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CONSTITUTIONALITY OF A LAW LIMITING THE HOURS OF LABOR BY EMPLOYEES OF CONTRACTORS ON MUNICIPAL WORK.

The trend of modern legislation, both in England and in the United States, regarding the labor question, and the hours and wages of the working classes, affords an interesting study. In the various labor trades and crafts, a decided change has been wrought during the last few decades. Not only has much real progress been made in shortening the hours of woman and child labor, but to all sorts of mechanical industry, and even unskilled labor a protection has been given which fifty years ago was hardly hoped for. Much of this change is directly due to the organization of trade unions and kindred societies, yet, to a very considerable extent it is the result of legislation. The labor, influenced by this latter agency, may be classified under two heads: that which by its nature is extremely exhaustive or unhealthy, and that which is employed by the state or state agencies. Of this latter class, is the law the constitutionality of which is in question in the case of *The People of the State of New York ex rel. Williams Engineering and Contracting Company v. Herman Metz. N. Y. Law Journal,* Vol. XL., No. 22.

The relator claimed to be entitled to payment from the City of

New York, the sum of $9,634.75, for work performed under a contract of November 6th, 1907. Payment was refused on the ground that the relator violated the "Labor Law," which provided that no laborer, workman, or mechanic employed upon work by or for the state or a municipal corporation or by contractors or sub-contractors therewith, shall be permitted or required to work more than eight hours in any one calendar day, except in cases of extraordinary emergency, and that such labor shall be paid for at the rate prevailing in the locality where the work is done. The present law is practically a re-enactment of the Labor Law of 1897, which was declared unconstitutional by the cases of *People ex rel. Treat v. Coler,* 166 N. Y. 144, and *People ex rel. Rodgers v. Coler,* 166 N. Y. 1. In the last mentioned case, the court held as unconstitutional the first Labor Law, because it denied to the city and its contractor, the right to agree with their employees upon the terms of employment. The court in the present case, bases its decision on the amendment to the constitution which was adopted in 1905. The purpose of this amendment was to overcome the decisions in the above-mentioned cases, and while the court expressly approves the previous cases, still its reasoning is not in accord with the principles there laid down, and is more in line with the dissenting opinions of Chief Justice Parker, in one of which he said:

"Legislatures have always provided for the duties and compensation of the officers, the state, counties and cities, and indeed the compensation for every kind and character of service whatsoever, has always been fixed by the legislature, directly or through agencies created by it. There is no valid distinction in this respect between the state, county and town officers, and ordinary laborers employed for the state."

This opinion seems to be in harmony with the quotations which the court cites with approval from the cases of *Atkin v. Kansas,* 191 U. S. 207: "We can imagine no possible ground to dispute the power of the state to declare that no one undertaking work for it, or one of its municipal agencies, should permit or require an employee on such work to labor in excess of eight hours each day." It would therefore appear that the decision in the present case could be upheld without regard to the constitutional amendment above referred to, and such a holding would have been in line with the case of *Clark v. State of New York,* 142 N. Y. 101, in which the court said: "There is no express or implied re-

strictions to be found in the constitution, upon the power of the legislature to fix and declare the rate of compensation to be paid for labor or services performed upon the public work of the state." The court then went on to state that as such legislation was not in conflict with the constitution, the matter is one with which the courts have no concern.

As far as the Fourteenth Amendment is concerned, the right of a State to discriminate between municipal corporations and private idividuals, was settled by the United States Supreme Court in *Hunter v. Pittsburgh,* 207 U. S. 161, and *Atkin v. Kansas, supra.* Previously, the decisions in some states, showed a tendency to extend to municipal corporations, in matters affecting their property and private contract rights, practically the same immunity from legislatative interference as is accorded to business corporations and private citizens. *Weismer v. Village of Douglass,* 64 N. Y. 91; *Board of Park Commissioners v. Common Council of Detroit,* 28 Mich. 228. The court in the last mentioned case laid down the following rule: "The constitutional principle, that no person shall be deprived of property without due process of law, applies as well to municipal corporations in their private capacity as to corporations for manufacturing and commercial purposes."

THE RIGHT OF PRIVACY.

The recent decisions of the Court of Appeals of New York, in the cases of *Rhodes v. The Sperry & Hutchinson Company,* 40 N. Y., *Law Journal,* No. 28, and *Wyatt v. James McCreery Company,* 111 N. Y. Sup. 86, declaring constitutional the act passed by the legislature on April 6, 1903, authorizing a suit to restrain the use for advertising purposes of a person's picture, and for damages unless the written consent of such person, or if a minor, of his parent, has been previously obtained, *N. Y. Laws,* 1903, Chapt. 132, § 2, are most important, for they now insure the enforcement of the right of privacy by statutory enactment in a jurisdiction wherein the Courts of Equity had previously denied relief.

This doctrine, which is in reality founded on the right of a person "to pass through the world without having his picture published without his consent, or his business interfered with, or his successful experiments and works published, or his eccentricities commented upon in handbills, periodicals, or newspapers," has been traced as far back as 1820, when the Courts of Equity