IN THE

Supreme Court of the United States.

OCTOBER TERM, 1904.

JOSEPH LOCHNER, Plaintiff in Error (Defendant below), vs. THE PEOPLE OF THE STATE OF NEW YORK, Defendant in Error (Plaintiff below).	No. 292

IN ERROR TO THE COUNTY COURT OF ONEIDA COUNTY, STATE OF NEW YORK.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

This action was commenced in the County Court of Oneida County in the State of New York. It was a criminal proceeding in which the defendant, Joseph Lochner, was charged with a misdemeanor, in that he violated Section 110, of Article Eight, of Chapter 415, of the Laws of 1897, of the State of New York, known as "The Labor Law," which said Section reads as follows:

> "No employe shall be required or permitted to work in a biscuit, bread or cake bakery or confectionery establishment more than sixty hours in any one week or more than ten hours in any one day, unless for the purpose of making a shorter work day on the last day of the week; nor more hours in any one week than will make an average of ten hours per day for the number of days during such week in which such employe shall work."

The indictment charges that on the 21st day of December 1899, he, the plaintiff in error, was arrested upon complaint of one of his employees for violating the law in permitting an employe to work in a bakery more than sixty hours in any one week. That he was convicted in the County Court, and fined twenty dollars, or in default thereof, stand committed to the County Jail for twenty days, and that he paid the fine; that after such conviction the defendant wrongfully, unlawfully and knowingly, with intent on his part to violate the law, permitted and employed another employe named, to work more than sixty hours in one week during the week commencing April 19th, and ending April 26th, 1901, in the defendant's biscuit, bread and cake bakery and confectionery establishment, thereby committing a misdemeanor as a second offense, contrary to the form of the statute in such case made and provided and against the peace of the people of the State of New York and their dignity.

The defendant demurred to the indictment on two grounds, (1) that more than one crime was charged and (2) that the facts stated did not constitute a crime. The local court overruled the demurrer and the different allegations in the indictment were taken as true under Section 330 of the Code of Criminal Procedure of said State; and

judgment of conviction was entered, and the defendant sentenced to pay the fine of $50, or stand committed to the County Jail until the fine was paid, not to exceed fifty days. The judgment was affirmed at the Appellate Division by a divided court, and from that judgment the defendant appealed to the Court of Appeals, where the judgment was again affirmed by a bare majority of the Court.

The Statute upon which the judgment rests is to be found in the Penal Code, Section 384-1, and reads as follows:

> "Any person who violates or does not comply with * * * the provisions of Article Eight of The Labor Law, relating to bakeries and confectionery establishments, the employment of labor and the manufacture of flour or meal food products therein * * * is guilty of a misdemeanor, and upon conviction shall be punished for a first offense by a fine of not less than twenty nor more than one hundred dollars; for a second offense, by a fine of not less than fifty nor more than two hundred dollars, or by imprisonment for not more than thirty days, or by both such fine and imprisonment; for a third offense by a fine of not less than two hundred and fifty dollars, or by imprisonment for not more than sixty days, or by both such fine and imprisonment."

The case was argued in the New York State Courts upon the constitutionality of the Statute in question under the State and Federal Constitutions. The Assignment of Errors in various forms brings before this Court the constitutionality of the Statute Section 110, of Article 8, of Chapter 415, of the Laws of 1897, of the State of New York, alleging that it violates Article 14, Section I. of the

United States Constitution in that it abridges the privileges and immunities of certain citizens of New York State, that it deprives them of their property without due process of law and that it denies to them the equal protection of the laws.

ASSIGNMENT OF ERRORS.

I.

That the court below erred in holding that Section 110 of Article 8, of Chapter 415 of the Laws of 1897, of the State of New York, entitled "The Labor Law," does not violate Article 14, Section 1, of the Constitution of the United States, in holding that the facts as set forth in the indictment constitute a crime.

II.

That the court below erred in holding that Section 110 of Article 8, of Chapter 415 of the Laws of 1897 of the State of New York, entitled "The Labor Law" was constitutional and not in violation of Article 14, Section 1 of the Constitution of the United States.

III.

That the court below erred in holding thta Section 110 of Article 8, of Chapter 415 of the Laws of 1897 of the State of New York, entitled "The Labor Law" is a health measure, and is a reasonable and proper exercise of the police power of the said State of New York.

IV.

That the court below erred in holding that Section 110 of Article 8, of Chapter 415 of the Laws of 1897 of the State of New York, entitled "The Labor Law" did not violate the 1st Section of the 14th Amendment of the Constitution of the United States, in that it did not abridge the privileges and

immunities of the Citizens of the United States in respect to the freedom of individuals to enter into contract with one another.

V.

That the court below erred in holding that Section 110, of Article 8, of Chapter 415 of the Laws of 1897, of the State of New York, entitled "The Labor Law," did not violate Section 1 of Article 14 of the Constitution of the United States, in that it did not deprive plaintiff in error of his liberty and property "without due process of law," in that it did not permit him to agree with his employees upon the number of hours per day and week in which they should work.

VI.

That the court below erred in holding that Section 110 of Article 8, of Chapter 415 of the Laws of 1897, of the State of New York, entitled "The Labor Law" does not violate Article 14, Section 1 of the Constitution of the United States, in that it denies to plaintiff in error the equal protection of the laws. And in holding said act is not class legislation and is equal and uniform.

VII.

That the court below erred in holding that Section 110 of Article 8, of Chapter 415 of the Laws of 1897 of the State of New York, entitled "The Labor Law" does not violate Article 14, Section 1 of the Constitution of the United States, in that said law fixes an arbitrary number of hours during which employees in bakeries in said State shall be employed and allowed to work, thus discriminating between such employees and employees in other lines of business, and in refusing to allow such employees to contract with their employers for

extra hours of work, as in other occupations they are allowed to do.

VIII.

That the court below erred in holding that Section 110, of Article 8, of Chapter 415, of the Laws of 1897 of the State of New York, entitled "The Labor Law" does not violate Article 14, Section 1 of the Constitution of the United States, in that by reason of the nature of the bakery business it is sometimes necessary to contract with employees for extra hours of labor, in order to save and preserve the property of the employer; and by the decision of the court below, the plaintiff in error is deprived of his property without due process of law.

We rely upon all of these assignments of error, which express in various forms, the manner in which the statute under review violates the provisions of the Fourteenth Amendment.

We shall take up the questions raised herein by the assignment of errors in the following order:

The statute in question denies to the plaintiff in error the equal protection of the laws. It appears from sections of "The Labor Law," following the section under review, from statutes and decisions of other States, and from facts within the common knowledge of mankind, that there are many other persons engaged in the same line of business that are not subject to the restrictions and penalties of the statute.

The statute in question is not a reasonable exercise of the police power, and this branch of the case is discussed under two subdivisions:

(a) From the standpoint of the trade itself.

(b) From the standpoint of the decisions interpreting the exercise of the police power in con-

nection with the 14th Amendment of the United States Constitution.

A review of the history of the legislation leading up to the adoption in its present form, of the statute in question, showing that the first section is clearly intended as a labor law, and not an exercise of the police power of the State.

The case of Holden vs. Hardy (169 U. S. 366), distinguished from the case at bar.

In the Appendix to this brief will be found the following documents:

Sections 110, 111, 112, 113, 114 and 115 of Article VIII of "The Labor Law," Chapter 415, Laws of 1897 of the State of New York.

New York Penal Code, Section 384l, the statute under which the plaintiff in error was indicted and convicted.

Tables of various trades taken from the report of the Bureau of Labor of the State of New York for 1900, showing that the baker's trade is fully up to the average healthfulness of all trades; and also a table of trades affected by the inhalation of dust, etc., in which the baking trade is not included. Various high medical authorities which we have collected showing that the conclusions of Judge Vann are not warranted.

1. The statute in question denies to certain persons in the baking trade the equal protection of the laws.

The legislation must affect equally all persons engaged in the business of baking in order to con-

form to this provision of Article 14 of the United States Constitution.

It really affects but a portion of the baking trade, namely, employes "in a biscuit, bread or cake bakery, or confectionery establishment."

It will be seen that this provision covers two classes of workmen; namely, employes in biscuit, bread or cake bakeries and employes in confectionery establishments. The former are bakers; the latter are candy makers.

We are concerned only with the employes in biscuit, bread and cake bakeries. They do not by any means comprise all persons engaged in the business of baking. While no figures are obtainable, it is probably safe to say that at least one-third to one-half of the persons engaged in the baking business are not within the prohibition of the statute.

The employers themselves, a large proportion of whom personally engage in the baking trade, may work 24 hours a day if they are so minded. There are many small establishments where the proprietor does most of his own baking. There are also bakeries where a number of the employers are in partnership, and do all or mostly all of their own baking.

Then again, the employes themselves may work twenty-four hours a day, and they are not subject to punishment for so doing. It is only when the employer requires or permits an employe to work beyond the prescribed time that the penalty of the statute applies. If this is a health law, the employer himself should be restrained in the cause of public health, and the employe should not be allowed to work more than the lawful number of hours.

Then again, there is that very large class of bakers who are employed in pie bakeries, hotels, restaurants, clubs, boarding-houses and private

families, that are not within the terms of the statute. The number of bakers employed in these establishments are probably as numerous as those employed in biscuit, bread and cake bakeries. They are engaged in the same business, yet even the large restaurants where great quantities of biscuit, bread, cake and pie are turned out daily by journeymen bakers; the great hotels with their army of bakers, doing the same work; the clubs which are becoming more numerous every year, and where a considerable part of the business population of New York City take their noon-day meal; the great number of boarding houses, some of them employing a number of skilled bakers, the pie bakeries such as the Consumers Pie Baking Company, the New York Pie Baking Company, and many more; are none of these entitled to the "equal protection of the laws"?

Then there is the American housewife. Here is the real artist in biscuits, cake and bread, not to mention the American pie. The housewife cannot bound her daily and weekly hours of labor. She must toil on, sometimes far into the night, to satisfy the wants of her growing family.

It seems never to have occurred to these ungallant legislators to include within the purview of the statute these most important of all artists in this most indispensable of trades.

Another serious objection to the statute is that it affects all *employes* in biscuit, bread and cake bakeries. This would not mean the bakers alone but the drivers, cash girls, counter girls, bookkeepers and others. Is their trade one within the scope of the police power? And is it more dangerous to wait on a counter, keep books or drive for a baker than for a butcher or grocer? This feature alone is fatal to the statute.

In the recent case of Union Sewer Pipe Company

(184 U. S., 540), the discrimination in favor of agricultural products and live stock in the hands of the producer or raiser, in the Illinois Trust Act of June 20th, 1893, exempting them from the provisions of the statute, was held to render the act repugnant to the provisions of the United States Constitution, 14th Amendment, in respect of the equal protection of the laws. The different lines of business affected by the Trust Act in question are very numerous, yet the exception of two lines of business was held to invalidate the statute. Can it then be said that the statute in question, which only affects a part of the bakery business, is not repugnant to the Constitution in a much greater degree?

The reason why bakers employed in hotels, clubs, restaurants, boarding houses and private houses, are not protected by the provisions of the statute, is not hard to find. The necessities of these establishments are such that during busy seasons it is absolutely necessary to keep their bakers until the business of the day or the night is finished. It would be impossible for these bakers to get employments in such establishments unless they were willing to work as long as their services were required. Nor is it true that the bakers who are within the protection of the statute are as a rule, employed in less desirable and healthful surroundings than those who are not within the provisions of the statute. The average bakery of the present day is well ventilated, comfortable both summer and winter, and always sweet smelling. The other class of establishments, where cooks as well as bakers are employed, are as a rule, much more close and ill smelling than the bakeries. Many modern bakeries resemble factories in their general appearance. They have light comfortable places for their workmen, while the average kitchen even of the finest

hotels, in the cities at least, are usually underground, with great open ranges which make them intensely hot. The baker's oven, on the contrary, is made of brick, with walls several feet in thickness, generally lined with sand to keep the heat within the oven. The principle on which they are built is to keep the heat within the oven and prevent its radiating into the outside air. Inspection of any bakeries in any city will show that the average bakery is much more desirable as a place to work in than the average kitchen.

A valuable illustration of the fact that this statute offends against this clause of the 14th Amendment is found in some of the labor statutes of the several States. In California we find the following statute:

> "It shall be unlawful for any person engaged in the business of baking to permit or engage others in his employ, to engage in the labor of baking for the purpose of sale between the hours of six o'clock P. M. on Saturday and six o'clock P. M. on Sunday, except in the setting of sponge, preparatory to the night's work; provided, however, that restaurants, hotels and boarding houses may do such baking as is necessary for their own consumption."—Exparte Westerfield, 55 Cal. 550.

It will be seen that this statute is first general in its terms, and affects "any person engaged in the business of baking." It then excepts from the prohibition of the statute, "restaurants, hotels and boarding houses." This statute clearly recognizes the fact that we are here calling to the attention of the court; namely, that persons engaged in the occupation of baking are not confined to those employed in biscuit, bread and cake bakeries.

In the statute now before the Court we find

reference to other bakers than those in biscuit, bread and cake bakeries. In Section 111 it refers to rooms occupied as biscuit, bread, *pie* or cake bakeries; and the same words are used again in the latter part of Section 112. Section 113 speaks of the "bake-room of any bakery, *hotel* or *public restaurant.*" Here is a clear recognition of the carrying on of the baking trade in pie bakeries, hotels and public restaurants.

It seems therfore perfectly clear that this statute denies to a substantial part of the baking trade the equal protection of the laws. The employer of bakers in biscuit, bread and cake bakeries is subjected to heavy penalties of fine and imprisonment for requiring or permitting his men to work more than the prescribed number of hours, whereas employers of the same class of men doing the same work throughout the state are exempt from the provisions of the statute. This brings the statute clearly within the decisions under this part of the 14th Amendment.

2. The authorities upon this subject are uniform and controlling in the case at bar.

It must be remembered that the Constitution itself says that no state shall "deny to any person within its jurisdiction the equal protection of the laws." It does not say, "no considerable number of persons," but "any person." And this plaintiff in error may appeal with confidence to the supreme law of the land against this law which singles out a certain number of men employing bakers, and permits all others similarly situated, including

many who are competitors in business, to work their employes as long as they choose.

Professor Freund, in his work on the Police Power, says at p. 633:

> "Equality is for the purpose of controlling the validity of legislation, a more definite conception than liberty, for it has the advantage of being measurable. Government cannot be conceived without an infringement of liberty, while the claim of equality is consistent, in idea at least, with almost any form of governmental power.

Again, at page 635, he says:

> "It is an elementary principle of equal justice, that where the public welfare requires something to be given, or done the burden be imposed or distributed upon some rational basis, and that no individual be singled out to make a sacrifice for the community."

This Court has said that the guarantee of the equal protection of the law means "that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and in like circumstances."

Missouri v. Lewis (101 U. S. 22, 31).

In the case of Connolly vs. Union Sewer Pipe Company, (184 U. S. 540) Mr. Justice Harlan says, at page 558:

> "The State has undoubtedly the power, by appropriate legislation, to protect the public morals, the public health and the public safety; but if, by their necessary operation, its regulations, looking to either of those ends, amount

to a denial to persons within its jurisdiction of the equal protection of the laws, they must be deemed unconstitutional and void."

In the case of Barbier v. Connolly, (113 U. S. 27) Mr. Justice Field says, at page 31:

"The Fourteenth Amendment in declaring that no State shall 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, undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property; but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights, that all persons should be equally entitled to pursue their happiness and acquire and enjoy property, that they should have like access to the courts of the Country, for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of any one *except as applied to the same pursuits by others under like circumstances*; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is subscribed to all for like offences."

Judge O'Brien, in his dissenting opinion, says (Record, Folios 58, 61):

"Work of the same general character is exacted from cooks and domestic servants in practically all the private houses in the land,

> and to a great extent, in hotels, restaurants and other public places. It would be absurd to say that all, or even the greater part of the biscuit, bread, cake and confectionery consumed in this State comes from what are called bakeries. The law does not even apply to bakers in small towns and villages who do their own work. It applies only to bakers who find it necessary to employ labor, and they alone are subjected to criminal prosecution in case they *permit* the servant to work more than ten hours in a day, even though the servant is willing and is given extra compensation. The baker is forbidden under the penalty of fine and imprisonment to contract or agree with his servant upon the hours of labor in such way as would be mutually beneficial; but his business is practically regulated by statute."

Confirming the views of Judge O'Brien we find in the report of the New York Factory Inspector's Bureau to the Legislature of that State, of 1897, that the number of bakeries inspected during that year was 3828, of which number more than one-half employed but two, one and no journeyman bakers. It is evident that in bakeries of this character the employer either does his own baking without any help, or he has the aid of members of his family, or in some cases, one or two bakers additional to his own labor. The members of the families of these small bakers cannot be classed as employes, and yet they do the same work, and like the employer himself, are not subject to the provisions of the statute.

In discussing the inequality of the Illinois Trust Act the Court calls attention to the freedom accorded by the law to agriculturists and live stock raisers through the exception allowed in their favor

and to the possibilities of the exercise of that freedom in direct opposition to and subversion of the general scheme of the act as intended by the Legislature. And this although the exception equally applied to all members of the agriculturists and live stock raisers as a class, while in the case at bar, the statutory restraints are limited to a small part of the members of the class sought to be effected by it.

If the exception accorded to two classes of trade by the Illinois Trust Act was deemed sufficient to hold the burden imposed upon a number of otner trades and callings, not at all affected by the trade competiton of those excepted, as unequal, how much more so must this principle apply to the case at bar where the inequality extends to members of a class and where the exemptions, which in effect are enjoyed by large numbers of bakers, accord them a distinctive economic advantage over those subjected to the rigors of the law.

The principle of equality means that equal conditions must receive equal treatment (Freund on Police Power, page 633).

The Stock Yards Act of Kansas attempted to prescribe rules and rates for the Kansas City Stock Yards Company exempting numerous small stock yard owners. The statute also conferred certain exclusive stock yard privileges upon the company as against the other dealers. This act was declared unconstitutional. Cotting vs. Goddard, 183 U. S. 79-92.

On page 282, Judge Cooley in his book on Constitutional Limitations, says: "And if a corporation has power to prohibit the carrying on of dangerous occupations, within its limits, a by-law which should permit one person to carry on such an occupation and prohibit another, who had an equal right from pursuing the same business, or which

should allow the business to be carried on in existing buildings but prohibit the erection of others for it, would be unreasonable."

A San Francisco ordinance required every male person imprisoned in the county jail to have his hair cut to the uniform length of one inch. Held invalid as being directed specially against the Chinese. Tin Sing vs. Washburn, 20 Cal. 5344; see also Yick Wo vs. Hopkins, 118 U. S. 356.

Classification must be based upon some difference bearing a reasonable and just relation to the act in respect to which the classification is attempted, but no mere arbitrary selection can ever be justified by calling it classification. The fact that all persons and corporations brought under the influence of an act, are subjected to the same liabilities and duties under similar circumstances, is sufficient to sustain an act as against the charge of the denial of the equal protection of the laws. Atchison, Topeka & Santa Fe R. R. Co. vs. Matthews, 174 U. S. 105. Class legislation of the character of the act in issue enacted by the States which discriminates in favor of one person or set of persons and against another or others is forbidden by the Fourteenth Amendment to the United States Constitution. Gulf C. & F. R. Co. vs. Ellis, 165 U. S. 150; Cotting vs. Kansas City S. Y. Co., 183 U. S. 79; Connolly vs. U. S. P. Co. 184 U. S. 540; People vs. Orange County Road Construction Co., 175 N. Y. 87-90.

In Yick Wo vs. Hopkins, 118 U. S. 356, a case where a municipal ordinance of San Francisco designed to prevent Chinese from carrying on the laundry business, was adjudged void, the Court says: "This Court looked beyond the mere letter of the ordinance to the condition of things as they existed in San Francisco, and saw that under the

guise of regulation an arbitrary classification was intended and accomplished.

See also the language of Mr. Justice Matthews in Yick Wo vs. Hopkins (118 U. S. 356, 369) "the equal protection of the laws is a pledge of the protection of equal laws."

Gibbons vs. Ogden (9 Wheat., 1, 210).

Sinnot vs. Davenport (22 How. 227, 243).

Missouri vs. Lewis (101 U. S. 22, 31).

Butcher's Union Co. vs. Crescent City Co. (111 U. S. 746).

Barbier vs. Connolly (113 U. S. 27, 31).

Yick Wo vs. Hopkins (118 U. S. 356, 369).

Gulf C. & F. R. Co. vs. Ellis (165 U. S. 150).

Missouri K. & T. R. Co. vs. Haber (169 U. S. 613, 626).

Cotting vs. Kansas City S. Y. Co. (183 U. S. 79).

Connolly vs. Union Sewer Pipe Company (184 U. S. 540).

People vs. Orange County Road Cons. Co. (175 N. Y. 84).

3. The Statute in Question is Not a Reasonable Exercise of the Police Power.

We will discuss this branch of the case under the following subdivisions:

(a) From the standpoint of the trade itself.

(b) From the standpoint of the decisions interpreting the exercise of the police power in connection with the 14th Amendment of the United States Constitution.

(a) The business of the baker is one of the oldest known trades.

The trade of the baker in years gone by, when the kneading of the "dough" or "sponge" was done by hand, may have caused some flour dust. But the contention that flour dust is at all unhealthful is disputed by high medical authority. It is doubtless also true that the quarters of the bakers have in the past been highly unsanitary. Regulations made by law for the purpose of bringing about sanitary conditions in bakeries, by providing for a certain amount of air space and ventilation, by excluding domestic animals from premises where baking is conducted, by forbidding sleeping apartments, privies, etc., from opening into the bake-room, are all provisions clearly within the police power, and highly beneficial to the trade and to the public.

The trade of the baker has, however, been much changed in more recent times, by the introduction of machinery into the preparation of the dough. The biscuit bakeries are conducted on a very large scale, all of the main processes are conducted by machinery, the work is usually done in large, well lighted buildings where the trade of the baker is absolutely sanitary, and as healthful as the best conditions and pleasant surroundings can make them. All of the factories of the American Biscuit Company and the National Biscuit Company are of this character. The bakery of the National Biscuit Company on 10th Avenue, New York City, is the largest bakery in the world and covers two city blocks. Its employes number about one thousand. The same thing is true of the large bread bakeries scattered to-day through our great cities. Large buildings, with many employes are given up wholly to the making of bread, which is distributed by wagons to the grocery stores and private houses. These great factories are models of cleanliness and healthfulness, yet they are within the terms of the act.

The ordinary bakery has two shifts of men—the bread bakers who work at night, and the cake bakers who work in the day-time. In almost every bakery of this character in our large cities, which has any considerable amount of business, mixing machines are installed for making the dough or "sponge." These mixing machines absolutely remove any possibility of flour dust filling the air. The cake bakers, who make all kinds of fancy cakes, pies, etc., do not raise dust in their operations. The most cursory examination of bakeries in any considerable city in the country, will show that for comfort, ventilation and healthful surroundings the baker's trade compares favorably with that of any other important trade. The making of dough may occupy an hour or two hours of the day's work. The rest of the day is occupied in moulding the dough into bread and rolls and baking it. And the mixing even in small shops, is now done mainly by machinery. How then can the shortening of hours affect the question of flour dust?

The statute in question goes far beyond any previous attempt to regulate the ordinary pursuits of mankind by legislative enactment under the guise of the police power, if indeed, the Legislature ever intended this to be a *health* regulation. Considering the statute from the standpoint of its reasonableness as a health regulation, we therfore urge that a very large proportion of the bakers affected by the statute are employed in bakeries of the classes above referred to, where their surroundings cannot be reasonably objected to on the ground which led a majority of the Court of Appeals of New York to sustain this statute. Why should the employes of the National Biscuit Company have laws enacted governing their hours of labor on the ground that their occupation is unhealthful? In like manner, why should the proprietors of one of

our great bread baking establishments be arrested and imprisoned for permitting their men to work more than sixty hours per week, on the ground that their health is endangered, or the health of the public is endangered by the nature of their business? Why should the numerous proprietors of first class baking establishments throughout our great cities, whose bakeries are well ventilated, clean and comfortable in every respect, with mixing machines to handle the dough, and improved appliances of every kind, be subjected to this alleged "health" law?

In so far as the baker works under unsanitary conditions, in small and poorly ventilated bakeshops, his interests are protected by the other sections of this law. A proper enforcement of the real health provisions of the statute will give him healthful and desirable surroundings. Where these ends are attained the Legislature has gone as far in its interference with the private business of the baker as a reasonable interpretation of the police powers of the State will admit.

It was never the intention of our law-makers nor the intention of the people in adopting the Federal and State Constitutions, to erect a government so paternal in its character that the treasured freedom of the individual and his right to the pursuit of life, liberty and happiness, should be swept away under the guise of the police power of the State. And while it is difficult to define the extent of the police powers of the States, this court should not, under the plea of protecting the powers of the various States to guard the lives, morals, welfare and safety of its citizens, permit the States, little by little, to break down and sweep away the most cherished rights of American citizenship. Each new attempt by the States to interfere with the contract and property

rights, and freedom to exercise a trade or calling by the citizen, should be most closely and jealously scrutinized by this court; and unless the justification of the laws was reasonably clear and apparent, the statute should be declared unconstitutional. To resolve every doubt in favor of the police powers of the State, instead of resolving them in favor of the liberty of the individual would soon lead to absurd conclusions that are more consistent with the autocratic governments whose day seems rapidly passing, than to the great Republic whose boast has been that the Federal Constitution secured its liberties for all time against encroachment from any source.

If this law can be sustained because a few bakers may still be using old fashioned methods, whereby for a few minutes in each day they may possibly breathe a little flour dust into their lungs, why should not the doctor be protected because he is brought in contact by his trade with contagious diseases? Or the lawyer, because his occupation requires him to damage his eye-sight by poring over badly printed law books and decisions of the courts? Or the Wall Street operator because he is kept in a condition of undue nervous excitement by the gambling features of his business?

Judge Vann, of the New York Court of Appeals, in his concurring opinion in this case, says (Record, Folio 48): "I do not think the regulation in question can be sustained unless we are able to say from common knowledge that working in a bakery and candy factory is an unhealthy employment. If such an occupation is unhealthy the Legislature had the right to prohibit employers from requiring or permitting their employes to spend more than a specified number of hours per day or week in the work, because such a command would be in the interest of public health and would pro-

mote the general welfare. As in the Jacobs case we took judicial notice of the nature and qualities of tobacco, so in this case we may take judicial notice of the effect of very fine particles of flour and sugar when inhaled into the lungs from the heated atmosphere of manufactories of bread and candy. Necessarily in considering the subject we may resort to such sources of information as were open to the Legislature." After quoting a number of medical authorities, census reports and encyclopedias, some of them evidently referring to places where the flour was ground, others based entirely upon the unhealthfulness of the apartments in which the trades are carried on, and others showing that the baker's trade was about on the general average of healthfulness, he concludes as follows (Record, Folio 53), "The evidence, *while not uniform,* leads to the conclusion that the occupation of a baker or confectioner is unhealthy and tends to result in diseases of the respiratory organs. * * * Such legislation under such circumstances is a health law, and is a valid exercise of the police power."

Judge O'Brien, in his dissenting opinion in this case says (Record, Folio 61):

"What possible relation or connection the number of hours the workmen are permitted to work in the bakery has, or can have to the healthful quality of the bread made there, is quite impossible to conceive. * * * There is nothing on the face of the law or in its manifest operation to show that it has any relation to the public health."

These opinions are confirmed by the common knowledge of mankind. Flour and meal are used in all families. Has any member of the court found flour dust in the air of his kitchen? On entering the kitchen, one may see the steam from the kettle, or scent the odor of the boiled dinner, but who has

been conscious of the presence of this death dealing flour dust?

As Judge Bartlett points out in his dissenting opinion (Record, Folio 67), the commodities of the baker are "more calculated to produce dyspepsia in the consumer than consumption in the producer."

(b.) This statute cannot be sustained unless it can be justified as a proper exercise of the police power of the State of New York.

Blackstone defines the public police as the due regulation and domestic order of the kingdom, whereby the inhabitants of a state, like members of a well governed family are bound to conform in their general behavior to the general rules of propriety, good neighborhood and manners, and to be decent, industrious and inoffensive in their respective stations. 4 Bl. Com. 162.

Police is in general a system of precaution, either for the prevention of crime or calamities. The power is exercised for the prevention of offenses, calamities, diseases, for charity, interior communication, police of public amusements, for recent intelligence and for registration. Edinburgh edition of works of Jeremy Bentham, part IX. 157.

"The police of a state in a comprehensive sense, embraces its system of internal regulation, by which it is sought, not only to preserve public order and to prevent offenses against the State, but also to establish for the intercourse of the citizen with citizens those rules of good manners and good neighborhood, which are calculated to prevent a conflict of rights, and to insure to each the uninterrupted enjoyment of his own, so far as it is reasonably consistent with like enjoyment of others. Cooley Con. Lim. 572.

Kent says: But although property be thus protected, it is still to be understood that the law given has the right to prescribe the mode and manner of

using it, so far as it may be necessary to prevent the abuse of the right to the injury to others or of the public. 2 Kent's Comm. 340.

In the Slaughter House Cases (16 Wall. 36, 37), Field, J., says: "All sorts of restrictions and burdens are imposed under the police power, and, when these are not in conflict with any constitutional prohibitions or fundamental principles, they cannot be successfully assailed in a judicial tribunal. * * * But under the pretense of prescribing a police regulation, the state cannot be permitted to encroach upon any of the just rights of the citizen, which the constitution intended to secure against abridgement."

In re Jacobs (98 New York, 98), Judge Earl says, at page 108:

"The limit of the power cannot be accurately defined and the Courts have not been able or willing definitely to circumscribe it. But the power, however broad and extensive, is not above the constitution. When it speaks, its voice must be heeded. It furnishes the Supreme Law, the guide for the conduct of legislators, judges and private persons, and so far as it imposes restraints, the police power must be exercised in subordination thereto."

Again at page 110, he says:

"These citations are sufficient to show the police power is not without limitations and that in its exercise, the Legislature must respect the great fundamental rights guaranteed by the Constitution. If this were otherwise, the power of the legislature would be practically without limitation. In the assumed exercise of the police power in the interests of the health, the welfare or the safety of the public, every right of the citizen might be invaded and

every constitutional barrier might be swept away. *Under the mere guise of the police regulations, personal rights and private property cannot be arbitrarily invaded, and the determination of the Legislature is not final and conclusive."*

Tiedemann on the Limitations of Police powers, says:

"Secion 178. Laws, therefore, 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. And this conclusion not only applies to laws regulating the rate of wages of private workmen, but also any other law whose object is to regulate any of the terms of hiring, such as the number of hours of labor per day, which the employer can demand. There can be no constitutional interference by the state in the private relation of master and servant except for the purpose of preventing frauds and trespasses."

See also Freund on Police Power, page 534.

"To prevent an abuse of the police power, for the alleged protection of the health or safety or the alleged prevention of fraud, the Court must be allowed to judge whether restrictive measures have really these ends in view. A remote and slight danger should not be recognized as a sufficient ground of restriction, and the provisions of the law should be scrutinized in order to see whether they in reality tend to effectuate their object."

On the question of the reasonableness of an act, to authorize it under the police power, the same author says on page 58 of his book on Police Power:

"If reasonableness is understood to mean well adapted to the end in view, there is practically no judicial claim to control the judgment of the legislature of what is reasonable. The Courts are certainly emphatic in their assertion that they have nothing to do with the wisdom or expediency of legislative measures. The question of judicial power practically confines itself to a third meaning of reasonableness, namely, moderation and proportionateness of means to end."

Where the ostensible object of an enactment is to secure the public comfort, welfare or safety, it must appear to be adapted to that end, it cannot invade the rights of persons and property under the guise of the police regulation, when it is not such in fact. Eden vs. People, 161 Ill. 296. Ex Parte Jentsch 112 Cal. 468, Ritchie vs. People, 155 Ill. 98, Lake View vs. Rose Hill Cemetery Co. 70 Ill. 191.

In re Jacobs (98 N. Y. 98) arose under a statute forbidding the making of cigars in tenement houses. There was no question but that this was intended by the legislature to be a health regulation. The court was unanimous that the statute was unconstitutional and not a proper exercise of the police power. It will be noticed that the court speaks of the *baker* as one of the "innocuous trades" that do not fall within the police power.

Judge Earl says, at page 114:

Under the guise of promoting the public health the Legislature might as well have banished cigar-making from all the cities of the State, or confined it to a single City or Town, or have placed under a similar ban the trade of a *baker,* of a tailor, of a shoe maker, of a wood carver, or of any other of the innocuous trades carried on by artisans in their own homes. The power would have been the same,

and its exercise, so far as it concerns fundamental, constitutional rights, could have been justified by the same arguments. Such legislation may invade one class of rights today and another tomorrow, and if it can be sanctioned under the Constitution, while far removed in time we will not be far away in practical statesmanship from those ages when governmental prefects supervised the building of houses, the rearing of cattle, the sowing of seed and the reaping of grain, and governmental ordinances regulated the movements and labor of artisans, the rate of wages, the price of food, the diet and clothing of the people, and a large range of other affairs long since in all civilized lands regarded as outside of governmental functions. Such governmental interferences disturb the normal adjustments of the social fabric, and usually derange the delicate and complicated machinery of industry and cause a score of ills while attempting the removal of one."

The Court further says, "When a health law is challenged in the Courts as unconstitutional on the ground that it arbitrarily interferes with personal liberty and private property without due process of law, the Courts must be able to see that it has at least in fact some relation to the public health, that the public health is the end actually aimed at, and that it is appropriate and adapted to that end."

People vs. Marx (99 N. Y. 377) arose under an act prohibiting the manufacture or sale of substitutes for butter or cheese. It was unanimously held unconstitutional because not limited to unwholesome or simulated substances. Judge Rapallo says, at page 387:

"Equal rights to all are what are intended to be secured by the establishment of constitutional limits to legislative power, and impartial tribunals to enforce them."

In the case of People vs. Gillson (109 N. Y. 389) an act prohibiting the sale of any article of food upon the inducement that something would be given to the purchaser as a premium or reward (Laws 1887, ch. 691) was held to be an unauthorized invasion of the rights of property and an improper exercise of the police power of the State. It was expressly declared in that case that the courts must be able to see upon a perusal of the enactment that there is some fair, just and reasonable connection between it and the public good, and that unless such relation exists the statute cannot be upheld as an exercise of the police power.

Judge Peckham, writing the opinion of the court in the Gillson case, says, at page 398:

"At the same time it must be remembered that the Constitution is the supreme law of the land, and that when an act of the Legislature properly comes before the court to be compared by it with the fundamental law, it is the duty of the court to declare the invalidity of the act if it violates any provision of that law."

Again, on page 399, he says:

"Liberty, in its broad sense, as understood in this country, means the right, not only of freedom from servitude, imprisonment or restraint, but the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation. * * *

"It is quite clear that some or all of these fundamental and valuable rights are invaded, weakened, limited or destroyed by the legislation under consideration. It is evidently of that kind which has been so frequent of late, a kind which is meant to protect some class in the community against the

fair, free and full competition of some other class, the members of the former class thinking it impossible to hold their own against such competition, and therefore flying to the Legislature to secure some enactment which shall operate favorably to them or unfavorably to their competitors in the commercial, agricultural, manufacturing or producing fields."

On page 400, he says:

"This brings us to the consideration of the question whether the act is valid as a proper exercise of what is, by way of classification, called the police power of the State. That power has never yet been fully described nor its extent plainly limited, further at least, than this; it is not above the Constitution, but it is bounded by its provisions, and if any liberty or franchise is expressly protected by any constitutional provision it cannot be destroyed by any valid exercise by the Legislature or the executive of the police power."

Again on page 403, he says:

"It is further argued, however, that the act is valid as a health law, a regulation of trade in food, and to prevent dealing in impure, unwholesome and adulterated food. The same principles apply here as have already been stated, i. e., there must be some fair and reasonable relation of means to end, which courts can see and admit the force of. We think it clear there is no such relation here. We think the act has not the slightest tendency to accomplish the alleged purpose."

In the case of People vs. Biesecker (169 N. Y. 53) a statute forbidding the use of preservatives in dairy products was held void. Judge Cullen says at page 60, "while it may regulate, it may not destroy the industry."

In declaring unconstitutional Chapter 931 of the Laws of 1896, which required all convict made goods to be labeled "convict made" before they could be exposed for sale and which act was sought to be sustained under the police power as a measure for the public welfare, Judge O'Brien writing the majority opinion, gives expression to these principles.

"A law which interferes with property by depriving the owner of the profitable and free use of it or hampers him in the application of it for purposes of trade or commerce, or imposes conditions upon the right to hold or sell it, may seriously impair its value against which the constitution is a protection. The fact that legislation hostile to the rights of property assumes the guise of a health law or a labor law will not save it from judicial scrutiny since the courts cannot permit that to be done by indirection which can not be done directly. People vs. Hawkins, 157 N. Y. 1.

The last case decided in New York which is directly in point is People vs. Beattie (96 App. Div. 383) decided in July, 1904. It arose under an act providing for the examination and licensing of horseshoers. The court declared it unconstitutional as an improper exercise of the police power. Judge Hatch writing the opinion of the Court, says at page 390:

"To undertake the regulation of these subjects would inject into the body politic a paternalism which is repugnant to free institutions."

And again at page 3991:

"We are of opinion, therefore, that this law arbitrarily interferes with personal liberty and private property without due process of law, for which reason it is invalid."

The following decisions of the New York Court of Appeals interpreting the "Labor Law" of that State are not directly in point, but are important expressions of the views of that court on some branches of the case at bar.

The earliest case under the Labor Law which came before the New York Courts was that of People ex rel. Rodgers vs. Coler (166 N. Y. 1). That was an application by a contractor with the city to compel the payment of his claim. It was resisted on the ground that the contractor had failed to comply with the Labor Law so far as it required payment by him to his employees of the prevailing rate of wages. It was held that the Labor Law, so far as it required that in contracts with the municipality the contractor should agree to pay his employees the prevailing rate of wages, was unconstitutional and void, and that the contractor was entitled to payment, though he had failed to comply with that provision.

People vs. Orange County Road Construction Company (175 N. Y. 84), was a case arising under the Penal Code which made any one contracting with the state or a municipality who should require more than eight hours work of an employee guilty of a misdemeanor and punishable by a fine. As is pointed out in the opinion rendered in the case the statute did not assume to punish a contractor for violating his contract but for doing the prohibited act, i. e., requiring more than eight hours labor from an employee, regardless of whether or not he had agreed by his contract not to require such a term of labor and even though his contract might have been made years before there was any legislation on the subject. It was held that this penal enactment could not be sustained as a police or health regulation because of the arbitrary distinc-

tion drawn between workmen employed on a state or municipal work and those performing similar labor under other contracts.

Ryan vs. City of New York (177 N. Y. 271), arose under the Labor Law, the plaintiff, an employee of the city, suing for the difference between the wages actually paid him by the city and the prevailing rate of such wages. It was there held by a majority of the court that the direction of the Labor Law that the city should pay its employees the prevailing rate of wages was constitutional and imposed upon the city officers the duty of fixing wages at the prevailing rate, but that the acceptance by the employee of a different rate and his continuance in the employment of the city at such rate constituted a waiver of all claim on his part for greater compensation.

The last "Labor Law" decision in New York was People ex rel Cossey vs. Grout (179 N. Y. 417). This was a case where the relator agreed in his contract with the city not to employ his men more than eight hours per day. The relator prevailed on the ground that the law was an unconstitutional invasion of the rights of the municipality. We cite the case for the purpose of calling attention to the statement of Judge O'Brien at page 434, where he shows the ground of dissent of three judges of that court in the Lochner case. It is quite true that this court has recently held that the legislature could make it a criminal offense for a baker to permit his workmen to work more than ten hours in the day, but the struggle in that case was to make what some of us thought was a labor law a health law and so within the police power."

No case yet decided by the Supreme Court of the United States would warrant the affirming of the decision of the New York Court of Appeals in this

case. We have elsewhere pointed out that Holden vs. Hardy (169 U. S. 366) was clearly distinguishable from this case. The occupation of mining has ever been held properly within the police powers; while a decision pronouncing the bakers trade subject to arbitrary regulation under the police power, would mean that all trades will eventually be held within the police power; and the 14th Amendment will become mere idle words. We feel confident of this as we show by the tables in the "Appendix" of this brief, that the baker's trade is about on the general average of healthfulness of all trades.

We cite briefly some of the leading cases decided by this Court.

In Butcher's Union Company against Crescent City Company (111 U. S. 746), Mr. Justice Field says, on page 757: "Among the inalienable rights as proclaimed in the Declaration of Independence is the right of men to pursue their happiness, by which is meant the right to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give them their highest enjoyment. The common business and calling of life, the ordinary trades and pursuits, which are innocuous in themselves and have been followd in all communities from time immemorial, must, therefore, be free in this country to all alike upon the same conditions. The right to pursue them, without let or hindrance, except that which is applied to all persons of the same age, sex, and condition, is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright."

The case of Munn vs. Illinois (94 U. S. 79) is not

an authority for the act of the New York legislature here complained of. In that case it was held that an occupation whose regulation was necessary "for the public good" was within the police power; but as Mr. Justice Field points out, it must be a case where one undertakes "a public employment, with special privileges which the State alone can confer upon him," and the warehousing of grain having become a "virtual monopoly" gave the business a public character that warranted its regulation.

The words of Chief Justice Chase in the case of Calder vs. Bull (3 Dallas 386, 388), have never been questioned by this court and are still authority for our contention in this case that the legislature is not omnipotent. He says:

"I cannot subscribe to the omnipotence of the State Legislature, or that it is absolute and without control; although its authority should not be expressly restrained by the constitution or fundamental law of the state. * * * The nature and ends of legislative power will limit the exercise of it. This fundamental principle flows from the very nature of our free republican governments, that no man should be compelled to do what the laws do not require; nor to refrain from acts which the law permit. There are acts which the federal or state legislature cannot do without exceeding their authority. There are certain vital principles in our free republican governments, which will determine and overrule an apparent and flagrant abuse of legislative power; as to authorize manifest injustice by positive law; or to take away that security for personal liberty or private property, for the protection whereof government was established. * * * A few instances will suffice to explain what I mean. A law that punished a citizen for an innocent ac-

tion, or, in other words, for an act, which when done, was in violation of no existing law; a law which destroys or impairs the lawful private contracts of citizens; a law that makes a man a judge in his own cause; or a law that takes property from A and gives it to B; it is against all reason and justice for a people to entrust a legislature with such powers; and therefore it cannot be presumed that they have done it. * * * It (the legislature) cannot change innocence into guilt, or punish innocence as a crime, or violate the right of antecedent lawful private contract; or the right of private property."

In United States vs. Martin (94 U. S. 400, 403), this court construed Section 3738 of the Revised Statutes, providing that eight hours shall constitute a day's work for employes of the Government. It was there held that this statute was "in the nature of a direction from a principal to his agent; that eight hours is deemed to be a proper length of time for a day's labor, and that his contracts shall be based upon that theory. It is a matter between the principal and his agent, in which a third party has no interest." (p. 404.)

The court also says:

"It does not establish the price to be paid for a day's work. Skilled labor necessarily commands a higher price than mere manual labor, and whether wages are high or low depends chiefly upon the inquiry whether those having labor to bestow are more numerous than those who desire the service of the laborer. * * *

"The statute does not provide that the employer and the laborer may not agree with each other as to what time shall constitute a day's work. There are some branches of labor connected with furnaces, foundries, steam or gas works, where the labor and

the exposure of eight hours a day would soon exhaust the strength of a laborer and render him permanently an invalid. The government officer is not prohibited from knowing these facts, nor from agreeing, when it is proper, that a less number of hours than eight shall be accepted as a day's work. Nor does the statute intend that, where out-of-door labor in the long days of summer may be offered for twelve hours at an uniform price, the officer may not so contract with a consenting laborer."

This decision clearly puts this court on record, as against the arbitrary regulation of innocuous trades by act of the Legislature.

The case of United States against Martin is similar in principle to People vs. Phyfe (136 N. Y. 554).

In the case of Henderson vs. Mayor of New York (92 U. S. 259), a State law regulating the landing of passengers was held unconstitutional and not within the police powers.

The case of Petit vs. Minnesota (177 U. S. 164), is also distinguishable from the case at bar. A Sunday law which in effect made the determination whether a given occupation was an act of charity or necessity a question of fact in all trades, except barbers. Sunday laws have universally been held within the police powers. This statute is a declaration that the barber's trade does not involve work of necessity or charity.

We regard the decision of this Court in the case of Atkin vs. Kansas (191 U. S. 207, 224), as favorable to our contentions in the case at bar. The statute there under review regulated the hours of labor on public works. It did not interfere with the right of private contract. Mr. Justice Harlan calls attention to this and says "Its action touching such a matter is final so long as it does not, by its

regulations, infringe the personal rights of others, and that has not been done."

Wynehamer vs. People (13 N. Y. 378); In re Jacobs (98 N. Y. 98); People vs. Marx (99 N. Y. 377); People vs. Gillson (109 N. Y. 401); People vs. Budd (117 N. Y. 15); Health Dept. vs. Rector (145 N. Y. 32); Colon vs. Lisk (153 N. Y. 188) People vs. Hawkins (157 N. Y. 1); People ex rel. Tyroler vs. Warden of Prison (157 N. Y. 116); People ex rel. Rodgers vs. Coler (166 N. Y. 1); People vs. Biesecker (169 N. Y. 53); People vs. Orange Co. Road Cons. Co. (175 N. Y. 84); Ryan vs. City of New York (177 N. Y. 271); People ex rel. Cossey vs. Grout (179 N. Y. 417); Calder vs. Bull (3 Dallas 386); Slaughter House Cases (16 Wall. 36); Henderson vs. Mayor of New York (92 U. S. 259); Munn vs. Illinois (94 U. S. 79); Missouri vs. Lewis (101 U. S. 22); Butchers' Union Co. vs. Crescent City Co. (Ill. U. S. 746); Barbier vs. Connolly (113 U. S. 27); Holden vs. Hardy (169 U. S. 366); Pettit vs. Minnesota (177 U. S. 164); Connolly vs. Union Sewer Pipe Co. (184 U. S. 540); Atkin vs. Kansis (191 U. S. 207); Cook vs. County of Marshall (Decided by this Court January 16, 1905).

In the other State Courts legislation of the kind in issue has been almost uniformly declared invalid.

Sawyer vs. Davis (136 Mass. 239, 243); Eden vs. People (161 Ill. 296); Ritchie vs. People (155 Ill. 98); Ex parte Kuback (85 Cal. 274); Godcharles vs. Wigeman (113 Penn St. 431); State vs. Goodwill (33 West. Va. 179); Leep vs. St. Louis R. R. Co. (58 Ark. 407); Low vs. Rees Pub. Co. (41 Neb. 127); Exparte Westerfield (55 Cal. 550).

The latter case is directly in point and pronounces the bakers' trade not one subject to the police power of the state.

In the Westerfield case, a California statute provides: "It shall be unlawful for any person engaged in the business of baking, to engage or permit others in his employ to engage in the labor of baking for the purpose of sale, between the hours of six o'clock p. m. on Saturday and six o'clock p. m. on Sunday, except in the setting of sponge preparatory to the night's work; provided, however, that restaurants, hotels and boarding houses may do such baking as is necessary for their own consumption"; the act is made a misdemeanor ,punishable by fine and imprisonment, or both. Held void as a special law. Myrick, J.: "The act purports, according to its title, to be an act to provide for a day of rest. Instead of pursuing that intent, it goes on to say that certain acts, viz., the labor of baking for the purpose of sale, if performed by certain persons, viz., persons 'engaged in the business of baking for the purpose of sale' shall constitute a crime and shall be punished. The employers are not to be punished. This is special legislation. A certain class is selected. * * * The baking of bread is in itself lawful and necessary." McKinstry, J., concurring: "The baking of bread is not only lawful and necessary, but we will take notice that there is nothing so peculiar in the occupation as that those engaged in it require—as a sanitary measure, or for the protection of their morals---a period of rest not required by those engaged in many other employments. A general law must include within its sanction all who come within its purpose and scope. It must be as broad as its object."

From all of the decisions on the exercise of the police power we find its exercise fairly tested by the questions set forth in Section 143 of Freund on Police Power.

"The questions which present themselves in the

examination of a safety or health measure are: Does a danger exist? Is it of sufficient magnitude? Does it concern the public? Does the proposed measure tend to remove it? Is the restraint or requirement in proportion to the danger? Is it possible to secure the object sought without impairing essential rights and principles? Does the choice of a particular measure show that some other interest than safety or health was the actual motive of legislation?"

Tested by these questions we believe the constitutionality of the case at bar cannot be maintained.

4. The statute in question was never intended as a health provision but was purely a labor law. This is indicated by the facts leading up to the adoption of this statute by the New York legislature.

The classic country of modern factory legislation, England, brought forward the first law regulative of conditions of bakeshops, that we are able to discover, to wit, the "Bakehouse Regulation Act" passed by Parliament in 1863 (26, 27 Vict. Ch. 40). This act was the result of an investigation of a Parliamentary commission. The law forbids persons under the age of eighteen to work between the hours of 6 p. m. and 5 a. m. and apprentices to work in excess of 10 hours per day.

In addition thereto it provides for a number of sanitary rules similar to those of the New York Labor Law, but it in no wise seeks to interdict the operation of bakeshops or restrict the hours of labor of the adult employees. The Factory Act

of 1883, designed as "Factory and Workshop Act, 1883" amended the Bakehouse Act of 1863 in several particulars in regard to the location and maintenance of privies, water closets, sewage, drains and pipes and other strictly sanitary matters, but in no wise sought to interfere with the hours of labor of employees.

As our factory legislation in America was largely borrowed from that of England, so did the bakery legislation of the several states take its impetus from the precedents established by our cousins across the sea.

The first demand for a ten hour work day for bakers in our country, appears to have been made by resolution adopted in a mass meeting of bakers of the City of New York, in Irving Hall, on April 23d, in 1887. In the same year a Bill made its appearance in the New York Legislature promoted by George G. Block, the Secretary of the Journeymen's Bakers Union which read as follows:

> Section 1. A day's work in a bakery, shop or other place in which articles of food are manufactured, shall not exceed ten hours per day.
>
> Section 2. This act shall take effect immediately.

See Baker's Journal, New York City, May 8th, 1895. This bill was rejected by the Legislature. Five years later in 1892, the Commissioner of Labor Statistics of the State of New York, with the aid of the Organization of the Journeymen Bakers, made an investigation of the conditions of labor and the construction of the bakeshops of New York City, which resulted in an agitation of the Journeymen Bakers renewing the struggle for a ten hour law for bakers and a number of sanitary pro-

visions which as stated above were largely borrowed from the English Bakehouse Act.

Report of New York State Bureau of Labor Statistics of 1892, Volume III.

In 1895 a Bill was introduced into the Legislature entitled "An Act to regulate the Manufacture of Flour and Meal Food Products." It became a law as Chapter 548 of the Laws of 1895. It was the first Baker's Law passed in any country of the world, which arbitrarily fixed the hours of labor of adult employees of bakeries and confectionery establishments, without providing for exceptions in emergency cases. In 1896 another bill was introduced adding certain sanitary amendments to the new law, such as providing for a minimum height of eight feet for all bakeshops and prohibiting domestic animals to be kept in bakeries. The Act which became known as Chapter 672 of the Laws of 1896 is substantially the present Article VIII. of the Labor Law. In 1897 the Legislature was engaged in consolidating into a series of general laws the Laws of the State and among others embodied all of the former independent acts bearing upon and having relation to the condition of labor and workmen into one act, entitled "The Labor Law," Chapter 32 of the General Laws. It was then that the question of the classification of the Bakery Inspection Law first presented itself to the Legislature and the latter although at the same time collating the laws relative to the public health under an act called the "Public Health Act," which was adopted the same year, placed the Bakery Act into the Labor Law. The legislature thus determined that this act was a labor measure and that its passage was so intended and in conformity thereto inserted it in

the Labor Law, as Article VIII. thereof and not in the Public Health law.

This act is the most arbitrary of its kind on the statute books of this country. It prohibits absolutely the employment of employees in baking and confectionery establishments over the prescribed limit of 60 hours a week without regard to loss of property or other emergencies that may arise, the desire of employes to contract for overtime, or the employer's willingness to pay for extra work in cases of emergency.

The Utah Miner' 8 Hour Law sustained by this Court in Holden vs. Hardy, 169 U. S. is clearly distinguishable in this respect from the act in question since it provides for an exception "in cases of emergency where life or property is in imminent danger," as well as in the fact that mining is not classed with the baking trade as innocuous.

The Acts of New York State of a similar nature are the act providing that ten hours within twelve consecutive hours should constitute a day's work on certain railroads. Overtime is here permitted in case of accident or unavoidable delay. Laws of 1897 Ch. 415, Section 5.

The New York Law relative to work in brick yards, forbidding employers to allow the men to work more than 10 hours per day, allows overtime agreements.

Outside of New York, most of these special Laws applying to adult labor concern railways or mines. Three other states followed New York in regulating the working time of men employed in bakeries, New Jersey, Pennsylvania and Missouri; as did also Ontario, Can.

The New Jersey Act was passed in April, 1896, and is almost an exact copy of the act here in is-

sue. The introducers of the act sought to enact the statute in the same form as the New York Act but the Legislature amended the ten hour work day provision, permitting employers in cases of emergency to employ the men two additional hours provided they receive extra remuneration for such extra time at the regular wage rate paid such employees.

An Act respecting Bakeshops, assented to April 7, 1896, is the title of a similar measure of the Province of Ontario. Section 7 thereof reads as follows: No employer shall require, permit or suffer any employee in any bakeshop to work more than sixty hours in any one week except by permission of the inspector given in writing to the employer.

It has already been remarked that the English Bakehouse Act has no restrictions as to the hours of labor of adults; nor do we find any such restrictions in the Bakery Inspection Laws of Connecticut, Massachusetts and Maryland passed in 1896 and 1897, and in the Act of Minnesota passed in 1895. The restrictions in the Acts of Pennsylvania and Missouri of 1897 apply to Sunday labor only.

Other laws regulative of the hours of labor may be distinguished from the act as respecting the freedom of contract in every State of the Union. While providing for a legal workday and for strict prohibitions against working over the legal limit they invariably either grant the parties to the labor contract the right to agree otherwise, to accept or pay extra compensation for over work, for extra work in cases of emergency, or of danger to life or property or for extra work to make up for lost time. We have failed to find an instance where an employer is so utterly helpless to protect his

property as in the case at bar, the only exception that we could find being where the restriction is intended to operate on State and Municipal employees or contractors.

5. Holden v. Hardy (169 U. S. 366) distinguished from the case at bar

Working in underground mines has always been recognized as hazardous and unhealthful. The bakers trade has not. We have a specific reference to the bakers trade as an "innocuous" one in the opinion of Judge Earl in the Jacobs case, (98 N. Y. at page 114). And a similar declaration by the highest Court of California in re Westerfield (55 Cal. 550).

The Utah miners act was passed pursuant to a provision of the State constitution which provided as follows "the legislature shall pass laws to provide for the *health* and *safety* of employes in factories, smelters and mines" (Const. Art. 16, § 6). The Utah Legislature pursuant to this provision enacted a law which was certainly intended as a health regulation.

The New York Statute is contained in "The Labor Law" of the State and is purely a regulation of the hours of a trade which under present day conditions is not unhealthful. The additional provisions relating to the sanitary surroundings of the bake shop amply protect the baker against unsanitary conditons. Such protection is impossible to the miner.

The Utah law applies to "workingmen in all underground mines and workings." The New York

law affects only employes in a "biscuit, bread or cake bakery." The law should have applied to all persons engaged in the business of baking. Such is the language of the California statute on the same subject (55 Cal. 550).

The Utah statute excepts "cases of emergency where life or property is in imminent danger." The New York Statute is unreasonable in this respect and makes no exception. The baker's business is peculiarly liable to changes in the time of the maturing of the material and changes of temperature affect it to the extent of hours. Yet the employer is a criminal if he compels or permits his employes to work over the prescribed time, though they do it willingly and are paid for overtime, and though the bakers product is destroyed thereby.

6. The plaintiff in error, believing the New York statute under review to be unconstitutional prays that the judgment of the New York Court of Appeals be reversed.

Respectfully submitted,

FRANK HARVEY FIELD,
HENRY WEISMANN,
of Counsel for plaintiff in error.

APPENDIX.

THE LABOR LAW.

CHAPTER 415, LAWS OF 1897.

Article VIII.—Bakeries and Confectionery Estabments.

Section 110. Hours of labor in bakeries and confectionery establishments.—No employee shall be required or permitted to work in a biscuit, bread or cake bakery or confectionery establishment more than sixty hours in any one week or more than ten hours in any one day, unless for the purpose of making a shorter work day on the last day of the week; nor more hours in any one week than will make an average of ten hours per day for the number of days during such week in which such employe shall work.

Source.—L. 1895, Ch. 518, Sec. 1, as amended by L. 1896, ch. 672.

Section 111. Drainage and plumbing of buildings and rooms occupied by bakeries.—All buildings or rooms occupied by bakeries.—All buildings or rooms occcupied as biscuit, bread, pie or cake bakeries shall be drained and plumbed in a manner conducive to the proper and healthful sanitary condition thereof, and shall be constructed with air shafts, windows or ventilating pipes, sufficient to insure ventilation. The factory inspector may direct the proper drainage, plumbing and ventilation of such rooms or buildings. No cellar or basement not now used for a bakery shall hereafter be so occupied or used unless the proprietor shall comply with the sanitary provisions of this article.

Source.—L. 1895, Ch. 518, Sec. 2, as amended by L. 1896, ch. 672.

Section 112. Requirements as to rooms, furniture, utensils and manufactured products.—Every room used for the manufacture of flour or meal food products shall be at least eight feet in height, and shall have, if deemed necessary by the factory inspector, an impermeable floor constructed of cement, or of tiles laid in cement, or an additional flooring of wood properly saturated with linseed oil. The side walls of such rooms shall be plastered or wainscoted. The factory inspector may require the side walls and ceiling to be whitewashed at least once in three months. He may also require the woodwork of such walls to be painted. The furniture and utensils shall be so arranged as to be readily cleansed and not prevent the proper cleaning of any part of a room. The manufactured flour or meal food products shall be kept in dry and airy rooms, so arranged that the floors, shelves and all other facilities for storing the same can be properly cleaned. No domestic animals, except cats, shall be allowed to remain in a room used as a biscuit, bread, pie or cake bakery, or any room in such bakery where flour or meal products are stored.

Source.—L. 1895, Ch. 518, Secs. 3, 4, as amended by L. 1896, ch. 672.

Section 113. Wash-room and closets; sleeping places.—Every such bakery shall be provided with a proper wash-room and water-closet or water-closet apart from the bake-room or rooms where the manufacture of such food product is conducted, and no water-closet, earth-closet, privy or ash-pit shall be within or connected directly with the bake-room of any bakery, hotel or public restaurant.

No person shall sleep in a room occupied as a

bake-room. Sleeping places for the persons employed in the bakery shall be separate from the rooms where flour or meal food products are manufactured or stored. If the sleeping places are on the same floor where such products are manufactured, stored or sold, the factory inspector may inspect and order them put in a proper sanitary condition.

Source.—L. 1895, Ch. 518, Secs. 5, 6, as amended by L. 1896, ch. 672.

Section 114.—Inspection of bakeries.—The factory inspector shall cause all bakeries to be inspected. If it be found upon such inspection that the bakeries so inspected are constructed and conducted in compliance with the provisions of this chapter, the factory inspector shall issue a certificate to the persons owning or conducting such bakeries.

Source.—L. 1895, ch. 518, Sec. 8, as amended by L. 1896, ch. 672. The portion of the former section fixing the number of inspectors is contained in Sec. 61, ante.

Section 115. Notice requiring alterations.—If, in the opinion of the factory inspector, alterations are required in or upon premises occupied and used as bakeries, in order to comply with the provisions of this article, a written notice shall be served by him upon the owner, agent or lessee of such premises, either personally or by mail, requiring such alterations to be made within sixty days after such service, and such alterations shall be made accordingly.

Source.—L. 1895, ch. 518, Sec. 9, as amended by L. 1896, ch. 672.

Penal Code, § 3841.

Any person who violates or does not comply with * * * the provisions of Article Eight of the Labor Law, relating to bakeries and confectionery establishments, the employment of labor and the manufacture of flour or meal food products therein * * * is guilty of a misdemeanor and upon conviction shall be punished for a first offense by a fine of not less than twenty nor more than one hundred dollars; for a second offense by a fine of not less than fifty nor more than two hundred dollars, or by imprisonment for not more than thirty days, or by both such fine and imprisonment; for a third offense by a fine of not less than two hundred and fifty dollars, or by imprisonment for not more than sixty days, or by both such fine and imprisonment.

From Buck's Hygiene and Public Health, 1879, *Volume II., Pages* 10-11:

I.

OCCUPATIONS INVOLVING THE INTRODUCTION OF DELETERIOUS MATTERS INTO THE BODY.

1. *By Inhalation.*

A. Vapors and Gases:

a. Irritating—Metal-refiners, gold and silver smiths, jewelers, electrotypers, etchers, bleachers, straw-hat makers, manufacturers of chemicals.

b. Poisonous—Gasmen, gilders, mirror-makers, brass-founders, match-makers, rubber manufacturers, smelters, manufacturers of aniline, photographers, cloth-scourers.

c. Offensive—Brewers, butchers, fellmongers, leather-dressers, tanners, gut-cleaners, tripe and hand cleaners, fat-renderers, lard-refiners, bone-boilers, glue-makers, fertilizer manufacturers, pork packers, soap-makers, oil-pressers, cheese-makers, scavengers, sugar-refiners, fullers, hostlers, dog-fanciers, rag-pickers.

B. Dust:

a. Irritating—*Metallic*: Bronzers, file cutters, fitters, grinders, needle-makers, pin-pointers, cutlers. *Mineral*: Cement-makers, stone-cutters, potters, lime-burners, plaster-burners, glass-cutters, sandblast operatives, diamond-cutters, lithographers. *Vegetable*: Chimney-sweeps, molders, millers, cotton, flax and hemp operatives, tobacco operatives. *Animal*: Brush-makers, button-makers, feather, wool and silk operatives. *Mixed*: Carpet-cleaners, hair-pickers, street-sweepers.

b. Poisonous—Artificial-flower makers, wall-paper makers, hatters, enamelers, painters, type-founders, white-lead manufacturers, workers in copper.

2. *By Absorption.*

1. Irritating substances: Domestics, washerwomen, grocers.

2. Poisonous: Paederasts, prostitutes.

II.

OCCUPATIONS INVOLVING EXPOSURE TO CONDITIONS THAT INTERFERE WITH NUTRITION.

1. *Elevated or Variable Temperature.*

a. Vicissitudes of weather—Boatmen, fishermen, farmers, (florists, gardeners, nurserymen), drivers (cartmen, hackmen, omnibus drivers), laborers, bricklayers, masons.

b. Artificial heat—Brick-makers, bakers, cooks, charcoal-burners, blacksmiths, engineers, stokers, forgemen, iron-puddlers, glass-blowers, dyers, laundresses.

2. *Overuse of Certain Organs.*

a. Nervous system (mental worry)—Brokers, gamblers, merchants, physicians, tea-tasters.

b. Eyes—Engravers, lapidaries, watchmakers, seamstresses (embroiderers, lace makers).

c. Vocal Organs—Actors, clergymen, singers, public speakers.

d. Muscles—Athletes, copyists, musicians, (pianists, violinists, brass-instrument players).

3. *Constrained Attitude.*

Printers (compositors, pressmen), coopers, carpenters, cabinet-makers, shoe-makers, tailors, sales men and women.

4. *Sedentary Life.*

Artists, clerks, lawyers, literary men, students, teachers.

III.

OCCUPATIONS INVOLVING EXPOSURE TO MECHANICAL VIOLENCE.

1. From machinery: Factory operatives, machinists, railway employees.
2. From preventable accidents: Lumbermen, quarrymen, roofers.
3. From variations in atmospheric pressure: Aeronauts, caisson workers, drivers, boilermakers.

OCCUPATIONS WITH HIGHEST AND LOWEST MORTALITY FIGURES IN ENGLAND, 1890-2.

(Supplement to 55th Annual Report of the Registrar-General.)

Occupation.	Comparative mortality figure.
Dock laborer	1,829
File maker	1,810
Lead worker	1,783
Inn, hotel servant	1,725
Potter, earthenware manufacturer	1,706
Innkeeper, servant, etc	1,659
Costermonger, hawker	1,652
Innkeeper	1,642
Coal heaver	1,528
Cutler, scissors maker	1,516
General laborer (industrial districts)	1,509
Glass manufacture	1,487
Brewer	1,427
General laborer (London)	1,413
Tool, scissors, file, saw, etc., maker	1,412
Tin miner	1,409
Manufacturing chemist	1,392
Copper worker	1,381

Wool, silk, etc., dyer	1,370
Seaman, etc.	1,352
Slater, tiler	1,322
Chimney sweep	1,311
Lead miner	1,310
Nail, anchor, chain, etc., maker	1,301
Carman carrier	1,284
Copper miner	1,230
Gunsmith	1,228
Messenger, porter (not railway or government)	1,222
General laborer	1,221
Transport service	1,216
Musician, music master	1,214
Bargeman	1,199
Zinc worker	1,198
Stone, slate quarrier	1,176
Coach, cab service	1,153
Coal miner (Monmouthshire and South Wales)	1,145
Cotton, etc., manufacture	1,141

Occupation. ,	Comparative mortality figure.
Silk, satin, etc., manufacture	921
Baker, confectioner	*920*
Shoemaker, bootmaker	920
Commercial clerk	915
Blacksmith, whitesmith	914
Coal miner (West Riding)	912
Paper manufacture	904
Tallow, soap manufacture	897
Malster	884
Carpet, rug manufacture	873
Shopkeepers	859
Other occupied males	847
Fisherman	845
Miller	845

Publisher	833
Railway guard, etc.	825
Barrister, solicitor	821
Railway engine driver, guard, etc.	818
Railway engine driver	810
Ironmonger	807
Coal merchant	803
Engine driver (not railway, etc.)	786
Carpenter, joiner	783
Railway official, clerk	781
Artist, engraver, etc.	778
Wheelwright	778
Coal miner (Durham and Northumberland)	774
Ironstone miner	774
Sawyer	768
Domestic indoor servant	757
Tanner, fellmonger	756
Brick tile burner	741
Coal miner (Derbyshire and Nottinghamshire)	727
Shipwright	713
Lace manufacture	709
Hosiery manufacture	698
Laborer in agricultural group	666
Grocer	664
Agricultural laborer	632
Schoolmaster	604
Agriculturist	602
Farmer, grazier	563
Gardener, etc.	553
Clergyman	533

NOTE.—Occupations in the first column have a mortality above and those in the second column below the average for all occupied males (953). Among the 48 other occupational groups 39 are above and 9 below this figure. The standard of

comparison (1,000) is the mortality figure for all males.

Indented lines indicate sub-classes or occupations.

The number of deaths of male persons between 25 and 65 years of age in the years 1890, 1891 and 1892 is compared with the number of living persons exercising the various occupations as returned by the census of 1891. The mortality of all males within the age period 25-65 years is then taken as a standard (1,000) with which the death rate in the various occupations is compared. The unoccupied males had a death rate more than twice as large as that of all males, the exact ratio being as 2,215 to 1,000, while the occupied males of course had a lower mortality, thus:

All males (standard)	1,000
Unoccupied males	2,215
Occupied males—England	953
Occupied males—London	1,147
Occupied males—Industrial districts	1,248
Occupied males—Agricultural districts	687

WHERE BREAD IS MADE.—By F. J. Waldo, M. A., M. D.; from article in Journal of the Sanitary Institute, April, 1894 (England), dealing with bakers and bake-houses and closing with thirteen recommendations of sanitary changes in the shops of London. He concludes the article by saying "if baking be carried on in well ventilated places, with a perfect sanitary environment, there is no reason why it should be a particularly dangerous or unhealthy trade."

BAKESHOP SANITATION AND THE REDUCTION OF THE WORKTIME OF BAKERS.

The claim that the reduction of the hours of labor of bakers is an element in bake-shop sanitation and in the promotion of the health of bakers and the wholesomeness of their products, is not sustained by medical and sanitary authority, and we fail to find an instance in which those who have given thought and labor to this question, have in any wise adverted to it.

The following references and opinions are notable in this connection.

The Lancet, Vol. 2, 1895, page 298, contains a joint paper of Dr. F. J. Waldo and Dr. David Walsh, two English sanitary experts of note, dealing with underground industries, especially with reference to the baking trade in London. They state that the underground rooms are unfit for workmen. The only way in which they can be made fit to work in is to have them at least eight feet high and a minimum of 500 cubic feet of air space for each workman, and a special allowance for each gas jet. Walls must be kept smooth and dry. Window space must equal one-eighth of the floor and ventilation, light, drainage and lavatory accommodations must be such as to satisfy advanced modern requirements, floors should have nine-inch concrete and drains should be a foot deep laid in concrete. There should be a front area outside and a back or side area to promote the circulation of air.

The recommendations of these men do in no wise refer to the reduction of the hours of labor of the employees. Report of Lancet, Special Sanitary Commission on Bakeries and Bread Making, 1889, Vol. 2, page 1140, treating of the unsanitary conditions of bakeries and poor ventilation. It states

that the system should be denounced, EVEN THOUGH SHORT HOURS AND INCREASED WAGES WERE GIVEN, the other conditions were so vile that it was dangerous to the consumer and the baker. Page 1142.

Report of Lancet Special Sanitary Commission on Bakeries and Bread Making, 1890, Vol. 1, Page 42, No. 2, advocating a better knowledge and wider application of sanitary laws.

No. 3, Page 208, same book, treating of ventilation and proper sanitation as followed in Belgium and France.

No. 4, Page 719, same volume, condemns poor sanitary and ventilating conditions in Scotland, states there are very few model bakeries in Scotland, most of the bakeries being under the ground.

Comparativ Mortality of men 25 to 65 years of age in different occupations.—Referencee handbook of Medical Sciences,Vol. 6, page 317, mortality of clergymen being lowest, 100 out of a list of 21 occupations, the highest being cotton workers at 196. Bakers are number 11 on the list at 172, above the bakers are scheduled cabinet makers 173, masons and brick layers 174, blacksmiths 175, clerks 170, railway laborers 185, gunsmiths 186, wool workers 180, tailors 199, hatters 191, and cotton workers as above stated. Millers have a higher death list than bakers, see page 325.

On page 317 is shown that the mortality from phthisis is far more frequent in many other trades than among bakers.

The "Practitioner," Vol. 53, 1894, pages 387, 389, 390, and up to page 400, treats of unsanitary conditions and poor ventilation of bakers and advocates reforms in that direction, but does not allude to the hours of labor.

Dr. Arlidge in his work entitled "The Diseases

of Occupations" enumerates the unhealthy influences to which the baker is exposed, as follows:

Exposure to heat from ovens, dust, storm, variations of temperature, fatiguing movements in kneading bread. Prolonged hours of work, more or less night work and loss of rest. And he comments on the discrepancies noticeable in the vital statistics of bakers compiled by different authors showing that many other occupations show a higher death rate.

Dr. Ogles' figures with respect to comparative mortality in various occupations are given in the supplement to the 45th Annual Report of the Register General.

The calculations were made from deaths registered during 1880-1881, 82, that is to say, prior to the passing of the English Bake-house Regulation Act of 1883, 100 headings on death within all, and in 37 of these the comparative mortality figure exceeds that of the bakers while in 62 it falls short. The comparative mortality figures of the bakers and confectioners stands at 938, and it may be noted that while he compares unfavorably with the grocer and with the shop keepers as a whole, he compares favorably with the cheesemongers, milk or butter man, the green-grocer and fruiterer, the fish monger and the poulterer and the butcher.

He states on page 396 that statistics show that the mortality from phthisis and from diseases of the respiratory organs hardly departs from the average of all males. Dr. Arlidge states that he does not believe FLOUR DUST CAUSES PULMONARY DISEASES TO ANY CONSIDERABLE EXTENT.

Our attention has been called to the fact that the bakers are in their majority night workers, that but a minority of them marry and lead a domestic life;

that large numbers of them live in cheap lodging houses, with a bar annex, amid squalor and filth; and that they are largely addicted to the excessive use of alcohol. Taking these facts for granted we do not hesitate to say that conditions such as these contribute largely to the debilitation and unhealthful condition of the men, where such condition may exist.

It is clear to us that habits such as these and life in these surroundings will render an extensive leisure of the employes more dangerous to their health in both a physical and moral sense, than correspondingly long hours of work in bake-shops properly conducted under the sanitary rules provided for by the provisions of the bakery inspection laws.

Professor Oliver, M. A., M. D., F. R. C. P., who is the medical expert of the White Lead, Dangerous Trades, Pottery and Lucifer Match Committees of the British Home Office, strongly supports this opinion. In statistics showing "the comparative mortality from specified causes in certain dusty occupations," he shows that the mortality among bakers stands eighteenth in a mortality list covering twenty-two such occupations, being exceeded by the mortality in such trades as Locksmith, Tinsmith, Bricklayer, Stonecutter, Cooper and Wood Turner, and various trades involving the handling of iron, steel, brass, copper and zinc, as well as the textile trades. Moreover, Prof. Oliver shows that the mortality among bakers from phthisis and diseases of the respiratory system *is the lowest of all the twenty-two occupations he cites, which occupations cover nearly all the groups in which artisans are employed.*

It is therefore plain that the occupation of a baker is not in itself as harmful as many trades for which no special legislation has been enacted.

The occupation not being inherently harmful, it

follows that the question is not whether bakers should work 9 or 10 or 11 hours or any specified time, but whether the sanitary condition of the individual bake-shop in which they are employed is what it should be in respect to ventilation, lighting, toilet accommodations and the like. If it is not, they should not be allowed to work there until unsanitary conditions have been remedied; if it is, they will take no more harm by working eleven or twelve hours than by working only ten.

A far more important factor than that of the hours of labor is the fact that not sufficient attention has been given by the public authorities to regulating the sanitary condition of some bake-shops, with resultant injustice not only to the operatives, but to the consumers of bakery products.