manner as the constitution of 1818, but as it prohibited the election or appointment of any officer by the general assembly, the office ceased to exist until the passage of the act of Feberuary 27, 1867, reating the office of attorney general, and prescribing his duties, that act being, so far as it relates to the powers and duties of the office, substantially identical with our present statute."

The court further said that the common law of England having been expressly adopted in this state, is as much a part of our law as are the statutes themselves and that the duties required of the Attorney General by the rules of the common law are as much the duties required of him by law as though imposed by the express mandate of a statute.

Under the constitution, and by the Attorney General and State's Attorney Act (Chap. 14, Hurd's Revised Statutes for 1908), there has been delegated to the State's Attorneys certain duties with respect to criminal prosecutions. The constitution, however, nowhere authorizes the appointment of any officer to enforce the law other than the Attorney General and the State's Attorney. The Ten Hour Law, by Section 2, imposes the duty upon the factory in-

spector of enforcing the provisions of the law. By the factory inspection act, creating the Illinois Department of Factory Inspection, the Chief Factory Inspector is given authority to employ an attorney to prosecute violations of the law. As that act (Hurd's Revised Stautes, 1909, p. 1046) must be construed in connection with the statute which authorizes the appointment of the factory inspector and the employment of his attorney, it must be construed as taking away from the Attorney General and the State's Attorney those powers conferred upon them by the constitution and the common law. Therefore, Section 3 of the Ten Hour Law must be held unconstitutional and void, and as it is an indivisible part of the act, the whole statute must fall with it.

*Mathews* v. *People*, 202 Ill., 389.

The act also imposes legislative and judicial power on the Factory Inspector, as it gives him the right to determine what are violations of the law and hence is unconstitutional.

*Rouse* v. *Thompson*, 228 Ill., 522, 535.

## VII.

THE LAW IS VOID BECAUSE IT IMPOSES UPON AND GIVES TO AN ILLEGALLY CONSTITUTED BODY THE AUTHORITY TO MAKE UNLAWFUL INVESTIGATIONS AND TO INVADE THE RIGHT TO PERSONAL SECURITY AND LIBERTY.

*Consolidated Coal Co.* v. *Miller*, 236 Ill., 149.
*Loan Assn.* v. *Keith*, 153 Ill., 609.

Section 2 of the act provides:

> "The state department of factory inspection shall be charged with the duty of enforcing the provisions of this act and prosecuting violations thereof."

There is no such department as "the state department of factory inspection." There has been created in this state an Illinois Department of Factory Inspection. Now in this case the chief factory inspector of the Illinois Department of Factory Inspection is claiming to act under and by virtue of the authority of this law, but as the law imposes upon a body not in existence the duty of enforcing this act, it must be considered as being void, because not capable of enforcement. If the court should so construe the act as conferring the duty of enforcement to rest upon the chief factory inspector of the Illinois Department of Factory Inspection, then the law is void because it gives inquisitorial power to an illegal officer and gives him the right of trespass under color of law when not an officer of the state.

By the act in force July 1, 1907 (Laws of 1907, p. 310), there was created and established a separate and distinct department of the state government,

known as the Illinois Department of Factory Inspection. The department, which was created by that act, was a new and executory department of the government and one unauthorized by the constitution.

Article V, Sec. 1, of the constitution provides that the executive department shall consist of a Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, Treasurer, Superintendent of Public Instruction and Attorney General. Nowhere in the constitution is authority found for the creation of an Illinois Department of Factory Inspection.

It has been held that the enumeration of objects of a class exclude others. This has been the settled law of this state for many years. The latest enunciation of this court has been in the case of *Consolidated Coal Co.* v. *Miller*, 236 Ill., 149. It was there held that the enumeration in Section 3 of Article IX of the constitution of the property which may be exempt from taxation, is a limitation upon the power of the legislature to exempt any other property. In that case this court said:

> "If there is an exemption of property within the classes enumerated in the constitution it must be by general law, but authority is denied to the legislature by the constitution to exempt any property except that which is enumerated, by form of legislation, general or special. Any exemption from the rule of equality established by Section 1 of Article 8 outside of the kinds of property enumerated in Section 3 of that article is absolutely prohibited."

Therefore, if this act can be construed as to impose upon the Illinois Department of Factory Inspection the duty of enforcing the law, then we main-

tain that that department being an illegally constituted body, renders the act nugatory, as it being intended that a certain officer should enforce the law, and such officer holding office under an illegal law, the statute impliedly prohibits the enforcement of the law by any other official, and hence the whole law must fall with section 2.

## VIII.

IT IS VOID BECAUSE IT IS AN ARBITRARY, UNYIELDING AND INFLEXIBLE DECLARATION OF THE LEGISLATURE, NOT ADAPTED TO VARYING CONDITIONS AND IS, THEREFORE, UNCONSTITUTIONAL.

*Bonnett* v. *Vallier* (Wis., 1908), 116 N. W., 885.

The act does not anywhere give to any of those on whom it operates, any opportunity to meet extraordinary conditions. In this case, there are certain "rush seasons" of the year, during which it is impossible for appellees to carry on their business without having the female employes work longer than ten hours a day. The "rush seasons" do not constitute more than one-third of the year's work and yet during that third the law operates as inflexibly as it does during the balance of the year. In case of strikes, unforeseen causes, casualties and extraordinary circumstances of every description, which may arise, the law operates in as arbitrary a fashion as it does during the summer months when conditions are quiet. Regulations of this character must be reasonable. They cannot be so arbitrary as to confiscate a person's business, destroy the fruits

of his industry and invade personal rights in such a harsh and inflexible manner.

In *Bonnett* v. *Vallier* (Wis., 1908), 116 N. W., 885, the court said, p. 888:

> "A police regulation must not extend beyond that reasonable interference which tends to preserve and promote enjoyment, generally, of those 'inalienable rights' with which 'all men are endowed' and to secure which 'governments are instituted among men' and must not violate any express prohibition or requirement of the state or national constitution. When it goes beyond the scope indicated and enters into the dominion of the destructive, it is illegitimate and offends against some constitutional restraint, express or implied, and though law in form, it is, as before said, not law at all and that whether an act purporting to be within the field of police power is reasonable or not, in the ultimate, is a judicial question. There must be reasonable ground for the police interference and also the means adopted must be reasonably necessary for the accomplishment of the purpose in view. So in all cases where the interference affects property and goes beyond what is reasonable by way of interfering with private rights, it offends against the general equality clause of the constitution; it offends against the spirit of the whole instrument; it offends against the prohibitions against taking property without due process of law, and against taking private property for public use without first rendering just compensation therefor."

The court then said that the line between what was reasonable and what was not was sometimes difficult of ascertainment,

> *"But when the boundary has been plainly passed, the duty of the court to repeal the encroachment and so uphold the constitution is absolute. It has no discretion in the matter."*

In this case the court held the law unconstitutional because the law was not flexible.

> "it applies to every part of the state, country districts, small citicies and villages—every portion is subject to the same degree of regulation as the City of Milwaukee notwithstanding the obvious fact, as suggested in effect in the New York case above cited, that the conditions calling for such interference are so widely different that it would seem need for classification would have occurred to the legislative mind at once, in dealing with the matter, especially in view of the requirements which are entirely unsuitable to locations where water and sewer systems do not exist, and the calls for an expensive grade of buildings common to large cities, but which no prudent man would seriously think of erecting in some situations unless he could afford and designed to devote his means to charitable uses."

Now in the case at bar, as we have pointed out, the act operates arbitrarily and unreasonably upon all conditions at all times and no matter how great the emergency, no matter how urgent the need, no employer may have his female employees work over ten hours a day, and this, irrespective of the fact that the place of employment may be the cleanest and most sanitary establishment in existence.

## IX.

THE ACT IS NOT SUSTAINABLE AS A POLICE REGULATION.

*People* v. *Ritchie*, 155 Ill., 98.
*People* v. *Steele*, 231 Ill., 340.
*Glover* v. *The People*, 201 Ill., 545.
*Booth* v. *People*, 186 Ill., 43.
*Ruhstrat* v. *People*, 185 Ill., 133.
*City of Belleville* v. *Turnpike Co.*, 234 Ill., 428.
*Burcher* v. *The People*, 41 Col., 495.
*In re Morgan*, 26 Colo., 415.
*Bonnett* v. *Vallier*, 116 N. W., 885.

On account of the great importance of the issues involved and the tremendous public interest which has been awakened in this case, the court must pardon us if we go into a very extended discussion as to what constitutes the police power of the state, as that is practically the whole contention of counsel for the appellants. We shall consider the separate briefs for both the appellants, Davies and Wayman, together, for both briefs are predicated entirely on the argument that the police power of the state is supreme and the act sustainable as a valid exercise of that power. They base their whole argument upon the fact that the police power of the state may override the constitution, and that regulations of this kind may be upheld simply because passed by the legislature.

In *Ritchie* v. *The People*, 155 Ill., 98, the court considered in detail what was the police power of the

state and held that a law of this character could not be upheld under it, saying, p. 111:

> "* * * there is nothing in the nature of the employment contemplated by the act which is in itself unhealthy, or unlawful, or injurious to the public morals or welfare. * * *
>
> It is not the nature of the things done, but the sex of the persons doing them, which is made the basis of the claim that the act is a measure for the promotion of the public health. It is sought to sustain the act as an exercise of the police power upon the alleged ground that it is designed to protect woman on account of her sex and physique. It will not be denied, that woman is entitled to the same rights, under the constitution, to make contracts with reference to her labor as are secured thereby to men. * * * The law accords to her, as to every other citizen, the natural right to gain a livelihood by intelligence, honesty and industry in the arts, the sciences, the professions or other vocations. Before the law, her right to a choice of vocations cannot be said to be denied or abridged on account of sex."

The court then went into great detail as to what was the police power of the state and the legitimate exercise of that power, and held that the argument was not sound and that the law was void.

In discussing the police power, it seems that there are two things which the court must consider in arriving at its determination:

A. Does the regulation involve a constitutional right?

B. Is that regulation reasonable?

Now it is true that the police power does not exist and cannot be called into question for those things which are not of themselves inherently dan-

gerous and inimical to the public health or the public welfare. This court has expressly held that a law of this kind was not sustainable as a police regulation and that no reason existed why the law should be applied to women employed in factories, laundries, workshops or anything of that kind any more than its stenographers or office help. Counsel have quoted numerous opinions from parties who are not subject to cross-examination and who do not appear in this case and the evidence of which is directly contrary to what the the facts in this case and to which we refer further on. We object very strongly to the introduction into briefs of other than legal principles. The opinion cited by counsel for the appellant, Davies, under their heading IV might have some bearing before the legislature when the hearing was in committee concerning this law. The whole matter in their brief from page 56 to 68 is totally irrelevant and does not apply. In the first place, it is not true under the facts as the last census of the United States showed these remarkable statistics concerning the death rate of women engaged in gainful occupations. Between the ages of fifteen and twenty-four the census shows the death rate is 6.1 per cent. per thousand for all females while among women in gainful occupation at the same age it ranges from 1.9 per cent. for stenographers and typewriters; 14.1 per cent. for factory employes to 5.1 per cent. for hotel and boarding house keepers and 5.3 per cent. for domestic servants. From twenty-five to forty-four the death rate for all females is 8.5 per cent. and for females employed in gainful occupations ranges from 4.1

per cent. for stenographers and typewriters to 5.1 per cent. for cigarmakers and factory workers; 6.3 per cent. for bookkeepers and clerks and 14.2 per cent. for domestic servants. From forty-four to sixty-four the average death rate for all women is 20.1 per cent. per thousand and for women engaged in gainful occupations range from 12 per cent. per thousand for mill and factory operators to 10 per cent. for dressmakers and seamstresses; 14 per cent. for bookkeepers and clerks and 53.4 per cent. for domestic servants, and it is apparent that the general death average for the women who work outside the home is 8.3 per cent. per thousand at all ages and 17.1 per cent. for domestic servants. In other words, two domestic servants die for every factory employe at all ages and the proportion is almost five to one at the ages of forty-five to sixty-four. Now that is one aspect of this agitation. From the facts where is the threatened danger?

We do not, however, intend to be drawn into any discussion of this kind. If it was proper that this should be done, then any lawsuit, involving the validity, say of the new tariff law, could bring into evidence the voluminous testimony that was heard before the tariff commission and the millions of pages of statistics which were there considered, rather than whether the law as passed conflicted with a constitutional enactment or not. We shall hereafter cite authorities to show that when the constitutionality of an act is called into question, there is only one question for the court to consider, and that is, whether the law conflicts with the constitution, and not whether it was advisable that the law be passed, not whether

it was policy for the legislature to pass that kind of a law, but only whether a constitutional right is involved. Out of courtesy only for the counsel for the appellant, Davies, and because the discussion takes up such a small part of the brief, do we refrain from filing a motion to strike the brief from the files, but we do not waive our rights to object very strongly, to the introduction of evidence which is extrinsic to the record and which this court cannot consider in this way. This court cannot take judicial notice of matters of that kind. All those things are matters to be presented in committee, when the legislature is considering the advisability of the act.

The very nub of the briefs for both counsel for appellee, Davies, as well as for Wayman, contend that the act may be upheld under the police power of the state. We fancy that what we have cited from *People* v. *Ritchie, supra,* should be sufficient on this point, as it was there distinctly and unequivocally held by this court that an act of this character cannot be upheld under that power. Inasmuch as the entire brief of both counsel is directed to that point, we shall answer it in detail.

We emphatically call to the attention of the court the fact, that the bill for an injunction in this case set up certain facts and certain circumstances, which it is desirable that this court bear in mind. As general demurrers were filed in this case, and we take it that all facts well pleaded in the bill, are admitted to be true, we, therefore, call the attention of the court to the following facts which are in this case:

The bill is filed by Ritchie & Company, a corpora-

tion, its president and manager, W. E. Ritchie, and Anna Kusserow and Dora Windeguth, two women employes. It sets forth that the company is an Illinois corporation, engaged in the business of manufacturing and selling paper boxes, paper cans, paper box machinery, straw board and the like; that the co-complainant, Dora Windeguth, is forty-five years old and since she has been thirteen years old has been employed by Ritchie & Company or its predecessors. It then sets forth the various departments of the business through which she has passed and that she is now engaged in the manufacture of certain boxes and works in the heaviest and most severe department in the whole paper box business and the one which taxes the endurance of the employe most. The bill then sets forth the weight of the boxes and the amount of time it takes to make one and shows in detail its operations. The bill sets forth that during the thirty-two years during which said co-complainant, Dora Windeguth, has been in the employ of Ritchie & Company she has worked on an average of three days a week overtime and that the regular hours in the factory are from 7:30 in the morning to 5 p. m. with a half hour for lunch and that during the busy season the employes work extra from 6 p. m. to 9 p. m.; that she has done so and has not noticed at any time any ill effects from her work; that she has never had occasion to consult a doctor for illness and is in as full strength and vigor today as at any time in her life and is considered one of the most skilled workers in her department. (Abst., 3-6.) The statement of Anna Kusserow is to the same

effect, except that she has been a paper box worker for sixteen years.

The bill then shows (Abst., 8) that there are eleven distinct operations which it is necessary for employes in their department to go through in making a box and sets forth that during the year they average about one hundred boxes of this kind a week. The bill then sets forth that the factory, wherein they are employed is well lighted, sanitary and wholesome throughout, and sets forth the toilet facilities of the building, the height, and the way the building is run in detail. (Abst., 9.) It then sets forth the facilities to employes in the way of luncheon arrangement and medical facilities (Abst., 10), and shows the very complete sanitary arrangements which are in force there. It then sets forth (Abst., 11-12) that the co-complainant, Anna Kusserow, is the head of a family consisting of four members, her father, brother, sister and self, and that the co-complainant, Dora Windeguth, is the head of a family, and that the members of the families are dependent upon them for support and that they are glad of a chance to work overtime and earn more money and that they welcome such opportunities and have grown to depend upon them and to adjust their household and living expenses in accordance therewith, so that if they are not allowed to work for more than ten hours a day, they will be compelled to run into debt to maintain their households and be deprived of wages which they would otherwise earn and of property which they would otherwise acquire. (Abst., 12.)

It then sets forth that Ritchie & Company employ in its respective factories about seven hundred and

fifty females and that ninety per cent. of the same are what is called skilled labor. The bill then alleges that there is employed in the whole state of Illinois approximately fifteen hundred females in the paper box business and that during what is known as the "rush season" the facilities of the paper box manufacturers, in spite of the most improved methods and the utmost diligence in securing help, is in such condition that it is impossible for them to comply with their orders and fill the demands of their customers without causing their employes at times to work longer than ten hours a day. (Abst., 13.)

There is then set forth in detail the efforts made by the complainant to get more employes and it is shown that they posted notices offering a reward for all new employes which were brought in and that the notice was given to about five hundred employes and that from the 2nd of August up to the time of the filing of the bill, which was the 11th of September, less than fifteen persons have been presented for its consideration, although its employes have done their utmost to comply with the notice. (Abst., 14, 15.)

The bill then sets forth that at certain periods of the year there arises a great and usual demand from the lines of businesses afterwards referred to for the output of Ritchie & Company and that during such periods of the year there is a great and extraordinary influx of orders and arise through the fact that extensive preparations are made for the fall and holiday trade by lines of businesses that are great users of paper boxes and that it is impossible to anticipate such demands, inasmuch as the demands

of business during such periods fix the conditions of labor and that it is impossible to forecast which of the customers will order a larger quantity of goods than usual and what style of box its various customers will desire certain quantities of, and then sets forth how this arises and cities specific instances. (Abst., 16-18.)

It then shows that there are seventeen distinct branches of business dependent upon the output of Ritchie & Company and shows in detail why it is necessary to run the business longer than ten hours a day. (Abst., 18-20.) It then alleges that its contracts are dependent upon prompt delivery and that it is impossible to comply with its contracts unless the females in its establishment are permitted to work for longer than ten hours a day and shows in detail that its business records since 1866 have shown this to be an established fact in matter of business experience. (Abst., 20-22.)

The bill then sets forth that unless an injunction is issued numerous prosecutions will be instituted against the complainants, resulting in a vast multiplicity of suits, and then follows certain matters of a similar character.

The question whether when facts of this kind are admitted counsel can introduce extrinsic and *ex parte* evidence and opinion was considered in *Burcher* v. *The People*, 41 Colo., 495, considered at length, *supra*. This was the case where the Woman's Labor Law of Colorado was held unconstitutional.

It appears from the opinion of the court, p. 497, that the defendants were engaged in operating a steam laundry in the City of Danver, in which they

had a number of machines and employed a large number of men and women; that the business in which the business was carried on consisted of a ground floor and basement, well lighted by windows from side and rear, well ventilated and heated, connected with which were good sewerage and drainage, and no escaping gases or other unhealthy conditions surrounded the work, and the water and soap used were pure. Belle Johnson, a woman over the age of sixteen years, was employed in this laundry by them, and her work consisted in operating a shirt body ironer, which necessitated her to stand upon her feet; that under the contract of employment she was required to, and did, thus work more than eight hours a day, to-wit, about fifty-five hours a week, and averaging about nine hours per day in the twenty-four-hour day. *The court held that the legislature could not find the laundry business to be unhealthful in view of such a statement of facts, saying, p.* 504:

> "* * * the laundry business must be considered healthful; for counsel themselves, in their stipulation of facts, on which the record shows the cause was decided, are in accord that such occupation is healthful."

Counsel for the appellee, Davies, in their brief lay down numerous propositions of law, the relevancy of which we confess does not entirely appear to us. What is the right of contract and what are limitations upon that right and the extent to which the right itself is protected by our constitution, has been passed upon so many times by this court that it would take a treatise of intolerable length to contain an exposition upon them. It is not necessary

for counsel to cite other than the decisions of the Supreme Court of Illinois. In our brief, under our headings concerning due process of law and class legislation, will be found a majority of the decisions of this state with reference thereto and to those decisions we refer the court, rather than to the academic discussions of economists and jurists who have laid down general principles, which however correct they may be as general principles, are not of a great deal of importance in this case.

Counsel for appellant Davies in their brief on page 24, in referring to legislation for the portection of labor which restrains individual liberty and property rights, say that such fall directly under the police power and that the great mass of labor legislation is enacted in the interest of health and safety in factory and mining regulations, concerning women and children. We do not dispute the proposition that children are wards of the state. We do most earnestly, however, contend that a woman is not such a ward of the state and that it has been expressly declared that she is not by the Supreme Courts of Illinois, New York, Colorado and California, and on those decisions we rely. As we have said hereafter in our brief, laws which deal with insanitary conditions, hazardous occupations or matters of that kind generally, and which do not arbitrarily restrict a business irrespective of the conditions of that business and laws of this kind, which discriminate without rhyme or reason, are vastly different things.

Counsel for appellant Davies cite on page 27 an article by Prof. Roscoe Pound and

italicize his fourth proposition, that the weight of authority is to the effect that the legislature may regulate the hours and conditions of labor of women and children. We did not know that Prof. Pound was an authority on the subject and that his opinion was entitled to any more weight than that of any other magazine writer. Analyzing the authorities he cites we find that there are three which do not at all deal with the regulation of labor of women. Among the others, the Massachusetts case has been expressly disapproved by our Supreme Court and the Supreme Court of Colorado. He does not cite the California, the Colorado or the New York cases, all of which were decided before this article was written. We do not intend to spend time upon the merits of his article, but simply have made the foregoing statement to show that his conclusion is not by any means sound, for he says that the case of *Ritchie* v. *The People* is the only case to the contrary, whereas there are three other decisions which are the other way.

On page 31 of their brief counsel for appellant Davies enumerated a number of states that have passed legislation of this kind. In seven of those states has legislation limiting the hours of employment of women been passed on by the Supreme Courts of those states, namely, Colorado, Illinois, Massachusetts, Nebraska, New York, Oregon and Washington, and in Colorado and New York the statutes there referred to have been held unconstitutional, and in Illinois similar legislation was held void in the Ritchie case, which is cited *infra*. In Oregon and Washington the statutes

have been upheld, and in Pennsylvania, by a *nisi prius* court, but as will be shown hereafter, those cases are not controlling upon this court.

We submit that because the legislature has passed those statutes, that is not saying that they are constitutional. The fact that in foreign countries statutes of this kind have been passed has nothing to do with the case at bar, for abroad there are no constitutions such as we are blessed with here, and no matter how arbitrary or exacting the laws are there, they must be obeyed and cannot be attacked.

There are two important things which we can call to the attention of the court here, that among all those laws that are cited, the one presented is practically the only one that contains a provision against working so long per day. All the others have maximum allowance of fifty-eight or sixty hours a week and are flexible in that respect, because an employer may work eight hours one day and eleven the next day.

Furthermore, this is the only law except the Oregon statute that makes the employer responsible for the criminal acts of his employee, such as his foreman or superintendent, in a matter in which he is entitled to exercise his own individual discretion and responsibility.

The main point counsel make to get around the Ritchie case is by saying that the present law is a health measure and that the other law passed on in the Ritchie case, was not. As we have shown, the exact language of Section 5 of the law, which was the section on which the court based its opinion and was held unconstitutional and was the section

that voided the whole act in the Ritchie case, is word for word the language of Section 1 of the present Act, except that Section 1 of the Ten Hour Law contains one sentence which was not in Section 5 of the other Act.

The paltry distinctions that counsel try to draw of the Ritchie case only emphasize more strongly the weakness of their position. They do not come squarely to this court and ask it to reverse itself, but they beat around the bush and try to distinguish a case which it is impossible to distinguish, because identically the same question and identically the same kind of a law was passed on in that case that is presented in this one, and so completely and so thoroughly was every point passed on in that case that that case itself forms the most exhaustive and the best brief that counsel can employ. We ask, is the present law a health measure, because it is called so? And that is substantially appellant's argument. Counsel for appellant Davies, in their brief, p. 40, attempt the argument that because the title of the Act says it is for the health of the employee the law cannot be judicially reviewed. But in *Ruhstradt* v. *The People,* 185 Ill., 133, the court said, p. 142:

> "The legislature has no power, under the guise of police regulations, to arbitrarily invade the personal rights and personal liberty of the individual citizen. Its determination upon this question is not final or conclusive. If it pass an act ostensibly in the exercise of the police power, but which in fact interferes unnecessarily with the personal liberty of the citizen, the courts have a right to examine the act and see whether it relates to the objects which the

exercise of the police power is designed to secure, and whether it is appropriate for the promotion of such objects. Where the police power is exerted for the purpose of regulating a useful business or occupation and the mode in which that business may be carried on or advertised, the legislature is not the exclusive judge as to what is a reasonable and just restraint upon the constitutional right of the citizen to pursue his calling, and to exercise his own judgment as to the manner of conducting it. The general right of every person to pursue any calling, and to do so in his own way, provided that he does not encroach upon the rights of others, cannot be taken away from him by legislative enactment."

To the same effect, see:

*Eden* v. *The People*, 161 Ill., 296.
*People* v. *Steele*, 231 Ill., 340.
*Booth* v. *The People*, 186 Ill., 43.
*Ritchie* v. *The People*, 155 Ill., 98.

In *Ritchie* v. *The People*, 155 Ill., 98, the court said, p. 110:

"Where the ostensible object of an enactment is to secure the public comfort, welfare or safety, it must appear to be adapted to that end; it cannot invade the rights of person and property under the guise of a mere police regulation, when it is not such in fact; and where such an act takes away the property of a citizen or interferes with his personal liberty, it is the province of the courts to determine whether it is really an appropriate measure for the promotion of the comfort, safety and welfare of society."

And in *City of Belleville* v. *The Turnpike Company*, 234 Ill., 428, the court said, p. 437:

"Police power has been defined by this court as that inherent plenary power in the state which

permits it to prohibit all things hurtful to the comfort, welfare and safety of society. It 'is co-extensive with self-protection, and is not inaptly termed "the law of overruling necessity."' (*Town of Lake View* v. *Rose Hill Cemetery Co.*, 70 Ill., 191.) While the police power of the state can be used to promote the health, comfort, safety and welfare of the city and is very broad and far reaching, it is not without its restrictions. (*Ritchie* v. *People*, 155 Ill., 98.) It must not conflict with the constitution, and must have some relation to and be adapted to the ends sought to be accomplished. *Rights of property will not be permitted to be invaded under the guise of a police regulation.* (*Bailey* v. *People*, 190 Ill., 28.) *The legislature may determine when the exigency exists for the exercise of the police power, but it is for the courts to determine what are the subjects of police power and what are reasonable regulations thereunder.*"

In *Booth* v. *The People*, 186 Ill., 43, the court said, p. 49:

> "With the wisdom, policy or necessity for such an enactment courts have nothing to do. But what are the subjects of police powers and what are reasonable regulations are judicial questions and the courts may declare enactments which, under the guise of the police power, go beyond the great principle of securing the safety or welfare of the public, to be invalid."

And it is also true that an act, though valid as a police regulation, is void if against an express provision of the constitution. *State* v. *Frobish*, 115 Wis., 32; 91 N. W., 115; 95 Am. St., 894; 58 L. R. A., 757, and that there is no such thing as a police power which is above the constitution or which justifies any violation of any express prohibition of the con-

stitution or any implied one. *State* v. *Chittenden*, 127 Wis., 468.

In *Bonnett* v. *Vallier* (Wis., 1908), 116 N. W., 885, the court said, p. 887:

> "Good intentions in the passage of a law or a praiseworthy end sought to be attained thereby cannot save the enactment if it transcends in the judgment of the court the limitations which the constitution has placed upon legislative power."

Counsel for appellant Davies, on page 39 of their brief, say:

> "The current of authority has formed itself since, with the Massachusetts case as its fountain head, and the Illinois case standing alone in seeming to deny to the state this supervisory power over female employes."

We are afraid that counsel put themselves in a bad position by that statement. Unfortunately for them, that statement is true, with the exception that the Ritchie case is not the sole case and does not stand alone as the only case which holds a contrary doctrine. California, Colorado and New York are on the other side of the fence. The New York case (*People* v. *Williams*, 189 N. Y., 131), expressly approved the Ritchie case. The Colorado case (*Burcher* v. *The People*, 41 Colo., 495), relied on the case of *Re Morgan*, 26 Colo., 415, which expressly approved the Ritchie case and refused to follow the ruling of the United States Supreme Court in *Holden* v. *Hardy*, 169 U. S., 366, the leading case in that court, on the validity of labor legislation. The New York case was decided before the case of the Supreme Court of the United States. Now we ask the court, if the Massachusetts case is the "fountain head" for some of the

cases since decided, and that case has been expressly disapproved by this court, is this court going to follow a line of decisions, the "fountain head" of which has been disapproved by the Supreme Court of this state?

On page 40 of their brief counsel for appellant Davies say that the statute here brought in question is a sanitary measure and cannot be fairly disputed and they quote the title of the act, that it is 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, and they have italicized part to show that it was a sanitary measure. Can the legislature make a statute a health measure or a sanitary measure by providing in order to safeguard the health of such females? Can they take away from this court the power to determine judicially, whether it is or is not in fact a health measure. To hold so would be to have this court reverse its ruling and abjure the language used in the Ruhstrat case cited *supra.*

Counsel attempt to say that because the hours of labor in this case are ten instead of eight a difference appears. Yet we ask whether the Ritchie case, 155 Ill., 98, would have been changed if the hours of labor there had been ten or eight? Is the reasoning of the case only based on a difference in time? We think not and we do not believe that the court will think so either.

Counsel for appellant Davies in their brief under point IV, from page 46 to 56, cite a number of *ex parte* opinions of various labor

bureaus. We pass these by denying the statement contained in each one of them. A demurrer has been filed in this case. The facts alleged in the bill are admitted to be true and the evidence placed before this court is *ex parte,* has not been subject to a court's examination, and is not proper to be considered in this brief.

The statement of counsel, that the factory inspector of this state has found that ten hours is a reasonable time for paper box factories to work and that in the better class of establishments the employers have no trouble in getting skilled labor, is extremely regrettable. The facts alleged in the bill in this case and admitted by the demurrer, show that the complainant, Ritchie & Company, employs fifty per cent. of the paper box workers of this state and show that after great efforts to get labor, in fact showing that they offered rewards for the acquisition of employes, nevertheless are compelled to run over ten hours a day during the "rush seasons." Possibly this situation does not exist in less prosperous establishments.

As is shown by the Colorado decision of *Burcher* v. *The People,* cited *infra,* the statements in the record, which are admitted to be true, must be the only guide to this court.

In a report of the census (Pt. II, Mfrs., 1905), there is collected a great variety of statistics, showing the conditions of labor in the various states. From that list, pp. 83, 197, 417, 607, 701, 897, 1141, it appears that New York has 37,000 manufacturing establishments with a capital of $2,031,000,000, employing 245,000 women with an annual production of

$2,488,000,000; that Illinois has 15,000 manufacturing establishments with a capital of $975,000,000, employing 60,000 women with an annual production of $1,400,000,000. Now Oregon has 1,602 manufacturing establishments with a capital of $44,000,000, employing 1,472 women with an annual production of $55,000,000. Washington and Nebraska are approximately the same. We cite these statistics simply to show the importance of these laws in those states as compared to Illinois and New York, excluding Massachusetts and Pennsylvania on account of their peculiar constitutional provisions which give to their legislatures together with the decisions of their courts construing their constitutions the power to pass such laws. Is this court going to allow the public policy of states which have such an insignificant industrial status to weigh against the policy of the two greatest manufacturing and industrial states of the Union and whose combined capital and interests are so vastly more important than the others that the mere comparison alone savors of the ridiculous?

The proposition that this act is not class legislation is answered further on in our brief. The nub of the argument of counsel is contained on page 61, wherein they say:

> "Legislation of this character may properly be made to apply to a class of citizens, as minors or women, or to a class of industries."

We do not assent to that proposition and without discussing some of the distinctions which might be observed, we say that class legislation must rest upon some regulation which does not grant to

one person special privileges which it denies to the other.

The ninth proposition is to the effect that this court should uphold the law, because it is similar to the Oregon statute, which has been upheld by the Supreme Court of the United States In the first place, it is not a copy of the Oregon statute.

The Oregon law in the first place applied to employes of restaurants in addition to the other businesses. Section 1 of that act is identical with Section 1 of this act. Section 2 of the Oregan act is entirely missing from this and provides as follows:

> "Every employer in any mechanical or mercantile establishment, factory, laundry, hotel, or restaurant, or any other establishment employing any female, shall provide suitable seats for them, and shall permit them to use them when they are not engaged in the active duties of their employment."

Section 3 of the Oregon law is entirely different from ours, that providing as follows:

> "Any employer who shall require any female to work in any of the places mentioned in this act more than ten hours during any day of twenty-four hours, or who shall neglect or refuse to so arrange the work of said females in his employ so that they shall not work more than ten hours during said day, or who shall neglect or refuse to provide suitable seats, as provided in Section 2 of this act, 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 not less than $10 nor more than $25."

Section 5 of that act is entirely missing from ours and provides as follows:

> "Inasmuch as the female employes in the various establishments of this state are not now protected from overwork, an emergency is hereby declared to exist, and this act shall be in full force and effect from and after its approval by the governor."

In the second place, under the judiciary act of congress it is provided that the decisions of state courts on matters of state policy and concerning the construction of state statutes shall be binding on the federal courts. We confess that in trying to seek some reason for what we consider the remarkable decision of the Supreme Court of the United States, we have been impelled to the belief that the decision was rendered to uphold the decision of the Supreme Court of Oregon that the statute did not conflict with the constitution of that state.

It cannot be denied that the Supreme Court of the United States fairly decided that that law did not violate the 14th amendment of the constitution of the United States, yet counsel did not cite to the court and that court did not consider the California, Colorado and New York cases, all of which were decided when the matter was presented to it. The only question presented to it and which it considered was the due process of law question. It did not pass on the question of class legislation and there was not presented to it any of the other questions which are raised in this brief. Who can doubt for a moment but that if the Ritchie case, decided in 1895, could have been taken by the state to the Supreme Court of the United

States but that the Supreme Court of the United States would have followed the decision of the Supreme Court of Illinois. We confess frankly we do not understand the case in 208 U. S. The reasoning is not logical; in fact we state here that the only case which has considered the question of a law of this character and which has rendered a satisfactory exposition of the matter, is the case decided by this court in 1895. On that case we lean, supported as it is, by the Supreme Court of the greatest state of the Union and of two other states, either of whose importance is equal to that of Washington, Oregon and Nebraska combined. This court, however, is in no manner obligated to follow the doctrine of the United States Supreme Court.

Our court has enunciated the same principle that the Colorado court adhered to in the case of *In re Morgan*, 26 Colo., 415, which case approved our Ritchie case and whose decision was based upon it.

In *Lender* v. *Kidder*, 23 Ill., 49, the Supreme Court of this state said:

> "We possess the paramount right to construe our own statutes."

The policy of the Federal Courts has been materially different from that of the states in their attitude toward the limitation of hours of labor. Prior to the decision in the Ritchie case the United States Supreme Court had passed on practically the same question that was presented in that case in two decisions. One case was the case of *Barbier* v. *Connelly*, decided by the Supreme Court of the United States in 1884, 113 U. S., 27. In that case the Supreme Court of the United States upheld an

ordinance of the City of San Francisco, which prohibited the carrying on of laundries from ten o'clock at night until six o'clock in the morning, and the other was the case of *Soon Hing* v. *Crowley,* 113 U. S., 703, which was to the same effect. In both those cases the ordinance provided that no contract should be made for labor in any laundry between those hours. There was every point raised in those cases that was raised in the Ritchie case and the court answered them all by saying that the ordinance was a valid exercise of the police power and that as the city had power to pass it and was authorized to do so by a state law, it was not for a United States court to question the wisdom or policy of that act.

Congress has passed a law providing that no contracts shall be made for labor on public improvements for longer than eight hours a day. They have upheld the validity of such a law, although Illinois, New York, Indiana, Ohio, Wisconsin, Minnesota, Colorado and California dissent from such a proposition and hold similar statutes void.

In New York, after the law was held void there, a constitutional amendment was passed and the law upheld under the amendment, which gave the legislature power to pass the act. We do not care to go into this matter in detail, as it is not profitable, because the policy of the United States Supreme Court, in upholding a limitation on the hours of labor, is so different from that of our state that no comparison at all is possible. As far back as *United States* v. *Martin,* 94 U. S., 400, 24 L. ed., 128, and *United States* v. *Jefferson,* 60 Fed., 736, the United States

Supreme Court held that it was lawful to limit the hours for men who worked on public improvements to eight hours a day. Yet our court has repudiated that doctrine in *The People* v. *Fiske*, 188 Ill., 206, and refused to follow that doctrine, and so has a majority of the states, in fact practically all of them, with the exception of Rhode Island.

Our Supreme Court has differed with the United States Supreme Court before this on other questions and has never felt itself called upon before, to reverse a decision simply because the United States Supreme Court holds different views. The court will probably recall one branch of carrier law, where this fact is exceptionally true. It has been the doctrine in this state for fifty years that a carrier, who accepted goods consigned to a point beyond his own line and who issued a through bill of lading, was responsible for the safe delivery of the goods at the end of the journey and liable for the negligence of the connecting carriers over whose route the shipment was carried. The United States Supreme Court has consistently maintained a contrary doctrine, repudiating the Illinois rule and adhering strictly to the proposition, that the carrier was not liable for the carriage of goods carried beyond the end of its own line. Many other instances could be cited to the same effect, but we believe that enough precedent will be found in the labor legislation to show the strong differences there are between the states and the United States. A stronger instance could not well be cited than the famous case of *Holden* v. *Hardy*, 169 U. S., 366. That was the case, as probably the court will recall, where the Utah statute, limiting the right of miners to be employed for more than eight hours a day in smelters and

underground mines, was sustained by the Supreme Court of the United States in one of the most exhaustive opinions rendered by that tribunal.

The same question exactly, the statute being almost a verbatim copy of the one there under discussion, was before the Supreme Court of Colorado in the case of *In re Morgan,* 26 Col., 415, 58 Pac., 1071, 47 L. R. A., 52, 77 Am. St., 269. It was there strenuously contended that the case of *Holden* v. *Hardy* should control and that the reasoning of the Supreme Court of the United States be adopted and followed. The court refused to be bound by that decision, saying:

> "It is a mistaken notion that the 14th article of amendment to the National Constitution created any civil rights or entitled citizens of states to transfer from the states to the federal government their security and protection."

In this connection let us examine briefly the early labor statutes which came before the United States Supreme Court from the state courts.

In *Barbier* v. *Connolly,* 113 U. S., 27, the California Courts upheld the ordinance of the City of San Francisco, which prohibited employment in laundries at night. Mr. Justice Field began his opinion by stating that the jurisdiction of a court was confined to a consideration of the federal question involved, which arose upon an alleged conflict of the ordinance with the first section of the 14th amendment of the Federal Constitution, saying that the court could not pass upon the conformity of the ordinance with the requirements of the constitution of the state, and then said:

> "* * * it would be an extraordinary usurpa-

> tion of the authority of a municipality, if a federal tribunal should undertake to supervise such regulations * * * of the necessity of such regulations the municipal bodies are the exclusive judges; at least any correction of their action in such matters can come only from state legislation or state tribunals."

He then quoted the 14th Amendment to the Federal Constitution, saying that the amendment intended that there should be no arbitrary deprivation of life or liberty or arbitrary spoliation of property but that equal protection and security should be given to all under like circumstances in the enjoyment of their person and civil rights, and gave to the amendment an extremely broad construction. He then said:

> "But neither the amendment, broad and comprehensive as it is, nor any other amendment was designed to interfere with the power of the state, sometimes termed its 'police power,' to prescribe regulations to promote the health, peace, morals, education and good order of the people, * * *"

He then reviewed certain other provisions and said, that while certain provisions of the law seemed harsh and burdensome, it was a matter for the municipality or the state itself to change.

An ordinance somewhat similar in character came before the court for construction in the case of *Soon Hing* v. *Crowley*, 113 U. S., 703, and the court said:

> "* * * the municipal authorities are the appropriate judges. Their regulations in this matter are not subject to any interference by the federal tribunals, unless they are made the occasion for invading the substantial rights of persons, and no such invasion is caused by the regulation in question."

So it has been held again and again by the Federal Courts, that a clear and definite construction of the provisions of a state constitution by the highest court of the state is binding on all other courts, state or federal.

*Western Union Tel. Co.* v. *Julian*, 169 Fed., 166.
*United States* v. *Anderson*, 169 Fed., 201.
*Welsh* v. *Swace*, 214 U. S., 91.
*Maiorano* v. *The Railway*, 29 Sup. Ct., 424.
*Equitable Life Insurance Co.* v. *Brown*, 29 Sup. Ct., 404.
*Joseph Dixon Crucible Co.* v. *Paul*, 167 Fed., 784.
*Singer Mfg. Co.* v. *Adams*, 165 Fed., 877.
*Continental Securities Co.* v. *Transit Co.*, 165 Fed., 945.
*Lewis* v. *Herrera*, 208 U. S., 309.
*Ughbanks* v. *Armstrong*, 208 U. S., 481.

In *Penn* v. *Bornman*, 102 Ill., 523, a case before the Supreme Court of this state, concerning a director's liability on a note given in violation of a law, providing that it shall be unlawful for a director to borrow money from the bank, the personal representative of this director was sued on the note. The defense of illegality was set up. At a prior date the Supreme Court of this state held that under similar circumstances the representative was not estopped to set up the defense of illegality. Subsequently the Supreme Court of the United States came to a different conclusion and it was urged upon this court that it should reverse its prior rulings, but it said, p. 573:

"In conformity with the rule so strictly adhered to in the foregoing cases, it was held in *Fridley* v. *Bowen*, 87 Ill. 151, that a mortgage taken by a national bank to secure a present loan, was, by implication, prohibited by the general Banking Act of the United States, and was therefore void. It is true the Supreme Court of the United States has reached a contrary conclusion upon this question, and while we concede the paramount authority of that court to construe all federal statutes, including the National Bank Act, *yet when that court, in construing such a statute, reaches a conclusion which is believed to be in direct conflict with the most approved text books, and to be opposed to an almost unbroken current of judicial decisions in this country and England, however great our respect may be for the unquestioned learning and ability of that distinguished tribunal, we cannot accept such conclusion as binding authority in construing one of our own statutes, especially when such construction is manifestly at variance with the previous decisions of this court.*"

Counsel say that conditions to-day are different from that in the Ritchie case; that the court knows more. We believe that the census of the United States has been published for more years than are boasted by any of the counsel in this case and that in 1895 the facts and knowledge were just as open to the court then as to-day. All these things at all events, simply go to prove the wisdom of the passage of an act of this kind and do not in any way deal with its legal aspect.

The Massachusetts case, upholding a law of this character, has been distinguished in the Ritchie case by this court, showing that the Constitution of Massachusetts gives to the legislature a broader

power and a greater latitude of expression than does our own. It may be relevant to note here that the Massachusetts court in *Commonwealth* v. *Osborne*, 130 Mass., 33, has very strictly limited its prior ruling by holding that it only applies to women who are engaged in a continuous employment and does not apply to transient workers or to those who go from one employment to another.

Now just as there was express authority in the Constitution of Massachusetts to provide for the passage of that act, so has there been express authority in the Constitution of Pennsylvania for the passage of its law. Section 3 of Article XVI of the Constitution of Pennsylvania provides:

> "The exercise of the police power of the state shall never be abridged."

And if page 15 of the opinion in *Comm.* v. *Beattie*, 15 Pa. Super. Ct., 5, is read, the court will see that that it is the basis for the opinion and that it is that express power under the constitution which was the foundation for that opinion.

The Constitutions of Nebraska, Washington and Oregon all contain provisions either concerning the police power of the state or the authority of the legislature to pass special legislation, which differentiate their cases from that in this state and their constitutional decisions in expounding the constitutional policy of those states are so different from that of Illinois that very little comparison can be made between them.

We thus see that there are only four decisions which really can be said to be contra to the case of *Ritchie* v. *The People*, and those are, the decisions of the United States Supreme Court, Nebraska, Washington and Oregon. Counsel contend that the Ritchie case is not in point.

In the case of *In re Morgan*, 26 Col., 415, that court said, concerning the Massachusetts case:

> "* * * we think it clear that the general court of Massachusetts has, in the field of legislation under review, much wider latitude, and is hampered by fewer restrictions than is our generally assembly."

And the court cited with approval the Ritchie case and that part of it particularly, which distinguished the Massachusetts case, and rested its decision in holding the Eight Hour Law in that case void solely upon the authority of the Ritchie case, and that ruling has been steadfastly adhered to by the Supreme Court of Colorado and in 1907 in *Burcher* v. *The People*, 41 Colo., 495, it held the Woman's Labor Law unconstitutional and void, and that is what this court should do in the case presented.

Yet in the case of *State* v. *Muller*, afterwards affirmed by the United States Supreme Court, the Oregon Supreme Court said:

> "The case of *Ritchie* v. *The People*, 155 Ill., 98, is the only decision to which our attention has been called, and which we have been able to find, in which an act of the kind under consideration has been held unconstitutional and void. The case is well considered and ably presented, but is we think borne down by the weight of authority and sound reason."

Now counsel contend that the decision of *Ritchie* v. *The People* is not in direct conflict with the Oregon decision and they try to evade the issue, as we have pointed out before, and do not come out squarely and ask this court to reverse itself, being evidently afraid to do so, but we cited the above quotation to the court to show that the Oregon Supreme Court themselves recognized that the case of *Ritchie* v. *The People* was contrary to their own decision and they refused to follow it, and a reference to every other case cited by counsel for appellants, such as the Nebraska case, the Pennsylvania case and the Washington case, will conclusively show that practically the same language was used concerning the Ritchie case and the Ritchie case repudiated. But we submit, that is no reason why this court should now overrule a case it has cited with approval at the last term of court.

And as late as 1903 our court said in *Glover* v. *The People*, 201 Ill., 545; p. 548:

> "The power to restrict, by law, the right of an individual to contract for his services or labor for a longer period than eight hours in each day was fully considered by us in *Ritchie* v. *People*, 155 Ill., 98, where we held that an act of the legislature which sought to prohibit the employment of any female in a factory or workshop more than eight hours in any one day, or forty-eight hours in any one week, was unconstitutional and void, because, among other things, the right to contract is a right of property, of which the legislative authority could not deprive the individual. And applying that principle, we held in *Fiske* v. *People*, 188 Ill., 206, that a provision in a contract between the city and the contractor which provided that 'any

contractor or contractors who shall compel or allow laborers or employees to work more than eight hours in one day shall be liable to have this contract forfeited,' was unconstitutional and void."

It will be observed that in this case of *Fisk* v. *The People*, above referred to, the holding is contrary to that in the U. S. Supreme Court on the same question.

## X.

THE LAW IS CLASS LEGISLATION, FOR IT MAKES AN ACT PROHIBITIVE TO ONE CLASS OF PERSONS, WHICH IT SANCTIONS IN ANOTHER, WITH NO VALID REASON FOR SUCH DISTINCTION EXISTING.

*Ritchie* v. *People*, 155 Ill., 98.
*Burcher* v. *People*, 41 Col., 495.
*People* v. *Williams*, 189 N. Y., 131.
*In re* Maguire, 57 Cal., 604.
*Frorer* v. *The People*, 141 Ill., 171.
*Braceville Coal Co.* v. *People*, 147 Ill., 66.
*Massey* v. *Cessna*, 239 Ill., 352.
*City of Belleville* v. *Turnpike Co.*, 234 Ill., 428.
*Mathews* v. *The People*, 202 Ill., 389.
*Bessette* v. *The People*, 193 Ill., 334.
*Bailey* v. *The People*, 190 Ill., 28.
*Millet* v. *People*, 117 Ill., 294.
*Harding* v. *People*, 160 Ill., 459.
*Eden* v. *People*, 161 Ill., 296.
*City of Chicago* v. *Netcher*, 183 Ill., 104.
*People* v. *Wilcox*, 237 Ill., 421.

*Gillespie* v. *People,* 188 Ill., 176.
*Ruhstrat* v. *People,* 185 Ill., 133.
*In re Day,* 181 Ill., 73.
*Adams* v. *Brennan,* 177 Ill., 194.
*Carrollton* v. *Bazzette,* 159 Ill., 284.

Counsel for appellees earnestly contend that the law under consideration is void, as it constitutes class legislation. We have shown that there are other constitutional objects to this act; that it took property without due process of law and that it was not sustainable as a police regulation, although we discussed the latter feature of the matter only because that is the reasoning on which the brief of both appellants is based. The vice was well discussed in the case of *Ritchie* v. *The People,* 155 Ill., 98, to which extended reference has been made heretofore. The court in that case said, p. 107:

> "But whether this is so, or not, we are inclined to regard the act as one which is partial and discriminating in its character. If it be construed as applying only to manufacturers of clothing, wearing apparel and articles of a similar nature, we can see no reasonable ground for prohibiting such manufacturers and their employes from contracting for more than eight hours of work in one day, while other manufacturers and their employes are not forbidden to so contract. If the act be construed as applying to manufacturers of all kinds of products, there is no good reason why the prohibition should be directed against manufacturers and their employes, and not against merchants, or builders, or contractors, or carriers, or farmers, or persons engaged in other branches of industry, and their employes therein. *Women, employed by manufacturers, are forbidden by Section* 5 *to make contracts to labor longer than eight hours*

*in a day, while women employed as saleswomen in stores, or as domestic servants, or as bookkeepers, or stenographers, or typewriters, or in laundries, or other occupations not embraced under the head of manufacturing, are at liberty to contract for as many hours of labor in a day as they choose. The manner, in which the section thus discriminates against one class of employers and employes and in favor of all others, places it in opposition to the constitutional guaranties hereinbefore discussed, and so renders it invalid.''*

In view of that language, we think it absurd for counsel to contend that the reasoning in that case is not applicable to the case at bar.

In *Mathews* v. *The People,* 202 Ill., 389, this court said, p. 401:

> "An employer, whose workmen have left him and gone upon a strike, particularly when they have done so without any justifiable cause, is entitled to contract with other laborers or workmen to fill the places of those who have left him. Any workman seeking work has a right to make a contract with such an employer to work for him in place of any one of the men, who have left him to go out upon a strike. Therefore, the prohibition, contained in Section 8, strikes at the right of contract, both on the part of the laborer and of the employer. It is now well settled that the privilege of contracting is both a liberty, and a property right. Liberty includes the right to make and enforce contracts, because the right to make and enforce contracts is included in the right to acquire property. Labor is property. To deprive the laborer and the employer of this right to contract with one another is to violate Section 2 of Article 2 of the constitution of Illinois, which provides that 'no per-

son shall be deprived of life, liberty or property without due process of law.'"

And continued:

"Section 8 draws an unwarrantable distinction between workmen, who apply for situations to employers where there is no strike or lock-out, and workmen who do not so apply, and it also draws an unwarrantable distinction between employers who may have the misfortune to be the victims of a strike or lock-out, and employers who do not have such misfortune. That is to say, Section 8 does not relate to persons and things as a class, or to all employers, but only to those, who have not been the victims of strikes or lock-outs. 'Where a statute does this, where it does not relate to persons or things as a class, but to particular persons or things of a class, it is a special as distinguished from a general law.' (*Gillespie* v. *People, supra.*) Judge Cooley, in his work on Constitutional Limitations (6th Ed., pp. 481, 483, says: 'A statute would not be constitutional * * * which should select particular individuals from a class or locality, and subject them to peculiar rules, or impose upon them special obligations or burdens from which others in the same locality or class are exempt. * * * Every one has a right to demand that he be governed by general rules, and a special statute which, without his consent, 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 would be such an arbitrary mandate as is not within the province of free governments.' (*Gillespie* v. *People, supra.*) The conclusion is inevitable that this Section 8 is a provision 'in aid of strikes and strikers, whether right or wrong, and regardless of the justice or the propriety of the strike or lock-out.'

By the terms of this law, the statute creates free employment agencies, and provides for the

payment of those who operate them, out of the money of the people of the state; and yet it singles out a particular class of citizens, and, without cause, deprives them of the benefits of the provisions of the act, while it grants such benefits to another class of persons, who have no greater right to the same than the persons subjected to the deprivation."

In *Bessette* v. *The People*, 193 Ill., 334, an act relating to horse-shoeing was applicable only to cities of over fifty thousand inhabitants, but it permitted cities of over ten thousand and under fifty thousand to adopt its provisions, and hence compelled horse-shoers residing in cities of over fifty thousand and in cities of over ten thousand, which had adopted the act, to take out licenses, whereas those residing in cities and towns of less than ten thousand inhabitants were exempt, and it was held that the act created an arbitrary and unjust discrimination between localities.

The court said, p. 350:

"In the case at bar, the act deals with one class of workmen, to-wit, horse-shoers. It grants to horse-shoers, living in cities and towns, containing a population less than 10,000, and in those, containing a population between 10,000 and 50,000, a special privilege, to-wit, the privilege of being exempt, either entirely or conditionally, from the obligation to take out licenses to pursue their business, while it requires horse-shoers living in cities and towns containing a population of 50,000 or over, to obtain such license. The manner in which the act discriminates in favor of particular persons of one class, pursuing one occupation, and against all others of the same class, places it in opposition to the

constitutional guaranties hereinbefore referred to."

The court said, p. 348:

> "Why should a man, pursuing the business of horse-shoeing who lives in a city containing 50,000 inhabitants or over, be required to take out a license, while a man living in a city containing between 10,000 and 50,000 inhabitants need not take out such license, unless his city or town chooses to come under the provisions of the act, and the man who lives in a city or town, containing less than 10,000 inhabitants, is not obliged to take out any license at all?"

In *Bailey* v. *The People,* 190 Ill., 28, an act provided that no more than six persons should sleep in the same room of any lodging house at the same time and was held unconstitutional as being a discrimination against lodging houses in favor of hotels, inns or boarding houses. In speaking of the Ritchie case, the court said, p. 36:

> "In *Ritchie* v. *People, supra,* an enactment which prohibited contracts for the employment of females to work for more than eight hours in any one day in any factory or workshop where clothing, wearing apparel or articles of a similar nature were manufactured, was held to be partial and discriminatory in character, and void, as contravening constitutional guaranties, for the reason that other manufacturers and their employes, though engaged in other branches of industry, were not forbidden to so contract."

In discussing the argument that the act in question was a health measure and should be upheld under the police power, the court said, p. 36:

> "The principle which may be deduced from the declaration of this court on the subject is, that an act which arbitrarily discriminates against one class in the transaction of a busi-

ness of a lawful occupation, and leaves unaffected by such discriminatory enactment other persons or classes of persons engaged in acquiring property in a manner not distinguishable in character from that in which the class discriminated against is employed, is in contravention of the constitutional guaranties under consideration.

The attorney general concedes that the term 'lodging house' and the words 'inn,' 'hotel' or 'boarding house' are none of them convertible terms or words, and that a distinction exists between these several institutions and a lodging house, but he insists that the act, though it has no penalties against the inn or hotel keeper or boarding house keeper, may be legally enforced against keeper of lodging houses as a sanitary measure, under the police power. *Some lodging houses, as it is urged, may be, and doubtless are, the recognized abiding places of unclean, diseased and vermin-infected guests or patrons, who, together with the owners or keepers of the lodging houses, are wholly indifferent to sanitary conditions, rendering such houses sources of contagious and infectious diseases. But it cannot be asserted that all lodging houses are of this character; neither can it be said boarding houses, inns and hotels are not to be found which shelter the same class of patrons, and whose keepers are likewise indifferent to sanitary conditions. The public health is less endangered by a cleanly and well conducted lodging house, than by a filthy, ill-managed, disease-breeding hotel or boarding house. The lodging of more than six persons in any one room in a cleanly lodging house cannot be condemned, from a sanitary point of view, any more than the lodging of a like number of guests in one room in a hotel or boarding house. If intended as a measure to protect health, the act should have been directed against the evil which threatens to introduce sickness or disease, whether found in a lodging house, boarding house or*

*hotel, and as its penalties are not so leveled it can but be regarded as partial and discriminatory legislation."*

In this case it is evident that there is no statute which probably could be more clearly upheld as a health measure than one which provides for sanitary conditions of this character. But the court held that the legislature of the state must yield to the constitutional aspects of the case and that the police power of the state is not so wide or so great that it can override the constitutional guarantees of citizens of this commonwealth. If the act above discussed in the Bailey case was held unconstitutional, how much more strongly does that reasoning apply to this one. This one does not prohibit women in domestic employments; it does not prohibit those who must labor in crowded department stores; it does not prohibit those who must labor in occupations which are insanitary and hazardous; it operates only on industries for which no apparent cause appears why this legislation should stand. It does not operate on the dish washer who must stand on her feet in a restaurant, washing dishes for twelve or fourteen hours a day; it does not operate upon the telephone girl who sits at her switchboard for twelve or fourteen hours a day. It operates, just exactly as in the Ritchie case, upon a few selected occupations, and is, therefore, void and unconstitutional.

As was said in *Harding* v. *The People*, 160 Ill., 459, p. 405:

"Each person subject to the laws has a right that he shall be governed by general, public rules. Laws and regulations entirely arbitrary in their character, singling out particular persons not

> distinguished from others in the community by any reason applicable to such persons, are not of that class. Distinctions in rights and privileges must be based upon some distinction or reason not applicable to others."

In this case, a statute which deprived coal miners and those employing them of the right to fix the weight of coal mined, was held unconstitutional. The law was attacked because operators of one class of coal mines were singled out and restrictions were imposed upon them not required to be born by operators of other mines or by persons engaged in other business and for interference with the right of employer and laborer to contract with each other.

Numerous similar examples exist in the decisions of this court.

In *Millett* v. *The People,* 117 Ill., 294, an enactment which prohibited the owners and operators of coal mines from making contracts which other owners of property and employers of labor might lawfully make, was held unconstitutional and void as not being a lawful exercise of the police power.

In *Eden* v. *The People,* 161 Ill., 296, a statute was held unconstitutional which made it unlawful for a barber to follow his ordinary pursuit on Sunday and which did not place a like restriction on any other class of business, and it was held that it deprived persons following that avocation of property and unjustly discriminated against them and could not be sustained as a valid enactment under the police power of the state, because of the unequal operation of the law, the court said, p. 303:

> "Is the act in question a law binding upon all the members of the community? A glance at

its provisions affords a negative answer. The act affects one class of laborers, and one class alone. The merchant and his clerks, the restaurant keeper with his employes, the clothing house proprietor, the blacksmith, the livery stable keeper, the owners of street car lines, and people engaged in every other branch of business, are each and all allowed to open their respective places of business on Sunday and transact their ordinary business if they desire, but the barber, and he alone, is required to close his place of business. The barber is thus deprived of property without due process of law, in direct violation of the constitutions of the United States and of this state."

In this case the court reviewed and approved the Ritchie case, p. 305, and said, p. 306:

"If the legislature has no power to prohibit, by law, a woman from being employed in a factory or workshop more than eight hours in any one day or forty-eight hours in a week, upon what principle, it may be asked, has the legislature the right to prohibit a barber from laboring and receiving the fruits of his labor during any number of hours he may desire to work during the week? If a woman may be allowed to determine the number of hours she may work in a week, why not allow a barber the same right? Moreover, if the merchant, the grover, the butcher, the druggist, and those engaged in other trades and callings, are allowed to open their places of business and carry on their respective avocations during seven days of the week, upon what principle can it be held that a person who may be engaged in the business of barbering may not do the same thing? Why should a discrimination be made against that calling, and that alone?"

It was then said that act could be upheld as a

health measure under the police power. The court disposed of that contention, p. 307:

> "It will not and cannot be claimed that the law in question was passed as a sanitary measure, or that it has any relation whatever to the health of society. As has been heretofore seen, as a general rule a police regulation has reference to the health, comfort, safety and welfare of society. How, it may be asked, is the health, comfort, safety or welfare of society to be injuriously affected by keeping open a barber shop on Sunday? It is a matter of common observation that the barber business, as carried on in this state, is both quiet and orderly. Indeed, it is shown by the evidence incorporated in the record that the barber business, as conducted, is quiet and orderly,—much more so than many other departments of business. In view of the nature of the business and the manner in which it is carried on it is difficult to perceive how the rights of any person can be affected or how the comfort or welfare of society can be disturbed."

The court then drew the following distinction, p. 309:

> "We do not, therefore, think the law was authorized by the police power of the state. If the public welfare of the state demands that all business and all labor of every description, except works of necessity and charity, should cease on Sunday, the first day of the week, and that day should be kept as a day of rest, the legislature has the power to enact a law requiring all persons to refrain from their ordinary callings on that day. (Cooley's Const. Lim., 725.) All will then be placed on a perfect equality, and no one can complain of an unjust discrimination. But when the legislature undertakes to single out one class of labor harmless in itself, and condemn that and that alone, it transcends its legitimate powers, and its action cannot be sustained."

Now in the case presented the legislature is doing precisely the very thing which was the vice of the law in that case. They are singling out a few branches of business lawful in themselves, and imposing upon them arbitrary and unwarrantable restrictions not imposed upon other business, but upon the few particular kinds enumerated in the statute. The law does not strike at insanitary or unhealthy places where women are employed; it does not prohibit their employment in hazardous occupations; it prohibits them from working only in a few selected occupations, which are necessary and essential to the well being of commercial life, which this court must recognize is a component part of cizilized existence, and declared that they shall not work for longer than ten hours a day. It does not prohibit women from working as domestic servants for longer than ten hours a day and yet the death of domestic servants is ten times as high as it is of female factory employes.

In *City of Chicago* v. *Netcher,* 183 Ill., 104, it was held that an attempt to deny a property right to a particular class in a community, which all other members of the community are left to enjoy, is an unwarrantable interference with constitutional rights.

In *Gillespie* v. *The People,* 188 Ill., 176, a statute which made it a criminal offense for an employer to attempt to prevent his employes from joining labor unions or to discharge them because of their connection with labor unions, was held unconstitutional as an unlawful interference with the right of contract. The court held that the terms "life," "liberty" and "property" were representative terms and were in-

tended to cover every right to which a member of the body politic is entitled under the law; that these terms included the right of self-defense, freedom of speech, religious and political freedom, exemptions from arbitrary arrests, and the right to freely buy and sell as others may; that they embraced all liberties, personal, civil and political, including the rights to labor, to contract, to terminate contracts, and to acquire property; that none of these liberties and rights can be taken away except by due process of law. The court said that the rights of life, liberty and property embrace whatever is necessary to secure and effectuate the enjoyment of those right and that the rights of liberty and of property include the right to acquire property by labor and by contract. If an owner cannot be deprived of his property without due process of law, he cannot be deprived of any of the essential attributes which belong to the right of property, without due process of law. Labor is property. That the laborer has the same right to sell his labor, and to contract with reference thereto, as any other property owner; that the right of property involves, as one of its essential attributes, the right not only to contract, but also to terminate contracts; that one citizen cannot be compelled to give employment to another citizen, nor can any one be compelled to be employed against his will; that the act under consideration deprived the employer of the right to terminate his contract with his employe. The right to terminate such a contract is guaranteed by the constitution. The legislature is forbidden to deprive the employer or employe of the exercise of that right. The legislature has no author-

ity to pronounce the performance of an innocent act criminal when the public health, safety, comfort or welfare is not interfered with. The court held that liberty includes not only the right to labor, but to refuse to labor, and, consequently, the right to contract to labor or for labor, and to terminate such contracts, and to refuse to make such contracts; that the legislature cannot prevent persons, who are *sui juris*, from laboring, or from making such contracts as they may see fit to make relative to their own lawful labor; nor has it any power by penal laws to prevent any person, with or without cause, from refusing to employ another or to terminate a contract with him, subject only to the liability to respond in a civil action for an unwarranted refusal to do that which had been agreed upon.

The court said, also, p. 185:

> "The act certainly does grant to that class of laborers, who belong to union labor organizations, a special privilege. The employer, if he discharges a 'union' man from his employment, is liable to be punished as having committed a crime. But he is not subject to punishment, if he should discharge from his employment a 'non-union' laboring man. An unwarrantable distinction is thus drawn between workingmen, who belong to union labor organizations, and workingmen, who do not belong to such organizations. That is to say, the statute does not relate to persons and things as a class, or to all workingmen, but only to those who belong to a lawful labor organization, that is to say, a labor union. 'Where a statute does this, where it does not relate to persons or things as a class, but to particular persons or things of a class, it is a special as distinguished from a general law.' "

*Ruhstrat* v. *The People,* 185 Ill., 133, is a case where the so-called flag law was construed. In that case the use of the flag was prohibited for advertising purposes. Its use, however, was not prohibited for other purposes. The court said, p. 147:

> "The act is also unduly discriminating and partial in its character. It exempts from penalties imposed by the act persons who may choose to make use of the national flag or emblem for either public or private exhibitions of art. The exhibitor, who engages in public or private exhibitions of art, may do so not merely for the public benefit, but for the promotion of his own interests. By thus excluding artists or exhibitors from the inhibitions of section 1 of the act, the act thereby creates a class or classes of persons who are exempted from the penalties embraced therein. Legislation of this kind has frequently been condemned by the courts in this country. The legislature clearly has no power to deny to plaintiff in error the right to use the national flag to advertise his business, or, in other words, to deny to all persons following particular occupations the right to use the national flag, and, at the same time, to permit artists or art exhibitors to use the same. The manner, in which the act thus discriminates in favor of one class of occupations and against all others, places it in opposition to the constitutional guaranties hereinbefore referred to. (*Millett* v. *People,* 117 Ill., 294; *Ritchie* v. *People,* 155 id., 98.)"

*In re Day,* 181 Ill., 73, the court said, p. 80:

> "No doubt the legislature, in framing an enactment for that purpose, may classify persons so long as the law establishing classes is general and has some reasonable relation to the end sought. There must be some difference which furnishes a reasonable basis for different legislation as to the different classes, and not a

purely arbitrary one, having no just relation to the subject of the legislation. (*Braceville Coal Co.* v. *People*, 147 Ill., 66; *Ritchie* v. *People*, 155 id., 98; *Gulf, Colorado and Santa Fe Railroad Co.* v. *Ellis*, 165 U. S., 150.) The length of time a physician has practiced and the skill acquired by experience may furnish a basis for classification (*Williams* v. *People*, 121 Ill., 84), but the place where such physician has resided and practiced his profession cannot furnish such basis and is an arbitrary discrimination, making an enactment based upon it void. (*State* v. *Pennoyer*, 65 N. H., 113.) Here, the legislature undertakes to say what shall serve as a test of fitness for the profession of the law, and, plainly, any classification must have some reference to learning, character or ability to engage in such practice. The proviso is limited, first, to a class of persons who began the study of law prior to November 4, 1897. This class is subdivided into two classes: First, those presenting diplomas issued by any law school of this state before December 31, 1899; and second, those who studied law for the period of two years in a law office, or part of the time in a law school and part in a law office, who are to be admitted upon examination in the subjects specified in the present rules of this court; and as to this latter subdivision there seems to be no limit of time for making application for admission. As to both classes the conditions of the rules are dispensed with, and, as between the two, different conditions and limits of time are fixed. No course of study is prescribed for the law school, but a diploma granted upon the completion of any sort of course its managers may prescribe is made all-sufficient. Can there be anything with relation to the qualifications or fitness of persons to practice law resting upon the mere date of November 4, 1887, which will furnish a basis of classification? Plainly not. Those who began the study of law November 4 could qualify themselves to practice in two years as well as

those who began on the 3rd. The classes named in the proviso need spend only two years in study, while those who commenced the next day must spend three years, although they would complete two years before the time limit. The one who commenced on the 3d, if possessed of a diploma, is to be admitted without examination before December 31, 1899, and without any prescribed course of study, while as to the other the prescribed course must be pursued and the diploma is utterly useless. Such classification cannot rest upon any natural reason or bear any just relation to the object sought, and none is suggested. The proviso is for the sole purpose of bestowing privileges upon certain defined persons. It is not a mere change of system at a given date, but it recognizes the change made and the power of the court to make future changes subject to a certain restriction, and legislates for a particular class. Students who began before and after November 4, 1897, were pursuing their studies when it was passed, and those who began after that date and before December 31, 1897, will complete two years before December 31, 1899, but cannot enjoy its privileges."

In *Adams* v. *Brenan*, 177 Ill., 194, it was held that a provision in a contract for a public school building, which required the employment of union men only, created a monopoly in their favor and restricted competition by preventing contractors from employing any but union men, excluding all others engaged in the same kind of work, was void.

*In re Mary Maquire*, 57 Cal., 604, was the first case in the country, involving the right of women to labor. In that case the following ordinance was passed by the Board of Supervisors of the City of San Francisco:

"Section 32. Every person who causes, procures, or employs any female to wait or in any manner attend on any person in any dance-cellar, bar-room, or in any place where malt, vinous or spiritous liquors are used or sold, and every female who in such place shall wait or attend on any person, is guilty of a misdemeanor.

No person owning or having charge or control of any drinking cellar, drinking saloon, or drinking place, or any place where malt, vinous, or spiritous liquors are sold and used, shall suffer or permit any female to be or remain in such drinking cellar, saloon, or drinking place between the hours of six o'clock P. M. and six o'clock A. M. No female shall be or remain in such drinking cellar, saloon, or place between such hours; *provided*, that this section shall not be construed so as to apply to hotels or restaurants or grocery stores, where the wife or daughter of the proprietor may happen to be in attendance; or public gardens, or to balls that are not given or held in drinking saloons or barrooms; *provided further*, that if the ball is given for the purpose of evading the provisions of this order, then this order shall be applicable."

In that case the petitioner was convicted under the ordinance and brought an action of habeas corpus on the ground that the ordinance was void.

The court said, p. 606:

"The language of the ordinance is plain, and its meaning unmistakable. It leaves nothing for construction. The words employed in this ordinance incapacitate 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 person on account of sex from following a lawful business by direct enactment, it may by in-

direction accomplish the same end by forbidding, under a penalty, the prosecution of such busines. 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 disabling, 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 morality, and that this only is the object and design of the ordinance. It is not intended 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 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 account of sex. As we have in effect said above, the attempt is thus made to do that by indirection which cannot be done directly. The organic law of the land annuls all such enactments."

A point was then raised that the ordinance was made under the police power. The court said, p. 608:

"We have carefully weighed the arguments addressed to us on the point of immorality. But we must presume that all these considerations

were discussed and weighed by the convention which framed the constitution, and the people who adopted it; that they fully considered on the one hand the benefits which would spring from the adoption of a policy like that established by the second, and the bane on the other; and that on a just and fair balancing of the resulting good and evil, they determined to have the section as it is, as fixing and carrying out a policy, in their judgment, the best under the circumstances. As we understand the section, it does establish, as the permanent and settled rule and policy of this state, that there shall be no legislation either directly or indirectly incapacitating or disabling a woman from entering on or pursuing any business, vocation, or profession permitted by law to be entered on and pursued by those sometimes designated as the stronger sex. To adopt the conclusion to which the reasoning of the counsel for the people would lead us would be, in our judgment, to insert an exception to the general rule prescribed by this section. But there are no exceptions in the section, and neither we nor any other power in the state have the right or authority to insert any, whether on the ground of immorality or any other ground. All these are considerations of policy, the determination of which belonged to the convention framing and the people adopting the constitution; and their final and conclusive judgment has been expressed and entered in the clear and unmistakable language of the constitution itself, declaring the rule as above stated. The policy of the ordinance is inconsistent with the policy intended and fixed by the constitution. They cannot both stand."

The court continued, p. 609:

"We will add here that the law-making power of the state is ample to make laws affecting both sexes alike, and not inhibited by the constitution, which will accomplish the object so much desired—to prevent practices hurtful to public

morality. The constitution was not framed with a disregard of the important considerations urged upon us in this regard. It merely directs that a law which is framed to accomplish this object by affecting or operating upon lawful callings, shall affect both sexes alike. We are not at liberty to say that such important matters were overlooked in framing our organic law."

There is no doubt that the true ground for this decision rests solely upon the fact that the law was declared unconstitutional because it placed an unlawful restriction upon the right which women have to contract and also upon the ground that women were unduly discriminated against, who were shut out from working at night while others were permitted to do so, McKinstry, Justice, in his concurring opinion, saying, p. 611:

"But while I am not prepared to agree that Par. 18 of Article XX of the Constitution prohibits any law or ordinance which would prevent the presence of women, as attendants or otherwise, at liquor 'saloons, bar-rooms,' etc., I agree that petitioner should be discharged, because I am of opinion that the ordinance (under which petitioner has been prosecuted) is void, in that it is unreasonable, of ambiguous import, and not of uniform operation. The practice which, in effect, is declared to be deleterious to the public welfare is the presence of females as waiters or attendants upon the guests at any place where malt, vinous, or spiritous liquors 'are used or sold,' and the presence of females in such places during certain hours of the night. The very presence of females at such places in the night being prohibited, their presence in the capacity of waiters is prohibited. Yet the ordinance contains the exception, that where the wife or daughter 'may happen to be in attendance,' she may pursue without punishment

> the avocation from which her sisters are debarred. The ordinance further prohibits the presence of women at public balls where liquors are sold, provided the ball 'is not given for the purpose of evading the provisions of the ordinance.' This last clause would seem to prohibit the presence of women at public balls where the dancing is a pretext, and the real purpose is to secure the presence of women where liquor was sold. But if this is its meaning, the ordinance again fails of uniformity, since the presence of women or even their service as attendants, is not prohibited in places which are not really established with an intend to secure profit from them as 'hotels or restaurants or grocery stores,' but which take on the outward pretense of such—the subject being simply the sale of intoxicating agents.''

The Ten Hour Law also makes the employer guilty of a misdemeanor while his foreman, agent or employee go scot free although guilty of precisely the same offense, and the law is also class legislation on that account.

## Conclusion.

We draw the attention of the court in conclusion to this fact, that women employes, are co-complainants to this cause. They are asking this court to preserve their constitutional rights for them, not to relegate them back to the time of the ward and the dependent, not to place them on an equality with the idiot and the lunatic, but to give to them those equal rights guaranteed by the constitution and for which many a hard fight has been fought.

We are in full sympathy with all legislation which seeks to protect women from insanitary conditions

or which relieve her equally with her brother from the danger attendant upon hazardous employments. We do not feel that the reasoning of the Supreme Court of the United States or of the Supreme Court of Nebraska, which called woman a ward and dependent of the state, should be binding upon the Supreme Court of Illinois, the Supreme Court of the State which has always heretofore stood in the van of progress and equality for all classes of citizens within her borders.

Standing against the decisions of the Supreme Courts of Colorado, Illinois and New York are arrayed the decisions of Oregon, Nebraska and Washington. The women in those states combined are not one four hundredth as numerous as are the women wage earners of this state alone and the public policy of thise states is not in any degree persuasive in this court. The decision in Pennsylvania was that of a *nisi prius* court. It was predicated upon a peculiar provision of the state constitution, as was likewise that of Massachusetts. The Supreme Court of the United States has had its own peculiar policy with regard to these matters and that policy it followed, together with the fact that it will strain to the utmost its jurisdiction to hold the validity of a state statute declared constitutional by the Supreme Court of the state. This court has in many instances refused to follow the rulings of the federal supreme bench. Many times has it refused to follow rulings of other states and adhered strictly to that of this state. Within six months this situation has confronted this court, in the case of *Off* v. *Morehead*, 235 Ill., 40, decided June, 1908. The court will re-

member that case involved the bulk sales law, which was held unconstitutional. Statutes of that kind was upheld in Massachusetts, Connecticut, Tennessee, Washington and Oklahoma. They were held unconstitutional in Utah, Indiana, Ohio and *New York*. The court discussed those cases on page 47, and said:

> *"We do not regard the question involved here as one to be determined upon the weight of authority outside of this state. We have so often expressed our views in regard to the clause of the constitution now under consideration, that its interpretation is settled by the previous decisions of this court too firmly to be departed from out of regard for opposing views in other states, however highly we may esteem them. Without regard to the question of the weight to be given to the conflicting decisions of other courts upon the question now in hand, we think the reasoning of those courts which have held such statutes unconstitutional on the ground upon which we rest our judgment in this case are more in harmony with the views of this court as expressed in the numerous cases, than are the reasons which are given by those other courts in which a different result has been reached."*

Now this court handed that decision down on June 18, 1908. That case is almost identical with the case presented. At the time that decision was rendered, there was pending in the Supreme Court of the United States, in *Lemieux* v. *Young*, identically the same question, being an appeal on the Connecticut law, the case in the Supreme Court of Connecticut upholding the law being one of the cases considered by this court. The law was held constitutional by the Supreme Court of the United States in 211 U. S., 489, 29 Sup. Ct., 174. It appears from the de-

cision of the Supreme Court of the United States that twenty states have passed bulk sales laws and the weight of authority upheld the validity of those statutes. It would be a bold man indeed, who would contend for a single moment that this court would reverse its decision because the Supreme Court of the United States has since held otherwise.

We wish to impress upon the court that we do not in any way consent and do not intend in any manner to waive whatever right we may have to object to the introduction in the brief of counsel for appellant, Davies, of matter which is foreign to the record and improper to be decided by this court. The opinion of *ex parte* witnesses, the opinions of those to whom no opportunity has been given to be cross-examined, who form conclusions based on different conditions and which are the result of varying circumstances, have no place in the consideration of this court. Such matters are proper for the legislature to consider in committee, as to whether it will pass such a law or not. Such matters may have something to do with the construction of the act, but they have nothing to do with the opinion of the court in construing whether the provisions of the act conflict with the constitution.

There is no such thing as a police power which is above the constitution or which justifies any violation of express or manifestly implied prohibitions or limitations upon the power of the legislature, and an act, though valid as a police regulation, is void if against the express provisions of the constitution.

Because, therefore, a similar act has been held

unconstitutional by this court in the Ritchie case, and by the Supreme Courts of Colorado, New York and California, because it takes from citizens of this state their property without due process of law; because it abridges the constitutional policy of this state, under which great industries have been fostered and in accordance with which property rights have been built up and have accrued; because it denies to the citizens of this state the equal protection of the law and is unjust, discriminatory and class legislation; because it takes from the judicial officers of this state their common law and constitutional powers; because it abridges the right of contract and is arbitrary, unreasonable and unjust; because it is an unlawful exercise of the police power, in conflict with the constitution, and because, if it is enforced and the writ of injunction dissolved, great and irreparable damage will accrue to the appellees, we ask that the women complainants be permitted to support their families; we ask that the manufacturers of this state be protected from the unlawful encroachment of those, who, however good in motive and however worthy in intention, have tried to inflict this great burden upon citizens of this state, and that the law be held unconstitutional and void.

We conclude with the language of the Supreme Court of Wisconsin in the case of *Bonnett* v. *Vallier*, *supra*, wherein was said:

> "Good intentions in the passage of a law or a praiseworthy end sought to be attained thereby cannot save the enactment if it transcends in the judgment of the court the limita-

tions which the Constitution has placed upon legislative power.

* * * * *

The greatest constitutional lawyer of our country during its early history aptly said:

'Good intentions will always be pleaded for every assumption of power, but they cannot justify it. The Constitution was made to guard the people against the dangers of good intentions. When bad intentions are boldly avowed the people will promptly take care of themselves. They will always be asked why they should resist or question the exercise of power which is so fair in its object, so plausible and patriotic in appearance and which has the public good alone confessedly in view. Human beings we may be assured will generally exercise power when they get it and they will exercise it most undoubtedly under a popular government under the pretence of public safety or high public interest. * * * They think there need be little restraint upon themselves.'

Again they sometimes, it seems, lose sight of the fact that there are such restraints and so it becomes necessary for the courts in the performance of their constitutional duty to call that to mind. The fathers foresaw that in writing into the Constitution those significant words:

'The blessings of a free government can only be maintained by a firm adherence to justice, moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles.'

* * * * *

Sufficient, however, has been said to indicate that it cannot stand and that in case of a further effort to legislate in the same field the particular features condemned should be avoided and others should be studied with care; appreciating that law-making power is quite closely fenced about by wise limitations and must proceed, in

the field of police regulation, reasonably at every step. Common sense as to reasonable requirements and reasonable means of securing such requirements should prevail, not the extreme views of well-meaning persons as to what is for the best. Idealists will often find efforts to force their standards of living upon people generally by legislation barred by constitutional limitations. An eminent author aptly said: 'There is a wide interval between the ideal and the practical.' If what is here said were not so, individual rights as to persons and property would be only such as sovereign power, acting through the legislature, might see fit to recognize, the inalienable rights commonly supposed to be sacred and inviolable would be changed into mere uncertain privileges and regulation, so called, might easily become destructive of that which we have been wont to believe was essential to life, liberty, and the pursuit of happiness."

Respectfully submitted,

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