INDEX.

SUBJECT INDEX.

TABLE OF CASES CITED.

STATUTES CITED.

IN THE

SUPREME COURT OF THE STATE OF WASHINGTON

No. 26038

ERNEST PARRISH AND ELSIE PARRISH, HIS WIFE,
Appellants,

vs.

WEST COAST HOTEL COMPANY, A CORPORATION.
Respondent.

AMENDED STATEMENT AS TO JURISDICTION.

Pursuant to Rule 12, paragraph 1 of the Rules of the Supreme Court of the United States, appellant submits this statement showing that the appeal in the above entitled cause is properly within the jurisdiction of the Supreme Court of the United States.

Opinion Below.

The opinion of the Supreme Court of the State of Washington is reported at this time in the Advance Sheets of Washington Decisions, volume 85, No. 16, published at Olympia, Washington, on April 15, 1936, at page 517, being 85 Wash. Dec. 517. Said opinion was filed April 2, 1936 (R. 47). Petition for rehearing was filed by the appel-

lant within thirty days thereafter, to wit, April 26, 1936, and was denied on May 22, 1936 (R. 73). Judgment was entered on July 9, 1936 (R. 77). There is appended hereto as Exhibit "A", a copy of the oral decision of the Superior Court of Chelan County and as Exhibit "B" the opinion of the Supreme Court of the State of Washington being all of the opinions of the courts of the State considering the matter.

Jurisdiction.

The jurisdiction of the Supreme Court of the United States is invoked under section 237 (a) of the United States Judicial Code, as amended by the act of February 13, 1925, January 31, 1928, and April 26, 1928; Title 28 U. S. C. A., sec. 344 (a), 861 (a) and 861 (b).

1.

(*Appeal Timely Taken.*)

The judgment of the Supreme Court of the State of Washington sought to be reversed was entered on July 9, 1936 (R. 77). The time for taking the appeal began to run on the date of such judgment. (See *Puget Sound Power & Light Company* v. *King County*, 264 U. S. 22, where the time for appealing from the judgment of the Supreme Court of the State of Washington is considered). The petition for appeal, accompanied by assignment of errors and statement as to jurisdiction required by Rule 12 (1) of the Supreme Court of the United States, was on the 9th day of July, 1936, presented to the Hon. William J. Millard, Chief Justice of the Supreme Court of the State of Washington, and by him allowed on the date of the presentation of this petition (R. 93).

2.

(*Finalty of Judgment.*)

The judgment forming the basis of the appeal is a final judgment in the sense that it determines the controversy, leaving nothing to be done except the ministerial acts of enforcement. It is one denying the appellant any relief and entering a monetary judgment in favor of the appellees as against the appellant. The final court has entered a final judgment upon the merits (R. 77). The judgment appealed from is final within the meaning of section 237 of the Judicial Code.

Mower v. *Fletcher,* 114 U. S. 127;

Board of Commissioners of Tippecanoe County v. *Lucas, Treasurer,* 93 U. S. 108;

Gulf Refining Company v. *U. S.,* 296 U. S. 125.

3.

(*Judgment of the Highest Court.*)

The judgment of the Supreme Court of the State of Washington is that of the highest court in which, under the laws of the State, such judgment could be had. No further appeal may be had to it or any other court, save the Supreme Court of the United States since the appeal herein is taken from "a highest court of a State in which a decision on the suit could be had."

Constitution of the State of Washington, Article IV, sections 1, 4, and 6, as found in Remington's Revised Statutes of the State of Washington, 1932, volume 1, pages 422, 425, and 428, respectively.

Remington's Revised Statutes of the State of Washington, 1932, volume 4, section 1716, pages 10 and 11; Laws of 1893, page 119; Laws of 1901, page 28, section 1; section 1737, page 72, Laws of 1889, page 130, section 22; section

1740, pages 74 and 75, Laws of 1893, page 131, section 25; and section 1741, page 75, Laws of 1893, page 131, section 26.

4.

(Validity of a State Statute Drawn Into Question and Decision in Favor of Its Validity.)

In this suit the petitioner contended in the court below that a State statute, as applied to the petitioner, was repugnant to and in conflict with section 1, Article XIV of the Constitution of the United States, which states: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any persons within its jurisdiction equal protection of the laws." The decision of said Supreme Court of the State of Washington was in favor of the validity of the statute.

(a) Statute.

The statute, the validity of which was drawn into question is Chapter 174, Laws of 1913, page 602, being section 7623, *et seq.*, of Remington's Revised Statutes of Washington (1932, page 657). The pertinent parts of said chapter are as follows:

> "SECTION 1. The welfare of the State of Washington demands that women and minors be protected from conditions of labor which have a pernicious effect on their health and morals. The State of Washington, therefore, exercising herein its police and sovereign power declares that inadequate wages and unsanitary conditions of labor exert such pernicious effect.
>
> "SEC. 2. It shall be unlawful to employ women or minors in any industry or occupation within the State of Washington under conditions of labor detrimental to their health or morals; and it shall be unlawful to

employ women workers in any industry within the State of Washington at wages which are not adequate for their maintenance.

"SEC. 3. There is hereby created a commission to be known as the 'Industrial Welfare Commission' for the State of Washington, to establish such standards of wages and conditions of labor for women and minors employed within the State of Washington, as shall be held hereunder to be reasonable and not detrimental to health and morals, and which shall be sufficient for the decent maintenance of women."

* * * * * * *

Under Chapter 7, Laws of 1921, page 46, section 82, and page 68, section 134, being Remington's Revised Statutes (1932) Section 10840 and Section 10893 respectively the Industrial Welfare Commission was abolished and its duties assigned to the Industrial Welfare Committee, consisting of the Director of Labor and Industries, the Supervisor of Industrial Insurance, the Supervisor of Industrial Relations, the Industrial Statistician, and the Supervisor of Women in Industry.

"SEC. 6. It shall be the duty of the Commission to ascertain the wages and conditions of labor of women and minors in the various occupations, trades and industries in which said women and minors are employed in the State of Washington. * * *

* * * * * * *

"SEC. 9. The commission shall specify times to hold public hearings, at which times employers, employees or other interested persons may appear and give testimony as to the matter under consideration. The commission shall have power to subpoena witnesses and to administer oaths. * * *

"SEC. 10. If, after investigation, the commission shall find that in any occupation, trade or industry, the

wages paid to female employees are inadequate to supply them necessary cost of living and to maintain the workers in health, or that the conditions of labor are prejudicial to the health or morals of the workers, the commission is empowered to call a conference composed of an equal number of representatives of employers and employes in the occupation or industry in question, together with one or more disinterested persons representing the public; but the representatives of the public shall not exceed the number of representatives of either of the other parties; and a member of the commission shall be a member of such conference and chairman thereof. The commission shall make rules and regulations governing the selection of representatives and the mode of procedure of said conference, and shall exercise exclusive jurisdiction over all questions arising as to the validity of the procedure and of the recommendations of said conference. On request of the commission, it shall be the duty of the conference to recommend to the commission an estimate of the minimum wage adequate in the occupation or industry in question to supply the necessary cost of living, and maintain the workers in health, and to recommend standards of conditions or labor demanded for the health and morals of the employes. The findings and recommendations of the conference shall be made a matter of record for the use of the commission.

"SEC. 11. Upon the receipt of such recommendations from a conference, the commission shall review the same and may approve any or all of such recommendations, or it may disapprove any or all of them and recommit the subject or the recommendations disapproved of, to the same or a new conference. After such approval of the recommendations of a conference the commission shall issue an obligatory order to be effective in sixty (60) days from the date of said order, or if the commission shall find that unusual conditions necessitate a longer period, then it shall fix a later date, specifying the minimum wage for women in the occu-

pation affected, and the standard conditions of labor for said women; and after such order is effective, it shall be unlawful for any employer in said occupation to employ women over eighteen (18) years of age for less than the rate of wages, or under conditions of labor prohibited for women in said occupation. The commission shall send by mail so far as practicable to each employer in the occupation in question a copy of the order, and each employer shall be required to post a copy of said order in each room in which women affected by the order are employed. When such commission shall specify a minimum wage hereunder the same shall not be changed for one year from the date when such minimum wage is so fixed.

"SEC. 12. Whenever wages or standard conditions of labor have been made mandatory in any occupation, upon petition of either employers or employes, the commission may at its discretion reopen the question and re-convene the former conference or call a new one, and any recommendations made by such conference shall be dealt with in the same manner as the original recommendations of a conference.

"SEC. 13. For any occupation in which a minimum rate has been established, the commission through its secretary may issue to a woman physically defective or crippled by age or otherwise, or to any apprentice in such class of employment or occupation as usually requires to be learned by apprentices, a special license authorizing the employment of such licensee for a wage less than the legal minimum wage; and the commission shall fix the minimum wage for said person, such special license to be issued only in such cases as the commission may decide the same is applied for in good faith and that such license for apprentices shall be in force for such length of time as the said commission shall decide and determine is proper.

* * * * * * *

"SEC. 18. If any employe shall receive less than the legal minimum wage, except as hereinbefore provided

in section 13, said employe shall be entitled to recover in a civil action the full amount of the legal minimum wage as herein provided for, together with costs and attorney's fees to be fixed by the court, notwithstanding any agreement to work for such lesser wage. In such action, however, the employer shall be credited with any wages which have been paid upon account.

"SEC. 19. All questions of fact arising under this act shall be determined by the commission and there shall be no appeal from its decision upon said question of fact. Either employer or employe shall have the right of appeal to the superior court on questions of law.

* * * * * * *"

(b) **Application of Statute and Nature of the Case.**

In this suit the plaintiff and appellant below, Elsie Parrish, was employed by the defendant as a chamber maid in the hotel which it operates. Her husband was made a party in compliance with the community property laws existing in the State of Washington. The defendant was, at all times involved in the litigation, engaged in the operation of a hotel known as The Cascadian in the City of Wenatchee, Washington.

Mrs. Parrish had been employed as a chamber maid by the hotel company intermittently during a period beginning in August of 1933 and terminating in May, 1935. During the period of her employment Mrs. Parrish had been paid weekly a sum which was less than the $14.50 per week, which had been established by the Industrial Welfare Commission of the State of Washington for women employed in the hotel industry under the authority given to it by Chapter 174, Laws of 1913, page 602, Remington's Revised Statutes 1932, section 7623, *et seq.* Upon the termination of her employment Mrs. Parrish refused the check for $17.00 tendered by the hotel company and demanded the

difference between the wages she had been receiving and the wages she would have received under the minimum wage established by the Industrial Welfare Commission of Washington. This being refused she brought suit for this amount, expressly relying upon and citing the statute above referred to and the order promulgated by the Commission thereunder.

The hotel company, the petitioner here, answered, in effect, setting up a general denial of the indebtedness and affirmatively pleading that the minimum wage law and the ruling of the Commission thereunder were void under the limitations of section 1 of Article XIV of the Constitution of the United States.

Upon the case coming on for trial the Superior Court of the State of Washington for Chelan County ruled that the plaintiff, Mrs. Parrish, was entitled to judgment for $17.00, being the balance of wages owing to her, and that no further recovery could be had under the terms of Chapter 174, Laws of 1913, page 602, Remington's Revised Statutes 1932, section 7623, *et seq.,* for the reason that the statute was in conflict with section 1 of Article XIV of the Constitution of the United States, and was, therefore, void.

From this ruling the plaintiff, Mrs. Parrish, took an appeal to the Supreme Court of the State of Washington, wherein, in the opinion heretofore cited in this statement, the lower court was reversed upon the ground that the statute in question did not conflict with section 1 of Article XIV of the Constitution of the United States, and that, therefore, the plaintiff was entitled to judgment in accordance with the prayer of her complaint for the difference between the wages she had been paid and the amount she would have been paid under the minimum wage established by the Industrial Welfare Commission of the State of

Washington. It is from this decision that the petitioner seeks relief.

(c) **Constitutional Question Timely and Sufficiently Raised.**

The constitutionality of the statute was drawn into question by appropriate allegations in the answer of the petitioner, which expressly alleged as an affirmative defense that the statute was in conflict with section 1, Article XIV of the Constitution of the United States (R. 9) the express affirmative defense being as follows:

> "For a further separate and third affirmative defense defendant alleges that the act passed by the legislature of the State of Washington, known as Chapter 174 of the Laws of 1913, purporting to delegate to an Industrial Welfare Commission the power to establish and fix standards of wages for employees of various industries of this state, and particularly the wages to be paid employees of the housekeeping industry (hotels) is a violation of the constitutional rights of this defendant as guaranteed it under Article V and section 1 of Article XIV of the Constitution of the United States and sections 2 and 3 of Article I of the Constitution of the State of Washington."

At the close of the testimony the attorneys for the defendant, appellant here, made a motion to dismiss the case upon the express grounds set forth in the answer (R. 43). The Superior Court of Chelan County granted judgment to the defendant on this ground, the court stating in its decision as follows (R. 44):

> "If the law fixes a minimum wage, then I say she is entitled to her money. If that law is invalid then, of course, she is obligated to accept what she has received from time to time and paid her as full settlement for what she has done.
>
> "It seems to me that the decision of the highest court of the land (Adkins *v.* Children's Hosp., 261 U. S.

> 525) settles this question absolutely, and beyond all question, for the time being. I am not inclined to join the Kansas Court in saying that, but for the decision, I should like to do something else, because I do believe that it is in full accord with the principles on which our order is founded, that it is in accord with both the letter and the spirit of the Constitutions; so I believe the decision to be soundly right. Of course, it doesn't make any difference what this court thinks about it, nevertheless that is the view of the Court, not, as I say, joining the Kansas Court in apologizing for following the decision of the highest court of the land."

After the above oral decision was given the court made its findings of fact (R. 22) expressly finding as follows:

> "That the contention of the plaintiff that she should have been paid during all of said period at the rate of thirty-five cents per hour or $14.50 per week because of the existence of a so-called minimum wage scale for adult women as fixed by the Industrial Welfare Commission of the State of Washington, is unsound, is not sustained by the evidence and that any attempt to fix the minimum wage for adult women as prescribed by Chapter 174 of the Laws of 1913, and the acts of the Industrial Welfare Commission thereunder, are as to the defendant in this case a violation of its constitutional rights guaranteed it under Amendment V and section 1 of Amendment XIV of the Constitution of the United States."

The attorney for the respondents here (appellants below) filed a notice of appeal (R. 17) in accordance with the rules of practice and the statutes of the State of Washington, appealing to the Supreme Court of that state, in which notice it is recited:

> "Notice is hereby given that the plaintiffs, Elsie Parrish and Ernest Parrish, feeling aggrieved, do hereby appeal to the Supreme Court of the State of Washington from that certain judgment entered in the above entitled cause and court on the 9th day of No-

> vember, 1935, and from each and every part thereof wherein and whereby it was adjudged that the minimum wage act, Chapter 174, Laws of 1913, of the State of Washington, and the acts of the Industrial Welfare Commission, so far as it attempts to fix the scale of wages for adult women, is in violation of the constitutional rights of the defendant guaranteed it under Amendment V, section 1 of Amendment XIV of the Constitution of the United States, and whereby the plaintiff was awarded the sum of only $17.00 and costs instead of the sum of $216.19 as claimed by the plaintiff."

The notice of appeal above was all that was necessary to bring the constitutional question before the Supreme Court of the State of Washington, and the Supreme Court thereupon gave its decision as shown by the appended copy thereof, and the only point discussed in that decision is the application of section 1, Article XIV of the Constitution of the United States, the same appearing in 85 Wash. Dec. 518. The court there in part stated as follows (R. 48):

> "To recover that balance, plaintiff brought this action. The cause was tried to the court, which found that plaintiff was entitled to a recovery of seventeen dollars against defendant. The court further found that chapter 174, Laws of 1913, p. 602, in so far as it applies to adult women, is an unconstitutional interference with the freedom of contract included within the guaranties of the due process clause of the constitution of the United States.
>
> "'No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state 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.' Sec. 1, Amendment XIV, Federal Constitution.
>
> "Judgment was entered accordingly. Plaintiff appealed."

The Supreme Court then proceeds to devote the whole opinion to a discussion of the application of section 1 of Article XIV of the Constitution of the United States to the statute in question, the same being the sole subject of appeal.

The opinion and judgment which the State Supreme Court rendered and entered could not have been rendered and entered without denying to petitioner all of the rights asserted by it under the constitutional privileges relied upon and said opinion and judgment cannot be rested upon any independent, non-Federal ground.

It is submitted that the judgment plainly and definitely draws in question the validity of the statute on the ground of its being repugnant to the constitution of the United States, as required by section 237 of the Judicial Code, as amended, and that this appeal comes within the proper jurisdiction of the Court.

Pacific Telephone and Telegraph Company v. *City of Seattle,* 291 U. S. 300;

Morehead v. *New York ex rel. Tipaldo,* — U. S. —, 80 L. Ed. Adv. Op. 921;

Home Insurance Company v. *Dick,* 281 U. S. 397;

Millsap College v. *City of Jackson,* 275 U. S. 129;

Meyer v. *Nebraska,* 262 U. S. 399;

Fairmont Creamery Company v. *Minnesota,* 274 U. S. 1.

The Question Submitted is a Substantial One.

The question which is before the Court here is the right of the State of Washington to establish by law a minimum wage below which the appellant and the respondent cannot freely contract, the contracting respondent being an adult woman. The question is, therefore, a very substantial one, and the right of the appellant which it seeks to protect is the extremely substantial right of freely entering into con-

tracts with its employees for their services and if the State is entitled to deprive the appellant of this right it suffers substantial damage and irreparable harm.

The express question here submitted has been considered by the Supreme Court in the following four cases, which pass upon expressly similar statutes of other States or of the Federal Government:

Morehead v. *New York ex rel. Tipaldo,* — U. S. —, 80 L. Ed. Adv. Op. 921;

Adkins v. *Children's Hospital,* 261 U. S. 525;

John W. Murphy, Attorney General of the State of Arizona, et al., Appellants, v. *A. Sardell,* 269 U. S. 530;

W. H. Donhan, as Prosecuting Attorney for the Sixth Judicial Circuit of the State of Arkansas, et al., Appellants, v. *West Nelson Manufacturing Company,* 273 U. S. 657.

Dated this 22nd day of August, 1936.

JOHN W. ROBERTS,
CROLLARD & O'CONNOR,
ROBERTS & SKEEL,
Attorneys for Petitioner.

Address: 914 Insurance Bldg. Seattle, Washington.