

# TEN-HOUR LABOR LAW STANDS

Judge Sears Upholds Law Regulating Hours of Labor for Women and Girls.

THINKS QUESTION OF  
SEX MAY NOT COUNT

Court Declares That Legislature Pushed Its Exercise of Police Power to Very Verge—Appeal to Higher Courts Expected.

Circuit Judge Alfred F. Sears Jr. yesterday upheld the state law passed in 1903 limiting the hours of employment of women and girls in any mechanical or mercantile establishment, including laundries, hotels and restaurants, to ten hours a day. This decision was made in overruling a demurrer to the complaint filed against Kurt Muller, proprietor of the Grand laundry, for having allowed his foreman to cause Mrs. E. Gotcher to work more than ten hours on September 4, 1905. The case is expected to be appealed at once to the state supreme court, and if the law is upheld there, the United States supreme court probably will be asked to pass upon the case. It is understood that the local laundry owners' association is behind Muller. In rendering his decision, Judge Sears said, in part:

## Fourteenth Amendment in Question.

"The argument of the defendant urging the invalidity of this law is chiefly based upon the assertion that it violates the fourteenth amendment of the federal constitution. While one or two other propositions were suggested in argument, it is this which presents the most serious question. If the matter were one of first impression to be determined without the aid of authority, or if this court were the final arbiter of the questions involved, it would seem to me clear that the act in question does deprive a woman of a right of property, and it seems to me further that the act cannot be sustained as a legitimate exercise of the police power of the state, but it must be remembered that a nisi prius court, especially, is slow to set aside a legislative enactment, and that it should be satisfied beyond a reasonable doubt of the existence of conflict between such enactment and the state or federal constitution.

## Sex Question Important.

"Under the most recent determination of an analogous question, the supreme court of the United States had laid down principles which would finally determine this cause but for the sex of the alleged victim. To my mind it is doubtful whether at the present day, when woman has asserted her equality with man, and when such assertion has been embodied in many enactments of the legislature which have almost annihilated any distinction between the sexes, which have in effect emancipated women from the disabilities existing at common law, any real distinction exists between a law regulating the hours of labor of a baker in the state of New York and those of a laundress in the state of Oregon. This case is *Lochner vs. New York*.

"The supreme judicial court of Massachusetts upheld a law similar in character to the one under discussion. It must be said, however, that this opinion is by no means satisfactory in its reasoning, and it has been likewise asserted that under the constitution of Massachusetts the legislature has a broader power to assert the police power of the state than is generally contained in the state constitutions.

## Oregon Court's Language.

"By the supreme court of this state in the case of *ex parte Northrup* against Oregon, this language from a New York case is cited: 'It is to the interest of the state to have strong, robust, healthy citizens. \* \* \* Laws to effect this purpose by protecting a citizen from overwork \* \* \* have an obvious connection with the public welfare independent of any question relating to morals or religion. The physical welfare of the citizen is a subject of such primary importance to the state \* \* \* as to make laws tending to promote that object proper under the police power and hence valid under the constitution.'

"If this language is expressive of existing law in this state and if it has not been rendered nugatory by the effect of *Lochner vs. New York*, heretofore cited, as to which I am by no means certain, the principle stated is broad enough to uphold the validity of the act.

"I recognize the force of the argument of counsel for the defendant and I feel that in this instance the legislature has pushed its exercise of the police power to the very verge, and perhaps has passed the deadline of its powers. Yet I feel that an uncertainty as to how our own supreme court might regard the effect of this federal decision as well as the conflict in the cases heretofore referred to should determine me to resolve my own doubts in favor of the law. The demurrer will, therefore, be overruled."

Deputy District Attorney Bert Haney argued the case on behalf of the state, while William D. Fenton appeared as counsel for Muller.