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Constitutionality of Recent Legislation Interfering with the Freedom of Contract

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Introduction.

Of all peoples on the face of the earth, Americans are the most sensitive as to anything that relates to their "Liberty". Any restraint upon their freedom immediately engages their closest attention, and any possible infringement upon their rights is at once investigated. For this reason has the subject of legislation interfering with the Freedom of Contract called forth much discussion and argument of a most interesting nature. But the question is still a mooted one—at least it is generally deemed unsettled; and the recent legislation in relation to the subject has caused many of our most conservative men to lament the present tendency of our government, and as many of our more socialistic body to rejoice at the same tendency; and has incited them to demand still further legislation of the same nature. What the indifferent majority will believe when they awake enough to appreciate the situation and take an active part in deciding the matter, is at present an uncertainty, and indeterminable; but judging from the remote as well as the not far distant past, it would seem that public opinion will be in favor of the existing policy.
PUBLIC POLICY - THE INITIATORY FORCE.

It has been most truly said by our greatest economists and sociologists whose chief aim is to teach us true principles of government, that the historical method of dealing with any subject is the most profitable and the one most liable to teach us correct views. So in a superficial way I shall touch upon the history of the doctrine of freedom of contract at various points throughout this paper.

To go back then for centuries, leaving aside all the conditions of modern life-annihilating in our minds all the influences of civilization, picturing man as controlled by the same influences that now control the monkeys in the wilds of Central Africa—we find man uncivilized and left to act according to his own will, except as the physical superiority of a companion held sway over him. Then we certainly find a condition as near to freedom of contract as possible. Yet even then duress was a thumb-screw that bore down upon his will and interfered with his freedom.

But it is unnecessary to go back this far, to find the theory of freedom of contract in such active operation that a man could contract away his whole freedom.
There has been a time in the history of almost every nation when a man had the perfect right to bargain himself into slavery if he chose. Now that we find such rights of contract entirely gone, it is altogether fitting that we ask in what way were these rights withdrawn. Was it alone because people no longer wished to sell themselves, and refrained from exercising their own foolish tendencies, or was it because of legislation or what took the place of laws then—custom, which was the unexpressed but well impressed will of the people. Finding so many instances where punishment has been meted out for making these contractual relations, I think that we are forced to believe that they were not eliminated by universal consent but were suppressed by the stigma of public opinion. Such bargains were so clearly against public policy that they were done away with long before slavery as an institution was abolished.

Public policy therefore, which has been defined as the "prevailing opinion as to what is for the public good," was the initiatory force which restricted the right to absolute freedom of contract.
PUBLIC POLICY STILL MAKES THE LIMIT.

To the student of history, a casual glance at the great changes will suffice to convince him that the element of public policy in the law of contracts, and in law generally, is by no means of recent origin, but owes its existence to the very sources of law. The abolition of free will slavery mentioned in the preceding chapter is a striking example of the earliest time. How strong this force was among the Israelites is shown by the public indignation that followed the bargain of Esau with his brother—selling his birth-right for a mess of pottage.

But it was not until the rise of the more civilized nations of Greece and Rome that public policy became direct and effective as an influence in the regulation of contracts. In Greece it was strong enough for many decades to control the business and commercial interests, and confine them to the limits of Greece herself; no trading with foreign nations being allowed beyond that which was absolutely necessary.

And the same was true of that great law-making nation the Roman Empire. For many years there was the same policy as to commerce and contractual relations with people of
foreign nation until Rome took on a more cosmopolitan form and became engrossed with the desire for political power, and the policy then came so as to encourage commerce. And at the same time in many other ways, laws regulated the freedom of contract as it did their political rights, and we find that for the most part they were not the dictates of a tyrannical ruler, but laws having in mind the welfare of the people, such as the people thought were expedient.

Then came the feudal system, not of itself an institution founded on public policy, but nevertheless teeming with its relations of status which restricted the freedom of contract, so that in time public policy, which had gradually changed, arose through a long struggle and for once in its history enlarged the powers of contract.

The feudal system had culminated in the growth of towns of the village communities, the more modern patriarchal families and tribes where the people were bound together by the closest ties of friendship and kinship.

"Here it was perfectly natural that such communities should long retain the stamp of the original family relation that the relative positions of the different members should
should be the positions into which they had been born—that their mutual rights should be determined by the status or condition in life into which they were born rather than by contracts voluntarily entered into between free and independent men, and that custom rather than competition should fix the services mutually due, and the compensation therefore as well as the basis of exchange of products. In such societies the ancient sense of loyalty and of duties take the place of independence and rights. Within such communities, competitive bargaining is comparatively unknown. Status instead of contract, custom instead of competition, loyalty instead of independence indicate the leading contrasts between medieval and modern life."

"In the former a man was held entitled to a fair price determined commonly by custom. The fundamental theory of modern economy, that every man should be free to follow his own pecuniary interests as he thinks fit, without fraud, does not distinctly emerge until the 16th century in which Shakespeare deplores the decline of the loyalty of the antique world "when service sweat for duty, not for mead".

"1" T.E.Cliffe Leslie's Hist.& Future of Int. and Profit.

"2" C.A.Collin.
Never-the-less while this was the prevailing sentiment of the current business morality yet the competitive principle was constantly struggling to assert itself inspite of morals and legislation.

Thus we have seen that freedom of contract was first limited by status—then by statutes in opposition to the competitive principle. Such were the changes of public policy in England as to the theory of freedom of contract.

In this age and especially in this country, where the will of the people shapes the law, public policy is a more potent factor than ever in deciding what the relations of one person shall be to another as to the making and enforcing of contracts. But in the United States, the fact that we have a Constitution which is the supreme law of the land, must not be overlooked; and except as public policy vents itself in amendments to that Constitution it must remain unchanged and upheld.

For the most part the Constitution is explicit enough to guard against unconstitutional legislation, but there is one particular grant of powers vested in both state and national legislature in which public policy can most easily exceed its right. I refer to the "police power" which has been defined as ------
"In its broadest acceptation, as the general power of a government to preserve and promote the public welfare even at the expense of private rights.

The whole scope of legislation restricting freedom of contract must be within the exercise of this prerogative, otherwise it is unconstitutional and void. Therefore we must conclude that, while public policy regulates the legislation in question, it only decides how far the police power shall be exercised. It may contract or enlarge the exercise of its jurisdiction as the people see that the exigencies of the time require.

THE NON-EXISTENCE OF FREEDOM OF CONTRACT.

Before we shall turn to the exigencies of the present time and discuss the Constitutionality of the remedies that have been applied, it seems not out of place to consider the present condition of that theory which so closely concerns us—"The Freedom of Contract".

In this elaborate and highly developed system of government, we have been compelled to recognize the fact that true liberty is not licence. So that what was once a moral law forbidding persons to so exercise their rights that
they interfered with the rights of others, has now become
more or less embodied in the positive or civil law, and
properly so, now that we have a more correct idea of liberty.
And the topic now is practically to show the extent that
public policy has limited the former liberty of citizens
by this restrictive legislation.

Although it is urged by some that with few exceptions
we now have freedom of contract, the facts of the case ought
to leave the point incontrovertible. The legislative and
judicial history of this country is replete with instances
in which statutes impairing the freedom of contract have
been held valid and enforced against individuals as well as
corporations. Some of the principle ones that have been sus-
tained and enforced are the following: Fixing a maximum
rate of interest on money loaned; Fixing the maximum rates
for grain elevators and railroads; Fixing maximum price for
official reports of decisions; Fixing the price of bread;
Regulating insurance contracts and preventing forfeitures
for non-payment of premiums; Conferring the right of redemp-
tion after sale for breach of condition in a mortgage, contrary
to its terms; Forbidding the retaking of property sold
conditionally for non-payment of an installment, without a
tender of the sum paid on the property, after deducting a
reasonable amount for the use of the property or damage to it; Forbidding contracts for the attorney's fee on the opposite party; Forbidding gambling contracts, and contract between husband and wife; and statutes regulating the sale of liquors, of oleomargarine and of patent rights.
In the absence of legislative enactments, the courts have the power to hold contracts upon many subjects to be void and unenforceable, as opposed to public policy: such as contracts not to resort to the courts, but to submit to arbitration; Contracts not to remove a cause from a State Court to a Federal court; Contracts in restraint of trade; Contracts waiving the benefit of stay of execution laws; and contracts exempting a person or corporation from liability for the negligence of his or its servants.

In these cases the courts have power to decide what is public policy only because the legislature has not indicated its will to the contrary. But as soon as the legislature decides the question, its act is binding upon the courts.

With these and other similar statutes, it is perfectly evident to the most casual observer that freedom of contract from a legal point of view at least does not exist.

And moreover it would be a fiction to suppose that it existed even if every statute on the books should be annulled, for from a sociological point of view it will be seen upon close study that this theory is illusory and does not exist in practice. Every one knows that there is some measure of truth in this. It is axiomatic that dependence and not
independence is the order of things—and a most disorderly
order—with no regularity and no certainty. For one person
is financially dependent upon another who is in turn
physically dependent upon him: intellectual and financial
men are also interdependent; ability in one profession
is exchanged for ability in another—and what aggravates the
whole social problem is that there are all these qualities
and powers bound up in some, while in others we find barely
a trace of any: and again there are all degrees between the
two extremes.

And when the social order has thus been examined, no one
of intelligence will attempt to controvert the assertion
that however true the Declaration of Independence was in
asserting that "all men are created equal"—it is equally
true that all men are not living equal. And with such
inequality how can there be freedom of contract? Not nominally so, but in reality.

Freedom, so far as it exists, is the right to do as one
pleases with himself or his property. Freedom of contract
is the right to limit that right. So that where two parties
do not meet on equal terms, free contract may be and often
is the surest means of destroying freedom. And there are
instances of great number in which free contract now means
less freedom forever after.
Self-enslavement was an extreme case and belongs to the past but there are instances involving the same principles today; some of which savor very much of self-enslavement itself.

In spite of the many regulations of contract-making that are somewhat protective to the laboring classes, yet the laboring man is under a decided disadvantage when making contracts. He makes them—why? Because to sustain life, he is obliged to. The ordinary man of better circumstances must make them as well, and the highly developed corporation is not exempt from the "must"; but while the two latter make them to sustain life also, they are further from starvation; they can, having more resources, wait longer when driving a bargain, can force their weaker brethren to concede everything and need not themselves concede anything. The result of the numberless strikes throughout our history—their almost universal failure—forces us to this conclusion, if nothing else does.

It is the corporation and individual with equal capital who are considered respectable—never the laborer. It is the corporation that is born of and supported by the government—petted by courts (though damned by juries) and
and empowered by the "almighty dollar". The corporation has every thing -- the starving wage-earner, nothing. Economists have always been aware of the capitalist's advantage yet they have continually protested against any legislation to equalize, in any degree, the power of men in their contractual relations; and so strongly has it been protested in this country, that upon our Constitution, so full of true freedom in every other respect, has been grafted the doctrine of "laisser faire". The untruthfulness of this doctrine as a universal proposition has long been established, but we have not escaped its influence. The "Manchester School" has strenuously upheld it and the free traders, like it in other respects, likewise been consistently but fallaciously upholding it, so that it has been accepted in practice at least, not alone by the political party of free traders but even by those who claim to be its strongest opponents. The reasons for it have been manifold, but the chiefest of which is its practicability and seeming justification.

Its fallacy in the assumption of the economical and social efficiency of competition lies in the failure to distinguish between services and commodities -- between man and merchandize. Man is looked upon as under the same complete subjection to the impulses of pecuniary interest as a bale of cotton is in the hands of a trader. With respect
to merchandize—destitute of sympathies or antipathies—competition is, when modified, so far perfect as to be a fair controlling power. But with man, especially the laboring man, bound by manifold strong attachments to place, to home and friends; without mobility, by will or ability; and the employer—generous as the world goes but controlled by his own selfish interests—then it is self-evident that competition—supply and demand—"the iron-clad law of wages"—is not a sufficiently adequate or just controller of labor as it seems to be with other commodities. But denying that labor is a commodity at all—denying that man was meant to be a machine, to be kept in the market subject alone to the supply and demand,—denying it does not change the state of affairs however as a fact,—labor is treated as a commodity and man, a machine. As such, how can a man make contracts freely and to his own taste. With so few hands to work with and so many mouths to feed—he must do whatever he can find to do within the limited field to which he has access while a commodity has the whole world for its range. If his limited field is glutted with men he must work for what any poverty-stricken single man will work for, or the single
man will get the position. If the times are hard, he must endure reduced wages, for he cannot leave in search of employment. Yet he must pay the landlord whatever rent he demands. The laboring man is thus pinched on both sides—and yet, sometimes when this strange commodity becomes too cheap and the house rent of the employer becomes too dear, we find such an awakening of life as no other commodity ever has, and the sympathies and antipathies of the laboring man are vented in such activities as the late "Pullman Strike".

The strike has seldom been successful—yet when we consider that they are steadily increasing in number and magnitude, we may be sure that no such movements are without great initiatory force and some element of reason and determination.

To be sure, the question of "capital and labor" is here the direct issue; yet the trouble starts from the inequality of the men in making their contracts and the injustice that arises therefrom in the so-called "freedom of contract". Then it is true that I have considered the laboring man in particular as so unjustly treated from the unequal standing, in his direct dealing with one of more power. Yet the same is true as between even the latter and one still stronger—indeed it very often compels the previous state of affairs; and so on through all the stages of ability and resource.
The order of dependence is most wonderfully developed, indeed it is developed in a manner not to be tolerated long by those most injured, nor fostered much longer by those patriotic and humane citizens who see the injustice, whenever they see a way to remedy it. The American are already awake to the problem, and continuous, persistent effort will solve it "Laisser faire", in my judgment will never accomplish it. Legislation is a possible remedy. Still the efficiency of legislation depends upon the general public opinion, and any visionary schemes of legislation would not be tolerated—at least for any length of time.

THE POLICE POWER.

The people of the American colonies by the establishment of their independence held unto themselves all sovereign power. As individuals—they provided for a form of general government by adopting the Constitution of the United States and thereby marked out a somewhat definite and stable path which they would follow. They reserved unto themselves the supreme authority through the Constitution and the Congress, yet delegating some concurrent but subordinate powers to
the several States as sovereign bodies.

But it was not the design of the Constitutional Convention to hamper all the future Americans with the letter of the Constitution. It wished to perpetuate its spirit, "Liberty". So that I see in the Amendment and general welfare clauses, provisions purposely and deliberately constructed with this end in view. In these clauses did the wise founders of the Union provide for the progression that was hoped to follow; it put into the hands of the people great power, so great that many have hesitated and questioned whether these clauses really show the intent of the Constitutional delegates. Yet that police power, great as it may seem to be, is held down to true republican principles laid down in the Constitution that are irrevokable, and so interpreted in this case as to confine its exercise to promoting the health, peace and good order of the Nation.

And while public policy is so restricted by the limits of this police power, the constitution has no control over its exercise within those limits. Congress may be as changeable and arbitrary in obedience to the will of the people as it is pleased, and without conflict with the Constitution if rightfully exercising its police power.
And the same is true of the State legislatures so far as they have been vested with police power. For the U.S. Cons. has thus allied for the elasticity of public opinion, leaving it only for the courts to say whether or not the legislation is constitutional, so that the legislature uses its own discretion as to its expediency.

With this investigation of powers, we must conclude that changes of public policy if exercised within the police power regulations, fickle as they may be, are entirely constitutional.

CHANGE IN SOCIAL CONDITIONS.

It is quite pertinent also to ask—of what need has the public policy to change—especially in regard to the regulation of contract-making. Men are the same today in their nature as a hundred years ago. Granted—but are the surroundings the same now as then? Does the economical and industrial condition of the country demand of each man to act the same as then? Is he even permitted to act the same—and live?

If the country was the same size now as a century ago when the Constitution was drafted, or even the same as to
condition, the legislature would never be called upon to make laws that are necessities now. But the country has grown from three million of people mostly on the farm or in small villages to eighty million of people, the great proportion of which are now congregated in cities; the country is now under industrial conditions and influences in the preponderance, whereas it was then mostly agricultural; and that thereby the order of dependence has intensely increased. These facts account for legislation, now a necessity, that would have been anomalous in the past.

The problems of today are the result of the change; and are in proportion to the immensity of the great industrial departments out of which they have arisen. The mechanical inventions together with the development of the joint-stock principle has made possible a former impossibility and produced the prodigious manufacturing and trading interests. Individual production of the great portion of the commodities has given way to the large manufactures where the division of labor and machinery gives a decided advantage. And the laboring man no longer works under his own direction but as an employee under the supervision and direction of another. The order of dependence is here intensified. In fact the present century has witnessed
a rapid concentration of the industrial power into the hands of a few. And where the power has been concentrated, responsibility has been lessened -- the stronger shifting it upon the ones dependent upon him.

And this is most apparently true in regard to corporations. The two essential principles which they involve, of a limited liability and a power in each member freely to transfer his holdings to any stranger, an essential to the end for which they were established. So that, supported as they are in these respects by the government, a man of usual responsibility or without the franchises held by the corporation, cannot have the freedom of contract such as one might have had fifty or one hundred years ago. He is either precluded from making any contracts at all with corporations or he must contract on such terms as he can get from the corporation. And the majority of wage-earners, who, without capital, are forced to work for corporations -- as all kinds of business are rapidly assuming the form of corporate organization -- are still less able to cope with the corporation in making contracts, and are thus "holding their right to labor and their right to live, as tenants at will" of the corporations.

Before the days of corporations and large manufacturing
interests, when men were more upon an equality—when at least all bore the same responsibility, it is possible that the doctrine of "laisser faire" as applied to labor seemed more plausible. It certainly did not work the same injustice then for each man was more able to look out for himself, dealing with men more directly, and the competition was not so great.

But now when competition for labor is so great and when the laboring man deals not with individual men always but with that inanimate body the corporation, the doctrine of laissez-faire does not work justice—indeed it works a decided injustice, and any such proposition has no legitimate place among the principles of American liberty.

CONCLUSION

Over and above the fact that the majority of people believe that the fewer laws the better, there is a more or less distinct conviction throughout the country that legislation is the cure for all social evils, and one phase of this idea, that inasmuch as legislation has to a great extent made some of these evils possible through granting monopolous franchises and patents to great manufacturing interests and by protecting these infant industries with high tariffs—that new legislation should be the remedy for these unfortunate
social conditions that have been their natural outgrowth.

One of the most striking examples is the demand for restrictive immigration and contract labor laws. The American workman cannot compete with the pauper labor of Europe and live in the comfort he now does—and the public has appreciated the truth of this, and legislation has followed such as would have excited the whole commonwealth to opposition a century ago—and been considered as unnecessary and un-American.

But the policy of the country has changed to a still greater extent and in some cases demanded legislation which is by no means so apparently just or needed—legislation, as I have said, to remedy social evils, a great portion of which is really necessary for the welfare of the nation; and some or perhaps all having this as an end—may not accomplish the purpose of its projectors, or be of such a nature as to be unconstitutional. In later chapters the constitutionality of the most recent of these laws will be discussed at some length.

However, the changes which have occurred in public policy this legislation seems to turn especially upon one proposition, viz. The relation of the fundamental rights of the individual and the police power of the State. The cause for
the change being that competition no longer works justice; and the result has been, that while the fundamental rights of life, liberty and property are not to be assailed without "due process of law", the general trend of public opinion now is to restrain the use of property by the abridgment of the right of contract in the same manner and for the same purpose that other personal rights have been defined. The same motive that actuated the restriction of personal liberty is now the force that upholds the restriction of the use of property, which is, viz. to prevent the exercise of the right of ownership by the few in such a manner as to interfere with the rights of society as a whole. So that now the "public policy" is that all business interests which are "affected with a public interest" are amenable to legislation.

As to what business employments are "affected with a public" interest" remains to be determined hereafter.
A GENERAL VIEW OF THIS LEGISLATION.

Not-withstanding the fact that there has long been some restriction upon individual freedom of contract and the right of the legislature to pass laws of that nature under the police power has been well established, yet the Constitution is invariably invoked whenever a new law is passed, and the right to absolute freedom of contract is again declared to be guaranteed every individual in the Constitutional provisions that "no man shall be deprived of life, liberty or property without due process of law" and reiterated in the Fourteenth Amendment of the U.S. Constitution which further provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

The effectiveness of the constitutional guarantees to individual rights against the police power of the State was first brought into general discussion by the decisions of the Supreme Court of Illinois and the U.S. Sup.Ct. in 1876 in what are commonly called the Granger Cases. In these cases it was decided that it was lawful for the State, in the
exercise of its police power, to regulate the conduct and fix the maximum charge of compensation in such classes of business as were "affected with the public interest" and that the business of storing grain in bulk in warehouses, as well as that of common carriers was so affected with public interest. It has since been established, that to the same extent the legislature can control the right to contract in reference to property "clothed with a public interest when used in a manner to make it of public consequence and affect the community at large." It is argued that by devoting his property to a use in which the public has an interest, the owner, in effect, grants to the public an interest in that use and subjects himself to the control of the legislature for the common good, to the extent of the interest he has thus created. On this principle the legislature regulates the business of millers, bakers, hackmen, ferries, wharfingers, innkeepers and the like.

Wherefore, many of our best legislators and judges are led to believe that manufacturing and mining concerns, corporate or individual, which furnish necessaries of life as food, clothing, shelter or fuel to hundreds or thousands of the public; or which employ a large number of the public, as working-men--and are protected and defended by the public at the public expense, and particularly those which receive the
benefits of the fostering care of the public under a system of protection—these also, it is argued, are affected with a public interest and therefore subject to public control, under the police power of the States. And the most recent legislation of this general nature is based upon this understanding of the scope of the police power; and have as their especial purpose the establishment of amicable and just relations between the employer and the employee. And there is a very gradual tendency to distinguish between the employees labor and the other commodities; and to base labor laws on somewhat the same grounds as the usury laws are. "I"

'These proceed, says Mr. Justice Schofield in Frorer v. Peo. (141 Ill. 171) upon the theory that the lender and borrower of money do not occupy towards each other the same relations of equality that parties do in contracting with each other in regard to the loan or sale of other kinds of property, and that the borrowers necessities deprive him of freedom in contracting, and place him at the mercy of the lender".

The position of the laborer is analogous to that of the borrower, as I have shown in a previous chapter and my contention is that the laborer should have the same protection.

"I" Munn v. Ill. 94 U.S. 113; Peik v. Chi. & N.W. Ry. 94 U.S. 164; Budd v. N.Y. 143 U.S. 517; Peo. v. Budd 117 N.Y. 1; Munn v. Peo. 6911. 80; Mobile v. Yuille 3 Ala. 137

"2" Judge Holmes in Comm. v. Perry—155 Mass. 117
ANTI-TRUCK LAWS

The Truck System for the payment of wages otherwise than in lawful money or otherwise than to the full amount earned by the employee has been one of the most productive sources of social disorder and oppression in the civilized world. It has enabled the unscrupulous employer to mulct his workmen of a part of their earnings in a manner that of ease and seeming honesty that has for many years escaped the characterization of fraud and the remedies applied to fraudulent dealing; and until recently such have been the past doctrines of political economy as applied to the constitutions of our States and nation that any legislation in prohibition of the system has been declared unconstitutional and void as extra-constitutional interference with the right of every individual to freedom of contract.

Whatever the prevailing judicial opinion as to its constitutionality may or may not be at the present—it is certain that the viciousness of this system has been recognized.

In England, as far back as 1837, when the "Truck Act of 1832," 36 & 37, Wm. IV, ch. 37, was passed consolidating all previous acts on

Statutes of Edw. IV, c. I; 8 Eliz. c.7; 14 Eliz. c.12; I Anne ch. I87; 9 Anne c.20; 20 Anne c.16; I Geo. I c.23; 12 Geo. I c.54; 13 Geo. I c.23; 15 Geo. II, c.8; 22 Geo. II, c.29; 29 Geo. II, c.33; 30 Geo. II, c.12; 17 Geo. III, c.56; 19 Geo. III, c.49; 57 Geo. III cc. 115-122; 58 Geo. IV, c.51.
the subject, the desirability of altogether doing away with the system was appreciated. This act prohibited the manufacturers of corn and certain other things, and miners of coal, salt etc. from paying the wages of their laborers in anything other than the lawful money of the realm. And the application of this act has been extended by 50 & 51 Vict. ch. 46 and various other acts.

But the first instance in which a legislature in the United States presumed to make any such advance in the restriction of contract-making is found in the Act of 1881 c. 273 of the Maryland laws. This act provided "that every corporation engaged in mining or manufacturing, or operating a railroad in Allegany County, and employing ten hands or more, shall pay its employes the full amount of their wages in legal tender money of the United States; and that any contract by or on behalf of any such corporation for the payment of the whole or of any part of such wages in any manner than herein provided, shall be and is hereby declared illegal and void".

In the case of Shaffer v. Union Mining Co. (55 Md. 74) which occurred soon afterwards, the constitutionality of this law was made the question at issue: and after considerate attention, the Court declared it not to be contrary either to the principles of the State or U.S. Constitution. The ground
upon which it was held valid was that the power to require a corporation to pay its employes in a certain manner was necessarily incident to the power which the legislature possessed to "amend or alter the corporate charter of the defendant." But this decision, so dependent upon a special reason, does not add much to the jurisprudence of this subject—nor must its authority extend beyond cases of the same material facts.

And it has been considered authority for precisely such cases, not only those arising under the same statute but those arising under similar statutes. For since the passage of the Maryland Act not less than thirteen other states have passed enactments of this nature, and, where they have applied to corporations, the courts in their respective states have held them constitutional on the same grounds. 1

And some courts have considered them unconstitutional. 2


In the State of Indiana, where a law of this nature was passed requiring the owners of mines to pay for the mining of coal every weeks in lawful money of the U.S. and forbidding the execution of contracts by the employes waiving their right to payment in money, there was another reason was found for holding this kind of legislation constitutional in the case of Hancock v. Yaden. What was there held can best be told in the words of the judge himself. Judge Elliott, delivering the opinion of the court, said:

"It cannot be denied without repudiating all authority that the legislature does possess some power over the right to contract; and if it does, then there is nothing clearer than that this power extends far enough to uphold a statute providing that payment of wages shall be made in money, where there is no agreement to the contrary, after the services have been rendered." --- "We cannot conceive of a case in which the assertion of the legislative power to regulate contracts has a sounder foundation than it has in this instance. --- It is of the deepest and gravest importance to the government that it should unyieldingly maintain the right to protect the money which it makes the standard of value throughout the country. The surrender of this right might imperil the existence of the nation itself. "The provision of the statute to which our decision is directed, operates upon all members of the classes it
It neither confers special privileges nor makes unjust discriminations.

However in this case also do we find the real principle involved conspicuously absent and another "special reason" relied upon. The Justice seems to have been anxious to hold the law constitutional and having found another more sound and certain basis, has dodged the point in question. This has been the general tendency of those courts which favor the extension of these doctrines. Even in the best instance we have in support of this legislation, the court confined the basis of its decision to that which was most favorable.

The statute under consideration in this case—Peel Splint Co, vs. State—was an amendment of a previous act relating to the payment of laborers—the alteration being expressly intended to remove the objection which persuaded the court in State v. Goodwill (33 W. Va. 179) to declare it void as being special legislation: and the new provision covered all "persons, firms and corporations engaged in any kind of business". But it will be noticed that in this decision, the fact that the defendant was a corporation played an important part. The Court says "We base our decision, first, upon the ground that the defendant is a corporation in the enjoyment of unusual and extraordinary
privileges which enables it and similar associations to surround themselves with a vast retinue of laborers who need to be protected against all fraudulent or suspicious devices in the weighing of coal or in the payment of labor; secondly, the defendant is a licensee, pursuing an avocation which the state has taken under its general supervision for the purpose of securing the safety of employees by ventilation, inspection and governmental report, and the defendant therefore must submit to such regulations as the sovereign thinks conducive to public health, public morals or public security."

It is unfortunate that another matter of constitutionality should be included in this case for it detracts from the real merits of the point in question. But it will also be noticed that the basis of this decision is not the same as in the corporation cases, of which Shaffer vs. Union M. Co. (supra) is an example. The reason is no longer that the legislature had power to "alter or amend" the provisions of the corporate charter; but because the corporations and similar associations had unusual and extraordinary privileges. Judge Lucas says: We do not base this decision so much upon the ground that the business is affected by the public use; but upon the still higher ground that the public tranquility and the good and safety of society, demand, where the number of employees is such that
specific contracts with each laborer would be impossible, that in general contracts justice shall prevail as between operator and miner; and in the company's dealing with the multitude of laborers with which the State has, by special legislation, enabled the owners and operators to surround themselves, that all these opportunities for fraud shall be removed. The state is frequently called upon to suppress strikes; to discountenance labor conspiracies; to denounce boycotting as injurious to trade and commerce; and it cannot be possible that the same police power may not be invoked to protect the laborer from being made the victim of the compulsory power of that artificial combination of capital which special state legislation has originated and rendered possible. It is a fact worthy of consideration and one of much historical notoriety that the court may recognize it judicially, that every disturbance of the peace of any magnitude in this state since the Civil War, has been evolved from the disturbed relations between powerful corporations and their servants or employes. It cannot be possible that the state has no police power to the protection of society against the recurrence of such disturbances which threaten to shake civil order to its very foundations. Collisions between the capitalist and the workingmen endanger the safety of the state, stay the wheels
of commerce and at times throws an idle population upon the
bosom of the community. Surely the hands of the legislature
cannot be so restricted as to prohibit the passage of laws
directly intended to prevent and forestall such collisions”.

In reviewing the situation then we have the law partly
settled—definitely so in some cases and in others we have
decisions both ways. In the first place, there is no dispute
as to the strength of Hancock v. Yadon—that these anti-truck
or "store order" laws may be upheld on the basis of protect-
ing the currency of the United States.
Secondly, that the state may make these laws in amendments
or alterations of corporate charters where they have so
reserved that privilege.
Thirdly —as the Splint case decides —that corporations and
similar associations enjoying extraordinary privileges which
enables them to control a large number of laborers—or the
supply of food, clothing etc., for a large number of people are
affected with a public interest and thus subject to state
regulation.
Fourth , that while the laws declare individual persons in
the same business also liable to these regulations, their val-
idity is seriously questioned.
FINES LAWS.

Another ant the latest kind of legislation to prevent employers from defrauding their servants is embodied in what are called "Fines Acts". Within a few months during the year of 1891, the legislatures of three states considered it as constitutional as it was wise to pass these laws: Ohio being the first, closely followed by Illinois and Massachusetts.

The Mass. Act, known as the "Weavers Fines Act" was the first to be declared unconstitutional as it was so held by the Supreme C't of that state in the case of Commonwealth v. Perry (supra) very soon after its passage. The act in question is as follows " No employer shall impose a fine upon or withhold the wages or any part of the wages of an employee engaged at weaving for imperfections that may arise during the process of weaving".

The same general reasons for declaring all acts which interfere with the freedom of contract, are used in support of this decision: that it is unconstitutional in that it interferes with the inalienable right of "acquiring, possessing and protecting property" guaranteed by the state constitution, by restricting the necessarily incidental right to make reasonable contracts.

The court does say that if the act "went no further than to forbid the imposition of a fine by an employer for imperfect work it might be sustained as within the legislative power conferred by the constitution of this Commonwealth in chap. I sec.I art.4, which authorizes the general "to make ordain and establish all manner of wholesome orders, laws, statutes and ordinances - directions and instructions either with penalties or without, so as the same be, not repugnant or contrary to this constitution, as they shall judge to be for the good and welfare of this commonwealth, and for the government and ordering thereof, and of the subjects of the same. It might well be held that if the legislature should determine it to be for the best interests of the people, that a certain class of employes should not be permitted to subject themselves to an arbitrary imposition of a fine or penalty by their employer; it might pass a law to that effect."

But here the court makes a distinction. It foresees the possibility of imperfection arising from two different sources—from the negligence—and from the want of skill of the weaver. But it also sees that the fines may be imposed arbitrarily as well as for these imperfections; and it allows that the legislature might pass laws to prevent such impositions—if it could. But the court says "when an
attempt is made to compel payment under a contract for good work where only inferior work is done, a different question is presented—— If the statute is held to permit a manufacture to hire weavers and agree to pay them a certain price per yard for weaving cloth with proper skill and care, it renders the contract of no effect when it requires him, under a penalty to pay the contract price if the employee does his work negligently and fails to perform his contract. For it is an essential element of such a contract that full payment is to be made only when the contract is performed. If it be held to forbid the making of such contracts and to permit the hiring of weavers only upon terms that prompt payment shall be made of the price for good work, however badly their work may be done and that the remedy of the employer for their derelictions shall be only by suits against them for damages, it is interference with the right to make reasonable and proper contracts in conducting a legitimate business which the Constitution guarantees to every one when it declares that he has a natural, inalienable right of "acquiring, possessing property".

The length with which I have quoted from this decision is not because of any particular merit in the case but because it is the only case of direct judicial authority in which an opinion has been written. See note "I" on next page.
But however valuable Justice Knowlton's opinion may be of itself—the authorities in support of it are noticeably weak, for nearly all have been over-ruled; or the statutes which they declared invalid, so remedied as to be now considered perfectly constitutional.

It was also declared that this law impaired the obligation of contracts, but Judge Holmes conclusively points out in his dissenting opinion that this is a very weak position as it could in no way apply to contracts made after the act in question and he further declares that in his opinion this legislation did not interfere with the right of acquiring possessing and protecting property any more than the laws against usury or gaming, and these are indisputably within the police power. But he had still stronger reasons for dissenting. He foresaw the object of the legislature and the legitimacy as well as the justice of this act.

"I suppose, he says, that this act was passed because the operatives or some of them thought that they were often cheated out of a part of their wages under a false pretence that the work done by them was imperfect, and persuaded the

"I" A similar decision was made on the same day in case of Comm. v. Potomska Mills Corporation 155 Mass 122 , note.

For further discussion of principles involved see: Godcharles v. Wigeman 153 Pa. St. 431; State v. Goodwill 33 W. Va. 179
In re Jacobs 98 N. Y. 98; Peo. Marx 99 N. Y. 377; Peo. v. Gillson 109 N. Y. 389; Millett v. Peo. II7 Ill. 204.
legislature that their view was true. If their view was true, I cannot doubt that the legislature had a right to deprive the employers of an honest tool which they were using for a dishonest purpose, and I cannot pronounce the legislation void as based upon a false assumption since I know nothing about the matter one way or another."

This view taken by Judge Holmes seems to be the sounder and more liberal one. To the legislature is confided the generous power to make such laws as it shall deem fit for the general welfare, subject of course to constitutional limitations. Surely it may consider the fact that employers may possibly oppress their employees by arbitrarily withholding their wages on any pretext, and that such was a common occurrence. And an act in prevention of it would seem a wholesome and reasonable law for the good and welfare of the public.

The act does not pretend to deprive employers of their remedy for imperfect work by action. They still have this remedy, and the fact that it may be practically worthless is no ground for declaring this act unconstitutional. And furthermore the high purpose of the legislature which prevailed in the passage of this act is further vindicated by the spirit of fairness to the employer in the subsequent
act of 1892, repealing the act of '91 and providing " that no fines shall be imposed for imperfections in the work of the weavers unless the defects have been shown to the employee and the amount of penalty agreed upon by employer and employee". But this statute has not yet been tested so neither have those of Illinois or Ohio, so that this legislation as a whole does not rest upon a very sound basis; there being only three instances in all and in no case has there been a judicial opinion expressed declaring their validity.

Still, even though they are in the border-land, they have not been considered so inexcusably vicious or assuredly invalid but that they have survived for three years without being contested. In my opinion—so long as they are reasonably construed and have for their prime object the prevention of fraud, they are and ought to be considered as valid expressions of the police power.

"I" The Ohio and Ill. Acts are more general—applying to all industries. The Ill. statute, much like the last Mass. act, prohibits fines or deductions for any reason except for lawful checks or drafts advanced without discount and except such sums as may be agreed upon between employer and employee, which may be deducted for hospital or relief fund for sick or injured employees.
PAYMENT LAWS

It is a singular fact that so many statutes regulating the time when employers shall pay their employes should have been passed in the different states—at least fifteen—when as a class they are so near the border of unconstitutionality. "1" With the same possible opposition and with no pretension to the virtue of a preventive of fraud, these acts have been passed, and existed almost without any judicial authority: and the authority which they do have, as expressed in "2" the leading cases, is based only on the sound principle of corporate charter amendments with additional arguments on the grounds for their existence, which some consider as rightfully applicable not only to corporations but as to other associations having great advantages.

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In the case of State v. Brown & Sharpe & Co. (supra) the Sup. Ct. of Rhode Island also avoided the real authority which the legislature attempted to use—its police power—and decided the case wholly on the ground that the legislature exercised but its acknowledged power to amend corporate charters. And the same would probably have been held in the case of Braceville Coal Co. v. Peo. (supra) had not the statute been considered as special legislation in that it referred only to certain corporations while it did not affect other corporations created under the same general laws.

And in the latest case of Leep v. St. Louis I. M. & S. Ry. Co. (supra) the law was held constitutional as applying to corporations but not otherwise. The statute there in question required all corporations, companies and persons engaged in the business of operating or constructing railroads to pay their employes on the day of their discharge all unpaid wages due them at the contract price. But the court held that the legislature cannot make it unlawful for individuals to agree with each other that wages shall be paid at any time after the day on which the labor by which they are earned shall be completed, or that the price of property sold shall be paid on a given day after the sale, since such a contract, as to the time of performance, is necessarily harmless and of purely private concern. But as usual the judge here grapples with another fallacy and calls it
truth. He too considers labor a commodity and fails to distinguish it from property.

This legislation is to enable the laborer to have an immediate return for his work—because of his especial need—and to prevent the employer from withholding his wages, that he may enjoy their profit as long as possible. It cannot be considered pure fraud but dishonesty, and the legislatures, in that it is so disadvantageous to the wage-earner, consider it public policy that the laborer be protected. Neither need the wage-earner feel that he is being made infantile by this protection to his wages. Some deluded conservatives have so held. But the fact that this legislation is often sought for and obtained through the labor organizations, refutes this.

These statutes vary in relation to businesses included, the time for payment and the means of enforcement. But their general object is to relieve the laborer. Whether in fact this relief has a constitutional basis remains to be determined. But the legislation has been so general and so generally accepted that the probabilities are that it will be upheld. The fact that it simply precludes the employers from making illegal or at least dishonest profits causes him to object with less earnestness than he would if some mater-
and valuable right had been invaded, and to some extent accounts for the limited number of cases contesting this legislation.
Contracts of employment have been regulated in many states by statute not alone as to the time and method of payment but also in respect to the hours of labor. These statutes, however differential in the details, aim to determine the length of a regular day's labor; the reasons for which are two-fold: first, to protect the laborer from oppression of an employer who may compel his employees to work as many hours in a day as they desire—the same as the law protects him from the abuse and oppression in regard to time and method of payment. Or secondly, to protect the health of the public and the laborer.

By far the greater number of laws have their foundation in the latter reason and these apply mostly to employes of railroads and to women and children either because of the peculiar incapacibilities or the extra-ordinary positions of these persons.

In In re Fair, Justice Maynard says in respect to the right of the legislature to limit the days labor of railroad employes, that "In view of the great danger to and even the destruction of life and property which might result from the attempt of men, who have become enfeebled by prolonged and exhausting effort, to control engines and cars when in motion, it might be claimed that it was within the province of the legislature to enact such a law and make the violation of it a crime; that it was a reasonable exercise of the police power of the state; and was also a lawful assertion of its reserved right to regulate corporations of this character in their relations to the public." The validity of such laws is undoubtedly acknowledged so long as the public

as the public health is the object of protection.

It is still more obvious that those statutes applying to women and children are legitimate applications of the police power—to preserve the public health. The importance of having healthful women and children is fully appreciated; and it is because of the physical inferiority of these classes that especial protection is given.

In the case of Comm. v. Hamilton M'f'g. Co (120 Mass. 583) a statute prohibiting the employment of all persons under the age of eighteen, and of all women, in laboring in any manufacturing establishment more than sixty hours a week—violates no right reserved under the constitution to any individual citizen, and may be maintained as a health or police regulation. It does not forbid any person, firm, or corporation from employing as many laborers of this class, as such persons, firm or corporation should desire. But the legislature has deemed it to some extent dangerous to health that these persons should be compelled to labor more than eight or ten hours a day or sixty hours a week in all manufacturing establishments.

Nor indeed does it violate what is called "the sacred right of labor" belonging to each individual in these classes, and the exercise of it in accordance with their own judgment. These laws do not forbid them working as long as they please and in any particular business. It merely prohibits them being employed in the same service more than a certain number of hours per day or week and this is certainly a valid provision for the public health.

"The general rule undoubtedly is that any person is at liberty to pursue any lawful calling and to do so in his own way, not encroaching upon the rights of others." But here as elsewhere it is proper to recognize distinctions that rest in the nature of things. Some employments may advisable for males and improper for females, and regulations exercising the impropriety and forbidding women engaging in them would be open to no reasonable objection. The same is true of young children whose employment in mines and manufactories is commonly and ought to be regulated.

(49)

(continued) N.J. Act of 1892 c.92 ; N.Y. Act of 1893 c.691 ; Act of 1894 c.622 ; S.C. Act of 1892 p.94 ; Act of 1893 c.39 ; Wyoming Act of 1891 c.53 ; U.S. 27 St. 340 ; Utah Act of 1894 ch. 11


"2" From Ex Parte Kuback 85 Cal. 274
The N.Y. Pen. Code declares that any person who exhibits a female child under fourteen years of age or who, having care of such a child as parent, consents to her employment or exhibition as a dancer or in a theatrical exhibition, or in any exhibition dangerous or injurious to the life, limb, health or morals of the child, is guilty of a misdemeanor. And the case of Peo v. Peer (141 N.Y. 120) declares this law constitutional - saying, that while it is the enalienable right of the child, even of mature age, to pursue a trade, it must not only be one that is lawful but that which the state or sovereign as "parents patriae" recognizes as proper and safe. If the state can thus forbid women and children from engaging in certain occupations at all, it would seem almost certain that it can limit the hours of service in other employments when it is deemed necessary for the public health.

But when the legislature makes these regulations on any other basis the same doubt as to its validity attaches as in the case of anti-truck or fines laws. In Ex Parte v. Kuback (supra) the court held that an ordinance of the city of Los Angeles making it a misdemeanor for any contractor to employ any person to work more than eight hours a day or to employ Chinese labor, where the work is to be performed under any contract with the city, is an attempt to prevent persons from employing others in a
llawful business and paying them for their services, and is a direct infringement of the right of such persons to make and enforce their contracts and is unconstitutional and void so far as it attempts to create a criminal offense. Such ordinance is not a valid exercise of the police power, it not appearing that the services to be performed were unlawful or against public policy or that the employment was such as might be unfit for certain persons, such as females or infants, or forbidden on that ground. But this case does not preclude the possibility of these regulations. It allows that public policy may uphold some—especially in regard to employments unfit for women and children. The fact is, that there are numerous employments which are as imminently dangerous to male laborers as those in which the labor of women and children is regulated. For what reason therefore should not laws regulating such employments be considered as valid, sanitary and police regulations? And when the labor of many or all employments become so exhaustive and injurious to public health if prolonged—may not the legislature here deem it necessary to the public health that hours of a day or week's labor be defined.

In the case of Low v. Rees Printing Co., Neb. (59 N.W. 362) the act complained of provided, in effect, that for all classes of mechanics, servants and laborers excepting those engaged
engaged in farm or domestic service, a day's work should not exceed eight hours, and that for working any employee over the prescribed time the employer should pay extra compensation in increasing geometrical progression for the excess over eight hours. And the court held these provisions unconstitutional, "first because the discrimination against farm and domestic laborers is special legislation; second because by the act in question the constitutional right to contract with reference to compensation for services is denied".

By all means this is the strongest case against this legislation— and probably the best authority as public opinion now is. It claims to be supported by the whole history of these regulations and the weight of authority certainly seems to hold with it—that except as the laws are conclusively for the public health as those applying to women and children, they are absolutely unconstitutional and void—as interfering with the right to freedom of contract.

In the latest case, In re Eight Hour Law, Col. 1905- (40 Pac. Rep. 328) the court—there, on application declare in regard to an amendment to a bill before the legislature which should apply only to "laborers employed and working in mines, smelters and factories"—that this was class legis-
lation and therefore unconstitutional. However it did not pass upon the bill as it originally stood—providing that "eight hours should constitute a day's work for all classes of mechanics, workingmen and laborers employed in any occupation ".

Within the last year the Sup.Ct. of N.Y. in Peo. v. Warren "I" ( 77 Hun 120 ) declared that the statute fixing a day's work for any laborer under contract with the City of Buffalo at eight hours, was not unconstitutional, void or in violation of the provisions of section I of Art. 14 of the U.S. Cons., or of the provisions of Sec. 1 or art 1 of N.Y. Cons. ; and this case has not been reversed by the appellate court.

Such is the situation of general laws regulating the hours of labor.

As to the legality of those applying to women and children—and railroad employees controlling moving trains—there is no question. The weight of authority declares them to be Constitutional; and it is possible that the doctrines here applied may extend to the more general laws—with more certainty than at present.

"I" U.V.Laws of 1891, c.105, sec. 504.

"2" Same was held of the same statue in Peo. v. Beck 29 N.Y.S. p.47%. 

LAWS FORBIDDING EMPLOYERS TO REQUIRE THAT
THEIR EMPLOYEES SHALL NOT BELONG TO LABOR UNIONS.

The unfriendly rivalry of capitalist and labor union has
brought many of the former to a position where they will not
employ members of labor unions. Further they have tried to
compel any such who happen to be in their employ, to with-
draw from the union and to compel others to agree not to
join it. The employer certainly has a right to employ
only those whom he wishes; but has he the right to coerce
his men, by contracts forced upon them, to refrain from join-
ing any society whatever?.

Many legislatures have passed laws forbidding such con-
tracts."

"2"

Massachusetts has the following act. "Any person or
corporation, or agent or officer on behalf of such person or
corporation, who shall hereafter coerce or compel any person
or persons to enter into an agreement, either written or
verbal, not to join or become a member of any labor orga-

ization, as a condition of such person or persons securing

"1" Cal. Act of 1893 c.149 ; Ga. Act of 1892 p.183 ; Id. Act
of 1893 p.152 ; Ind. Act of 1893 c.76 ; Ill. 1893 p.98 ;
N.J. Act of 1894 c.212 ; Ohio Act of 1892 c.226 .

employment or continuing in the employment of any such
person or corporation, shall be punished by a fine of not
more than one hundred dollars."

Without question this is a limitation on freedom of
contract. Its legitimacy is uncertain, as there has been no
sound authority given by the courts.

In Davis v. State (30 Weekly Law Bulletin 542) the co
court of Common Pleas of Hamilton Co., Ohio, a law of this
nature was declared constitutional; and there may be other
cases in the lower courts not reported.

Certainly the laborer has a right to belong to any
organization he may choose just as the employer has the same
right—and each does so at his risk. But the point is—
the State has deemed it contrary to the welfare of the
public, that the employer should take advantage of his great
power over his laborers and subject them to any agreement
his whims or his interests should cause him to lay before
them. In—as—much as the legislature has found this op-
pression and sought to remedy it along reasonable lines,
hitherto in other cases considered valid, the courts should
up-hold it.
CONCLUSION

It is urged by Mr. Tiedman in his "Police Power" that "laws which are designed to regulate the terms of hiring in strictly private employments are unconstitutional, because they operate as an interference with one's natural liberty, in a case in which there is no trespass upon private right and no threatening injury to the public." But with such labor disturbances as we have witnessed in the last few years - toquel which a large armies were necessary and which resulted in much bloodshed - it can be said now with any degree of truth that there is no threatening injury to the public?

Continuing Mr. Tiedman, says: "As soon as the law places one, for any just reason, under a disability, or gives to another a privilege - not enjoyed in common by all - protection from oppression becomes a duty of the State, so far as the disability or its cause, or the grant of privileges produces or renders oppression possible." Here corporations are especially referred to, but, the frauds which corporations may perpetrate are quite as likely to be perpetrated by unincorporated associations and individuals as well, and from these the laborer should be protected as well.

As a rule, workmen and employers should make their own engage
engagements and in particularly should fully agree as to wages. Never-the-less there is a dictate of nature more imperious—that remuneration should be enough to support, in reasonable comfort, the laborer and his family, for he is entitled to such a family. The frauds made against him by the employer deprives him of that remuneration and it is the duty of the State to protect him.

The absurdity of the "laisser faire" is made wonderfully clear in the recent case of Godcharles v. Wigsman [I] (113 Pa. St. 431) Mr. Justice Gordon says this act is an infringement alike of the right of the employer and the employee; more than this, it is an insulting attempt to put the laborer under a legislative tutelage, which is not only degrading to his man-hood but subversive of his rights as a citizen of the United States. He may sell his labor for what he thinks best, whether money or goods, just as the employer may sell his iron or coal, and any and every law that proposes to prevent him from so doing is an infringement of his constitutional guarantee privileges and consequently vicious and void.

But there are those who agree that this is not true and have, on the grounds of public policy, protected the oppressed laboring man.

"I" Act to prevent fraud in the weighing of coal at mines.
Mr. Justice Burroughs in Richardson v. Mellish (2 Bing. 228) protests against arguing too strongly upon public policy. Very "It is an unruly horse and when you once get astride it you will never know where it will carry you. It may lead you from the sound law".

But this country is not, in my opinion, travelling the road to despotism—where freedom of contract is worthless, and liberty is not. The fact is that people are just beginning to distinguish between property rights and personal rights correctly; and to appreciate that one may be abridged as well as the other.

Hitherto the judges of this country have been too careful of the property rights and in so doing, have sacrificed personal rights. If they continue to over-ride the personal rights of our laborers, by declaring these laws unconstitutional, I can see only one conclusion. There will follow a series of constitutional amendments that will make these remedies possible; and capital and labor will the more estranged. However, if I discern the future policy of our legislatures and courts with any degree of correctness—there will be no occasion for a such a revolution in the law—for the whole sale oppression of the laborer will prohibited.
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