

the rights of laboring men by the enactment of just laws calculated to promote the industrial welfare of the people—such laws as will be just to all classes.

The command is to the lawmaking department of the State, and the only express limitations upon the power are that such laws shall be just and calculated to promote the welfare of the industrial classes. The legislature must decide whether the law is just and adapted to the purpose named. And unless the law is so palpably unjust, or so clearly not calculated to promote the purposes mentioned in the Constitution as to remove every reasonable doubt that it is unjust, or that it is not calculated to promote the purpose expressed in the Constitution, the court should not hold it without the scope of the authority mentioned in that instrument.

The first clause of section 8 declares that "eight hours shall constitute a day's work on all works or undertakings carried on or aided by the State, county or municipal government."

We presume the object of this provision was to protect the laboring man from the injurious consequences of prolonged physical effort, and to give him the remainder of the twenty-four hours for his own personal affairs, and for the cultivation of his mental and moral powers, the acquisition of useful knowledge and for rest and sleep.

The second clause of the section commands the legislature to pass laws "for the health and safety of employes in factories, smelters and mines."

This provision must be regarded as an expression of the will of the people of the State with respect to the subjects and objects of legislation named in it. And they possessed all the power to enact laws with respect to such subjects that the people of the United States had not conferred in the national Constitution exclusively on that government. Any laws adapted to the preservation of the health or safety of employes in factories, smelters or mines is within the scope of this provision. The law must be connected with some of the objects named, and calculated to effect that purpose; if it is not so connected and adapted, the court has the right to hold that it is not within the scope of the provision. But if there is a reasonable doubt as to the connection and adaptation, the advisability must be held by the court to have been with the law-making power—the court must be able to see clearly that the law was not so connected before holding it void for that reason.

If the power to pass the law is conceded the court cannot set it aside because it may deem its enactment unnecessary or injudicious, or because the court may think that experience has proven it so, or because the court may think itself more sagacious than the Legislature, and can therefore see more clearly that the law will retard rather than promote progress and prosperity, and will be a detriment to the community when actually applied to human affairs amid the conditions of the future.

This brings us to the question, is the first section of the statute limiting the period of employment of laboring men in underground mines to eight hours per day, except in cases of emergency

where life or property is in imminent danger, calculated to protect the health of such laboring men?

The effort necessary to successful mining if performed upon the surface of the earth in pure air and in the sunlight prolonged beyond eight hours might not injuriously affect the health of an able-bodied man, but when so extended beneath the surface, away from the sunlight, might injuriously affect their health. It is necessary to use artificial means to supply pure air to men laboring in mines any considerable distance from the surface. That being so it is reasonable to assume that the air introduced, and the impure air beneath the surface when mixed, is not as healthful as the free air upon the surface. The fact must be conceded that the breathing of pure air is wholesome, and the breathing of impure air is unwholesome.

We cannot say that the law limiting the period of labor in underground mines to eight hours each day is not calculated to promote health—that it is not adapted to the protection of the health or the class of men who work in underground mines.

While the provision of the constitution under consideration makes it the duty of the Legislature to enact laws to protect the health and to secure the safety of men working in underground mines, and in factories and smelters, it does not prohibit the Legislature from enacting other laws affecting such classes to promote the general welfare.

While the Constitution of the United States is a delegation of powers to that government with some express limitations upon the powers conferred, it also contains limitations upon the powers of the states. The government which it created is regarded as one of the enumerated and delegated powers. On the other hand while the State Constitution contains some mandatory provisions with others distinguishing the departments of the government, and specifying the duties of various officers thereof, it contains many limitations upon the State and is regarded in a general sense as a limitation upon the State government. The authority of the general government is ascertained from the powers delegated, while those of the State government are ascertained from those not prohibited. The powers of the first are described by those delegated, and the powers of the latter consist of those not prohibited. This leaves the State Legislature in the possession of all the law making power not prohibited to it by the Constitution of the United States, or the laws made in pursuance of it, or by the State Constitution.

The enactment of some laws is made mandatory; the enactment of others is left to the discretion of the Legislature as the public welfare may demand. Among the mandatory provisions of the Constitution of this State, is the one under consideration.

It is claimed that the enactment of the statute in question was forbidden by section 7, of article 1, of the Constitution of the State, which is that "No person shall be deprived of life, liberty or property, without due process of law."

The petitioner insists that his trial was not, and that his imprisonment is not, according to "the law of the land"

because the statute fixing the period of labor of a laboring man in underground mines, was, as he claims, forbidden by the Constitution, and therefore void. If the Legislature had power to pass the law, there was no valid objection to his trial, fine and imprisonment. If the law was valid, the usual and ordinary process was adopted; if it was not valid the defendant was deprived of his liberty without due process of law.

It is also insisted that the provisions of the State law were forbidden by section 1, of article 14, of the Constitution of the United States, as follows: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the state wherein they reside. 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 law."

This section declares, 1st. That all persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside—they are made citizens of two distinct governments. 2nd. It declares that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

The enactment of state laws depriving or abridging privileges or immunities of citizens of the state is left to the state legislature so far as this provision goes. It secures to citizens of the United States in any state, the privileges and immunities of the citizens of that state.

Expounding the provision now under consideration, the Supreme court of the United States said: "The constitutional provision there alluded to did not create those rights, which are called privileges and immunities of citizens of the state. It threw around them in that clause no security for the citizen of the state in which they were claimed and exercised. Nor did it profess to control the power of the state government over the rights of its own citizens. Its sole purpose was to declare to the several states that whatever those rights, as you grant or establish them to your own citizens, or as you limit or qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other states within your jurisdiction."

We do not agree with defendant's counsel that the business of mining is affected with a public interest and the Legislature had the power to pass the law for that reason. Mines are owned by private persons or corporations who have the exclusive use and control of them, as a farmer may own his farm and have the exclusive use and control of it. The fact that the business may benefit the public does not give the public any interest in the mine or its business, or affect it with a public interest. It is not like the railroad business. Such property and business is owned by a private corporation, but the use of the road is in the public; travelers and shippers have a common right to use