mands against him, without any definite improbability that it will be so applied. And, on the other hand, it is established that if the donor be not indebted at the date of the voluntary conveyance, that affords a presumption that there is no fraud in the gift, a presumption which may be repelled, however, by showing that the donor immediately contracted a large amount of indebtedness, or by any other proof that he designed to defraud the subsequent creditors.' 2 Min. Inst. (4th Ed.), 682, 683. In the case under consideration, the plaintiff has neither alleged nor proved that the husband was indebted at the date of the conveyance in question, and has wholly failed to establish the charge that it was made in anticipation of future indebtedness and in fraud of the rights of creditors whose debts were not contracted until nearly two years after the deed was executed and admitted to record. So that if the theory of appellant be true, and the record is not without some evidence tending to support it, that the money paid by the father was a loan to the son and that the latter supplied the residue of the purchase money; nevertheless, it appearing that the husband was not indebted at the time, and there being no proof that he designed to defraud subsequent creditors, the transaction would, at most, amount only to a voluntary settlement by the husband upon the wife, and ought, under the circumstances, to be upheld."

HOURS OF LABOR—EMPLOYMENT OF WOMEN AND CHILDREN.

III.

1. *In General.*—In many of our states laws have been enacted limiting the hours during which women and children may be employed in factories. While in some of the states the constitutionality of these laws, as applied to women, has been doubted, yet in most of them they have been upheld.[1] Women and children have always, to a certain extent, been wards of the state. While single women of competent age, have at all times enjoyed more or less freedom of contract, this privilege at common law was withheld from married women. The latter, however, in recent years have been partly emancipated from their common law disabilities, and they now have a limited right to contract. They may own property in their own right, and may engage in business on their own account. But neither married nor single women, or minors, have any voice in the enactment of the laws by which they are governed, and can take no part in municipal affairs.[2] They are unable, by reason of their physical limitations, to endure the same hours of exhaustive labor as adult males. Certain kinds of work which may be performed by men without injury to their health would wreck the constitutions and destroy the health of women and children. For these reasons, therefore, the state must be accorded the right to interpose in their behalf and protect them, as a class, against such conditions. "It is prerogative of the legislature," said the court in a Pennsylvania case, "to prescribe regulations founded on nature, reason and experience in determining the kind of labor, and the length of time it shall be permitted by either men, women or minors. Sex imposes limitations to excessive or long continued physical labor as certainly as does minority, and the arrested development of children is no more dangerous to the state, than debilitating so large a class of our citizens as adult females by undue and unreasonable physical labor."[3]

On the question of the right to contract, except where the public health, safety or morals are concerned, the courts will declare a law unconstitutional which interferes with or abridges the right of adult males to contract with each other in any of the business affairs or vocations of life. While the employer and the adult male laborer are practically on an equal footing, the case is different with women and children. "Of the many vocations in this country," it was said in a recent case, "comparatively few are open to women. Their field of remunerative labor is restricted. Competition for places therein is necessarily great. The desire for place, and, in many instances, the necessity of obtaining employment, would subject them to hardships and exactions which they would not otherwise endure. The employer who seeks to obtain the most hours of labor for the least wages has such an advantage over them that the wisdom of the law for their protection cannot well be questioned."[4]

Said Judge Cooley: "The general rule undoubtedly is that any person is at liberty to

[1] State v. Buchanan (Wash.), 59 L. R. A. 342, collecting cases; *Ex parte* Kubach, 85 Cal. 274. See People v. Orange County, etc., Co., 175 N. Y. 84.

[2] See Ritchie v. People, 155 Ill. 98; People v. Ewer, 141 N. Y. 129.

[3] Commonwealth v. Beatty, 15 Pa. 5.

[4] Wenham v. State (Neb.), 58 L. R. A. 825, 91 N. W. Rep. 421.

pursue any lawful calling, and to do so in his own way, not encroaching upon the rights of others. This general right cannot be taken away. It is not competent, therefore, to forbid any person, or class of persons, whether citizens or resident aliens, offering their services in lawful businesses, or to subject others to penalties for employing them. But here, as elsewhere, it is proper to recognize distinctions that exist in the nature of things, and under some circumstances to inhibit employments to some one class by leaving them open to others. Some employments, for example, may be admissible for males and improper for females, and regulations recognizing the impropriety and forbidding women engaging in them would be open to no reasonable objections. The same is true of young children, whose employment in mines and manufactures is commonly, and ought always to be, regulated.[5]

2. *Hours of Labor.*—Consistently with the principles discussed in the foregoing paragraph, the courts, with few exceptions, have held that statutes limiting the hours during which women and children may be employed at labor or detained in any manufacturing establishment, mercantile industry, workshop, and the like, are a constitutional exercise of legislative power, and do not deprive them of liberty or property without due process of law.[6] In sustaining a statute of this kind it was said in a Pennsylvania case that a "prohibition upon unhealthy practices, whether inherently so, or such as may become so by reason of prolonged and exacting physical exertion which is likely to result in enfeebled or diseased bodies, and thereby directly or consequently affecting the health, safety, or morals of the community, cannot in any just sense be deemed a taking or an appropriation of property.

[5] Cooley's Const. Law, 745 (5th Ed.). See *Ex parte* Kubach, 85 Cal. 274.

[6] In Parker and Worthington's Public Health and Safety, 299, it is said: "The state may forbid certain classes of persons being employed in occupations which their age, sex, or health renders unsuitable for them, as women and young children are sometimes forbidden to be employed in mines and certain kinds of factories. And statutes are perfectly valid which provide that women or minors shall not be employed in laboring, by any person, in any manufacturing establishment, more than a certain number of hours in any one day, with reasonable exceptions. Of such laws it has been said, that they do not violate any constitutional rights. They do not prohibit any person from working as many hours of the day as he chooses. They merely provide that in an employment, which the legislature deems to some extent detrimental to health, no person shall be engaged in labor more than the prescribed number of hours per day. There can be no doubt that such legislation may be sustained as a proper health regulation." In Tiedeman's State and Federal Control of Persons and Property, section 86, the author says: "The regulations, prohibiting women and children from being employed in certain callings or trades, are becoming quite common, particularly in regard to child labor. In the case of women, the prohibition relates generally to working in mines. But children under ages, stated in and varying with the provisions of the different states, are in some states, prohibited altogether from working outside of their homes, while in others they are only prohibited from engaging in certain kinds of work. * * * In so far as the employment of a certain class in a particular occupation may threaten or inflict damage upon the public or third persons, there can be no doubt as to the constitutionality of any statute which prohibits their prosecution of that trade. But it is questionable, except in the case of minors, whether the prohibition can rest upon the claim that the employment will prove hurtful to them. Minors are under the guardianship of the state, and their actions can be controlled so that they may not injure themselves. * * * It may be, and probably is, permissible for the state to prohibit pregnant women from engaging in certain employments, which would be likely to prove injurious to the unborn child; but there can be no more justification for the prohibition of the prosecution of certain calling by women, because their employment will prove hurtful to themselves, than it would be for the state to prohibit men from working in the manufacture of white lead because they are apt to contract lead poisoning, or to prohibit occupation in certain parts of iron smelting works, because the lives of the men so engaged are materially shortened." In the case of *In re* Morgan, 26 Colo. 415, a case wherein it was decided that an act limiting the hours of labor for adult males in underground mines and smelters in the state of Colorado, was unconstitutional. Mr. Justice Campbell, who delivered the opinion of the court, said: that a law applying only to women and children might be held valid, since the former class, on account of sex and supposed physical infirmities, and the latter, because of their tender age, are under the guardianship of the state, and, not standing on an equality with adult men, are subject to restraining regulations. See *In re* Considine, 83 Fed. Rep. 157, where an act which forbade the employment of women in saloons or places of amusement where intoxicating liquors were sold as a beverage, was held not to abridge the priviliges and immunities of citizens, or to deny to them the equal protection of the laws, within the meaning of the fourteenth amendment to the federal constitution. Nor did it contravene the constitutional inhibition against the abridgment of the liberty to contract. Also see State v. Considine, 16 Wash. 358. An act making it an offense for liquor dealers to employ female servants in their places of business was held constitutional in Bergman v. Cleveland, 39 Ohio St. 651. See also *In re* Maguire, 57 Cal. 604, where a similar act was held to be unconstitutional as being in conflict with a provision of the constitution of California providing that "no person shall on account of sex, be disqualified from entering upon or pursuing any lawful business, vocation or profession."

The length of time a laborer shall be subjected to the exhaustive exertion of physical labor is as clearly within legislative control as is the governmental inspection of boilers, machinery, etc., to avoid accidents, or of the sanitary conditions of factories and the like to preserve the health of laborers.

The power to legislate on this subject is inherent in all free governments, and is limited only by the constitution. It must be asserted within reasonable limits, and when we consider that the federal government has fixed eight hours as a day's work for all laborers, mechanics and workmen employed by or on behalf if it,[7] and that our own state has fixed the same number of hours as a day's labor in all of our penal institutions, and for all mechanics, workmen and laborers in the employment of the state, or any municipal corporation therein, and that electric railway companies are prohibited from permitting or suffering any of their employees to work more than twelve hours in one day, and that in all cotton, woolen, silk, paper bagging and flax factories, ten hours of any secular day shall be considered a legal day's labor, it cannot be held to be unreasonable to fix the time of labor for adult females at twelve hours a day or not more than sixty hours a week in the establishments named in the act."[8]

Statutes of both Nebraska[9] and Washington,[10] providing that no female shall be employed in certain business establishments more than a certain number of hours in a day have been held to be a reasonable exercise of the police power. These statutes were held not to deprive the citizen of his property, or the reasonable use thereof, nor to prohibit the right of contract guaranteed by the constitution. In like manner, a Massachusetts statute, prohibiting the employment of all persons under the age of eighteen years, and of all women over that age, in any manufacturing establishment more than a certain number of hours per day or week, was held to violate no right reserved under the constitution to any individual citizen, and could be maintained as a health or police regulation.[11]

On the other hand, an Illinois statue, providing that "no female shall be employed in any factory or workshop more than eight hours in any one day, or forty-eight hours in any one week," was declared unconstitutional. The court's reasons for thus holding were (1), that the act was partial and discriminatory in character as applied to manufacturers and merchants; and, (2) that it was a discrimination against women; and (3) that it prohibited both employer and employee from contracting with each other with reference to the hours of labor; and (4), that it was an arbitrary restriction on the fundamental rights of the citizen to control his or her own time and faculties; and (5), that it was a substitution of legislative judgment for that of employer and employee in a matter about which they are competent to agree with each other. "The act," said the court, "is not based upon the theory that the manufacturer of clothing, wearing apparel and other articles is an improper occupation for women to be engaged in. It does not inhibit their employment in factories or workshops. On the contrary, it recognizes such places as proper for them to work in by permitting their labor therein during eight hours of each day. The question here is not whether a particular employment is a proper one for the use of female labor, but the question is whether, in an employment which is conceded to be lawful in itself and suitable for women to engage in, she shall be deprived of the right to determine for herself how many hours she can and may work during each day. There is no reasonable ground—at least none which has been made manifest to us in the arguments of coun-

[7] Revised Statutes, 3738.

[8] Commonwealth v. Beatty, 15 Pa. Sup. Ct. Rep. 5, collecting cases. See Lawton v. Steele, 152 U. S. 133; People v. Orange County, 175 N. Y. 84; Bailey v. People, 190 Ill. 28.

[9] Wenham v. State, 91 N. W. Rep. 421, 58 L. R. A. 825. The statute considered in this case "was taken from, and is practically an enactment of the statute of Massachusetts considered in Commonwealth v. Hamilton Mfg. Co., 120 Mass. 383.

[10] State v. Buchanan, 29 Wash. 602, 70 Pac. Rep. 52, 59 L. R. A. 342, collecting cases and distinguishing Seattle v. Smythe, 22 Wash. 327.

[11] Commonwealth v. Hamilton Mfg. Co., 120 Mass. 383. It was said in this case that a law which merely prohibits a woman's being employed in any manufacturing establishment more than a certain number of hours per day or week, does not violate her right to labor as many hours per day or week as she may see fit. It merely prohibits her being employed continuously in the same service more than a certain number of hours per day or week, which was so clearly within legislative power that it required no argument to prove it. The decision should be interpreted as meaning that the act was intended to be confined to factory work, leaving question open whether legislature's power extends to private work. Freund's Police Power, sec. 312.

sel—for fixing upon eight hours in one day as the limit within which woman can work without injury to her physique, and beyond which, if she work, injury will necessarily follow. The police power of the state can only be permitted to limit or abridge such a fundamental right as the right to make contracts, when the exercise of such power is necessary to promote the health, comfort, welfare or safety of society or the public, and it is questionable whether it can be exercised to prevent injury to the individual engaged in a particular calling."[12]

3. *Doctrine of Subject Summarized.*—In passing from this portion of our subject, we may observe that if we have not mistaken the meaning and effect of the cases heretofore adverted to, they establish the following principles: The position of women and children is, in some respects, different from that of men. Unlike the latter, they have no right to take part in governmental affairs. While single women, or *femes sole*, of competent age, have always enjoyed considerable freedom of contract, this privilege was withheld from married women at common law for reasons of public policy. The latter's rights in this respect, however, have, in recent times, been very greatly enlarged by statute, and her common law disabilities have been almost wholly removed. But women, whether single or married, and minors, have always been regarded, in many ways, as wards of the state, hence the constitutional guaranty of the liberty to contract does not have the same meaning to them as it does to adult males, although it cannot be denied that women are entitled to practically the same right, under the constitution, to make contracts with reference to their own labor as are men.[13] When legislation, however, is deemed necessary for their moral and physical well being, and for the public good, it will not be declared invalid because it conflicts with the constitutional guaranty of the liberty to contract. Special provisions of the legislature for women have been sustained on account of their recognized physical limitations. Labor in mines has been interdicted for this reason; and a limitation of the hours of labor is based upon the same principle. Where a shorter work day is provided for women than is thought necessary for men, the discrimination between them is not considered arbitrary. While it may seem expedient or necessary to guard women against the moral and physical injury which may result from long hours in certain occupations, it does not necessarily follow that there is or may be the same necessity for making like provisions for men.

As we have seen, while the weight of authority sustains the doctrine as laid down in the case of Commonweath v. Hamilton Manufacturing Co.,[14] to the effect that women are more or less under the tutelage of the state, and require the same protection against oppression, and physical and moral injury as do minors, there is to be found in the case of Ritchie v. People,[15] authority for saying that the rights of women are practically the identical rights of men which safeguard her against arbitrary and discriminating legislation.

Los Angeles, Cal. O. H. MYRICK.

[12] Ritchie v. People, 155 Ill. 98, 114, 40 N. E. Rep. 454, 29 L. R. A. 79, 46 Am. St. Rep. 315. Said the court in this case: "Sex will not alone justify the exercise of the police power for the purpose of limiting the rights of women to make contracts. As a 'citizen' woman has the right to acquire and possess property of every kind. As a 'person' she has the right to claim the benefit of the constitutional provision that no person shall be deprived of life, liberty or property without due process of law." See *In re* Jacobs, 98 N. Y. 98.

[13] See Minor v. Happersett, 21 Wall. 162, where it is held that a woman is both a "citizen" and a "person" within the meaning of the fourteenth amendment to the federal constitution. "It will not be denied," said the court in Ritchie v. People, 155 Ill. 98, "that women are entitled to the same rights, under the constitution, to make contracts with reference to her own labor as men."

[14] 120 Mass. 383. The decision in this case should be interpreted as meaning that the act was intended to be confined to factory work leaving the question open whether the legislature's power extends to private work. Freund's Police Power, sec. 312.

[15] 155 Ill. 98.

MUNICIPAL CORPORATIONS — EMPLOYMENT OF COUNSEL BY CITY ATTORNEY TERMINABLE AT WILL.

CITY OF WILMINGTON v. BRYAN.

Supreme Court of North Carolina, May 28, 1906.

Where, under authority of the legislature empowering a city to collect its arrearages of taxes, and making it the duty of the city attorney, together with such associate counsel as he might select, to bring actions against delinquent taxpayers, one S, then city attorney, associated other attorneys with himself for the collection of taxes, the contract for the collection of such taxes was one made with S as city attorney, and