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Note and Comment

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NOTE AND COMMENT

THE RIGHT OF A TRADE UNION TO ENFORCE A BOYCOTT.—The recent vigorous action of the Supreme Court of the District of Columbia, in passing sentences of imprisonment upon Samuel Gompers, John Mitchell and Frank Morrison, officers of the American Federation of Labor, for contempt in the violation of an injunction, is the most significant and, by all odds, the most interesting development in that comparatively modern phase of jurisprudence which centers in the relation between organized labor and its employers.

The Buck's Stove and Range Company, in the city of St. Louis, employs union and non-union men. Thirty-five union men in one branch of the company's service got into a dispute with their employer over matters pertaining to hours of work. The difficulty was not satisfactorily adjusted and a strike ensued. The American Federation of Labor endorsed the action of the men, ordered a boycott of the products of the company and placed its name upon the Federation's "We don't patronize" list. The company applied to the Supreme Court of the District of Columbia for an injunction to restrain such boycott. On December 18, 1907, the court granted an injunction pendente lite, restraining the defendants as prayed in the bill. The order was later made permanent. For its violation the defendants were punished as

above stated. *The Buck's Stove and Range Co.* v. *The American Federation of Labor et al.* (1908), 36 Wash. Law Rep. 822. See also 35 Wash. Law Rep. 797.

The courts differ widely in their application of the principles which govern the right of a labor union to divert trade from an employer deemed unfriendly to labor, and the different conclusions reached are arrived at by processes of reasoning so utterly at variance, as to make anything like an accurate and intelligent resume of the decisions a matter of extreme difficulty.

There is little disagreement, however, in the meaning of the term "boycott," which, as applied to trade unions, is generally defined to be an attempt, by arousing a fear of loss, to coerce others, against their will, to withhold from one denominated unfriendly to labor their beneficial business intercourse. *Toledo, A. A. & N. M. R. Co.* v. *Penn. Co.*, 54 Fed. 730, 19 L. R. A. 387; *Barr* v. *Essex Trades Council*, 53 N. J. Eq. 101, 30 Atl. 881; *My Maryland Lodge* v. *Adt*, 100 Md. 238; *Rocky Mountain Bell Telephone Co.* v. *Montana Federation of Labor*, 156 Fed. 809; *Beck* v. *Railway Teamsters' Protective Union*, 118 Mich. 497, 74 Am. St. Rep. 421, 77 N. W. 13.

One distinct group of decisions, based upon the old common law doctrine that it may be unlawful for men to do collectively what they may do without wrong individually, holds that trade unions by attempting to divert trade from an individual are guilty of a conspiracy. *Oxley Stove Co.* v. *Coopers' International Union*, 72 Fed. 695; *Rocky Mountain Bell Tel. Co.* v. *Mont. Fed. of Labor*, supra; *Casey* v. *Cincinnati Typographical Union No. 3*, 45 Fed. 135, 12 L. R. A. 193; *Barr* v. *Essex Trades Council*, supra; *Temperton* v. *Russell*, 1 Q. B. 715; *Chicago Typ. Union No. 16* v. *Barnes*, 232 Ill. 424, 14 L. R. A. (N. S.) 1018; *Loewe* v. *Cal. State Fed. of Labor*, 139 Fed. 71.

That the lawful or unlawfol character of the object to be accomplished is the proper criterion, forms the basis of another line of authorities. *Macauley Bros.* v. *Tierney*, 19 R. I. 255, 61 Am. St. Rep. 770; *People* v. *Radt*, 71 N. Y. Supp. 846; *National Protective Assn.* v. *Cumming*, 170 N. Y. 315, 88 Am. St. Rep. 648; *Foster* v. *Retail Clerks' International Pro. Assn.*, 39 Misc. 48, 78 N. Y. Supp. 860; *Lindsay* v. *Montana Fed. of Labor* (Mont.), 96 Pac. 127; *Longshore Printing Co.* v. *Howell*, 26 Ore. 527, 46 Am. St. Rep. 640; *Quinn* v. *Leathem* [1901], A. C. 495.

The means employed to enforce the boycott have been carefully scanned by many courts in considering what amounts to an unlawful conspiracy. *Brace Bros.* v. *Evans*, 5 Pa. Co. Ct. 163; *Jensen* v. *Cooks' and Waiters' Union*, 39 Wash. 531, 4 L. R. A. (N. S.) 302; *Jordahl* v. *Hayda*, 1 Cal. App. 696, 82 Pac. 1079; *Goldberg, B. & Co.* v. *Stablemen's Union*, 149 Cal. 429, 8 L. R. A. (N. S.) 460; *State* v. *Gannon*, 75 Conn. 206, 52 Atl. 727; *Gray* v. *Building Trades' Council*, 91 Minn. 171, 103 Am. St. Rep. 477.

But a classification of the decisions on these grounds, while alleviating the situation, by no means dissipates entirely the confusion into which the courts have plunged the question, since the ultimate issue in each case must necessarily be whether a given set of facts or acts constitute an unlawful object, or formulate an illegal means, whatever test be adopted as the proper criterion.

A careful examination of the cases, however, leads to the opinion that a boycott, as defined herein, is, by weight of authority, unlawful, and that the defendants in the principal case were guilty of illegal acts within that definition. *Old Dominion Steam-Ship Co.* v. *McKenna*, 30 Fed. 48; *State* v. *Glidden*, 55 Conn. 46; *Alfred W. Boos* v. *Burgess* (N. J.), 65 Atl. 226; *W. P. Davis Mach. Co.* v. *Robinson*, 41 Misc. 329; *Wilson* v. *Hey*, 232 Ill. 389, 122 Am. St. Rep. 119; *Beckman* v. *Marsters*, 195 Mass. 205, 122 Am. St. Rep. 232; *Raymond* v. *Yarrington*, 96 Tex. 443, 97 Am. St. Rep. 914, note 923; *Banks* v. *Eastern R. Co.* (Wash.), 90 Pac. 1048; *State* v. *Stewart*, 59 Vt. 274; *Crump* v. *Commonwealth*, 84 Va. 927; *Doremus* v. *Hennesy*, 176 Ill. 608; *Thomas* v. *Cincinnati, N. O. & T. P. Ry. Co.*, 62 Fed. 803. In the case last cited Judge TAFT says: "Boycotts, though unaccompanied by force or violence, have been pronounced unlawful in every state in the United States, where the question has arisen, unless it be in Minnesota." A combination of two or more persons with intent to injure the rights of others, and under circumstances that give them when so combined a power to do an injury they would not possess as individuals acting singly, is in itself wrongful and illegal. Mr. Justice HARLAN, in *Arthur* v. *Oakes*, 11 C. C. A. 209, 63 Fed. 321, 322. There need not be violence. *American Steel Co.* v. *Wire Drawers' Unions*, 90 Fed. 608. A mere request to do or not to do a certain thing by a body of strikers, under circumstances calculated to intimidate, may be no less objectionable than the use of physical force. *In re Doolittle*, 23 Fed. 545. Upon the theory that one's interest in his business and its patronage is a property right, as sacred in the case of intangible property as tangible, injunction is the proper remedy. *Underhill* v. *Murphy*, 117 Ky. 640, and cases cited above.

An excellent discussion of the opposite side of the question is in the opinion of the Supreme Court of California in the very recent case of *J. F. Parkinson Co.* v. *Building Trades Council of Santa Clara County*, 98 Pac. 1027, citing *Allen* v. *Flood* [1898], A. C. 1; *Boyson* v. *Thorn*, 98 Cal. 578; *Quinn* v. *Leathem*, supra. The decisions in a number of jurisdictions are in accord with the attitude of the California court and opposed to the majority doctrine. *Marx & Haas Jeans Clothing Co.* v. *Watson*, 168 Mo. 133; *Mills* v. *U. S. Printing Co.*, 91 N. Y. Supp. 185; *Bohn Manufacturing Co.* v. *Hollis*, 54 Minn. 223; *Longshore Printing Co.* v. *Howell*, supra; *National Protective Assn.* v. *Cumming*, supra; *Mogul Steamship Co.* v. *McGregor*, L. R. (1892), App. Cas. 25; *Clemmitt* v. *Watson*, 14 Ind. App. 38, 42 N. E. 367; *Cote* v. *Murphy*, 159 Pa. 420, 39 Am. St. Rep. 686; *Payne* v. *Railroad*, 13 Lea (Tenn.) 507, 49 Am. Rep. 666; *State* v. *Van Pelt*, 136 N. C. 633, 68 L. R. A. 760; *Lindsay* v. *Montana Federation of Labor*, supra.

A late decision of the Supreme Court of the United States, *Loewe* v. *Lawlor*, 208 U. S. 274, 28 Sup. Ct. Rep. 301, holds that any concerted attempt by employees or labor unions to interfere with the trade of another which comes under the head of interstate commerce, is a violation of the Sherman anti-trust law, and therefore unlawful. Taking interstate commerce, as defined in *United States* v. *The American Tobacco Company*, 164 Fed. 700, to mean not only transportation, but also the purchase and sale of articles

to be transported from one state to another, the defendants in the principal case appear to have brought themselves within the above rule, a question which will doubtless be determined on the appeal which has been taken.

To sum up, it may be said with considerable assurance that the line of demarcation separates those courts which see the paramount issue to involve the right of a business organization to regulate its own affairs unhampered by the opinions or actions of labor unions, and those courts which regard as of greater importance the right of organized labor to effectuate its purposes by methods essential to its existence. E. A. M.

CRIMINAL RESPONSIBILITY OF HUSBAND FOR MALICIOUSLY SLANDERING HIS WIFE.—Again the Supreme Court of North Carolina has been called upon to decide as to the criminal liability of a husband for maliciously slandering his wife. This question has recently been passed upon in the interesting and well considered case of *State* v. *Fulton*, decided Nov. 25, 1908, and reported in 63 S. E., p. 145.

A statute of North Carolina provides, that if any person shall attempt in a wanton and malicious manner to destroy the reputation of an innocent woman by words written or spoken, which amount to a charge of incontinency, he shall be guilty of a misdemeanor. The defendant was indicted under the provisions of the statute for having defamed his wife. An order was made quashing the indictment for failure to state an offence, and on appeal was affirmed. By a divided court the case of *State* v. *Edens*, 95 N. C. 693, 59 Am. Rep. 294, was overruled, holding that a husband may be convicted of maliciously slandering his wife under this statute. BROWN and HOKE, JJ., dissenting, while WALKER, J., although concurring in the result, holds that the decision of *State* v. *Edens*, supra, is a protection to the defendant from indictment for such offence.

The statutes making the slander of women punishable by indictment are of comparatively recent development, and the decisions arising under such statutes are limited in number. Apparently the first case in this country to be decided under a statute of this nature wherein the liability of a husband is involved for the slander of his wife, is the case of *State* v. *Edens*, supra. In this case a husband was indicted for slandering his wife under the statute in the principal case. In interpreting the statute, the appellate court construed it so as to embrace those not sustaining marital relations, and held that a husband is not indictable for slandering his wife. The court observed in its decision that at common law slander was not the subject of a criminal prosecution, and is now a misdemeanor only in case of the imputation of a want of virtue in an innocent woman, and that the enactments with reference to married women concern the preservation and disposal of property as separate estate, and do not affect the personal relations other than those incidental to property and its use. The decision in the case of *Stayton* v. *State*, 46 Tex. Cr. R. 205, 78 S. W. 1071, 108 Am. St. Rep. 988, arose under a statute almost identical with the one in question, and the holding of the court was to the effect that the statute was all-embracing, and did not exclude

slander perpetrated by the husband against the wife. A somewhat similar case, although not directly in point, was decided in England in 1882, *Queen* v. *Lord Mayor,* 16 L. R. Q. B. Div. 772. The married woman's act enacted by the English parliament in 1882 (45, 46 Vict., c. 75, § 12), gives to a wife remedies by criminal proceedings for the protection of her separate property against all persons whomsoever, including her husband, subject to certain limitations as to the husband. Under this statute a husband was prosecuted for publishing a defamatory libel respecting his wife. It was urged by counsel for the wife that the husband be prosecuted, as her good name as a vocalist was her separate property within the meaning of the statute. The court, however, was of the opinion that the separate property as contemplated by the statute was not in jeopardy. The court in concluding said, "* * * Neither as the law stood prior to 1870, nor since, can a wife criminally prosecute a husband or give evidence against him upon a prosecution for a personal libel upon herself."

The decision of the court in the principal case is based principally upon the ground that such a slander is within the letter and spirit of the statute, while the dissenting opinion inclines to the doctrine of stare decisis. Another reason given in the dissenting opinion why the construction given this statute in the *Eden* case should be followed is that the wife is not permitted to testify against her husband on the trial of the indictment. In this opinion much stress is laid on the fact that the law, as announced by the court in the *Eden* case, has been acquiesced in by the legislature for a number of years, and that the legislature at its last session voted down a bill intended to change it. However true this may be, the court expressly decided, in *State* v. *Oliver* (1874), 70 N. C. 60, before this statute was enacted, that a husband had no right to chastise his wife without regard to the animus, weapon used or injury inflicted. No good reason appears to be given why this statute should not protect married women from the false and malicious charges of their husbands. Presumably the legislature knew of the law as announced in *State* v. *Oliver,* supra. It does not seem plausible to infer that the legislature, in view of this decision, would intend that the law should be that a husband will be criminally liable for a simple assault and battery upon his wife, and permit him with impunity to slander her. It would seem that if the legislature intended to permit a husband to utter such a slander without incurring a criminal liability, an exception would have been expressly stated in the statute. The court should enforce the statute as written unless there is some controlling reason to the contrary, notwithstanding the difficulty of enforcing the statute against the husband because the wife may not be a competent witness to prove her own chastity in such cases. It rests with the legislature to remedy this latter defect, if it exists.

WALKER, J., is of the opinion that the judicial interpretation of a statute becomes a part of the statute, and, if that interpretation is afterwards changed or modified, the defendant should be tried under the law as it had been declared to be at the time of the commission of the alleged offence,

simply because it was the law at the time. This ruling is extended farther perhaps than that in the case of *State* v. *Bell,* 136 N. C. 674, 49 S. C. 163, cited by the court, where the court refused to allow the defendant, who was accused of crime, to be prejudiced by the retroaction of an overruling decision. The true doctrine seems to be that where a statute has received a given construction by the courts of last resort, and contracts have been made and rights acquired under and in accordance with such construction, such contracts may not be invalidated nor vested rights acquired under them impaired by a change of construction made by a subsequent decision. 2 LEWIS' SUTHERLAND STATUTORY CONSTRUCTION, Ed. 2, § 485; *Hill* v. *Brown,* 144 N. C. 117; *Hill* v. *Railroad,* 143 N. C. 539; *City of Sedalia* v. *Gold,* 91 Mo. App. 32; *Railway* v. *Fowler,* 142 Mo. 670. In case of overruling a decision involving statutory construction, the overruling decision does not retroact so as to invalidate contract rights. *Falcomer* v. *Simmons,* 51 W. Va. 172; *Douglass* v. *County of Pike,* 101 U. S. 677. Just how far this doctrine will be carried in the future remains to be seen, but it is safe to say that where contract and property rights are involved the overruling decision will be entirely prospective in its nature. Whether or not this principle should be extended to a criminal statute we are not prepared to say, but with regard to statutes generally it is desirable not so much that the principle of the decision should be capable at all times of justification as that the law should be settled.

J. F. M.

THE BULK SALES LAWS.—The more the commerce of the country expands the greater is thought by many to be the need for the fostering protection of the government. That the ever increasing number of commercial creditors seem to require to be guarded against unscrupulous debtors is evidenced by the number of states which have, principally since 1900, passed the so-called "Bulk Sales Laws." These laws are of particular interest at this time because they have been declared to be constitutional by the United States Supreme Court in the case of *Lemieux* v. *Young,* 29 Sup. Court R. 174, decided in January, 1909.

The Bulk Sales Laws provide in substance that the sale of the entire stock of merchandise of a retail dealer, or any portion thereof, otherwise than in the ordinary course of trade or in the regular and usual prosecution of the seller's business, shall be presumed to be fraudulent and void (or shall be void) as against the creditors of the seller unless, within a certain number of days before such sale, said creditors shall be notified, or a notice thereof filed with a public official, etc. Thirty-five states and territories, including the District of Columbia, have passed such statutes. In many of these the constitutionality of the acts appears not to have been passed upon. In such case the citation of the statute alone will be given.

Following are the various acts:

California, March, 1903, CIV. CODE, § 3440, construed, but not as to constitutionality, in *Calkins* v. *Howard,* 83 Pac. 280.

Colorado, May, 1903, Chap. 110.

Connecticut, Chap. 161, Acts 1901, amended 1903. Held valid in *Walp* v. *Nooar,* 76 Conn. 515, where the court decided it was not unconstitutional either as applying to a particular class, retail dealers, or as depriving persons of property without due process of law. A law which is uniform is not rendered invalid because of the limited number of persons affected by it. It is to prevent fraud and does not interfere with the conduct of retail business in the usual manner. Held valid in *In re Paules,* 144 Fed. 472, where the court said the law was a reasonable exercise of the state's police power. Also held valid in *Young* v. *Lemieux,* 79 Conn. 434, which is the case affirmed by the United States Supreme Court referred to above. Mr. Justice WHITE approves unqualifiedly the holding of the Connecticut court that the subject was within the police power of the state, as the statute alone sought to regulate the manner of disposing of a stock in trade outside of the regular course of business, by methods which if uncontrolled were often resorted to for the consummation of fraud, to the injury of innocent creditors. The restrictions will not cause such serious inconvenience to those affected by them as to amount to any unconstitutional deprivation of property. A retail dealer who owes no debts may still lawfully sell his entire stock without giving the required notice, and one who is indebted may by paying his debts even after the sale is made avoid the operation of the act.

Delaware, March 24, 1903, Chap. 387.

District of Columbia, April 28, 1904.

Florida, May 27, 1907.

Georgia, August 17, 1903; in *Parkhorn* v. *Potts-Thompson Liquor Co.,* 127 Ga. 303, a sale not complying with the statute was held fraudulent, but owing to a defect in the pleadings the question of constitutionality was not decided. Construed also in *Lampson* v. *Grocery Co.,* 127 Ga. 454.

Idaho, February 12, 1903.

Illinois, May 13, 1905; held unconstitutional in *Off* v. *Morehead,* 85 N. E. 264, decided June 18, 1908, the most recent decision in the state courts. The court here held that the act singles out a particular class and imposes burdens upon this class from which all other classes are exempt, thus depriving this class of liberty and property, in that its members are not permitted to contract in respect to a particular kind of property subject to the same laws applicable to other classes of property. The privilege of contracting is both a liberty and a property right which a law cannot take away. A statute cannot arbitrarily select a class without reference to some common disability, or qualification marking them as objects for class legislation.

Indiana, Acts 1903, Chap. 153; held unconstitutional in *McKunster* v. *Sager,* 163 Ind. 671. This decision is sound, however, as the Indiana statute applied only to merchandise creditors and other creditors whose money the vendor had borrowed and actually used in the business. This was clearly class legislation, giving one class a superior lien.

Kentucky, June 5, 1904, Chap. 22.

Louisiana, July 9, 1896, No. 94; conviction for fraud affirmed in *State* v. *Artus,* 110 La. 441.

Maine, July 1, 1905.

Maryland, April 3, 1906, Chap. 579; construed, though not as to constitutionality, which was presumed in *Hart* v. *Roney,* 93 Md. 432.

Massachusetts, Statutes 1903, Chap. 415; held valid in *Squire* v. *Lellier,* 185 Mass. 18, upon substantially the same grounds as the Connecticut cases—a valid exercise of the police power to prevent fraud.

Michigan Public Acts 1905, No. 223; held valid in *Spurr* v. *Travis,* 145 Mich. 721, which, with other cases, is discussed in a note in 5 MICH. L. REV. 107. A case involving the statute is discussed in 6 MICH. L. REV. 177. See also *Hanna* v. *Brewing Co.,* 112 N. W. 713, and *Musselman Co.* v. *Kidd, Dater & Price Co.,* 151 Mich. 478.

Minnesota, Laws 1899, Chap. 291; held valid in *Thorpe* v. *Pennock Mercantile Co.,* 108 N. W. 940. The burden of proof was declared to be upon the party claiming the property to overcome the presumption of fraud.

Montana, March 7, 1907.

Nebraska, March 4, 1907.

Nevada, March 20, 1907.

New Jersey, June 11, 1907.

New York, Laws 1902, Chap. 528; held invalid in *Wright* v. *Hart,* 182 N. Y. 330, with two dissenting opinions, as a restraint of the rights of "liberty" and "property" as those terms have been judicially declared to have been used in the federal and state constitutions. The restraint is too much even "under that Shibboleth of legislatures and courts known as the police power." This case is discussed in 4 MICH. L. REV. 216. In the Laws of 1907, Chap. 722, is to be found a new act along the same lines, but in somewhat more moderate language. This appears not to have been construed.

North Carolina, March 5, 1907.

North Dakota, March 8, 1907.

Ohio, p. 96, H. B. 334, April 4, 1902; held invalid in *Miller* v. *Crawford,* 70 Ohio St. 207, as placing an unwarrantable restriction upon the right of the individual to acquire and possess property and because it contains a forbidden discrimination in favor of a limited class of creditors. The more exacting conditions of this statute compare well with the original New York statute of 1902.

Oklahoma, Chap. 30, Laws 1903; held valid in *Williams* v. *Fourth National Bank,* 15 Okl. 477, the court declaring that the law "operates only to the proper safeguard of public interests and not to the impairment of vested rights."

Oregon, Bellinger & C. Anno. Codes and St., Chap 7.

Pennsylvania, Laws of 1905, No. 44; held valid in *Wilson* v. *Edwards,* 32 Pa. Sup. Ct. 295.

South Carolina, February 5, 1906.

Tennessee, Acts 1901, Chap. 133; held valid in *Neas* v. *Borches,* 109 Tenn. 398, as a proper exercise of the police power and not arbitrary class legislation.

Utah, Laws 1901, Chap. 67; held invalid in *Block* v. *Schwartz*, 27 Utah 387, as a violation of the statute was made a crime. A new act went into effect May 8, 1905.

Vermont, November 9, 1906.

Virginia, January 2, 1904.

Washington, Laws 1901, Chap. 109; held valid in *McDaniels* v. *Connelly*, 30 Wash. 549, in a clear statement of the law.

Wisconsin, Laws 1901, Chap. 463; assumed to be valid in *Fisher* v. *Herrman*, 118 Wis. 424.

Eighteen of the thirty-five statutes thus appear to have been before the state courts of last resort. Of the five states holding them unconstitutional, New York and Utah have reënacted similar laws, so modified as to meet the decisions. Ohio with its penalty clause and Indiana with its class distinction are distinguishable. Illinois stands alone without regard to the decisions of other states, the court declaring "We do not regard the question as one to be determined upon the weight of authority outside of this state." *Off* v. *Morehead*, 85 N. E. 264. In five of the states the constitutionality of the laws has not been passed upon or they have been assumed to be valid. Eight state courts have directly held the statutes to be constitutional, and to the weight of these authoriies has now been added the decision of the United States Supreme Court in the case of *Lemieux* v. *Young*. J. H. P.

THE POLICE POWER AND LIBERTY OF CONTRACT.—The case of *John McLean* v. *State of Arkansas* (1909), 29 Sup. Ct. 206, involves the question of the right of the state in the exercise of its police power to provide in what manner miners employed at quantity rates in the mines shall be paid. The Arkansas statute provided that they be paid upon the basis of screened coal, instead of the weight of the coal as originally produced in the mine. The statute was upheld by the Supreme Court of the United States, with Mr. Justice BREWER and Mr. Justice PECKHAM dissenting.

The court in sustaining this legislation as a valid exercise of the police power seems to have extended that doctrine to a much greater length than it has in some of its later decisions, for example that of *Lochner* v. *N. Y.*, 198 U. S. 45.

While the term police power has never been clearly circumscribed, it means at the same time a power and function of government, a system of rules, and an administrative organization and force. The power is inherent in the government, and aims to secure and promote the public health and welfare. FREUND, POLICE POWER, Arts. 2 and 3; *Crowley* v. *Christensen*, 137 U. S. 86; *Holden* v. *Hardy*, 169 U. S. 366; *Adams* v. *Cronin*, 29 Col. 488.

Personal liberty is secured by the Constitution of the United States to every person within its jurisdiction, and by the fourteenth amendment no state can deprive any person of life, liberty or property without due process of law. The right of property preserved by the Constitution is the right not only to possess and enjoy it, but also to acquire it in any lawful mode, or by following any lawful industrial pursuit which the citizens in the exercise

of liberty guaranteed may adopt. The property which every man has from his own labor is the original foundation of all other property, and so it is the most sacred and inviolable. Personal liberty and the right of property embrace the right to make contracts for the sale of one's own labor, and the worker may sell that labor upon such terms as he deems best. *Lochner* v. *New York,* 198 U. S. 45; *Adair* v. *United States,* 208 U. S. 161; *Allgryer* v. *Louisiana,* 165 U. S. 578; *Godcharles* v. *Wigeman,* 113 Pa. St. 431; *Frorer* v. *People,* 141 Ill. 171. This liberty of contract relating to labor includes both parties to it, and the one has as much right to purchase as the other has to sell.

The liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and under all circumstances, wholly free from restraint. For the common good there are manifold restraints to which every person is necessarily subject. It is liberty regulated by law. The possession and enjoyment of all rights, both of property and of liberty, are subject to such reasonable conditions as may be deemed, by the governing authority of the country, essential to the safety, health, peace, good order and morals of the community. Liberty of contract, then, is not universal, but is subject to the restrictions passed by the legislative branch of the government in the exercise of its police powers. *Jacobson* v. *Massachusetts,* 197 U. S. 11; *Soon Hing* v. *Crowley,* 113 U. S. 703; *Muller* v. *Oregon,* 208 U. S. 412; *Comm.* v. *Hamilton Mfg. Co.,* 120 Mass. 383; *State* v. *Buchanan,* 29 Wash. 602; *Wenham* v. *State,* 65 Neb. 394.

Legislative enactments must stand, provided always they do not contravene the Constitution. Generally, it is for the legislature to determine what laws and regulations are needed to protect the public health, and to secure the public comfort and safety; and the exercise of its discretion is not subject to review by the courts. Courts cannot inquire into the motives of the legislators in enacting the laws, even though they may differ with the legislature in its views, and in no event is there ground for judicial interference unless the act is unmistakably in excess of legislative power. *Mulger* v. *Kansas,* 123 U. S. 623; *Gundling* v. *Chicago,* 177 U. S. 183; *Atkin* v. *Kansas,* 191 U. S. 207. Statutes of the nature under review are not saved from condemnation by the claim that they are passed in the exercise of the police power, unless there be some fair ground, reasonable in and of itself, to assert that there is a material danger to the public welfare. Under the guise of prescribing police regulations the state cannot be permitted to encroach upon any of the just rights of the citizens which the Constitution intended to secure against abridgment. *Slaughter House Cases,* 16 Wall. 36; *In re Jacobs,* 98 N. Y. 98; *Ex parte Dickey,* 144 Cal. 234; TIEDEMAN, POLICE POWER, Art. 191.

There is no dispute about the fundamental propositions of law. The difficulties and differences of opinion arise in their application to the facts of a given case. In *People* v. *Havner,* 149 N. Y. 195, VANN. J., said: "The vital question therefore is whether the real purpose of the statute under

consideration has a real connection with the public health, welfare or safety." In *Holden* v. *Hardy*, 169 U. S. 366, Mr. Justice PECKHAM said the real question was: "Is this a fair, reasonable and appropriate exercise of the police power of the state, or is it an unreasonable, unnecessary and arbitrary interference with the right of the individual to his personal liberty, or to enter into those contracts in relation to labor, which may seem to him appropriate or necessary, for the support of himself and his family."

In the present case how will the community be affected whether the coal of the company is weighed before or after it is screened, and how will the public in general be affected by it? In all other kinds of business involving the employment of labor the employer and employee are left free to fix by contract the amount of wages to be paid, and the mode in which they shall be ascertained and computed. What is there in the condition or situation of the laborer in the mine to disqualify him from contracting in regard to the price of his labor, or in regard to the mode of ascertaining the price? And why should the owner of the mine not be allowed to contract in respect to matters as to which all other property owners may contract? The labor of the employee is his own property, and he has a perfect right to fix a price upon it, let it be high or low, and the public has no right to say, "Why did you do so?"

The conditions which may have led to the legislation were the subject of an investigation by an industrial commission, authorized by act of congress, and it appeared from testimony there given that there was a divided opinion as to the better method of weighing the coal. In two states similar statutes have been declared unconstitutional. *Ramsey* v. *People*, 142 Ill. 380; *In re House Bill*, No. 203, 21 Col. 27, while the Supreme Court of West Virginia, in *State* v. *Peel Splint Coal*, 36 W. Va. 802, was divided upon the question.

Where the line should be drawn in the exercise of the power is a debatable question, with many apparently conflicting decisions, even by the same courts; and the exercise of this power should not be permitted to encroach upon the rights of one class of citizens: a thing which, to some minds, will seem to have been permitted in this case. J. F. K.

THE OBLIGATIONS RESULTING FROM AN INDORSEMENT, IN BLANK, BEFORE DELIVERY, OF A NEGOTIABLE INSTRUMENT.—The way in which the enactment of the Negotiable Instruments Law has unified the rules of business in this country is well illustrated by several cases recently decided. The questions involved in each of these cases was the liability of one who signs in blank upon the reverse side of a promissory note before it has been delivered. *Rockfield* v. *The First National Bank*, 77 Oh. St. 311, decided Dec. 17, 1907; *Roessle* v. *Lancaster*, 114 N. Y. Supp. 387, decided Jan. 8, 1909.

These cases, following the strict words of the statutes, have held such a signature to render its maker liable as an indorser in due course. Before the passage of the Negotiable Instruments Law there existed a great conflict in the cases, and this became so marked that difficulty in com-

mercial transactions was caused. The courts of the states were divided in holding that such a signature created the relationship of surety, of guarantor, of maker and of indorser, while some cases have held that no presumption of liability could be indulged, but that the obligation existing must be determined from the intention of the parties to the instrument as shown by the facts. The liability is now fixed as that of an indorser in due course.

Typical of those states regarding such a signature as creating a contract of suretyship was Ohio. The rule remained settled in that state until the recent case of *Rockfield* v. *Bank*, supra. The defendant Rockfield in an action upon a promissory note maintained that he was not liable upon the instrument because he had not been notified of its non-payment at maturity by the maker. In the trial court judgment was rendered for the plaintiff, and this on appeal was affirmed by the circuit court. In a unanimous opinion the supreme court reversed the lower courts and declared that the defendant was liable as an indorser by virtue of the Negotiable Instruments Law. The court in terms overruled its last utterance upon the subject, under the rule of which case the defendant would have been regarded as a surety. *Ewan* v. *Brooks-Waterfield Company*, 55 Oh. St. 596. The liability as surety has been recognized by other courts. *Houck* v. *Graham*, 106 Ind. 195, 6 N. E. 594, 55 Am. Rep. 727; *Escude* v. *La Coste & Lapouyade*, 2 McGloin (La.) 132; *Nalle & Carmack* v. *DuFour*, Man. Unrep. Cas. (La.) 377; *Rouss* v. *King*, 48 S. E. 220, 69 S. C. 168. In some states the same indorsement would have created the contract of guarantyship. *Firman* v. *Blood*, 2 Kan. 496. See *Deitz* v *Corwin*. 35 Mo. 376. An indorsement of a note before delivery subjected the indorser to the same obligations as an indorsement in due course in the case of *Carrington* v. *Odom*, 124 Ala. 529, 27 So. 510. In New Jersey it has been held that the blank indorsement of an anomalous signer gives rise to no presumption whatever. *Chaddock* v. *VanNess*, 35 N. J. L. 517.

In the case of *Roessle* v. *Lancaster*, 114 N. Y. Supp. 387, the note in suit was given by one K. in payment for some furniture. The note contained the blank indorsement of the defendant, placed on the reverse side before the delivery of the instrument. Upon the first trial of the cause the court directed a verdict for the plaintiff upon the pleadings and the defendant's opening. The judgment entered thereon was reversed on appeal and the case remanded. 119 App. Div. 368; 104 N. Y. Supp. 217. On the rehearing the question of the relations of the parties was in issue. The court said, "Prior to the Negotiable Instruments Law (Chap. 612, p. 714, of Laws of 1897) the defendant would not have been liable to the payee of the note as indorser, but by virtue of that act the defendant became liable to the payee of the note, as an indorser, there being no indication of an intention that he should be bound in any other capacity." Sustaining its opinion that the Negotiable Instruments Law changed the rule in New York, the court cited *Coulter* v. *Richmond*, 59 N. Y. 478, which announced the doctrine that one who indorsed a promissory note in blank before delivery was presumed to sign as second indorser and so not liable to the payee, but that such presumption may be rebutted by parol proof of a contrary intention. See 2 PARSONS, NOTES AND BILLS. 119, and notes e. f, g and h. W. A. H.