FLAWS IN THE LAW.

Supreme Court Punctures the Eight-Hour Act.

CONTRACT SECTION VOID.

Women May Work More than Eight Hours a Day.

INSPECTORS KNOCKED OUT.

Appropriation for Their Salaries Declared Illegal.

ALTGELD'S LABOR IDOL WRECKED.

MOUNT VERNON, Ill., March 14.—[Special.]—In a unanimous opinion rendered today the Supreme Court holds that the eight-hour law for women passed in 1893 is unconstitutional, and the section appropriating $20,000 for salaries of factory inspectors is null and void. The burden of the decision is that women in respect to contracts are on the same footing with men and that an act which abridges the freedom of contract between workman and employer in a lawful occupation is unconstitutional.

In far reaching results the decision is most important. It is the first decision in the United States against the eight-hour law and presents a new obstacle in the path of the movement for shorter hours. The opinion strikes out a law which was the particular child of Gov. Altgeld. It was among the first acts he approved. As a result of the opinion the salaries of Chief Factory Inspector Florence Kelly, one assistant and ten deputies will be discontinued.

The case decided was that of William E. Ritchie vs. The People, and was a writ of error to the Criminal Court of Cook County, prosecuted by the plaintiff in error to determine the constitutionality of the act passed by the General Assembly of 1893 "to regulate the manufacture of clothing, wearing apparel, and other articles in this State, and to provide for the appointment of State inspectors to enforce the same, and to make an appropriation therefor." The act has generally been known as the eight-hour or sweating law.

Foundation of the Case.

In the Criminal Court of Cook County the plaintiff in error was found guilty and fined upon the complaint of a factory inspector. The complaint charged that Ritchie on a certain day in February, 1894, employed a certain adult female of the age of more than 18 years for more than eight hours during said day. The trial court was asked to hold that the act in question and every section thereof was illegal and void. The trial court refused the proposition and found the defendant guilty. In the Supreme Court, as conceded by counsel for both sides, the bone of contention was Sec. 5 of the act, which declares that "no female shall be employed in any factory or workshop more than eight days in any one day or forty-eight hours in any one week."

Counsel for Ritchie contended that the section enforced unwarranted restrictions upon the right to contract. Counsel for the people held that the section was a sanitary provision and justifiable as an exercise of the police authority of the State.

The Supreme Court holds that women as to contracts are on the same footing with men. That Sec. 5 prohibits them from contracting their own labor and determining how many hours they may elect to work, and that such restriction is an infringement upon the rights of both employer and employé and is in conflict with Sec. 2, Art. 2, of the State Constitution, which provides that "no person shall be deprived of life, liberty, or property without due process of law." The privilege of contracting is both a liberty and a property right. 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.

Of all the labor legislation of recent years this act is the only one which has been sustained, even in part, by the Supreme Court.

Legislature Powerless in the Premises.

The Legislature has no right 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 employer. The right to labor or employ labor and to make contracts is included in the section of the Constitution quoted. When an owner is deprived of his right to make contracts he is deprived of his property within the meaning of the Constitution. 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 the right to contract is the most essential and it cannot be taken away "without due process of law" and is synonomous with the "law of the land," which is the opposite of "arbitrary, unequal, and partial legislation." The Legislature has no right to deprive one class of persons of privileges allowed to other persons under like conditions. The power of the Legislature to limit the right to contract must rest upon some reasonable basis and cannot be arbitrarily exercised.

Sec. 5 prohibits women from working in any manufacturing establishment more than eight hours in any one day, but at any other occupation she can contract to work as many hours as she sees fit. This is a discrimination which is antagonistic to the Constitution and it is therefore invalid and void. The act substitutes the judgement of the Legislature for the judgment of the employer and employé in a matter about which they are competent to agree with each other. This transcends the power of the Legislature. General laws are sometimes as obnoxious as partial laws. The right to make contracts is an inherent and inalienable one and any attempt to abridge it is in conflict with the Constitution.

Exercise of Police Power.

The section cannot be held legal as an exercise of the police power of the State, which is a power to be used to promote the health, comfort, welfare, and safety of the people. Whilst the power is broad and far-reaching it has its limitations. Acts passed in pursuance of it must not be in conflict with the Constitution, and must have some relation to the health, comfort, welfare, and safety of the people. It cannot invade the rights of persons and property under the guise of a 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 court to determine whether it really is a measure for the health, comfort, and welfare of the people.

There is nothing in the title of the act of 1893 to indicate that it is a sanitary measure. It is not the nature of the things done but the motives of the persons doing them which forms the basis of the claim that the act is a sanitary measure for the promotion of the public health. As a citizen woman has the right to acquire property of every kind; she cannot be deprived of life, liberty, or property without process of law. The tendency of

legislation in this State has been to recognize the rights of woman. She has the right to contract to work as many hours in a day or week as she may see proper.

Sex and Police Powers.

The mere fact of sex does not justify the Legislature in putting forth the police powers of the State to restrict that right unless the health, comfort, and welfare of the people require it. The court can see no reasonable ground for fixing upon eight hours in one day as the limit in which a woman can labor without injury to her physique and beyond which, if she work, injury will necessarily follow. It is questionable if the police power of the State can be invoked to prevent injury to the individual engaged in a particular calling. There can be no more justification for the prohibition of the prosecution of certain callings by women because the employment will prove hurtful to them than it would be for the State to prohibit men from working in white lead because they are apt to contract lead poisoning.

When a health law is challenged on the ground that it arbitrarily interferes with personal liberty and private property without due process of law the court must be able to see that it has at least in fact some relation to the public health; that the public health is the end actually aimed at, and that it is appropriate and adapted to that end. This the court has not been able to see in Sec. 5, and it is therefore unconstitutional and void.

Knocks Out the Inspectors.

The validity of the act of 1893 is challenged because it contains more distinct subjects and that both are contained in the title, which is in contravention of Sec. 13 of Art. 4 of the Constitution, which is: "No act hereafter passed shall embrace more than one subject, and that shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title such act shall be void only as to so much thereof as shall not be so expressed."

Sec. 16 of the same article provides that the pay of members of the Legislature and all State officers must be provided for in appropriation bills which shall contain no provision on any other subject. The court cannot, after giving it a fair construction, see that two subjects are embraced in the title of the act, and therefore hold that it is legal and binding. But it holds that the Factory Inspectors are State officers, or officers of the State Government, and that the paragraph of Sec. 10 of the act which appropriates $20,000 for the payment of their salaries is in conflict with Sec. 16, Art. 4 of the Constitution, and is therefore illegal, null, and void. The appropriation of $3,000 for the enforcement of the act is held to be valid and binding.

Summary of the Finding.

The conclusion of the court is that Sec. 5 of the act of 1893 and the first clause of Sec. 10 of the same act are void and unconstitutional for the reason cited above. These are the only portions of the act which were attacked by arguments of counsel; no reason was pointed out why they are not separate and distinct from the rest of the act. The rule is that where a part of a statute is unconstitutional the remainder will not be declared unconstitutional also if the two are distinct and separable so that the latter may stand though the former be of no effect.

The court does not wish to be understood by anything said in the opinion as holding that Sec. 5 of the act of 1893 would be invalid or void if it was limited in its terms to females who are minors.

The judgment of the Criminal Court of Cook County is reversed and the cause remanded to that court with directions to dismiss the prosecution.

The opinion is by Mr. Justice Magruder, and there is no dissent by the other Justices. Eight other cases which came up from Cook County at the same time and upon the same points are disposed of by this opinion, and are reversed and remanded to the Criminal Court of Cook County. The opinion is filed and made public in advance of the usual time of filing during sessions of the court in order that the General Assembly may, if it sees fit, provide by legislation for the errors pointed out by the court.