IN THE

Supreme Court

OF THE

STATE OF ILLINOIS

DECEMBER TERM, A. D. 1909.

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

v.

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

Appeal From Circuit Court, Cook County.

HON. RICHARD S. TUTHILL, JUDGE PRESIDING.

Statement, Brief and Argument for Appellant, Edgar T. Davies, Chief State Factory Inspector.

WILLIAM H. STEAD,
Attorney General.

[redacted],

SAMUEL A. HARPER,
Of Counsel.

Counsel for Appellant Desire to Argue This Case Orally

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STATEMENT.

This is an appeal prosecuted by the State Factory Inspector and the State's Attorney of Cook County, from a decree of the Circuit Court of Cook County,

declaring unconstitutional and permanently enjoining appellants from enforcing the so-called Ten-Hour Law.

The statute in question reads as follows:

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

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

2. Any employer who shall require any female to work in any of the places mentioned in section 1 of this Act, more than the number of hours provided for in this Act, during any day of twenty-four hours or

who shall fail, neglect, or refuse so to arrange the work of females in his employ that they shall not work more than the number of hours provided for in this Act, during any one day, or who shall permit or suffer any overseer, superintendent or other agent of any such employer to violate any of the provisions of this Act, shall be guilty of a misdemeanor and upon conviction thereof, shall be fined for each offense in a sum of not less than $25.00 or more than $100.00.

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

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

Session Laws, 1909, page 212.

The bill alleges that the statute infringes upon the constitutional right of complainants to contract, that it is beyond the police power of the State, and that it is unequal, discriminatory and unjust, and prays that appellants be permanently enjoined from enforcing it. A general demurrer was filed to the bill, which was

overruled, and appellants, electing to stand by their demurrer, a decree was entered holding the statute in question unconstitutional and ordering that the injunction issue as prayed.

An appeal to the Supreme Court having been prayed and allowed, and contending that the law in question is constitutional and valid, appellants now bring the case to this Honorable Court for review.

BRIEF.

I.

The right to make simple contracts, is not a "natural" or a "inalienable" right, as those terms ure used in the organic law.

I Andrew's Am. Law (2d Ed.), Sec. 550, p. 724.

Id. Sec. 462, p. 582; sec. 10, n. 45.

Mill on Liberty, Chap. V.

2 Pollock & Maitland, Hist. Eng. Law (2d Ed.), 232.

2 Bryce Am. Com., 410.

Opinion of Mr. Justice Holmes in *Lochner* v. *N. Y.*, 198 U. S. 45, 75.

Maine's Ancient Law (Pollock), pp. 321, 325, 326.

Colquhoun j. 282.

Chanier Roman Law, pp. 4, 156, 160.

II.

The Act is within the Police Power of the State.

Brannon on Fourteenth Amendment, pp. 167, 168, 169, 170, 171, 173, 174, 175.

1 Andrew's Am. Law (2d Ed.), p. 404, sec. 342a.

Beer Co. v. *Mass*, 97 U. S. 25.

Cooley Const. Lim. (6th Ed.), p. 704.

Tiedman's Police Lim., sec. 1.

1 Tiedman on State and Fed. Control of Per. and Prop., p. 336.

8 Cyc. Law and Pro., p. 864.

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

Com. v. *Hamilton Mfg. Co.*, 120 Mass., 383.

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

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

Com. v. *Beatty*, 15 Pa. Sup. Ct., 5, 17.

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

Freund on Police Power, secs. 155, 310, 500, 538.

Hawthorn v. *People,* 109 Ill., 302.

III.

The Act is "Due Process of Law."

8 Cyc. Law and Pro., 1119, n. 18.

Bank of Columbia v. *Okely,* 4 Wheat., 235.

Mr. Webster in *Dartmouth Col.* v. *Woodward,* 4 Wheat., 581.

Brannon on Fourteenth Amendment, pp. 143, 144.

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

IV.

It is a Reasonable Health Measure as Proven by Statistical Records and the State of the Law in This and Foreign Countries.

Muller v. *Oregon,* 208 U. S., 412, 419;

Freund Police Power, Section 313;

Commonwealth v. *Beatty,* 15 Pa., Supr Ct., 5, 17.

(a) Does not unreasonably change present work day hours:

Rep. Ill. Bureau Labor Stat., 1906, p. 305; Id. pp. 250-333;

11th Ann. Rep. U. S. Com. Labor, 1895-6, pp. 639 to 644;

19th Ann. Rep. Com. Labor U. S., 1904, pp. 43 to 46;

Rep. U. S. Ind. Com., 1900, p. 64.

(b) Statistical reports show need for such a law:

Rep. Mass. Bureau Labor Stat., 1875, p. 96;

Rep. Cal. Bureau Labor Stat., 1887-8, p. 102;

Rep. Conn. Bureau Labor Stat., 1890, p. 29;

Rep. Maryland Bureau Indust. Stat., 1896, p. 52;

Rep. Select Com. Shops Early Clos. Bill, 1895, p. 219;

Hutchins & Harrison's Hist. Fac. Leg., p. 167.

V.

The Court Should Take Judicial Notice of Actual Industrial Conditions, as Shown by Statistical Records, and the Common Experience of Men.

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

16 Cyc. Law & Pro., 870;

Cooley Const. Lim. (6th Ed.), p. 744.

VI.

The Doctrine of Stare Decisis Does Not Apply.

Allardt v. *People*, 197 Ill., 501, 509;

Stevens v. *Pratt*, 101 Ill., 206;

26 Am. & Eng. Ency. Law, 2nd Ed., pp. 162, 167.

VII.

The Act Does Not Impair the Obligation of Any Contract.

Brannon on Fourteenth Amendment, p. 169, 170;

N. Y. v. *Bristol*, 151 U. S., 567;

Freund Police Power, Sec. 556, 602;

Authorities under Point II, *supra*.

VIII.

The Act is Not Class Legislation.

Cooley Const. Lim. (6th Ed.), pp. 479 to 481.

IX.

The Act being a copy of the Oregon Statute and interpreted by its Supreme Court and the Supreme Court of the United States, as a proper sanitary measure, should be so interpreted by this Cout; and any doubts in regard to its validity should be resolved in favor of the Act.

(a) Act adopted from Oregon. Oregon Session Laws, 1903, page 148.

(b) Construed by Supreme Court of Oregon and by the Supreme Court of the United States, and held constitutional by both courts.

State v. *Muller,* 48 Oregon, 252;
Muller v. *Oregon,* 208 U. S. 412.

(c) When statute adopted from another state, construction placed upon statute by courts of latter

State adopted, unless contrary to the spirit of the laws of adopting State.

Streeter v. *People*, 69 Ill., 595;

Gage v. *Smith*, 79 Ill., 219;
Campbell v. *Quinlan*, 3 Scam., 288;
Tyler v. *Tyler*, 19 Ill., 151;
Hopkins v. *Medley*, 97 Ill., 402.

(d) Presumed to be constitutional, all doubts and intendments being resolved in favor of the statute.

Hudnall v. *Ham*, 172 Ill., 76;
Burke v. *Monroe Co.*, 77 Ill., 610;
Donnesberger v. *Prendergast*, 128 Ill., 229;
People v. *Nelson*, 133 Ill., 565;
Hogan v. *Akin*, 181 Ill., 448;
Chicago v. *Cement Co.*, 178 Ill., 372.

ARGUMENT.

The sole question to be determined here is: Is the Act of the Legislature limiting the hours of employment for females, a valid exercise of the police power?

It has seemed to the writer in examining the cases touching upon this question, that a good deal of un-

certainty has arisen in regard to the power of the State to regulate employments because of the failure of the courts; *first,* to discriminate between "natural" and "common law" rights, and *second,* to take notice of the practical inequalities existing between employer and employe.

I.

The Right of Contract.

In many instances academic theories of equality have been forced upon legislation in the face of practical and obvious conditions of inequality. Want of knowledge in the courts of these actual conditions, can only be predicated upon the assumption that such courts are more ignorant of industrial conditions than the ordinary layman. This we all know is not true.

What is the right of contract? No one will dispute that it is a property right in which every person is clearly entitled to be protected. But it is, and always has been a right subject to all manner of regulation and supervision. It is not in any proper sense a "natural" or an "inalienable" right as those terms are used in the various bills of right which, upon the

foundation of this government, were incorporated into our organic law.

The Declaration of Independence, reads:

> "We hold these truths to be self-evident: that all men are created equal; that they are endowed [not by the edicts of emperors, decrees of parliament, or the prerogative of the chancellor, but] by their Creator, with certain inalienable rights; that among these are life, liberty and the pursuit of happiness."

No man has ever been endowed in this sense with the right to make simple contracts. This is a late law-given privilege. Instead of being endowed "by their Creator" with the right to make simple contracts, this right was first granted by the civil law through the Roman Prætor. Equitable actions were first granted upon *pacts* which had never matured into contracts, because they had never been reduced to writing, provided the *pacts* in question had been founded upon a consideration. (*Causa*) Maine's Ancient Law (Pollock), 326.

In early times when a contracting party had neglected to clothe his agreement in a "stipulation" or formal writing, nothing done in pursuance of the

agreement would be recognized by the law. Maine, *supra*, 321-326.

In England in the early days the King's Court entertained jurisdiction only where the contract was made by deed under seal, or the transfer of the thing was completed by delivery. Of mere agreements *privatae conventiones* not so perfected, and claims resting upon verbal promises, the King's Court took no cognizance and the common law afforded no remedy.

> 1 Andrew's American Law, (2nd Ed.) Sec. 550, page 724.

The statement contained in the Declaration of Independence which has been incorporated in the Constitution of our State and of practically every state in the Union, follows the provisions of Magna Charta which were that

> "no freeman shall be imprisoned or disseized of his freehold liberties or privileges or outlawed or exiled or in any manner deprived of his life, liberty or property, but by the judgment of his peers or the law of the land."

This provision was construed in the early history of this Court and following the doctrines of Lord Coke,

the Court held that these provisions of the Great Charter applied originally to criminal charges only, and,

> "if it was also intended to relate to civil proceedings, it must be taken in a very limited and restricted sense."
>
> *Reinhart* v. *Schuyler*, 7 Ill., 473-520.

The idea that the right of contract is an absolute or unrestricted one, and that men can fix their rights and duties by agreement, has been termed

> "an unruly and anarchial idea. If there is to be any law at all, contract must be taught to know its place."
>
> 2 Pollock & Maitland's History of English Law, 2nd Ed., 232;
>
> 1 Andrew's American Law, (2nd Ed.), Sec. 10, 45.

Any student of politics will observe that the absolute untrammeled right of contract has at times led to extravagant political inequality and also permitted individual servitude in no way distinguishable from slavery, and all must agree that by no form of con-

tract or consent can one man confer upon another the power to exercise such physical restraint upon his liberty.

Mill on Liberty, Chap. 5;

1 Andrew's American Law, (2nd Ed.), Sec. 462, p. 582.

It is often overlooked that liberty has been brought about quite as much by the limitation of the right of contract as by limitations upon governmental power. See Justice Holmes' opinion in

Louchner v. *New York*, 198 U. S., 75;

2 Brice Amer. Commonwealth 410.

Mr. Bryce says

> "that the hesitation shown by American States in interfering with the individual rights of citizens *is not due so much to constitutional objections* as it is the ingrown doctrines of individualism which the history of the country and the circumstances of its origin have done so much to encourage."

(b) Inequalities of contracting parties:

If the legal equality which is often declared to exist between employer and employe was a reality instead

of a legal fiction, the laborer would not seek legislative interference in his contractural relations with the employer more actively than does the employer. For since the employer and the employe are equally guaranteed the liberty of making common law contracts under certain proper restrictions, each is free to make whatever contracts he sees fit, subject only to such reasonable restrictions as are imposed for the public good. If such legal equality were a reality, the laborer would felicitate himself upon his constitutional right to accept or reject the terms of employment which were proposed to him. But as a matter of fact, there can be no substantial equality between the man who has not wherewith to provide himself with food and shelter for the current day, and one, whether you call him capitalist or employer, who is able to put the former into a position to earn his food and shelter, and this is especially true where the employe is a woman whose very presence in industry is almost always due to the stern necessities of her life, and the burden of responsibility imposed upon her, which in normal conditions would rest upon the shoulders of

the husband or father. The employer occupies a vantage ground which enables him in a majority of cases to practically dictate the terms of employment, and there would seem to be no good reason why this inequality should not be recognized and considered.

1 Tiedman on State and Federal Control of Persons and Property, pp. 315-326.

Legislation of this sort which is now common, represents an effort of the legislature to realize a new ideal of social justice, which consists of the neutralization of natural inequality, by the power of the State.

Keeping in mind, therefore, these two considerations, viz: (1) That the right to make simple contracts is not one of those "inherent and inalienable rights" preserved to us by the Constitution, and (2) that "all men are free and equal" (including the employes in the establishments covered in this Act) is often a fiction which is belied by the actual facts, let us now read the Constitution of Illinois of 1870 which appellees invoke to protect them against alleged legislative infringement.

It provides, Article II, Section 1,

> "that 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," etc.

Section 2, (Therefore)

> "no person shall be deprived of life, liberty or property without process of law."

The inapplicability of the terms of Section 1 (for the reasons pointed out) to the particular right of contract here involved, largely takes away from Section 2 the force and mandatory effect of its provisions; so far as concerns the right of the State to reasonably regulate such industrial contracts as are here in question.

The Act is Within the Police Power of the State.

Those great powers vested in a State and its subordinate agencies, called the police power, under which life, liberty and property may be taken, existed from the dawn of government, existed in the colonies at the date of the Declaration of Independence, and

were always exercised by the states, notwithstanding clauses in their own constitutions declaring that no person should be deprived of life, liberty or property without due process of law, and the exercise of such powers by the states was always held to be entirely consistent with such constitutional provisions. These powers cannot properly be called exceptions from the constitutional demand of due process of law, for they are in themselves, due process. When the fourteenth amendment came, it came not to destroy rights existing in the states; it did not undertake even to define due process of law, or declare or indicate what already were, or should thereafter be, legitimate powers of the states; it used only the common law expression "due process of law," as a local phrase of common import, as a thing pre-existing. It neither originated, enlarged, nor narrowed that expression in its meaning. It simply declared that no state shall pass upon or affect the life, liberty or property of a person, except according to due process of law, whatever that be in the particular case or instance, tested by the existing general law applicable alike to all. Plainly,

then, this amendment does not touch or impair the lawful police power of the states.

Brannon on the Fourteenth Amendment, p. 167, 168.

Judge Cooley described police power in general terms as follows:

> "The police power of a state in a comprehensive sense embraces its whole sytem of internal regulation, by which the state seeks not only to preserve the public order and to prevent offenses against the state, but also to establish for the intercourse of citizen with citizen, those rules of good manners and good neighborhood, which are calculated to prevent a conflict of rights and to insure to each the uninterrupted enjoyment of his own, so far as is reasonably consistent with a like enjoyment of rights by others."

Cooley's Const. Lim. (6th Ed.), 704.

Prof. Freund, in the introduction of his "Police Power" defines the term as

> "the power of promoting the public welfare by restraining and regulating the use of liberty and property."

Freund, Police Power, p. iii.

Prof. George F. Tucker of the Boston Law School has given it the following modern application:

> "Police power is the name given to that inherent sovereignty which it is the right and duty of the government or its agents to exercise whenever public policy in a broad sense demands, for the benefit of society at large, regulations to guard its morals, safety, health, order, or to insure in any respect, such economic conditions as an advancing civilization of a highly complex character requires."
>
> 8 Cyc., 863.
>
> "This power extends to the protection of the lives, health, comfort, and quiet of all persons, and the protection of all property within the State, and the mere fact that a law, necessary for the welfare of society, regulates trade or business, or to some degree operates as a restraint thereon, does not make it unconstitutional. So too, it may substantially interfere with the enjoyment of private property; but there must be some obvious and real connection between the actual provisions of police measures and their asumed purposes."
>
> 8 Cyc., 864.

All property, all business, every private interest, may be affected by the police power and brought with-

in its influence. Under it the Legislature regulates the use of property, prescribes rules of personal conduct, and in numberless ways, through its pervading and ever-present authority, supervises and controls the affairs of men in their relation to each other and to the community at large, to secure the mutual and equal rights of all, and promote the interests of society. It has limitations; it cannot be arbitrarily exercised to deprive the citizen of his liberty or property. But a statute does not work such a deprivation *in the constitutional sense*, simply because it imposes burdens or abridges freedom of action, or regulates occupations, or subjects individuals or property to restraints in matters in difference, except as they affect public interest or the rights of others. Legislation under the police power infringes the constitutional guaranty only when it is extended to subjects not within its scope and purview, as that power was defined and understood when the Constitution was adopted. The generality of terms employed by jurists and publicists in defining the power, while they show its breadth and the universality of its presence, never-

theless leave its boundaries and limitations somewhat indefinite.

People v. *Budd*, 117 N. Y., 1.

The certain trend of the latter day judicial opinion is to extend the exercises of the police power to industrial relation in such manner as to neutralize the inequalities which the courts are beginning to recognize as existing. As stated by one learned author:

> "Under the police power the state may recognize the actual discrepancy which exists between persons differently situated, and that one class of individuals may be measurably within the power of another, and so dependent upon them that they require the assistance of the state to prevent unjust oppression and ruinous burdens being placed upon them.
>
> "The cry is loud and persistent that the freedom of contract must be preserved, and that the Anglo-Saxon principles of individual liberty prevent the imposition of any terms and regulations as to mere contracts; but the practical effect of this freedom being to load the weak and helpless who are obliged to obtain their sustenance by labor, with burdens grievous to be bourne, has in some jurisdictions led to the adoption of regulations between the employer and employe, and it

is now generally held that the hours of labor may be regulated, at least in certain lines of employment; that the conditions and circumstances under which labor shall be performed as to sanitary regulations may be controlled; and in some localities, the manner in which compensation shall be paid and received; the age at which persons employed in certain lines of labor may be restricted; and in various ways, the absolute untrammeled freedom of contract may be controlled."

1 Andrews Am. Law, (2d Ed.), p. 404, Sec. 342a.

All legislation for the protection of labor which restrains individual liberty and property rights, falls directly under the police power, and the great mass of labor legislation is enacted in the interest of health and safety, and in factory and mining regulations we find, especially where women and children are concerned, provisions to promote decency and comfort and in the language of a recognized authority on this subject,

"laws of this character rest upon a clear and undisputed title of public power."

Freund, Police Power, Sec. 310.

The relation of service may rest on voluntary contract and yet be contrary to public policy. It has been held that this may be so, for the reason that conditions of the contract subject the servant or employe to the arbitrary discretion of the employer. *Parsons* v. *Trask*, 7 Gray, 473; *Matter of Mary Clark*, 1 Blackf. 122. Even the practical confiscation resulting from the enforcement of prohibition and oleomargarine laws is within the police power of the State, and is not considered the taking of property without compensation, within the constitutional inhibition. *Mugler* v. *Kansas*, 123 U. S., 623; *Powell* v. *Pennsylvania*, 127 U. S., 678.

So that while it is conceded that contracts may be forbidden which in their effects tend to injure or to demoralize the public at large, it is insisted by some authorities that where the restraint is for the benefit of one party of the contract, it is illegitimate, since the fact of agreement shows that the party to be protected freely consents to the supposed injury, and that the state has no business to force a benefit upon him against his will, but this argument is fallacious in the case of wage contracts where the voluntary assump-

tion of a burden by one may, through the stress of competition, force others to assume the same burden against their will.

However, even if the restraint is looked upon as protecting the party to the contract from his own acts, and not from the act of others, it is proper, as long as prevention of oppression is recognized as one of the legitimate grounds for the exercise of the police power. Economic oppression regularly proceeds with the *apparent* consent of the oppressed, *whose weakness compels him to accede to onerous terms*, and such oppression cannot be dealt with otherwise than by restraining the freedom of contract. To emphasize this freedom in the face of oppression, is to deny the legitimacy of the police power for the protection of economic liberty; whatever may be the theoretical strength of this position, it does not constitute a sound principal of constitutional law.

Freund, Police Power, Sec. 500.

The opinion of Mr. Justice FIELD, in *Butchers Union* v. *Crescent City Co.*, 111 U. S., 746, 762, is really the fountain head of the line of decisions, in which the idea of *liberty of contract* has been urged

to defeat legislation under the police power. In this opinion he followed and practically restates the views of the minority in the Slaughter House Cases (16 Wall., 36), and his opinions as there expressed do not represent the views of the Federal Supreme Court, the main opinion, based on sounder logic and better reasoning, being written by Mr. Justice MILLER.

The influence of this doctrine is clearly shown in various decisions of the courts, from this case down to the recent Adair case in the Supreme Court of the United States. (208 U. S., 161.)

In commenting upon this line of decisions, after a careful and intelligent review of them all, Professor Roscoe Pound of the University of Chicago, in an article in the Yale Law Journal for May, 1909, uses the following language:

> "Let us now turn to the other side, as represented in the decisions. It is a saving characteristic of Anglo-American case law, that decisions upon an unsound principle are gradually surrounded by a mass of exceptions, distinctions and limitations which preclude extension for the future, and soon enable the current of judicial decision to flow normally. Just as in the natural

body foreign substances are encysted and walled in and thus deprived of power for evil, the body of our case law has the faculty of encysting and walling in rules and doctrines at variance with a sound condition of the law. Such a process has long been going on with respect to extreme doctrines of liberty of contract. As a result we may now recognize six categories of cases in which it has been laid down that labor legislation may interfere with and infringe upon liberty of contract. The first of these is the case of corporations. Under the power to amend the charters of corporations, which all states now reserve, it is held that the state may define the power of corporations to contract, and that natural persons can have no claim or right to contract with these creatures of the state, beyond their powers. * * * Second, it has been held that even if wages themselves may not be regulated, the data from which to fix wages by any contract to be entered into may be regulated in order to prevent fraud. But the decisions noted above, as to weighing statutes, are to the contrary. Third, it is held that hours and conditions of labor in unhealthy occupations such as mining, work in smelters, and the like, may be regulated. But just how unhealthy the occupation must be, so that the court will know it to be such, from its general information, the Lochner case leaves in doubt. *Fourth, the overwhelming*

weight of authority is to the effect that the Legislature may regulate the hours and conditions of labor of women and children. (Citing, *Com.* v. *Hamilton Mfg. Co.*, 120 Mass., 383; *Beyman* v. *Cleveland*, 39 O. St., 651; *State* v. *Buchanan*, 29 Wash., 602; *Wenham* v. *State*, 65 Neb., 394; *State* v. *Muller*, 48 Ore., 252; *State* v. *Shorey*, 48 Ore., 396; *Muller* v. *Oregon*, 208 U. S., 412; *Starnes* v. *Allison Mfg. Co.* (N. C.) 61 S. E., 525, and *Ritchie* v. *People*, *only*, to the contrary.) Fifth, It has been held to be within the power of the State to prescribe the conditions upon which it will permit public work to be done for itself or its municipalities, and hence to regulate wages and hours on public contracts. But California, New York and Indiana, as has been seen, hold to the contrary. Finally, a number of cases have taken the sound position that the mode of payment of laborers is a matter of public concern; that it is competent for the Legislature to require that they be paid promptly at stated intervals. Several of these cases reject the distinction between corporations and natural persons in this connection. But what is worth more, a number clearly recognize the actual facts of inequality as between employer and employe in bargaining for labor in many sorts of employment. (Citing, *International Text Book Co.* v. *Weissinger*, 160 Ind., 349, and *McLean* v. *Arkansas*, 29 Sup. Ct. Rep., 206.) And in *Hancock* v. *Yaden*, ELLIOTT,

J., makes it clear from abundant examples that limitations upon freedom of contract in the interest of individual contracting parties, have always existed. It is unfortunate that the sweeping assertions of *Godcharles* v. *Wigeman* should have been made the model for subsequent cases with this decision at hand in the books." 18 Yale Law Journal, pp. 484, 5, 6. (Citing, *Shaffer* v. v. *Mining Co.*, 55 Md., 74; *State* v. *Brown*, 18 R. I., 16; *State* v. *Peel Coal Co.*, 36 W. Va., 802; *Leep* v. *Railway Co.*, 58 Ark., 507; *Railway Co.* v. *Paul*, 64 Ark., 83; *Dugger* v. *Insurance Co.*, 95 Tenn., 245; *Railway Co.* v. *Paul*, 173 U. S., 404; *State* v. *Wilson*, 61 Kan., 32; *Holden* v. *Hardy*, 169 U. S., 366; *In re Boyce*, 27 Nev., 299; *Ex parte Kair*, 28 Nev., 127, 425; *U. S.* v. *Martin*, 94 U. S., 400; *State* v. *Atkin*, 64 Kan., 7; *Atkin* v. *Kansas*, 191 U. S., 207; *In re Broad*, 36 Wash., 449; *Hancock* v. *Yaden*, 121 Ind., 366; Opinion of the Justices, 163 Mass., 589; *Harbison* v. *Knoxville Iron Co.*, 103 Tenn., 421; *Dayton Coal and Iron Co.* v. *Barton*, 103 Tenn., 604; *Knoxville Coal and Iron Co.* v. *Harbison*, 183 U. S., 13; *International Text Book Co.* v. *Weissinger*, 160 Ind., 349, in support of the various lines of decisions pointed out.)

Coming then to the specific question of the right of the Legislature to regulate the hours of labor of

females, in the language of Prof. Pound, the overwhelming weight of authority sustains such right.

Legislation of this kind has been passed in Arizona, Colorado, Connecticut, Georgia, Indiana, Illinois, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Virginia, Washington and Wisconsin, and the following foreign states impose restrictions in some form or other, upon the hours of labor that may be required of women; Great Britain, France, Switzerland, Austria, Holland and Germany. (See statutes of the states named and Great Britain Factories Act of 1844, chap. 15, pp. 161 to 171, Factory and Workshop Act of 1901, chap. 22, pp. 60, 71; and Edw. VII, chap. 22; France, 1848, Act Nov. 2, 1892, and March 30, 1900; Switzerland, Canton of Glarus, 1848, Federal Law, 1877, Art. 2, Sec. 1; Austria, 1855, Acts 1897, Art. 96a, Secs. 1 to 3; Holland, 1889, Art. 5, Sec. 1; Italy, June 19, 1902, Art. 7; Germany, Laws, 1891.)

The experience of the legislative bodies of these various states and nations corroborates the experience of our State Legislature, demonstrating the urgent need for legislation regulating the conditions and hours of employment of women in industries.

The limitation upon the hours of employment for females as set forth in the laws above referred to, has been passed on by the courts of Massachusetts, Nebras, Washington, Pennsylvania, Oregon, Illinois, and by the Supreme Court of the United States. All these decisions sustain such regulations, except the one in Illinois, which did not involve a health measure, and which will be distinguished from the present proceeding, in the following pages. In New York a law limiting the hours of *all* employes in bakeries was sustained by the state courts as a valid exercise of the police power; (Lochnerr, N. Y. 177 N. Y., 145); but the Federal Supreme Court reversed the decision, (198 U. S., 45), and following this precedent, apparently, the New York Court in *People* v. *Williams*, 189 N. Y., 131 (decided in June, 1907), holds that a prohibition against night work for women is invalid, but the Federal Supreme Court which the New York

court was evidently trying to follow decided in the following October that the Oregon statute limiting the hours of labor for women in just the sort of establishments covered by the Illinois law, was a valid exercise of the police power, for the public good. In chronological order, the decisions regulating female employment are as follows:

Com. v. *Hamilton Mfg. Co.*, 120 Mass., 383;
Ritchie v. *People*, 155 Ill., 98;
Wenham v. *State*, 65 Neb., 394;
State v. *Buchanan*, 29 Wash., 602;
Com. v. *Beatty*, 15 Pa. Super. Ct., 5, 17;
Muller v. *Oregon*, 48 Ore., 252;
Muller v. *Oregon*, 208 U. S., 412.

We will not take the time to discuss, or quote from these cases at length. With the exception of the Ritchie case they all hold clearly and unequivocally that the right of the Legislature of the State to reasonably regulate the employment of females cannot be questioned. The Massachusetts court points out that it does not prohibit the employe from working as many hours as she may please, in other clases of establishments, and that it does not prevent the em-

ployer from running his factory day and night, by means of two shifts of laborers, if he desires to do so.

The Pennsylvania Court points out that the legislative judgment, founded upon statistical experience, must be accepted by the court when it said that long hours of continuous labor injuriously affected the health of women workers, and hence was detrimental to the interests of society. The court quoted approvingly the language of the lower court:

> "Surely an act which prevents the mothers of our race from being tempted to endanger their life and health by exhaustive employment, can be condemned by none save those who expect to profit by it."

The Washington court holds that the law is a progressive science, and that the conditions of women in industry imperatively demand effective sanitary regulation, and call for the application of different rules than those enforced against male employes.

In discussing the difference in physical structure of women and the consequent necessity for applying

different regulations to the conditions of their employment, the Supreme Court of the United States, in sustaining the decision of the Supreme Court of the State of Oregon, speaking by Mr. Justice BREWER, says:

> "Many words cannot make this plainer. The two sexes differ in structure of body, in the functions to be performed by each, in the amount of physical strength, in the capacity for long-continued labor, particularly when done standing, the influence of vigorous health upon the future well-being of the race, the self-reliance which enables one to assert full rights, and in the capacity to maintain the struggle for subsistence. This difference justifies a difference in legislation, and upholds that which is designed to compensate for some of the burdens which rest upon her."

Muller v. *Oregon*, 208 U. S., 412, 423.

It is the law of Oregon, also, as it is in Illinois, that women, whether married or single, have contractual rights practically equal to those enjoyed by men. And although the Federal Supreme Court refers to the political inequality of the sexes in that females were

not permitted to exercise the elective franchise, still the court said

> "the reason runs deeper, and rests in the inherent difference between the two sexes, and in the different functions in life which they perform."

The Ritchie case involved the question of the constitutionality of an act of the Legislature of this State entitled:

> "An act to regulate the manufacture of clothing and wearing apparel and other articles in this State, and to provide for the appointment of State inspectors to enforce the same, and to make an appropriation therefor." (Hurd Rev. Stat., 1908, p. 1036).

Section five of this act read as follows:

> "No female shall be employed in any factory or workshop more than eight hours in any one day or forty-eight hours in any one week." (Hurd, *Supra*, p. 1037, Sec. 25.)

There are at least four reasons assigned by the court in its opinion, in addition to the infringement of the right of contract, why the law must be held unconstitutional. In the first place the court held, that the act unreasonably discriminated against the

manufacturer of *clothing* and in favor of all other classes of manufacture. Again, that it was not a health measure, and had no direct relation to the end apparently sought to be attained by Section five, viz.: the health of the women workers. Further, that "any factory or workshop" as used in Section five, was more comprehensive than the language used in the title of the act, which referred only to the manufacture of clothing and wearing apparel, and that the law was objectionable for that reason. Also, that the regulation was unreasonable, inflexible, and arbitrary, and lastly that the second clause of section ten of the act appropriating "twenty thousand dollars for the salaries of inspector, assistant inspector, and ten deputy factory inspectors," was a subject embraced in the act but not expressed in the title, and therefore void.

It is of course evident from reading the opinion of Mr. Justice MAGRUDER in this case that it was the intention of the court to decide that the limitation prescribed by section five of the act, was an unwarranted exercise of the police power. The point is expressly passed on. But the force of the decision as

a precedent is very largely qualified and lessened by the fact that there were so many other constitutional objections involved, which the court also expressly passes upon. And it should be constantly kept in mind in reading this opinion, that everything there said about the constitutional right of women to make contracts of employment, was uttered with reference to an act which was in no sense a sanitary measure. If it had been a health measure, it is reasonable to assume that the language of the court would have been different. The act which the court was called upon to interpret made no reference to the health, comfort or welfare of the women affected by it, either in the title of the act or in its various provisions. There was no pretense that it was a sanitary measure, prompted by the well-being of society at large, and the court merely holds that

> "where the ostensible object of an enactment is to secure the public welfare or safety, it must appear to be adapted to that end; it cannot evade the rights of persons and property under the guise of a mere police regulation, when it is not such in fact."
>
> 155 Ill., 98, 110.

At the time of this decision, (1895), there was only one adjudicated case on the precise question of the right of the State to regulate the employment of females, in the interest of the public health and welfare. The Massachusetts case above referred to was the only case on the point. And the learned judge in writing the opinion in the Ritchie case is therefore in error when he says that "the Massachusetts case is not in line with the current of authority." 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 employments. The large body of statute law, the unanimity of contrary judicial opinion including the Federal Supreme Court the vast amount of statistical records which have become a part of our industrial and economic history since this decision was rendered, gives Illinois (in the language of a recent law writer) "a bad eminence in this connection" and leaves the State apparently standing alone in its doctrine as to the contractual rights of women.

That the statute here brought in question is a sanitary measure, cannot be fairly disputed. The title of the act recites 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*," etc.

The act itself contains no provision other than the reasonable limitation as to hours of women, and the maximum number is fixed at *ten* instead of *eight*. The *welfare* of women workers was the *only* reason for its enactment. If the hours had been ten in the Ritchie case instead of eight, who can say that the court might not have held that the regulation was a reasonable one. Statistics which will be referred to hereafter show that very few factories or mechanical establishments work their employes more than ten hours a day, while the eight-hour day is the ideal sought for by labor unions and social economists without reference to any question of health or general welfare.

Prof. Freund in discussing the Ritchie decision, and the differences to be observed between men and

women in considering the reasonableness of police regulations, uses the following language:

> "The opinion in *Ritchie* v. *People* can hardly command unqualified assent either in the light of reason or authority. The statement that the Massachusetts decision (*Com.* v. *Hamilton Mfg. Co.*, 120 Mass., 383) is not in line with the current of authority is unwarranted for the right to restrict the labor of women in factories had not been passed upon by other courts of last resort (1876) and the precedent of Massachusetts has on the contrary furnished the authority for similar legislation in a number of other states. The limitation of the law to factories is not in itself unconstitutional discrimination; the law of Illinois forbids women labor in mines, and the work in factories and workshops is as different from that in mercantile establishments or in domestic service as that in mines is from either; all civilized manufacturing states have factory legislation and thus recognize the existence of special conditions of labor in factories. Still less is the singling out of women in the matter of factory work an arbitrary discrimination. It is not by the assertion of vague principles of liberty, or by the unqualified denunciation of class legislation, that the limits of the police power can be determined.

"If we look upon limitation of hours of labor in factories as a measure of physical protection, a discrimination between men and women cannot be condemned as arbitrary. And if an excessive number of hours is regarded as detrimental to women, it may be forbidden, although the labor of men remains unregulated; for there may be practically no need for legislative limitation of men's labor to (say) 11 or 12 hours if that number is not as a rule exceeded; and it would be fatal to all police legislation to hold that it must deal with all evils though requiring different remedies or with none. But if we look upon limitation of hours of labor as a measure of economic and social advancement, and if that principle of limitation be conceded as legitimate, the discrimination between men and women can no longer be based upon consideration of physical strength, but must be justified by specific, economic and social conditions of employment, as affected by difference of sex.

"It is clear that some special provisions regarding women's labor are justified by their greater physical weakness. Their labor in mines is interdicted largely on that ground and the prohibition of night labor in factories may be explained in like manner. * * * The German Trade Code provides that women who attend to the household are entitled to an extra half day for the midday meal, unless an hour and a half is

given for the latter; here we have a social measure justified by the special duties of women, and it is perhaps possible that other cases (apart from provisions of decency and morality) may arise in which all women, as distinguished from all men are entitled to distinct consideration or vice versa; so the law may require time to be given to men to vote, a respite from work in which women do not participate; but to establish a Saturday half holiday for men only, or for women only would be clearly unequal legislation.

"Applying these considerations to the existing statutes, there seems to be a general consensus of opinion that ten hours factory labor, or sixty hours per week, is a reasonable maximum for women, and that the observance of that limitation is required by the care for their physical welfare. From this it does not follow that the same is true of eight hours, or that the choice of hours is entirely within the discretion of the Legislature. This is one of the cases in which reasonableness is a matter of degree, to be determined in the last resort by the courts. Conceding that eight hours is not an unreasonably short day, yet it is generally recognized that the eight-hour day is not a requirement of the public health, but is desired as a measure to raise the social and economic standard of the working classes. In that aspect women are not entitled to a preference over men. This last considera-

tion seems sufficient to support the decision of the Supreme Court of Illinois, without an endorsement of all that was said with reference to the constitutional right to contract, and legislative control over it."

Freund, Police Power, Sec. 313, 314.

In this connection Judge Cooley says:

"It is proper to recognize distinctions that exist in the nature of things, and under some circumstances to inhibit employments to some one class, while leaving them open to others. Some employments, for example, may be admissible to males and improper for females, and regulations recognizing the impropriety and forbidding women engaging in them would be open to no reasonable objection."

Cooley Const. Lim. (6th Ed.) p. 744.

III.

The Act Amounts to "Due Process of Law."

This proposition has been covered in a general way in the discussion of the Police Power.

The best attempt at a definition of "due process of law" which we have found is that given by Mr.

Justice JOHNSON, in *Bank of Columbia* v. *Okely*, 4 Wheat., 235, viz.:

> "The good sense of mankind has at length settled down to this: that they (the words 'due process of law') were intended to secure the individual from the *arbitrary* exercise of the powers of government, unrestrained by the established principles of private right and distributive justice."

The police power of the State, reasonably exercised, is due process of law. *Wenham* v. *Nebraska*, 65 Neb., 394, 400.

It does not follow that what was due process, when the Fourteenth Amendment was adopted, remains such, and that such prior law is the only due process, and that laws made after its adoption are not due process of law. It does not prohibit a state from future legislation or action necessary, in its judgment, in the administration of its government, provided it bears alike on all similarly circumstances, and be not unusual, oppressive or arbitrary.

> Brannon on Fourteenth Amendment, p. 143, 144;
>
> *Holden* v. *Hardy*, 169 U. S. 366.

It cannot be fairly questioned that it is due process of law for the state not only to regulate the relations of employer and employe, where the public are reasonably interested, but to entirely forbid the transaction of business where it is conducted under circumstances injurious to the public comfort or morals.

8 Cyc. Law and Pro., 1119, n. 18;
Mugler v. *Kansas*, 123 U. S., 623;
Powell v. *Pennsylvania*, 127 U. S., 678.

IV.

It is a Reasonable Health Measure as Proven by Statistical Records and the State of the Law in This and Foreign Countries.

The Supreme Court of the United States, in *Muller* v. *Oregon*, 208 U. S., 412, at page 419, preface their discussion of the constitutional question involved, by saying:

> "In patent cases counsel are apt to open the argument with a discussion of *the state of the art*. It may not be amiss, in the present case, before examining the constitutional question, to notice the course of legislation, as well as expressions of opinion from other than judicial sources."

Referring then to the wide-spread legislation on the subject of employment of women, both domestic and foreign, and the opinions judicial and otherwise of those in a position to observe and know the actual conditions of women workers, which opinions were presented to the court in the brief of counsel, the Court continues:

> "The legislation and opinions referred to in the margin may not be, technically speaking, authorities, * * * yet they are significant of a wide-spread belief that woman's physical structure and the functions which she performs in consequence thereof, justify special legislation restricting or qualifying the conditions under which she should be permitted to toil."

Let us therefore examine, for a moment into the conditions of the working woman in Illinois, at the time this law was enacted.

The bill of complaint in this case makes out a very attractive place for the employment of women, in the box factory of Ritchie & Company, appellees. It is difficult to reconcile this view given to us of the happiness and contentment of the female employe with the further allegation of the bill that it is well-nigh

impossible to get women to work in the factory, even after offering inducements in the form of prizes. The situation is rendered all the more puzzling when, upon consulting the last bi-annual report of our State Bureau of Labor Statistics, we find the Commission in reporting on the paper box factories, using this language: "*In the better class of plants, help is readily obtained.*" Rep. Ill. Bureau of Labor Stat., 1906, p. 305.

The average hours of labor in Illinois for paper box factory employes is given in this report as 10, $9^1/_2$ and 9 hours per day. (See p. 305.)

Out of thirty-nine industries in Illinois, reporting to the State Bureau, only *three* show average working hours in excess of ten hours per day. Rep. Bureau Labor Stat. Ill., 1906, pp. 250-333.

Referring to statistics collected by the Federal Government on the same subject, we find the following interesting facts:

Complete reports from 879 manufactories, including box factories, cotton mills, and all the "sweated trades," show only forty-nine factories where em-

ployes, *men and women,* work more than ten hours a day; 335 plants work less than ten hours a day. Leaving out the cotton and woolen mills, which are generally conceded to be in a class by themselves, only 9 out of the total of 897 work more than ten hours. Out of 50 reporting box factories, not a single one worked more than ten hours a day, and 21 worked less than ten hours, varying from 48 to 59 hours per week.

11th Ann. Rept. U. S. Com. Labor, 1895-6, pp. 639 to 644.

Federal reports for 1904 show that for a period of three years prior thereto, the hours for workers in box factories, *men and women,* averaged from 59 to 60 hours per week.

19th Ann. Rep. Com. Labor U. S., 1904, pp. 43 to 46.

This report shows also that there are very few factories or mechanical establishments of any kind reporting more than ten hours for a work day. The vast majority of them work much shorter hours. (See pp. 36 to 103.)

It is well known that hours of labor have a tendency to become shorter rather than longer, under the influence of labor organizations, and improved economic conditions, and reports of this kind which may be made in the future to our own state department as well as to the Federal government, will doubtless show a decrease rather than an increase, in the already small percentage of factories employing labor of any kind, for a longer period than ten hours a day.

The United States Industrial Commission, 1900, in discussing the reasonableness of the ten-hour regulation, said:

> "We may find that it is desirable in time to do by law, what a few persons are doing voluntarily. It is in that way that the original ten-hour law was tried tentatively in England; a few manufacturers tested the matter in their own factories, and found that their people could do as much in ten hours as they theretofore had been doing in twelve and thirteen; that made the law seem reasonable."
>
> Rep. U. S. Industr. Com., 1900, p. 64.

Our Legislature many years ago, showed what it considered a reasonable work day by enacting a law that eight hours should constitute a day's work. (Hurd's Stat., 1908, p. 1030, Sec. 1.) The Federal Congress has fixed the same maximum as a legal day's work. (27 Stat. L. 340.) Practically all the states have similar statutes.

It is difficult to understand how one could reasonably object to the placing of a ten-hour limitation upon hours of labor, when the ten-hour maximum under present conditions is seldom if ever exceeded. If it is taking away the property right of any person, it is a right which is seldom or never claimed or exercised. It practically amounts to putting into law the customs which are now almost universally observed by all parties covered by the provisions of the act. The exceptions to the rule which we have shown are few, are just sufficient to warrant the Legislature in prescribing the regulation. The few exceptions which exist, are the excuse for the legislation. Had the Ritchie case in the 155th Illinois involved a *ten-hour* law of a *sanitary character*, instead of an arbitrary restriction, purely incidental to the main

purpose of the act, which cut off a considerable portion of the working day in most manufactories, it is fair to believe the result would have been very different. The two laws are absolutely unlike, in these two particulars, that one is a reasonable shortening of the day's work, and the other was not, and one is a health measure, and the other was not.

In addition to the statistics at hand in regard to the customary and usual hours of labor, the libraries are full of reports of an official, semi-official and expert character, which show conclusively that such a health regulation as is here imposed is eminently just and reasonable. A brief reference will be made to some of these recognized reports: For example, the Massachusetts Bureau of Labor, in 1875 (the year preceding the decision of the Massachusetts Supreme Court sustaining this sort of a law), made the following report:

> "A 'lady operator' many years in the business informed us: 'I have had hundreds of lady compositors in my employ, and they all exhibited in a marked manner, both in the way they performed their work and in its results, the difference in physical ability between themselves and men. They cannot endure the prolonged close attention

and confinement which is a great part of type-setting. I have few girls with me more than two or three years at a time; they must have vacations, and they break down in health rapidly. I know no reason why a girl could not set as much type as a man, if she were as strong to endure the demand on mind and body.' "

Rep. Mass. Bureau Labor Stat., 1875, p. 96.

The California Bureau of Labor Statistics states that it is

"decidedly of the opinion that it (long hours) is highly injurious. It will certainly aggravate any existing complaints, and still more, it will and does have a tendency to induce complaints in persons previously free from them. It is especially injurious to females in regard to the diseases peculiar to the female sex."

Rep. Cal. Bureau Labor Stat., 1887-8, p. 102.

Connecticut also:

"The violation of this law is objected to by the most of the working people, on the ground that ten hours out of twenty-four makes as long a day as women and children should ever be required to work."

Rep. Conn. Bureau Labor Stat., 1890, p. 29.

And Maryland:

"Once inside the walls of the factory a weary day's work of ten hours' duration is begun, with an intermission for lunch at noon. * * * When the day's work is at last over, the wearied crowd trooping from their place of employment hasten in all directions to their homes, which in many instances are in the extreme suburbs of the city. Once home they swallow a hasty supper and soon retire to a needed and deserved rest, with no pleasant anticipations for the morrow.

"What lives are these for future wives and mothers? Future generations will answer."

Rep. Maryland Bureau Indus. Stat., 1896, p. 52.

In the report of the Select Committee on Shops Early Closing Bill, to the British House of Commons, we find the following testimony of one of the experts who appeared before the committee:

"If the matter could be gone into carefully, I think the committee would be perfectly surprised to find what a large number of these women are rendered sterile in consequence of these prolonged hours. I believe that is one of the greatest evils attached to these prolonged hours. I have seen many cases in families where certain mem-

bers who have pursued the calling of shop girl's assistants have been sterile, while other members of the family have borne children. I know of one case where four members of a family who were shop girls were sterile, and two other girls in the family, not shop girls, have borne children."

Rep. Select Com. Shops Early Closing Bill, 1895, p. 219.

Well known historians of factory legislation and conditions agree with these almost universal official opinions. For example:

"So far from being regarded as romantically philanthropic, like the ten-hour bill of 1844, the bills of 1867 (ten-hours) were taken as a matter of common sense and economic prudence. * * * Only a certain amount of work is to be got out of women and children in the twenty-four hours. * * * Nothing can be gained in the end by anticipating our resources, and to employ women and children unduly is simply to run in debt to nature."

Hutchins & Harrison, Hist. Factory Leg., p. 167.

The quantity and extent of these opinions need only be limited by the time and industry which it would seem desirable to employ in collecting them, but those

above quoted would seem to answer every purpose of the present inquiry.

Again, in view of the thousands of women employed in the industries covered by this Act, it would seem almost self-evident that some regulation of their employment providing for their health and safety, is imperatively necessary.

Com. v. *Penna.*, 15 Pa. Supr. Ct., 14.

V.

The Court Should Take Judicial Notice of Actual Industrial Conditions, as Shown by Statistical Records, and the Common Experience of Men.

In the Muller case, the Federal Supreme Court, upon referring to the extensive array of statistics set forth in the brief filed by Mr. Brandeis, recognize that these conditions and opinions should be judicially noticed by the courts:

> "When a question of fact is debated and debatable, and the extent to which a constitutional limitation goes, is affected by the truth in respect to that fact, a wide-spread and long-continued

belief concerning it is worthy of consideration. *We take judicial cognizance of all matters of general knowledge.*"

Muller v. *Oregon*, 208 U. S., 412, at p. 421.

The rule governing judicial notice of such facts is well stated in the Cyclopedia of Law and Procedure as follows:

"Courts know the facts generally known to have been established by statistics, in much the same way and for much the same reason that they know the facts set forth in the almanac. The court cannot verify the facts; but where statistics are official, prepared by public officers acting under provision of law, the duty of the court to know the law and recognize the existence of acts done under it stimulates and endorses the court's knowledge of the facts established by such statistics in which the community shares."

16 Cy. C., p. 870.

See also:

Freund on Police Power, Sec. 145.

Toledo, etc., Ry. Co. v. *Jacksonville*, 67 Ill., 37;

Matter of Viemeister, 179 N. Y., 235.

VI.

The Doctrine of Stare Decisis Does Not Apply.

The rule in this State as announced by the Supreme Court in 1902 is in accord with the rule in Alabama, Missouri and Texas, viz.: that the doctrine of *stare decisis* "cannot control questions involving the construction and interpretation of the organic law."

> 26 Am. & Eng. Ency. Law, 2d Ed., p. 162;
> *Allart* v. *People,* 197 Ill., 501, 509.

In the Allart case our Supreme Court says, p. 509:

> "If the constitutionality of that act should again be presented by parties not before the court in the Burdick case, that decision *will not preclude them,* except in so far as it is founded upon sound reasoning and authority, and will then be reaffirmed or overruled as shall appear right and proper."

And manifestly and for a variety of reasons, a single decision will be given much less weight than a series of decisions.

> *Stevens* v. *Pratt,* 101 Ill., 206.

> "When a question involving important public or private rights extending through all coming time has been passed upon on a single occasion, and the decision can in no just sense be said to have been acquiesced in, it is not only the right but the duty of the courts, when properly called upon, to re-examine the questions involved, and again subject them to judicial scrutiny."
>
> 26 Am. & Eng. Ency. Law, (2d Ed.), p. 167.

While, therefore, we do not consider *Ritchie* v. *People*, 155 Ill., 98, a direct precedent against the position taken by appellants here, because of the great dissimilarity between the two cases, we still respectfully urge that even though the cases were identical the doctrine of *stare decisis* could not properly be invoked to nullify the present law.

If the doctrine of *stare decisis* were rigidly adhered to in considering questions arising under the organic law, constitutional law would cease to be a progressive science.

VII.

The Act Does Not Impair the Obligations of Contracts.

This proposition naturally follows as a corolary to the proposition discussed under points II and III *supra,* relating to the police power of the State, and due process of law. If the act in question is within the police power of the State, it necessarily follows, as a principle of constitutional law, that it does not impair the obligation of contract.

> "A law limiting the hours of labor in the interest of safety of health may apply to existing contracts, although it is within the legislative power to exempt existing contracts from its operation.
>
> Freund, Police Power, Sec. 556; See also, Sec. 602.

VIII.

The Act is Not Class Legislation.

It is difficult to see how appellees' contention that the act is unjust and discriminatory, can find any sup-

port either in reason or authority. Its comprehensive terms are not open to the objection successfully urged in the Ritchie case. The restriction there was made to apply to only *one kind* of *one class* of manufacturers, viz.: manufacturers of clothing. Obviously this would be an unjust limitation upon the rights of one small class of manufacturers,—but the Legislature in enacting the present law apparently endeavored to comprehend within the scope of its provisions, *all* classes of factories and mechanical establishments, throughout the State, and all laundries. These general classes needed a uniform and reasonable limitation placed upon the hours of labor of women, according to the legislative judgment, which judgment was corroborated and sustained by public statistical records, an extensive legislative history and the common experience of the members of the Legislature gained in different sections of the State.

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

Cooley Const. Lim. (6th Ed.), pp. 479-481.

IX.

The Act Being a Copy of the Oregon Statute and Interpreted by its Supreme Court and the Supreme Court of the United States as a Proper Sanitary Measure Should be so Interpreted by This Court and Any Doubts in Regard to its Validity on That Ground, Should be Resolved in Favor of the Act.

The United States under the Fourteenth Amendment and the commerce clause has power to control State legislation, under the police power, regarding safety and health. It is the duty of the United States to see that no state shall pass any law whereby a person may be "deprived of life, liberty or property without due process of law." This act is adopted from the Oregon law (Laws 1903, p. 148) and its language is identical with it, and the Federal Supreme Court sustaining the Supreme Court of Oregon has said that such a law does not deprive a citizen of his liberty or property rights without due process of law. There can be no question whatever but that it would say the same with reference to our law. Indeed

> "the Fourteenth Amendment guaranteeing due process of law and the equal protection of the

laws, is capable of an interpretation subjecting all State legislation to Federal control, nearly equal in scope to that now exercised by the State courts, and of course, superior to the latter." (Freund's Police Power, p.).

Again the provisions of the Illinois Constitution upon which the Court based its decision in the Ritchie case are the same as the provisions of the Federal Constitution. When the Ritchie case was decided the United States Supreme Court had not spoken on the subject and our Supreme Court was called upon to give an independent interpretation. It has been well said that the fundamental rights of persons and property have been placed under the protection of the Federal Constitution because they are national rights, and as such they should have the same construction all over the country. We therefore respectfully submit that it would be eminently proper for this Court to permit its opinion in this matter to be guided entirely by the opinion of the Supreme Court of the United States. Furthermore it is a well known doctrine of interpretation and construction that when a state adopts a statute from a foreign state, it is also presumed to adopt the interpretation placed upon it

by such foreign state. Is not this Court bound to assume, therefore, that the Legislature, knowing the state of the law in Illinois, adopted from Oregon the statute of that state and the interpretation placed upon it by the Courts of Oregon and the Federal Supreme Court, holding such law to be a proper sanitary measure? The fact that *Ritchie* v. *People* was in the books at the time of this legislative action, does not affect the question. The Legislature must be presumed to have known the law and also the social and industrial conditions requiring that they enact a new law on the basis of the Oregon statute.

When all is said and done, as a matter of construction, all doubts should be resolved in favor of the constitutionality of the law and this is especially true where the statute is a health measure.

> "Though reasonable doubts may exist as to the power of the Legislature to pass a law, or as to whether the law is calculated or adapted to promote the health, safety and comfort of the people, or to secure good order or promote the general welfare, we must resolve them in favor of that department of the government." (*State* v. *Holden*, 14 Utah, 96; *Commonwealth* v. *Beatty*, 15 Pa. Superior Court, pp. 5, 17.)

CONCLUSION.

This argument has already extended itself beyond the limits originally intended, but counsel have felt so deeply the tremendous importance to the State and its people of the questions here involved, that a most thorough and exhaustive treatment of the subject has seemed imperative.

Opinions may vary in regard to the decision in the Ritchie case, but as to some of the reasoning in support of it, there can be no question but that it is open to very serious objection. The Court said, in its opinion, that

> "the laborer has the same right to sell his labor and to contract with reference thereto, as has any other property owner,"

and that it was doubtful whether the Legislature under the police power could limit this right even to prevent injury to the person himself. If this were true, peonage would be lawful in Illinois. Mr. Freund states the true rule that the

> "police power is not rendered unlawful by the fact that it makes impossible the performance of a contract entered into by a person affected thereby." (Freund, on Police Power, Sec. 602.)

Statements of this kind, made in the Ritchie decision should no longer be considered the policy of the State that has prohibited the labor of women in mines, (Hurd's Stat., 1908, p. 1438, Sec. 22), and which by numerous other laws, has clearly indicated its special interest in the welfare of women workers. (See Hurd's Stat., 1908, p. 905, Sec. 38; p. 1303, Sec. 36; p. 1378, Sec. 8, and Laws of Illinois, 1909, p. 204, Sec. 9.)

A constitutional provision which was originally intended to protect citizens against oppressive and tyrannical criminal process, and against acts of a state tending to create sinecures and monopolies, should not now be extended by construction to so reasonable a police regulation as we are here considering, but on the contrary we respectfully submit that the Court should shape its policy so as to insure such wholesome economic conditions as an advancing civilization of a highly complex character imperatively demands.

We cannot even contemplate the possibility of a reaffirmance of the doctrines of the Ritchie case with its binding force upon subsequent legislation and ad-

judication in this State, without feelings of positive alarm, in view of the absolute unanimity of legislation and judicial opinion to the contrary throughout the country.

We feel the utmost confidence that the Supreme Court, recognizing well known industrial conditions, will apply the maximum *salus populi suprema lex*, and announce a policy of police with regard to the employment of women, in accord with those sound principles of constitutional law which have had such unanimous support in the courts everywhere.

We respectfully pray that the judgment of the Circuit Court of Cook County, may be reversed.

WILLIAM H. STEAD,

Attorney General.

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[redacted],

SAMUEL A. HARPER,

Of Counsel.