FACTORY LEGISLATION IN PENNSYLVANIA ITS HISTORY AND ADMINISTRATION

BARNARD

Publications

OF THE

University of Pennsylvania

SERIES IN

Political Economy and Public Law

No. 19.

FACTORY LEGISLATION IN PENNSYLVANIA: ITS HISTORY AND ADMINISTRATION

BY

J. LYNN BARNARD, Ph.D.

Assistant-Professor of History and Government, Philadelphia School of Pedagogy.

Published for the University

PHILADELPHIA

1907

THE JOHN C. WINSTON Co., Selling Agents

1006-16 Arch Street, Philadelphia, Pa.

"Progress in Political Science has been in nothing happier than in Factory Legislation."

DUKE OF ARGYLL.

"The progress of Factory Legislation in the different nations furnishes us the principal and most interesting example of the gradual education of the people as regards the proper attitude of Government towards industries."

W. F. WILLOUGHBY.

PREFACE.

By many the meaning and scope of factory legislation are only partially understood, and in fact a brief definition would be hard to give. In terms of what is included in this phase of governmental control, factory legislation might be defined as the state's supervision over those employers of labor who operate factories, workshops, mercantile establishments, printing offices, bakeshops, laundries and the like. Such regulations come within the police power of the commonwealth, which may, in turn, be defined as that power which is employed by the state "to promote the health, comfort, safety and welfare of society." Factory legislation will be found to relate primarily to the safety and well-being of the individual employee, rather than to the protection of the consuming public, thereby illustrating the dictum laid down by the United States Supreme Court in the important case of *Holden* vs. *Hardy:* "The whole is no greater than the sum of all the parts, and when the individual health, safety and welfare are sacrificed or neglected, the state must suffer." This field of legislation concerns itself with hours of labor, intervals for meals, night work, sanitary conditions (including light and air), the guarding of machinery, elevators, fire-escapes, a minimum of schooling, and even the time and method of wage payment.

England, with its unitary type of government, controls this field of social activity, once and for all, by act of Parliament; while in our own country, with its dual type of government, the subject must be taken up by each commonwealth separately. Congress has no contribution to make, outside the District of Columbia and the territories, except through the information it may furnish by means of statis-

tical and other publications, and through the control it may exercise in the regulation of inter-state commerce. Our national government, being one of delegated powers, has not inherited the legacy of common law police powers, which remain vested in that "residuary legatee" of our political system—the commonwealth. This results both favorably and unfavorably. It enables the more progressive states to move faster than the nation as a whole would care to travel; but it makes the problem a harder one when there are forty-five battles to fight instead of one.

The first state to develop an effective factory code—as it had been the first to introduce the factory system of manufacture—was Massachusetts, with New York second. Pennsylvania was a close third, following the lead of New York rather than of Massachusetts in the method of enforcement. A comparison of the two methods would be of interest. But the time has not yet come for a comparative study of factory legislation in the United States, and will not have arrived until a detailed account shall be given us of the history and workings of the factory laws in a number of typical commonwealths, with a background view of the condition of affairs in certain southern states where the movement has hardly begun. Pennsylvania now ranks so high industrially and commercially, and its factory code is so well advanced and a strict enforcement so greatly needed, that it is time to take the backward glance, and then to examine critically the present status, in order to take new hope and a fresh start for the future.

No better setting for this history could be asked than that intensely human and inspiring book by Mrs. Florence Kelley, which she has appropriately styled "Some Ethical Gains Through Legislation." Mrs. Kelley dares to assume the *right* to childhood, the *right* to leisure: a "right" whose ethical basis shall be accorded social recognition through legislative action. It was with a view to set forth the steps, prosy and uninteresting as they may be, by which

Pennsylvania has guaranteed to her toiling citizens one social "right" after another, and to indicate some of the steps yet to be taken, that this brief study was attempted.

Materials for such a work as this can be secured only through the co-operation of others, and the author feels under special obligations to those who have assisted him. The Chief Factory Inspector of Pennsylvania, Mr. J. C. Delaney, courteously gave permission to the writer to accompany his deputies on their rounds, and several interesting trips resulted. Numerous school superintendents and principals, and others who were or had been participants in the passage, or in the administration of the law, freely contributed opinions and information. Professor Samuel McCune Lindsay, of the University of Pennsylvania, Secretary of the National Child Labor Committee, kindly read the manuscript and gave helpful criticism. And to my colleague in the School of Pedagogy, Professor William H. Mearns, and to one of my former students, Professor C. G. Haines of Ursinus College, thanks are due for that laborious and important task of reading the proof and offering final suggestions as to both form and content.

Acknowledgment is also hereby made of the financial assistance in the collection and preparation of material, received from the Department of Economics and Sociology of the Carnegie Institution of Washington, through Professor Henry W. Farnam of Yale University. And, finally, the author would gratefully record the generosity of Mr. J. G. Rosengarten of Philadelphia, and of a friend who wishes his name withheld, which has made possible the immediate publication of this monograph.

J. Lynn Barnard.

School of Pedagogy,
Philadelphia, *December, 1906.*

CONTENTS.

PART I.

HISTORY.

PART II.

ADMINISTRATION.

Factory Legislation in Pennsylvania: Its History and Administration.

PART I.

HISTORY.

CHAPTER I.

Efforts Toward Legislation (1824-1847).

Attempts of 1824, 1827-8, 1833.

It is significant of the peculiar problem with which our country has had to deal that the beginnings of this form of social legislation in Pennsylvania should have been made along educational lines, for the alleged reason that in a democracy elementary education for its citizens is indispensable—that upon it depends the safety of the state.

For the first movement in this direction we must go back to the year 1824, when, on the ninth day of February, Mr. O'Neill, member from Philadelphia County, made the following motion in the House of Representatives: *Resolved,* That a committee be appointed to inquire into the expediency of requiring the proprietors of manufacturing establishments, who may employ children under the age of twelve years, to provide for them the means of instruction, at least two hours each day, in the rudiments of an English education." A few days later the motion was adopted, and a committee, of which Mr. O'Neill was chairman, was appointed for the purpose expressed in the above resolution. On March 6th this committee reported a bill entitled, "An act providing for the education of children employed

in manufactures." Unfortunately, the House bills for 1824 have not been preserved, and the Harrisburg newspapers (there was then no Legislative Record) fail to state the provisions of the bill. It was never acted on by the House of Representatives, nor was the matter considered in the Senate.

The subject of education for factory children was not again brought to the attention of either House until 1827, when, on the 11th of December, the following motion was made in the House of Representatives by Mr. Richards of Philadelphia, chairman of Committee on Domestic Manufactures: "*Resolved,* That the Committee on Domestic Manufactures be instructed to inquire into the expediency of providing by law for the education of children employed in cotton, woolen and other manufactures."

The resolution was at once adopted, and four days later Mr. Richards reported a bill entitled, "An act to provide for the education of the children employed in manufactories, and also to ascertain the extent and increase of said manufactories within this commonwealth." The provisions of this bill were[1] that "from and after January 1, 1830, it shall not be lawful for any cotton or woolen manufacturer to employ in his factory any minor between the age of twelve and eighteen years, unless said minor, or his, her or their parent or guardian, shall produce a certificate signed by a respectable schoolmaster, or two respectable citizens of the county, that the said minor can read and write the English, German or some other modern language, or unless said manufacturer shall provide for the instruction of said minor, until the provisions of this act are complied with."

The enforcement of this law was to be left with the assessors, who were to visit the factories of their districts and report all violations; and a manufacturer or superin-

[1]House Bills for 1828, Bill No. 80.

tendent failing to comply with the provisions of the act would be liable to a penalty of five dollars. The assessor was also to send in each year to the county commissioner a list of the cotton and woolen factories in his district, with the number of spindles and looms.

If this bill could have been passed, Pennsylvania would have had the honor of antedating England by five years in the matter of providing for factory inspection, and of taking its own initial step in that direction sixty years earlier than it actually did take it. The speech[2] of Mr. Richards in support of his measure is one of the few fragments of the debate at this time that have been preserved. Mr. Richards explained that the committee "had directed their attention to the manufactories mentioned in this bill, because it is known to all familiar with the subject, that they are supported by, and are the only factories which are based upon, the employment of children. . . . There are now many thousand children employed in our manufactories, the nature of the employment is constant and unremitting from sunrise until night, and never discontinued, except on Sundays, during the year. . . . If the poverty of the parent is made an objection, it may be stated that in most manufacturing districts our public schools are at hand, and in all parts of the state the county commissioners are bound to provide for the instruction of the indigent." Mr. Richards urged the beginning of legislation while the factory system was still comparatively young, and while the dreadful necessity which then existed in England was not yet apparent in this country. "The people engaged in manufactories are destined to have a powerful influence in our country—powerful, because they will be numerous, the more powerful because they will be always congregated, . . . always interchanging sentiments with each other—always

[2]See the Harrisburg Reporter and Democratic Herald for February 1, 1826.

moving in a body. I wish, sir, that this may be an enlightened influence, a happy influence. . . ."

One of the opponents of the bill held that such laws might do in England, "where the great mass of the population are burthened to support a luxurious and profligate nobility, . . . but here, in this happy country, every man can, by industry and frugality, honestly and decently maintain and educate his family. This compulsory measure is foreign to the spirit of our government." Becoming more specific in his objections to the bill, this member expressed the opinion that the power given to the assessor was inquisitorial, and especially dangerous if in the hands of an unscrupulous man; and further, that an invidious distinction was placed upon one branch of manufactures.

Despite strong opposition the bill was passed by the House, with some important amendments, on March 19, 1828. After being twice debated in the Senate, the measure was rejected by that body. This ended for a time all legislative effort in Pennsylvania to secure the rudiments of an education for factory children, the movement being merged in that larger one which was evolving the public school system out of the charity schools of that day.

The reports of various meetings of workingmen[3] during 1829-30 show that their demands were: for the establishment of a "republican system of education;" for the exemption of certain property from execution; for the passage of a lien law; and for the abolition of imprisonment for debt;—none of which, be it observed, came under the head of factory legislation. However, in 1833, when the attention of the Legislature was again directed toward the neglected factory children, the subject of their long and exhausting hours of labor was for the first time introduced, by a motion in the House of Representatives (again made by a Philadelphia member), that the Committee on Domestic

[3]See Excerpta of Matthew Carey, Vols. 7 and 24. (Ridgway Branch Philadelphia Library.)

Manufactures be instructed to inquire "How far the employment of children, under fourteen years of age, is detrimental to health; and, also, whether some regulations cannot be adopted by which the time of labor of such children may be limited to eight hours per day." Though nothing appears to have come of this motion, which was promptly adopted, it serves as an indication of the rising public sentiment.

It is a striking fact that this attempt at legislative investigation of the effect of factory labor on children should have followed so closely upon the startling revelations of the English Parliamentary Committee (Sadler's) of 1832. The pioneers in American manufacture found themselves compelled to import skilled workmen from England and Scotland; and, naturally, important events in the labor world there were speedily felt in this country. As England had been the first to develop and perfect the factory system, so she was the first to suffer from its evil effects and to attempt remedial legislation. (See Appendix.)

Dyottville Glass Factory (1833).

Before passing on to the next attempt at regulating factory labor in Pennsylvania, it seems worth while to present a picture of what was, beyond a doubt, an exceptional factory; but which shows, nevertheless, the problems with which the manufacturers of that day had to deal.

Dr. T. W. Dyott, owner of the Dyottville Glass Factory, which was situated between Kensington and Richmond, on the Delaware, had applied to the Legislature for an act of incorporation; and in support of this application he published a pamphlet,[4] in 1833, entitled "An Exposition of the System of Moral and Mental Labor, established at the Glass Factory at Dyottville, in the County of Philadelphia." The statements contained in this pamphlet were cor-

[4]To be found in the collection of pamphlets in the State Library, Harrisburg.

roborated by a special legislative committee sent to investigate the place.

The writer says that in their early days American manufacturers were "exotics," being supplied almost entirely with European artisans, who brought with them their class feelings and intemperate habits. Becoming tired of the vicious men in his employ, he had discharged all but a few of the best, and had tried teaching the trade of glass-blowing to young American lads, apprentices, who were at the same time given an education comprising reading, writing, arithmetic and grammar, together with singing and religious instruction. More than this he thought it would be unkind to give them, as it would create tastes which they would not have the means of satisfying. He employed in his factory 400 persons, of whom 130 were apprentices, besides 200 people variously occupied as teachers, superintendents, clerks, fire-tenders, wood-choppers, etc.; and fifteen to twenty females were employed in tailoring, cooking, etc. These last occupied sleeping apartments in the house of the proprietor's brother, "where every regard to morality, decorum and piety is strictly observed and mildly enforced." A physician, apothecary and nurse formed part of the establishment, and a minister conducted services regularly at the factory chapel.

The program for a working day was as follows: The rising bell rang at daylight, and after washing and dressing, considerable stress being laid upon the ablutions, the apprentices and workmen attended prayers in the school room, and then repaired to breakfast. They worked from 7 to 12 a. m., during which time a period of rest was allowed and a luncheon of crackers was served. After an hour's dinner time they worked from one till six o'clock, with a similar intermission for lunch. Then, after washing, they ate supper, and might play a short time before attending school. The smaller boys retired at 8.30, and the larger at 9.30, when the gates were closed. In case the apprentices worked

overtime they were paid, and might spend the money on "fine clothes for Sunday and holiday suits, or to buy watches," or they might let it accumulate as a "fund for domestic purposes." The worthy doctor believed in early marriages, which he encouraged by providing dwellings for his married employees. Children of seven years began working in the factory, first learning wicker-work, in the covering of demijohns. All employees lived on the premises, and no alcoholic liquors were admitted. The thesis of Dr. Dyott's pamphlet was that moral instruction is indispensable to a well-regulated factory, and that the mass of the people should have neither mechanical instruction without general education nor the reverse—a conclusion which the modern educator is now reaching.

Senatorial Investigation of 1837.

After a period of four years had elapsed, a second and more successful attempt was made to investigate the condition of child labor in factories. The subject first came up in the House of Representatives, where Mr. Reed of Philadelphia moved for the appointment of a committee which should inquire into the expediency of passing a law regulating the age at which children might be employed in any trade or business in this commonwealth. This motion was promptly negatived when it came up for second reading, and despite various petitions in favor of such a measure the House gave itself no further concern in the matter, leaving to the Senate the honor of taking the initiative in securing the information necessary to intelligent factory legislation. Numerous petitions having been received by the Senate and referred to a select committee, consisting of Messrs. Peltz, Darragh, Rogers, Penrose and Fullerton, that committee, on the last day of March, 1837, submitted a lengthy report to the Senate.

The report begins by asserting that the committee believes "that the subject is one which demands the serious attention of the Legislature; they regard it as a matter not

only affecting some of the most important interests of the community, but involving the character and happiness of a large portion of our people." Then follows this timely suggestion: "Notwithstanding the rapid rise and progress of the manufacturing system, and more particularly in the State of Pennsylvania, it is still to be regarded as in its infancy; and the effect of legislative action on the system will be rendered more salutary, and less liable to produce injury, at the present than at a future time. Whatever regulations may be established by law, should be enforced without unnecessary delay, that they may grow up with and become a part of the system itself, instead of being introduced hereafter as matters of reform." The report then dwelt at some length on the status of factory legislation in England, and the struggle that was being waged there in behalf of the factory children—whose condition, the committee believed, was worse than that of American factory children.

It was then pointed out that the reduction of hours of labor in England had resulted neither in lessened production nor in lowering of wages, but precisely the opposite; and the committee "feel warranted in the conclusion that the same kind of action here would be attended with happy results." But in order that the Legislature might act intelligently on the subject it ought to be in possession of the most reliable data, gathered by its own members at first hand. The Senate was evidently of the same opinion, for it at once "*Resolved*, That the committee [before enumerated] be authorized to visit the cities of Pittsburg and Philadelphia, and such other manufacturing districts of the state as they may think necessary, during the recess of the Legislature, for the purpose of investigating and inquiring into the system of labor adopted in cotton and other factories, and particularly with reference to children employed in such manufactories, and to report thereon at an early period of the next session of the Legislature."

In pursuance of this resolution of the Senate, the committee met in the City of Philadelphia on the 9th of May, and proceeded to investigate the subject in the following manner: "Subpœnas were issued, directed to operatives, machinists, foremen, or bosses, owners of factories, and in some instances to the parents of children employed, to physicians, teachers and citizens residing in the vicinity of manufactories, and in manufacturing towns."

The following questions were put to these witnesses:

1. What are your opportunities of knowledge of the factory system?

2. Have you any knowledge of any evil existing as it is practiced in Pennsylvania; if yea, state what the evil is, and . . . the appropriate remedy.

3. Are you engaged in business, and how?

4. If yea, state what is the extent of your factory, its nature, power used, persons employed, their ages and sex.

5. What are your hours of work?

6. What time is allowed for meals?

7. Is the labor for children excessive?

8. Is that labor done sitting or standing?

9. Do they appear tired when they leave work, or complain of pain from overwork?

10. Do the boys and girls work together?

11. Do they use the same water-closets, or is any care taken to keep them apart?

12. Is any attention paid to their education or morals?

13. Is any punishment inflicted on them, what, and who by?

14. Is any attention paid to the personal cleanliness of the children employed?

15. Are children more healthy when they first come to the factory than after they have been some time in the mill? State any knowledge you may have of the effect of the work of children in the factory on their health.

16. Would it be desirable to abridge the hours of labor

in factories; to exclude children under, say, twelve years, and require that children should not be employed until they can read and write? What would be the effect of any or all of these provisions on the business and on the community?

17. What are the means employed to ventilate your factory?

18. What is the degree of heat at which the temperature of the factory is kept in the winter season?

19. Have you ever known a contagious disease to occur among persons employed in factories?

20-21-22. The remaining three questions had to do with the progress and condition of the factory system, *e. g.*, the number and kind of factories, the motive power used, the number of employees, the amount of capital invested, and the effect of the compromise act of 1833 on the manufacturing interests. And these might better have been omitted, for the replies were so evasive and fragmentary in the few instances where any answer at all was vouchsafed, as to make the results utterly valueless.

After sitting for several weeks in Philadelphia and Manayunk, the committee adjourned its sessions to Pittsburg, where it remained from the 20th to the 30th of June, making forty-two days in all.

On the 7th of the following February (1838) the report of this Senatorial Investigating Committee was read in the Senate. As this is the only legislative investigation of factory conditions in Pennsylvania, it deserves some attention.[5]

In nearly every instance the testimony was given on oath or affirmation, and the results of the inquiries may be summed up as follows:

Of the hands employed in cotton mills (where the conditions of labor seem to have been hardest) the proportion

[5] A copy may be found in the Philadelphia Law Library, City Hall.

as to age was: under twelve years of age, one-fifth of whole number employed; under ten years of age, perhaps one-twentieth of whole number employed. As to sex: males, one-third; females, two-thirds, this proportion holding good whatever the age. As to hours of labor: there was no uniformity throughout the state, especially in cotton mills, the hours of actual labor per day averaging eleven in some establishments, twelve in others (this being the general average), and in rare instances fourteen; "the humanity or cupidity of employers being the only motive by which it is regulated." In summer the working time was from daylight (usually 5 a. m.) till dark (7 to 7.30 p. m.), with intervals of thirty minutes for breakfast and forty-five minutes for dinner; the operatives getting their supper after their return home at night, seldom before 8 p. m., when the younger children were often too exhausted to eat and would fall asleep the minute they reached home. In winter the working time was from daylight (6.30 to 7 a. m.) till 8 or 8.30 p. m., with same intervals for meals.

The so-called working week averaged seventy-two hours, but as the custom was general to close three hours earlier on Saturday, except in the busiest seasons, the more liberal employers would give those three hours to their employees, thus reducing the number of hours per week to sixty-nine, while the majority of employers compelled a little overtime on other days from the workers to make up for Saturday.

In a few factories, according to the testimony given, eighty-four hours per week was exacted, but no specific instance was cited and the allegation seems unreasonable, except for specially busy seasons. The factories were lighted for night work during five or six months in the year, but never for early morning work, which began after daylight.

There seemed to be a concensus of opinion, one or two factory owners excepted, that the labor for children was

excessive, both on account of the number of hours, the vitiated atmosphere, and the weariness resulting from constant walking or standing, sitting being rarely possible from the nature of the work. The strain on eyes and nerves alike was very great, and when long continued could not but result detrimentally to growing boys and girls. The children rarely complained of any pain and it was seldom that their health entirely broke down, but they soon came to look pale and less robust than children not so strictly confined within doors. The female employees seem to have been more often broken down in health by factory labor than were the males. Contagious diseases were almost unknown in the factories, except tuberculosis, which frequently developed in those who had entered the factory in early youth.

According to the testimony of one Dr. Callahan—a physician and surgeon of twenty years' practice, seven years among the manufacturing population of Glasgow, Scotland, and thirteen years among the manufacturing population of Pittsburg—the health of children was most seriously impaired by their labor, especially in cotton factories. His conclusion was that children placed in a factory at an early age never acquired that buoyancy and hilarity of spirits common to children of their age. "They are early attacked with rickets and other diseases of the bones. . . . Diseases of a scrofulous character overrun all classes of persons employed in factory labor, and particularly children. . . . Tubercular consumption has, of late years, fearfully increased among this community, and as we go on increasing our manufactories, this species of disease will also increase; it is a sure concomitant of factory labor, factory dress, factory diet, and of a factory atmosphere. . . . From the ill-clothed and dirty condition of the children of factories, cutaneous diseases are frequent and unmanageable, as it is impossible to remove the causes from which they originate."

Dr. Callahan's belief was that no child should be allowed to work in a factory until it had attained the age

of fourteen years, and then should not be employed for more than six hours a day.

Dr. Thomas Foster, a graduate of Jefferson Medical College and a practicing physician in Pittsburg, had not observed anything peculiar about the diseases of factory children, though he considered the long hours of labor and the vitiated atmosphere of the factories prejudicial to the health of the children. He had attended many of the children who were injured by the machinery, most of these injuries arising from the children getting their fingers and hands caught in the cards, some of the sufferers being under twelve years of age and nearly all under sixteen years.

There was perfect unanimity among those who testified that no attention whatever was paid by the employers to the personal cleanliness of the children employed, that matter being left wholly to the parents; and the same as to their education, though one factory owner naively remarked that he desired his child employees to attend Sunday school, and that they might receive education evenings if they chose. The heartlessness of the latter suggestion is apparent, when we consider how utterly exhausted young workers found themselves at the close of their twelve or thirteen hours of toil.

More or less profanity and obscenity seems to have prevailed among the boys, though it was sternly repressed by the overseers whenever it came to their ears. But no corporal punishment seems to have been inflicted for any offense other than carelessness and inattention; and such chastisement generally consisted of a box on the ear, or a few blows with a strap, by the overseer. This was rarely excessive, most bosses preferring simply to discharge the offender after sufficient warning. Once discharged, for whatever cause, it was very difficult to obtain re-employment in the same neighborhood so long as the previous employer refused to give his workman a certificate of honorable dismissal. Most factories made it a custom to keep back one

or two (usually two) weeks' wages, which were retained by the employers in case an employee left without giving two weeks' notice; but the rule was not allowed to work the other way, discharges without previous notice being customary, either for inattention, carelessness, or participation in meetings called in the interest of factory legislation. If a workman was five minutes late in the morning he was usually docked one-quarter of that day's wages.

In most instances there were separate water-closets provided for boys and girls, but sometimes separated only by a board partition.

The testimony throughout goes to show that the morals of the operatives in the textile factories were as pure as prevailed outside, but that quite the reverse was the condition among the iron and steel workers, many of whom were drunken, vicious and immoral. Of all those under eighteen years of age employed in the cotton mills, not more than one-third could either read or write, this being "an effect of their early employment in factories, and the total neglect of their education afterwards." Superintendents and factory owners had deprecated the practice of employing children under twelve years of age before they had secured the rudiments of an education and while they were still too young and weak to be of much assistance in a factory; yet these same witnesses had several times expressed their fear that any reduction of the hours of labor, or the prohibition of child labor, so long as it could apply only to Pennsylvania, must result disastrously to the manufacturers in their competition with others not similarly restricted. This apprehension of the manufacturers the committee regarded as exaggerated.

"It is true," they say, "that our manufacturers have to compete with those in other states engaged in the same business, where, perhaps, no such system may be adopted; but, if such enactments here are associated with enactments to secure the benefits of education in the elementary branches

essential to make good citizens, while they will guard against what may become revolting tyranny, they will secure the benevolent . . . against competition of men in the same business in this state, of less humanity, who are restrained by no feeling from requiring excessive labor from the children employed; and, besides, although the time of labor may be restricted, the operatives who are not overworked will work with greater activity and zeal, and, being in a degree educated, with greater intelligence and cheerfulness; circumstances will counterbalance the effect of the restriction, and perhaps fully compensate for it. But, at all events, the committee are satisfied that in a republic, where so much depends upon the virtue and intelligence of the people, it is far better that we should forego pecuniary advantages, rather than permit large masses of children to become the miserable victims of an oppressive system, and to grow up in ignorance and vice, alike disgraceful to themselves and dangerous to the community."

The committee then assert that "The testimony further shows that the labor of children under twelve years of age, in factories, is not desirable or profitable; and that no injury would result to employers by the enactment of a law to prohibit the employment of all children under that age. The reason alleged by them [the manufacturers] for the employment of younger children is that they are forced on them by poor, and in many instances by worthless, parents. Instances are related of parents who have taken little children, under seven years of age, from factory to factory, and begged employment for them. . . . children have sometimes been kept in the factories without ever having been sent to school for a single hour, and their hard earnings appropriated by their unnatural parents, as long as they can legally control them. . . .

"The owners of mills are not always the employers of children. The mule spinners are frequently paid by the piece for their work, and are required to continue at it while

the machinery runs, and to furnish their own assistants, who are called piecers. The labor of piecing is not severe, but the children are kept on their feet during the whole time, and are actively engaged. Whether employed by master or journeyman, the only interest felt for the child is to get its labor—between parent and employer the child can have no indulgence, the rules of the factory must be obeyed. . . .

"It may be asked, Why confine this inquiry exclusively to manufactories, and not extend it to business of other kinds? The answer is that in most occupations the apprenticing system prevails. In our factories there is no such thing: no indenture is executed to secure to the child its trade; no provision is made for its education. This deficiency is peculiar to the factory system alone, and here is the point where legislative interposition seems to be necessary."

This statement that the apprentice system was unknown in Pennsylvania factories, though exaggerated, serves to point out one of the main differences between the English problem and ours, at the beginning of the factory legislation in the two countries.

The committee submitted a bill to the Senate containing such provisions as they thought might be safely adopted.

1. That no child under ten years of age should be employed in any factory.

2. That factory children not sufficiently well educated to read and write and keep an account should be sent to school for at least three months in each and every year while so employed.

3. That children under sixteen years of age should not be allowed to labor more than ten hours a day.

As this report came at a most inopportune time, right upon the financial crash of 1837 when more than half the mills were idle and most of the remainder running on half-

time, it failed to produce the anticipated result. The bill was given but one reading, and another decade had to go by before relief could come to factory children.

Although this question of legislating for the "health and morals" of the young factory workers was under consideration in 1838, 1844 and 1847, no action was taken until 1848. Four of the New England states—Massachusetts, 1836; Connecticut, 1842; New Hampshire, 1846; Maine, 1847—preceded Pennsylvania in this field of legislative action. But these commonwealths, as well as Pennsylvania, were only following the lead of England, where the struggle of humanity against greed was then being waged so valiantly by Lord Ashley, better known as Lord Shaftesbury, who had taken the place of Mr. Sadler as leader of the ten-hour movement when the latter failed of re-election to the first reform Parliament. (See Appendix.)

CHAPTER II.

Early Child Labor Laws (1848-1855).

Act of 1848.

On January 11th there was presented to the House a petition, with thirty-five hundred signatures,[1] praying for the passage of a ten-hour law which should operate regardless of special contracts to the contrary, and for the fixing of the minimum age of child labor in factories. This petition was followed by others of the same nature. On the 19th, Captain Small[2] introduced a bill entitled "An act to prevent the employment in factories of children under twelve years of age." Three days later a motion was made, apparently intended to delay action, providing for the appointment by the two houses of a joint committee of inquiry which should "visit some of the manufacturing establishments within this commonwealth," investigating especially the condition of the children employed. This motion would seem to have been superfluous, for factory life had not materially changed since the Senate investigation of a decade before. It was very properly negatived. Encouraged by numerous favoring petitions, the committee in charge promptly reported Captain Small's bill with a few amendments. In the discussion which followed, the opponents of the bill maintained that manufacturers were already embarrassed by the tariff of 1846, and that if an act were passed imposing special burdens on Pennsylvania manufacturers, Philadelphia factories would be driven over into Camden.

[1] The daily papers of the time make no comment on this petition, and we are left in the dark as to the forces back of it.

[2] A Democratic member from Philadelphia, who had served in the Mexican War.

After some further alterations by the Senate, the most important of which was the proviso allowing more than ten hours work for minors, by special contract, the bill was passed February 24th. A month later, March 27th, it received a favorable vote of 54 to 9 in the House of Representatives, becoming a law in precisely the form in which it came from the Senate.

This act of 1848[3] forbade the employment of any minor under twelve years of age in any cotton, woolen, silk or flax factory, under penalty of $50, one-half of which would go to the party so employed and the other half to the commonwealth; and established a legal working day of ten hours in all cotton, woolen, silk, paper, bagging and flax factories, with the proviso that minors above the age of fourteen might be employed more than ten hours a day by special contract with their parents or guardians.[4] This proviso was the work of a Mr. Johnston, who had first proposed the amendment, "Nor shall any contract stipulating for more than ten hours labor in twenty-four be binding or valid before any court of this commonwealth," which was to apply to persons of all ages. This motion being lost, he offered a second amendment which became the proviso included in the act, because he did not wish children to be put on a different footing from adults.

That Mr. Johnston's former amendment was according to the wishes and expectations of a large number of the working people of the state is evident both from the nature of the petitions before referred to and from the disturbances which followed the passage of the act. When the manu-

[3]P. L. No. 227, p. 278. As there are no factory statistics for the State of Pennsylvania showing the number of children employed prior to the organization of the Department of Factory Inspection in 1889, it is impossible to state the number of persons affected by this act or by the acts of 1849 and 1855.

[4]This last clause would seem to imply that the employment of children between the ages of 12 and 14 years for more than ten hours was prohibited.

facturers refused to adopt the legal working day set forth in the act, various strikes occurred, especially in the vicinity of Philadelphia and of Pittsburg. The operatives working in and near Philadelphia continued to work as before, from 5 a. m. to 6 p. m., until July 4th, when there occurred a number of strikes, the results of which were that "some shut down, others reduced their wages one-sixth and run ten hours, and another portion continued as usual, having entered into special contracts with their operatives to work the time required of them previous to the passage of the ten-hour law."[5] But the seven cotton factories of Allegheny City stopped work on July 4th, on the ground that they could not comply with the provisions of the ten-hour law. On August 28th the factories resumed work with their old employees, under the ten-hour plan, but with an abatement of sixteen per cent in the wages of the employees. Some rioting occurred while the strike was in progress, directed against a few mills that ventured to start up on the old-time system.

Act of 1849.

In 1849 Governor Johnston asked the Legislature in his annual message to repeal the proviso which he himself, as a member of the Legislature, had suggested the previous year; and in accordance with this request Captain Small introduced such an amendatory bill, which was supported by numerous petitions, and passed by the Senate about the middle of March.

Meanwhile, two separate bills had been presented to the House, but neither of them reached a second reading,

[5]For accounts of these Pennsylvania labor troubles of 1848, and comments on the same, see Report Bureau of Industrial Statistics for 1881-2, pp. 102-3. See editorial in the Philadelphia Public Ledger for January 19, 1849, headed: "The Trial of the Factory Girls of Pittsburg has begun." Also, editorial in the Pennsylvanian (a Philadelphia daily paper) for February 13, 1849, on "The Insolence of Capital."

nor did the House consider the Senate bill. Nevertheless, the day before the session was to close a curious action was taken by the Legislature. The Senate made certain amendments to a House bill entitled "An act for the relief of the heirs of James Caldwell, deceased." When these were read in the House a motion was made and carried further to amend by adding five sections relating wholly to factories; and on the following day the Senate concurred in the amendments.

This act of 1849,[6] which repealed the preceding act, raised the minimum age of child labor from twelve to thirteen years;[7] extended the prohibition of such labor so as to include cotton, woolen, silk, paper, bagging and flax factories;[8] advanced the maximum limit of protected persons —those who might work only ten hours a day—from fourteen to sixteen years; and, lastly, forbade the employment for more than nine calendar months of any protected persons who had not attended school for at least three consecutive months within the same year.

Any parent or guardian who should permit or connive at the employment of his or her child or ward under the age of thirteen years, in any of the aforesaid factories, or any employer who should wilfully or knowingly employ such minor, should be liable for each offense to a penalty of $50, recoverable like ordinary debts by any person who might choose to sue for the same, one-half the fine to go to the person suing, and the other half to the county where the offense was committed. Parents or guardians, only, were to be liable for allowing the employment of protected persons for more than ten hours; and employers, only, for failure to comply with the school regulation; the penalty

[6] P. L. No. 415, p. 672.

[7] Where it remained for nearly forty years, being again lowered to twelve by act of 1887 and returned to thirteen by act of 1893.

[8] Paper and bagging had not been included in the corresponding clause of act of 1848.

in each case to be the same as before, and recovered and applied in the same manner.

It is to be noted that neither of these acts, of 1848 or 1849, was so drawn as to render its enforcement likely under ordinary circumstances. Laws whose enforcement is left to the initiative of private citizens are almost always worthless, and all the earlier factory legislation for Pennsylvania falls within this category.

Act of 1855.

After two unsuccessful attempts had been made to supplement the act of 1849, the matter was again brought before the House of Representatives in 1855 through a bill substantially identical with one which had passed that body the year before. Many favoring petitions were received, and after several amendments—the most important of which were to render the employer liable only when he had "knowingly" offended, and to limit the enforcement duty of the constables to those cases where complaint had been duly made—the bill passed the House. During the discussion a statement was made, the reliability of which is problematical, to the effect that there were 19,000 minors then employed in the cotton and woolen factories of the state, of whom 11,000 were females.

On reaching the Senate the bill was very peculiarly modified by the committee to which it was referred. Besides reducing the maximum penalty from $100 to $50, and the minimum penalty from $50 to $10, a section was added making it "the duty of the owners or managers of any manufactory described in the first section of this act to contribute $2 per annum for the first year, and thereafter $1, for each operative that such manufactory is designed to employ, for every year while the same shall be in operation; for the maintenance of one or more reading and lecture rooms, and the supplying them with books and periodical literature of a

useful, entertaining and instructive description, which shall be kept open and accessible from the hours of 2 to 9 o'clock p. m. on Saturdays, and from 7 to 9 o'clock on all other evenings of the week throughout the year, and, when necessary, lighted and heated, for the free and gratuitous use of the operatives. . . ." As an inducement to the performance of this "duty," any manufacturer who supplied a free library of the above description might work the minors in his employ for sixty-six hours per week instead of sixty! This library attachment was speedily removed by the Senate, though the reduction of penalty was retained; and after some further alterations, which were accepted by the House, the bill became a law.[9] The statute applied to the same factories as did the act of 1849. No person under twenty-one years of age (instead of sixteen) might work more than sixty hours per week, "or an average of ten hours per day."[10] The responsibility of the protection still rested mainly on the parent or guardian, who was liable to a fine of from $10 to $50 for permitting overwork; while the employer must have knowingly offended to be liable for the same penalty. Fines were recoverable by suit brought before any alderman or justice of the peace of the proper ward, borough or district, and were to be applied to the use of the public schools of the district. Suit must be brought within one month, and no person might sue for more than one penalty for the working of any factory for the same period of time. Constables were required to attend strictly to all complaints made of violations of the law.

The hesitancy with which the Legislature attempted

[9]P. L. No. 501, p. 472.

[10]This was much weaker than the corresponding clauses of the preceding acts, which had prohibited the employment of protected persons *for more than ten hours in any secular day.* By placing no limit on a single day's labor, unlimited leeway was given in the matter of making up lost time; while the opportunity was afforded of employing two shifts of children in busy times, by working each shift for long hours per day during but few days of the week.

any interference with the rights of employers is shown by their unwillingness to allow constables to enforce the act unless complaint had been made of its violation. It was still the private citizen alone who could bestir himself in the matter. The result was, as will be seen, that many manufacturers were unaware of the existence of such a law, and it remained practically a dead letter for a period of thirty-five years, until the creation of a department of factory inspection.

The writer has been unable to find any record of cases arising under the acts of 1848, 1849 or 1855.

CHAPTER III.

Fire-Escape Legislation (1879-1885.)

Act of 1879.

The factory problem was now allowed to drop for a quarter of a century. This may fairly be attributed to the Civil War and Reconstruction epoch, which, like the Napoleonic wars for England, put a check on economic and social legislation. When the subject reappears, in 1878, it has taken on a new form, that of compelling the erection of fire-escapes on factories, hotels and other tall buildings. Bills on this subject were introduced in both houses at about the same time, and the Senate bill formed the groundwork of the act passed the following year.

This act of 1879[1] provided as follows: "Section 1. Be it enacted, etc., That all the following described buildings within this commonwealth, to wit, every building used as a seminary, college, academy, hospital, asylum, or a hotel for the accommodation of the public, every storehouse, factory, manufactory, or workshop of any kind, in which employees, or operatives are usually employed at work in the third, or any higher story, every tenement house or building in which rooms or floors are usually let to lodgers or families, and every public school building, when any of such buildings are three or more stories in height, shall be provided with a permanent, safe, external means of escape therefrom in case of fire; and it shall be the duty of the owners or keepers of such hotels, or the owners, superintendents, or managers of such seminaries, colleges, academies, hospitals, asylums, storehouses, factories, manufactories, or workshops, of the

[1] P. L. No. 132, p. 128.

owners or landlords of such tenement houses, or their agents, and the board of school directors of the proper school districts, to provide and cause to be affixed to every such building such permanent fire-escape." Section 2 made it the duty of the board of fire commissioners, together with the fire marshal of the district, "To first examine and test such fire-escape, and after, upon trial, said fire-escape should prove satisfactory, then the said fire marshal, in connection with the fire commissioners, or a majority of them, shall grant a certificate approving said fire-escape." And when no such fire marshal and fire commissioners existed, then the school directors might act in their stead, and issue the said certificate. Section 3 provided a liability for damages in case of death or personal injury resulting from fire where no such escapes had been erected, together with a penalty, not exceeding $300, for non-compliance with the act.

Act of 1883.

After two unsuccessful attempts at amendment in 1881, a third and successful attempt was made in 1883, in the form of a supplemental act which provided that, in addition to the "permanent, safe, external means of escape" hitherto required, a chain ten feet long with a rope attached should be fixed to the inside of the window head of at least six windows on the third and each higher floor of every building amenable to the act, one in each room on such floors in hotels. The rope was to be one inch or more in thickness, to reach to the ground, and be coiled inside the sill when not in use.

Two arguments were urged in support of this measure: First, that access to the one general escape of a large building might easily be cut off in case of fire; and, second, that the chain and rope escape, being cheap, would stand more chance of being adopted. It was stated in the debate that the Philadelphia Times had recently published a list of

nearly two hundred persons owning mill buildings and other properties to which the escapes should have been applied under the act passed four years before, who had failed to comply with the law. The speaker seemed to feel that, although the fire commissioners had failed to enforce the act of 1879, perhaps if a cheaper escape were provided the authorities might be bold enough to compel its adoption.

The bill was amended in the House so as to make owners solely responsible for the erection of these escapes—a most important change, as will be seen. In the Senate it was still further amended in the same direction by adding a section giving tenants a right, after thirty days' warning to the landlord, to erect such fire-escape and to obtain the cost thereof either by a suit for debt or by taking it out of the rent; and in this form it passed both houses.

The senator who offered the last-mentioned amendment said he was prompted to do so by the recent decision in a suit against the owner of the Landenberger Mills, where the court decided that the "owner" in the act of 1879 meant the occupier of the premises. And he trusted that this last amendment would not only insure the erection of a fire-escape, but would also show where the responsibility for its erection really lay.

Fire-Escape Decisions (1883-4).

The case to which he referred is known as that of *Moeller* vs. *Harvey*,[2] of which the facts are these: Prior to the act of 1879, C. H. Landenberger, as agent for his wife, leased the defendant's mill. The lease was renewed by C. H. Landenberger, in his own name, before its expiration but after the passage of the act; and he remained in continuous possession of the premises down to the time of the fire, in 1881 (October 12th).[3]

[2]Court of Common Pleas, No. 2, Philadelphia. Opinion delivered February 15, 1883, by Hare, P. J., Philadelphia Reports, Vol 16, p. 66.

[3]Of the 41 employees, 9 were killed and 16 severely injured.

The jury found that the injury to the plaintiff resulted from the absence of a fire-escape, but leave was reserved to the court to enter judgment for the defendant if it was of opinion that the defendant was not liable as owner.

"The case," said Judge Hare in rendering his decision, "turns on a single point. What is the word 'owner' as used in the act of June 11, 1879? Does it include everyone who has a right of property in the premises in question, or only such persons as have a right of possession and can exercise an actual dominion and control? The term is broad enough to admit of both interpretations." The judge held that both in legal and common parlance not alone are they owners "who have a title that will or may be reduced to possession at a future period," but also they "who are in possession by virtue of an existing right, however brief. . . . It is a general and obvious rule that an ambiguous command, which may apply to various persons, is presumably addressed to those who can and not to those who cannot legally comply with its terms. . . . Is it the lessor, who has not hired and who cannot control the operatives, who has no power to direct where they shall be employed, who cannot cross the threshold without becoming liable as a trespasser, or is it the occupant of a building under a lease which renders him as absolutely the master of all it contains as if he held the fee, who owns the machinery and fixtures and engages and may dismiss the workmen, and to whom alone it belongs to say whether he will submit to the loss incident to the disuse of a large and it may be essential part of his factory, or proceed at the risk of being liable in damages should a fire occur?

"In answering this inquiry it is material to observe that the keepers of hotels and superintendents and managers of factories are grouped in the same clause with owners, and made equally answerable for the want of a sufficient means of escape from fire. Such a classification indicates that what the Legislature had in view was not ownership, but the authority which title ordinarily confers."

Judge Hare next upheld an argument which had been urged at the trial, namely, that a law rendering a man liable for damages for the non-performance of an act which he could not legally perform would be unconstitutional, in that it would be "as clearly a deprivation without due process of law as though the penalty were unconditional or the party an entire stranger in estate. The just inference, however, is not that the statute is unconstitutional, but that it shall be so read as to be consistent with the principles which the constitution embodies and was designed to guard."

The remainder of the decision related to the question whether the defendant, by renewing the lease, could "avoid the responsibility which would otherwise devolve upon him at the expiration of the existing term." This point the judge decided in favor of the defendant, because, if it was the duty of the tenant to affix a fire-escape or else to refrain from using the upper floors of a building, "it could not be incumbent on the landlord to re-enter for the sake of occupying a post that was already filled."

Later in the year another party injured at this fire brought suit against the owner, Harvey; and the case, *Schott* vs. *Harvey*,[4] having been decided in the same fashion as the one just described, an appeal was taken to the Supreme Court.[5]

Before proceeding to this decision—delivered by Mr. Justice Paxson—it may be well to consider the briefs submitted. To the lay mind, the brief of the plaintiff's counsel seems to furnish a very satisfactory answer to some of the points in Judge Hare's decision. "The term 'owner' as used in popular parlance, at common law, in judicial decisions, and in legislative enactments of this state, signifies primarily and in the absence of qualification, the owner of the free-

[4]Court of Common Pleas, No. 4, Philadelphia, July term, 1883, No. 226 (not reported).

[5]Case heard January 29, 1884. Opinion delivered February 25. Pennsylvania State Reports, 1884, 9 Outerbridge, p. 222.

hold. In order, therefore, to restrict its meaning in an act of Assembly to a tenant for years or 'owner of a term' some clear intention must appear in the words of the statute; but none such appears in this act.

"The legislative *power* to impose such duties on the owner of the fee cannot be questioned, the only question is the legislative intent. The legislative *object* was protection of life in case of fire; the intent was to secure that object beyond peradventure, by imposing the duty on the 'owners, superintendents, or managers,' of the factory. . . .

"It is no answer for the landlord to say that his act in providing the fire-escape might be a trespass or eviction, nor for the superintendent or manager to say that such act is not permitted by the lease, or not within the scope of his employment.

"There are many cases where public policy, the common law, or statutory provisions prescribe or sanction interference with private rights for the public safety or welfare. Instances may be found in the police and sanitary regulations, building laws, the right to enter or pull down buildings to prevent the spread of fire, . . . and generally to do whatever is necessary for the preservation of human life. No constitutional inhibition applies to such cases. The authority of the statute is ample justification[6] for such supposed trespass."

The main argument advanced by the counsel for the defendant was that the duty was a "conditional and shifting one, dependent on the use of the building by the occupant;" and that it was "reasonable to construe the word 'owners' as 'occupying owners,' who could at their option cause the duty to arise or to cease, by the character of their occupation. Until there was an occupant and a factory, there was

[6]That this contention was sound is evidenced by the fact that the act of 1885, which made it the duty of the "owner or owners in fee or for life" to erect fire-escapes, has not, as predicted by Judge Hare, been declared unconstitutional.

no duty . . . and the building might at any time cease to be a factory by the tenant's withdrawing his machinery and operatives."

In his analysis of the case, Judge Paxson, after expressing regret that a statute of so much importance should not have been prepared with more care, pointed out that the act was in the disjunctive, the duty being imposed upon owners, superintendents, *or* managers of factories, etc. Whence it followed that a more reasonable construction would seem to be that it was not intended to place a joint liability upon all, but to reach the person who was "in possession with a power of control, whether he be owner, superintendent, or manager." The judge held, further, that if the act were interpreted on the broad ground laid down by the plaintiff, the owner of the fee, though the property had been leased for a period of several hundred years, would be responsible for the neglect of the tenant in possession to put up fire-escapes; and this would be the case even if the property leased had been a vacant lot.

The decision of the Supreme Court, that by "owner" in the act of 1879 was meant "owner in possession," or tenant, was reaffirmed by that tribunal a few months later, in an even more pronounced form, in the case of *Keely* vs. *O'Conner*.[1]

Keely, the owner of a five-story mill building, had leased each floor except the first to a separate party for manufacturing purposes. He himself occupied the ground floor, and furnished heat and power throughout the building. Under the lease, either Keely himself or his engineer or watchman had free access to the leased premises for the purpose of oiling the journals and of seeing that the conditions of the lease as to care and cleanliness were complied with. Being notified by the mayor to erect a fire-escape, Keely built a wooden platform from the fifth floor to the top of a high embankment in the rear of the building, and connected the other floors with it by a flight of steps. A fire occurred

[1]Court of Common Pleas No. 1, Philadelphia, January term, 1884, No. 191 (not reported).

in the mill on December 12, 1882, and the plaintiff, in the employ of Lord & O'Conner (who leased the fourth floor), was unable to escape by either the internal or external stairways, and was seriously injured by being forced to jump from the fourth story to the ground.

In the lower court the verdict was for the plaintiff, on the ground that Keely was the responsible party and that the escape erected had not been in compliance with the act. In the appeal it was maintained that the ruling in the case of *Schott* vs. *Harvey* as to the meaning of the word "owner" (in the act of 1879) was applicable to this case, even though the landlord for certain specified purposes had free access to his tenants' premises; and that, moreover, the fire-escape did meet all legal requirements. It had been maintained by the plaintiff's counsel that this right of access possessed by the defendant, together with the fact of his furnishing power and heat, placed him in joint possession of the leased premises with his tenants, and that he was therefore liable under the act of 1879.

In denying this, Mr. Justice Clark (who delivered the opinion[8] of the Supreme Court) said: "If Keely was not the owner in possession, if he had no control of the fourth floor factory, and did not place the operative in a place of danger or enjoy the benefit of her services, the duty enjoined by the act of 1879 did not attach to him. . . . It is true . . . that the floors were leased to distinct tenants, that a like duty attached to each, that in the erection of fire-escapes each might consult his own interests only, and that the lessees of the lower stories might deny the privilege of access to the others for the purpose, but this was a matter to be provided for beforehand. The tenants of the higher stories should not voluntarily place themselves in a place of such peril, unless they are willing to accept the consequences. The duty imposed is several, not joint, and attaches when-

[8]Case heard April 10, 1884. Opinion delivered October 6, 1884. Pennsylvania State Reports, 1884, 10 Outerbridge, p. 322.

ever by the use of machinery and the employment of operatives the building or apartment becomes a factory."

Although this practically settled the case, there remained the question as to the legality of the escape provided, in the discussion of which the judge incidentally pointed out a need for future legislation. "If, however, the internal stairway be in one end of a building, we find nothing in the act which requires that the external means of escape shall be at the other."

Acts of 1885.

After these decisions of the Supreme Court it was natural that the Legislature should try again, in 1885, to frame a law whose import would be perfectly clear. Two fire-escape bills were introduced in the House on the same day, the first to amend the act of 1879, the second to amend the supplemental act of 1883. The former bill added to the list of buildings specified by the act of 1879, public halls, places of amusement and parochial schools;[9] made it the duty of the fire commissioners to see that the number of fire-escapes was adequate and their location proper; and rendered the owner in fee simple, or trustees or executors of estates, responsible for the erection of escapes. Imprisonment for from one to two months was added to the penalty for non-compliance; and if death or injury resulted from the lack of fire-escapes, the owners, besides being liable for damages, should be held guilty of a misdemeanor and imprisoned from six to twelve months.

Before the bill passed the House it was considerably improved by an amendment which made it the duty of "the owner or owners in fee, or for life, of every such building,[10]

[9]In 1897 the provisions of this act were extended to buildings "used in whole or in part for offices, not of fireproof construction"; and by the general factory act of 1901 its scope was still more widely extended.

[10]This met the objection of Judge Paxson that the owner of the fee might be held responsible for the neglect of the tenant to erect escapes, even if the property leased had been a vacant lot.

or trustee or trustees of every such estate, association, society, college, seminary, academy, hospital, and asylum, owning or using any such building, and of the board of education, or board of school directors having charge of any such school building, to provide and cause to be securely affixed outside of every such building, such permanent external unenclosed fire-escapes." The mover of the amendment stated that he had included the owner for life in his amendment, because such an owner has absolute control and possession of a building which may be used for any of the purposes mention in the section.

The bill was still further altered so as to specify that the fire-escape should "consist of an outside, open stairway of not more than forty-five degrees slant, the steps not less than six inches in width and twenty-four inches in length; and all such buildings capable of accommodating from 100 to 500 or more persons as occupants or inmates, shall be provided with two such stairways, and more than two stairways if such be necessary to secure a speedy and safe removal of said occupants or inmates in case the internal stairways are cut off by fire or smoke."[11]

Further testimony as to the zeal of the fire commissioners was offered by an interested member of the House, who said he had "seen fire-escapes erected from the fifth story of a building that not even an expert seaman could descend, to say nothing of women and children;" and if an owner "were a particular friend of the board of fire commissioners they would approve most anything." So he had come to the conclusion that as little leeway as possible should be left to the board of fire commissioners. That such fears were not groundless will be shown by the future developments in the enforcement of the fire-escape laws.

[11]This clause remedied that particular weakness in the earlier act pointed out by Judge Clark (*Keely* vs. *O'Conner*), viz.: that there was nothing in the act of 1879 which required the external fire-escape to be removed some distance from the internal stairways.

The endeavor was made to have the imprisonment penalty removed, on the ground that it was not practical to imprison a corporation, but this amendment was not agreed to. However, "school directors" and "school district" were changed to "county commissioners" and "county." And in this form, with only some slight changes, the bill became a law.

The second fire-escape bill brought in at this session was an amendment to the act of 1883. The same terms—"owners in fee or for life"—were introduced into this bill, so as effectually to dispose of the question as to where the responsibility lay. The penalty was increased by adding to the former fine of $300 imprisonment for from one to twelve months and a liability for damages in case of resulting injury. Section 3 of the act amended, giving tenants the right to erect fire-escapes and take the cost out of the rent, was repealed. In the Senate a clause was added requiring the hallways and stairways of buildings amenable to the act to be properly lighted at night, and fire alarms or gongs were to be placed so as to be easy of access and ready for use in case of fire. The fire commissioners were given some discretionary power as to the location of escapes, and were to grant certificates of approval to all who had complied with the act, which certificates were to relieve the parties of all liabilities for penalties or damages. This bill was signed by the Governor on the same day as the other amendatory act.

Further Legislation Needed (Decision of 1895).

It is a noteworthy fact that none of the fire-escape measures encountered any opposition in the Legislature, the vote being frequently unanimous. The discussion mainly turned on how to make them valid in the courts, and on how much power it was best to leave in the hands of the commissioners.

In making the owner, in fee or for life, responsible for

the erection of the escape, not all the difficulties had been met. The tenant may obstruct the way to the escape, so as to make it worthless: as was shown a few years later in the case of *Elizabeth Sewell* vs. *James C. Moore,*[12] which was appealed to the Supreme Court and decided in March, 1895. The opinion was given by Mr. Justice Mitchell.

The defendant had erected a fire-escape on the factory of which he was the owner, but had not received a certificate. The tenant had closed and locked the door leading to the escape, and on that account the plaintiff could not reach the escape, and in jumping from a window was injured.

The judge decided that the effect of the absence of a certificate of approval was only to put on the owner the burden of proof that he had complied with the law. He also decided that where the owner of a building had provided a proper fire-escape, but the injured party was unable to reach it because access had been cut off by one of the tenants, whose act the owner could not control, the owner was not liable in damages to the injured persons. This showed that further legislation was (and, it may be added, still is) needed to compel tenants to keep open the way to the escape.

[12]Appealed from Court of Common Pleas No. 3, Philadelphia, June term, 1892. Pennsylvania State Reports, Kress, 166, p. 570.

CHAPTER IV.

Attempts to Regulate Payment of Wages (1879-1901).

Payment of Wages Bill of 1879.

For over twenty years the legislators at Harrisburg have tried in vain to regulate the time and manner of wage payment. As to time: monthly, and finally semi-monthly; as to manner: "in lawful money of the United States"—which meant that it must no longer be in the hated "store-order." The so-called "company stores," owned if not operated by most mining corporations and even by some of the larger manufacturing concerns, have often been described, and the bondage in which many of them held the employee has been widely depicted.

Curiously enough, legislation intended mainly to benefit the miner was at length (1891) given over to the newly created Department of Factory Inspection for enforcement, where it remained until overthrown by the courts as opposed to freedom of contract. With recent attempts in the same direction this department has had no official relation, and they are chronicled here only because the story would not be complete without them.

In 1843 petitions had been received for legislation against the payment of wages in store-orders; and just twenty years later Governor Curtin, in his annual message, recommended the passing of such a law. In 1879 this agitation was revived by the introduction into the lower house of a bill for this purpose. As the bill failed to become a law, it is noteworthy only for the speech made in its favor by the member who introduced it.

He was aware that the constitutionality of the act would be called in question, since it would have no force

unless it forbade the employer and employee to make contracts contrary to its provisions, and this the courts might hold to be an infringement of the right to freedom of contract. He suggested a line of argument, together with some further supporting legislation, by which he thought the act might be sustained. A contract made to waive the right of payment of wages in money or at regular intervals was not usually, he believed, a voluntary act on the part of the employee; and he asked, "May not this Legislature provide that such conditions, unconscionable because not voluntary, shall not be competent and admissible evidence in a course of action in which the simple elements of a contract are the primary facts to be considered?" The statutes already "declare that certain contracts are voidable. . . . From these references [which he enumerates] it will be perceived that it is within the power of the Legislature to determine what contracts are now enforcible in the courts." In support of his position he quotes Story's Equity Jurisprudence (pp. 152-161), that "Contracts extracted from a poor man in his weak moments, are unconscionable and contrary to public policy, and will not be enforced in the courts."[1]

The Senate bill which superseded this one, and which was vetoed by the Governor on the ground of unconstitutionality, contained a section providing that "Any contract the legal construction of which would avoid the force and effect of the provisions of the act shall be incompetent and inadmissible as evidence in any suit."

Payment of Wages Act of 1881.

In 1881 four bills on the payment of wages were introduced in the House. Two were negatived in committee, and

[1] In reading the debates in the Pennsylvania Legislature on this and similar measures one is struck by the fact that the subject which is sure to be discussed with considerable clearness, and sometimes with decided ability, is the legal aspect of the question. Its economic and social side generally receives demogogic arguments in its support, and equally shallow and prejudiced opposition.

the other two—one of which was to protect workingmen and merchants from company stores, and the other to provide for the payment of laborers at regular intervals—were finally united into one measure, entitled "An act to secure to operatives and laborers engaged in and about coal mines, manufactories of iron and steel, and all other manufactories, the payment of their wages at regular intervals and in lawful money of the United States;" and providing that from and after September 1, 1881, all persons, firms, companies, corporations or associations engaged in the mining of coal, ore or other mineral, or mining and manufacturing them, or iron and steel, or any other kind of manufacturing, should settle with their employees at least once in each month, and pay them for their work or services either in lawful money of the United States or by a cash order, *i. e.*, an order purporting to be redeemable for its face value in lawful money of the United States, bearing interest at legal rate, made payable to employee or bearer, and redeemable within a period of thirty days by the parties making or issuing the same. And any person who should issue for payment of labor any paper or order other than the cash order above described would be guilty of a misdemeanor, and liable to a fine not exceeding $100, at the discretion of the court, the fine to go to the common school fund of the district wherein the crime was committed.

It was further provided that it should be unlawful for any manufacturer or coal operator who might be also directly or indirectly interested in merchandising, knowingly and wilfully to sell to any employee any goods whatever for a greater per cent of profit than merchandise of like quantity and quality were sold to other customers buying for cash and not employed by them. The debts for goods so sold should not be collectible. Finally, upon twenty days' failure to pay their employees at the regular intervals provided above, or to redeem any of the "cash orders" within the time specified (thirty days), if the same were presented and suit

brought for the amount overdue, the debt was to carry interest at one per cent a month. It was also provided that nothing contained in this act should affect the right of an employee to assign the whole or any part of his claim against his employer. And in this form the bill passed both houses.

Act of 1881 Declared Unconstitutional (1886).

Two decisions were rendered by the lower courts in 1885,[2] and one the following year,[3] upholding the act of 1881 in its prohibition of the payment of wages in store-orders. But when (1886) the last case, familiarly known as *Godcharles* vs. *Wiegman,* was carried to the Supreme Court of the state, the judgment of the lower court was reversed. Mr. Justice Gordon delivered the opinion.[4] After maintaining that the orders given by the defendant and received by the plaintiff were a proper set-off, Judge Gordon declared that the first four sections of the act were "utterly unconstitutional and void, inasmuch as by them an attempt had been made by the Legislature to do what, in this country, cannot be done; that is, prevent persons who are *sui juris* from making their own contracts. The act is an infringement likewise of the right of the employer and the employee; more than this, it is an insulting attempt to put the laborer under a legislative tutelage, which is not only degrading to his manhood, but subversive of his rights as a citizen of the United States. He may sell his labor for what he thinks best, whether money or goods, just as his

[2] *Kettering* vs. *The Imperial Coal Co.,*—Judge Ewing. Court of Common Pleas No. 2, Pittsburg. See Pittsburg Legal Journal, Vol. XV (N. S.), p. 359. *Rowe* vs. *Haddock et al.,*—Judge Rice. Court of Common Pleas, Luzerne Co., Wilkesbarre. Luzerne Legal Register Reports (Kulp), 1886, p. 501.

[3] *Godcharles & Co.* vs. *Wiegman.* Court of Common Pleas, Northumberland County, January term, 1886, No. 196.

[4] Case heard April 28. Opinion delivered October 4. Pennsylvania State Reports, 1886, 3 Amerman, p. 431.

employer may sell his iron or coal, and any and every law that proposes to prevent him from so doing, is an infringement of his constitutional privileges and consequently vicious and void."

Commenting on the above, in the American Law Register and Review, Ardemus Stewart, Esq., pertinently refers to this opinion as containing "that tinsel-like speciousness of epigram that is so often foisted on the world in place of sound reason." And continues: "But with all the deference possible under the circumstances, one may well stop to inquire whether it is more degrading to be forced to labor at wages barely sufficient to keep soul and body together, and then be compelled to accept goods at exorbitant prices, instead of the needed money, or to be freed from that oppression when unable to free oneself, even if it be by the exercise of a little paternalism. Certainly most men would prefer to be the slaves of the public, rather than of a private individual or corporation. But tastes differ!"

The judge's decision that the first four sections were unconstitutional destroyed the act entirely, as the remaining clauses had only to do with its enforcement.

Payment of Wages Act of 1887.

After two failures (in 1883 and 1885) to secure the *semi-monthly* payment of wages, and in the face of the unfavorable decision on the act of 1881, such a law was finally enacted in 1887, applying to "every individual, firm, association or corporation employing wage workers, skilled or ordinary, laborers engaged at manual or clerical work, in the business of mining or manufacturing, or any other employees;" and requiring such employers to make payment in lawful money of the United States, the first payment to be made between the 1st and 15th and the second between the 15th and 30th of each month, such payments to be the full net amount of wages or earnings due their employees on the 1st and 15th of each month wherein

such payments were made. Employers refusing or neglecting to make payments upon the dates above specified were liable to a legal claim for the amount unpaid, with interest from the date the amount had fallen due.

It will be noticed that this act, although it required the payment of wages in lawful money of the United States, did not provide for the enforcement of that clause, which, therefore, might as well have been omitted. Neither did the act say that contracts releasing the employer from compliance with the act should not be binding.

Amendatory Act of 1891.

In 1891, however, the payment of wages act of 1887 was strengthened by making its violation a misdemeanor, and the penalty a fine of $200 to $500. No assignment of future wages payable under the act was valid, nor any agreement relieving the employee for the obligations of the act. The enforcement of this statute, which applied to both mining and manufacturing, was committed to the Department of Factory Inspection.

Company Store Act of 1891.

The decision of Judge Gordon in the case of *Godcharles* vs. *Wiegman* showed that, for the present at least, no laws prohibiting the payment of wages in store-orders could be sustained in Pennsylvania. Therefore an act forbidding corporations to maintain company stores was the nearest approach to an anti-truck law that could be secured. Accordingly, a company store bill, which had been defeated in 1889, was reintroduced and passed in 1891.

This act forbade mining or manufacturing corporations, or their officers or stockholders acting in behalf of such corporations, to carry on by direct or indirect means any store known as a company store, where goods and merchandise other than such as had been mined or manufactured by the corporation were kept for sale.

The corporation was forbidden to lease, grant or sell to any of its officers or stockholders or any other person the right to maintain upon its property any such store, whenever such lease was intended to defeat the provisions of this act. Neither might the corporation make any bargain with the keepers of any store whereby the employees should be obliged to trade with such keeper, and any such contract should be *prima facie* evidence of a violation of the act. The penalty was a forfeiture of charter, the Attorney General to proceed by writ of *quo warranto* on receipt of a complaint signed by two or more citizens of the county.

Payment of Wages Decisions (1895-6-7).

In 1895-6-7 several cases arising under the semi-monthly pay law of 1891 were decided. This law, besides providing for the intervals of payment, had stipulated that it must be in lawful money of the United States, and that no assignment of future wages payable semi-monthly under the act should be valid that relieved the employer from the obligation to pay semi-monthly and in lawful money of the United States.

In the case of *Hamilton* vs. *Jutte & Co.*[5] the plaintiff, who was a miner, had accepted as part of his wages the payment of a running account at a store kept on the defendants' property, but which was claimed not to be a company store. After being discharged the plaintiff sued for the amount paid by the defendant to the store in payment of the plaintiff's account. The judge maintained that, had the plaintiff not agreed to the store arrangement, he could recover the amount, but having once agreed he could not do so, since "no act of assembly can prevent a man from making a contract to accept payment in any way he pleases."

A similar case, that of *Sally* vs. *Berwind-White Coal*

[5]Common Pleas, Fayette County, September term, 1894. Charge to the jury, February 27, 1895, by Ewing, P. J. County Court Reports, Vol XVI, p. 193.

Mining Company,[6] was decided in the same way, in February, 1896, the judge concluding his opinion as follows:

"If the Legislature intended by this enactment to prevent persons competent to contract from making such contracts as they deemed mutually advantageous and which are not harmful in themselves, or in conflict with the rights of others, then it is not only violative of the constitution, but of a law as old as humanity itself."

In May, 1894, through the Factory Inspection Department, suit was brought in Clearfield County—*Commonwealth* vs. *Isenberg & Rowland*[7]—against a coal mining firm who had engaged various persons to work for them, by a verbal agreement, nothing being said as to the duration of employment or time of payment. They admitted that the times of payment had not been according to the act, but as a defense claimed that the act was unconstitutional on three grounds: First, it was a law "impairing the obligation of contracts" (Art. 1, sec. 17, Constitution of Pennsylvania; second, it interfered with the right of "acquiring, possessing and protecting property" (Art. 1, sec. 1); third, it was a "local or special law . . . regulating trade, mining or manufacturing" (Art. 3, sec. 7). The case was decided in August, 1895, by Judge Gordon. After referring to the decision of Mr. Justice Gordon in the case of *Godcharles* vs. *Wiegman* and to a recent decision on a similar law in Ohio in which the law was declared unconstitutional, the judge decided that the law was unconstitutional on the first two grounds given by the defense, and that it was unnecessary to pass upon the third.

In 1897 another "payment of wages" decision was rendered, this time by the Superior Court, in the case of *Sho-*

[6]Common Pleas, Jefferson County, May term, 1895, No. 103. Reed, P. J., February 10, 1896. District Reports, Vol. V, p. 316.

[7]Court of Quarter Sessions, Clearfield County, May sessions, 1894, No. 14, Gordon, P. J., August 3, 1895, District Reports, Vol. IV, p. 579.

walter vs. *Ehlen and Rowe, Appellants.*[8] In this case, as in that of *Hamilton* vs. *Jutte & Co.,* the plaintiff had accepted goods from the defendants' store in part payment of his wages. Apparently, the buying of goods at this store had been voluntary on his part; but he now claimed that under the act of 1891 he could again recover the amount of his wages so taken.

The decision pointed out that the requiring of the payment of wages in money had been declared unconstitutional, not only by various district courts, but by the Supreme Court in *Godcharles* vs. *Wiegman.* The court then continued as follows:

"Prior to the passage of the acts mentioned [1881 and 1891] a laborer always could demand payment of his wages in money, if he had made no agreement to the contrary; but the purpose of these two statutes was to enable him, after making an agreement to accept another commodity in lieu of cash, and, receiving it, to repudiate the agreement and recover payment again in money. Common honesty forbids that, and the law estops him from doing it. If men could thus, by classes, obtain license from the Legislature to play fast and loose with their bargains, the most solemn contractual relations would soon become a mere farce and the civil courts might as well be closed. The fate of the act of 1881 should have been a sufficient warning against the passage of that of 1891."

With the act of 1891 declared unconstitutional, it is fortunate that the practice of paying wages at least once in two weeks has become so general that the need for its enforcement is practically at an end.

Company Stores—Opinions of Attorney General (1896).

For a decade of years, beginning with the really decisive case of *Godcharles* vs. *Wiegman,* in 1886, the Penn-

[8]Appeal, April term, 1897, by defendants, from judgment of Common Pleas Court of Somerset County, February term, 1897, on verdict for plaintiff. Superior Court Reports, Vol. V, p. 242.

sylvania judiciary had been steadily setting its face against the attempt on the part of the Legislature to prevent the payment of wages in store-orders. This trend had become so well understood by 1891 as to lead to a varying of the attack, as we have seen, by prohibiting company stores absolutely. In the enforcement of this company store act of 1891, certain citizens of Johnstown in 1896 petitioned the Attorney General for a writ of *quo warranto* against the Cambria Iron Company.[9] This petition averred that the Cambria Iron Company had been conducting a company store, known as the "Penn Traffic Company, Limited," in connection with its works. And the petition was supplemented with an affidavit that the stockholders and officers of the Cambria Iron Company were also stockholders in the Penn Traffic Company, and that employees of the first named company were obliged to settle their accounts with this store on pain of discharge, even though the account might seem to the employee an unjust one. The respondent filed an answer, denying every averment in the petition and affidavit.

Attorney General McCormick decided that as every allegation of the plaintiffs had been specifically denied by the defendants, and the proof offered was not of the sort that would stand before the courts, the writ ought not to be issued; and that in this he was following his predecessor, Attorney General Hensel, who had refused to institute any proceeding that was not likely, in his opinion, to be successfully maintained. Mr. McCormick regarded this act as "so highly penal in its nature and operation that the courts would be compelled to construe it strictly."

Undaunted by this failure, another attempt was soon made to secure a writ of *quo warranto,* this time against the Sonman Coal Mining Company.[10] Attorney General McCormick, after pointing out that his department was author-

[9]County Court Reports, 1896, Vol XVII, p. 415.
[10]County Court Reports, Vol. XXIII, p. 300.

ized to institute such a suit only on sworn written complaint of two or more citizens of the county where the offense was committed, decided[11] that "in the case under consideration a suggestion for a writ of *quo warranto* will be immediately filed." Here the matter ended. The constitutionality of the act has not been tested, for the reason that the "act has never been enforced because the miners at whose request it was enacted never carried proceedings beyond the complaint made to the Attorney General."[12] This is unfortunate. The law should be tested or removed from the statute books.

Taxation of Store-Orders—Bills of 1897, 1899; Act of 1901.

We now reach the third stage in the legislative fight against the company store. During the first stage (1881-91) the Legislature succeeded only in decreeing that wages must be paid in "lawful money of the United States," all agreements to the contrary notwithstanding. This, as we have discovered, was battered down by the courts from behind their bulwark of "freedom of contract." Then (1891) the Legislature turned to the prohibition of company stores, under penalty of forfeiture of charter by the offending corporation. But this highly penal remedy would seem to have been regarded as too drastic by the state's prosecuting attorneys; so that, as a last resort, the Legislature (1901) adopted the device of taxing all orders of whatever character, given in payment of wages, not redeemed within thirty days in "lawful money of the United States."

But this battle was not won without two preliminary skirmishes in the sessions of 1897 and 1899. At the former session the bill passed both houses, but was vetoed by the Governor on the ground that it was special legislation and hence unconstitutional.

[11]January 4, 1898.

[12]Letter from former Inspector Campbell.

The text of this store order tax bill was as follows:[13] "Sec. 1. Be it enacted, etc., That every person, firm, partnership, corporation or association engaged in operating oil or gas wells, conducting oil or gas in pipes, operating quarries, operating canal, steamboat, ship, steamship, ferry, transportation, tonnage, paving, macadamizing, steam heat, steam power, telephoning, telegraph, express, electric light, railways, railroad, cable road, water or gas companies, mining or manufacturing, shall, upon the first day of November of each and every year, make a report under oath or affirmation to the Auditor General of the number and amount of all orders, checks, dividers, coupons, pass-books or other paper representing the amount in part or whole of the wages or earnings of any employee that were given, made or issued by him, them or it for payment of labor, and not redeemed . . . by paying to the employee or a member of his family the full face value of said order, check [etc.], in lawful money of the United States within thirty (30) days from the giving, making or issuing thereof, the honoring though of said order, check [etc.], by a duly chartered bank by the payment in lawful money of the United States to the amount of said paper representing an amount due for wages or earnings is a payment, and he, they or it shall pay into the treasury of the commonwealth ten (10) per centum on the face value of such orders, checks [etc.] not redeemed as aforesaid." In case of neglect or refusal to make the report to the Auditor General required by this section, "on or before the first days of December of each and every year," the person, firm or corporation so offending was to "pay as a penalty into the state treasury twenty-five (25) per centum in addition to the ten (10) per centum tax imposed as aforesaid in this section."

Section 2 of the bill ordered that "fifteen (15) per centum of the twenty-five (25) per centum so imposed as

[13]Legislative Record, p. 2917.

aforesaid" should be paid by the State Treasurer to the person informing the Auditor General or State Treasurer of such unredeemed orders, checks, etc.

At the next legislative session (1899) a bill almost identical with the above was introduced in the House, with the substitution of twenty-five per centum for ten per centum. In the discussion, Mr. Wodruff, of Philadelphia, pointed out[14] that the store-orders provided for the buying of about everything used by the miner, *e. g.,* powder, mining implements, rent, coal, merchandise, and even the services of doctor, preacher or priest. He asserted further that the Hazleton riots were "made possible" because of the company stores. Later in the debate the report of the recent House commission to investigate the troubles in the coal regions (both bituminous and anthracite) was quoted from, to the effect that the company store was the "great crying evil of those regions;" and that said committee had "recommended that the company store be abolished." One member pertinently inquired whether the keeping of company stores had not already been prohibited—and how, then, could the Legislature tax an illegal act?

Though passed by the House, the bill received scant consideration in the Senate. But in 1901 this same taxation of store-orders bill was enacted into law, though with the proviso added: *"Provided,* This act shall not apply to tools and blasting material, and other mine supplies, furnished by the employer to the employee, used by the employee at or about the employee's vocation; nor to coal sold by the employer to the employee, nor to rent for houses leased from the employer and occupied by the employee. *And provided further,* That this act shall not apply to moneys paid to the treasurers of the employees about coal mines who have agreed to have a pro rata part of their earnings paid by the operators to such treasurers who are to pay check weighmen or check treasurers."

Taxation of Store-Orders Decisions (1901-2).

On December 20, 1901, the Dauphin County Court handed down opinions in three separate cases relating to the taxation of store-orders: *Commonwealth* vs. *Bethlehem Steel Company,*[15] *Commonwealth* vs. *Rochester and Pittsburg Coal and Iron Company,*[16] *Commonwealth* vs. *Lehigh Coal and Navigation Company.*[17] In none of these decisions was the constitutionality of the taxation of store-orders act of 1901 called in question, the only point decided being that the defendant companies had not brought themselves within reach of its taxing provisions. And when, later, the last-named case was carried to the Supreme Court, that body contented itself with finding[18] that "the statements of the corporation in this case have neither the form nor the semblance of the store-orders which the state subjects to taxation"—thus virtually acknowledging the right of the Legislature to impose this almost prohibitory tax.

The United States Supreme Court has held that the right to tax carries with it the right to destroy by taxation; and this power would naturally extend to the several commonwealths. Thus freedom of contract must give way before the taxing power—even as it has before the police power.

[15]County Court Reports, Vol XXVI, p. 225.
[16]County Court Reports, Vol. XXVI, p. 481.
[17]Unreported.
[18]Pennsylvania State Reports, Vol. CCVI, p. 641.

CHAPTER V.

General Factory Acts (1887-1893).

Acts of 1887 Relating to Women and Children.

The session of 1887 was marked by a revival of interest in the conditions of employment of women and children, concerning which there had been no legislation since 1855; but before considering the bills introduced on the subject, it may be well to notice some of the influences which were leading up to this awakening.

The Bureau of Industrial Statistics, established in 1874,[1] paid considerable attention in its reports from 1880 to 1889 to the subject of child labor, especially in the textile industries. In 1881 and 1883 the chief of the bureau sent out blanks to the textile factories asking for the number of adult males, females and children employed. The statistics thus obtained are hardly worthy the name, but the dearth of reliable information about Pennsylvania factories prior to the establishment of a Department of Factory Inspection (1889) is so great that we must make use of every fragment purporting to be official.

In 1881[2] 625 blanks were issued to the textile establishments, fifteen per cent of which made no returns. But assuming, for the purpose of comparison with similar statistics obtained two years later, that the average numbers and ages of the hands employed were the same in the fifteen per cent making no return as in the eighty-five per cent that did reply, the following totals are obtained:

[1]It succeeded the Bureau of Labor Statistics, which had been established two years earlier (1872).

[2]See Report Bureau of Industrial Statistics, pp. 102 and 159.

Boys under 16 years	4,921	or	7.7 per cent.
Girls under 15 years	4,174	or	6.6 per cent.
Women and girls over 15 years	27,148	or	42.7 per cent.
Men and boys over 16 years	27,305	or	43.0 per cent.
Total	63,548	or	100.0 per cent.

In 1883[3] 1,055 blanks were issued, and ninety per cent replied. Making the same assumption as in the previous case, we have the following results:

Boys under 16 years	5,901	or	8.2 per cent.
Girls under 15 years	4,772	or	6.7 per cent.
Women and girls over 15 years	30,385	or	42.5 per cent.
Men and boys over 16 years	30,451	or	42.6 per cent.
Total	71,509	or	100.0 per cent.

Comparing the per cents of the two years we find:

	1881 P.ct.	1883 P.ct.	Inc. P.ct.	Dec. P.ct.
Boys under 16 years	7.7	8.2	.5	..
Girls under 15 years	6.6	6.7	.1	..
Women and girls over 15 years	42.7	42.5	..	.2
Men and boys over 16 years	43.0	42.6	..	.4
Total	100.0	100.0	.6	.6

This shows a trifling increase in child labor of .6 per cent, too small an amount to be of importance, when the manner of investigation is considered.

One piece of statistical work done at this time will bear quoting from, although disputed by the United States Census Department, namely, the census of Philadelphia manufactures, taken under the supervision of the Hon. Lorin Blodget in 1882.[4] This showed a total number of factory operatives in Philadelphia of 242,483, of whom 60.7 per

[3] See Report Bureau of Industrial Statistics, pp. iv and 97.

[4] Census of the Manufactures of Philadelphia, 1883.

cent were men, 27.6 per cent women and 11.7 per cent youths (*i. e.*, between ten and fifteen years of age. The employments using the largest numbers of women and children were the textiles (including carpets and knit goods), boots and shoes, paper boxes, tailoring, glassware and umbrellas. In these factories the women largely outnumbered the men, the totals being: Men, 39,533; women, 52,342; youths, 11,695.

The report of the Bureau of Industrial Statistics for 1886 stated that the Society for the Prevention of Cruelty to Children had endeavored to prevent the employment of children under the age prescribed by law, but that it had been retarded in its efforts for want of proper authority on the part of its agents to enter and inspect factories. Inquiry at the Philadelphia office of the society secured the information that various cases were investigated, frequently at the instigation of labor union men who did not want children to work in the mills; that the complaints were, generally, that the children were under age (thirteen years), but there was one case where a child worked from six p. m. to six a. m.; that there were no prosecutions by the society, the manufacturers readily complying with the law, in many cases saying they had been deceived by the parents as to the child's age. The society finally had copies of the law (of 1855) struck off, and sent them to all the factories in the city. Numerous letters of thanks were received from the manufacturers, stating that they had been ignorant of the provisions of the law, but would hereafter comply with them.

The increasing strength of organized labor in this state, culminating in the early eighties, was first directed to measures whose purpose was to insure the security of employees' wages. But the Knights of Labor, whose headquarters were then in Philadelphia, in its first public declaration of principles in 1882, further advocated the adoption of measures to provide for the health and safety of those engaged in mining, manufacturing or building pursuits, and

prohibiting the employment of children under fourteen years in mines, workshops and factories. Later the same organization "made factory inspection one of its aims, and through persistent and intelligent agitation succeeded in securing satisfactory legislation in several states."[5] But though the leaders of the Knights of Labor desired the establishment of a Department of Factory Inspection, the rank and file of its membership in this state—if we may judge from the reports of their legislative committees and conventions—were more interested in semi-monthly pay laws, mechanics' lien laws, convict labor legislation, and the like.

But to return to the legislation of 1887. The last measures which attempted to regulate the conditions of employment of women and children *without inspection* were passed at this session. After so many years of trial, in which the utter uselessness of such laws had been demonstrated, one does not know whether to charge the legislators with stupidity or insincerity.

One law required that all persons or firms employing women in manufacturing, mechanical or mercantile establishments must provide suitable seats for such employees to use when not "necessarily engaged in the active duties for which they are employed," the penalty being a fine of $25 to $50. The other prohibited the employment of any child under twelve years of age by any person, firm or corporation, to do any work in any mill, manufactory or mine, under penalty of $20 to $100. This last act, it will be observed, lowered the minimum age for child labor from thirteen years—where it had been placed in 1849—to twelve, but widened the scope of the statute.

Factory Inspection Bill of 1887.

Besides these two unimportant measures which were passed, a very important bill which provided for factory

[5]From a letter from Mr. Watchorn, ex-Chief Factory Inspector for Pennsylvania.

inspection was introduced in the House. It was a long and elaborate measure, differing considerably from anything subsequently proposed. Whence it came, is difficult to find out. A Knights of Labor legislative convention was held at Harrisburg in April of that year, and the report of their proceedings shows plainly that they were ignorant of the fact that such a bill had been introduced. Various persons who were interested in the passage of the act of 1889 have asserted that they were unaware that such a bill was considered in 1887.

The bill failed of obtaining a constitutional majority,[6] although the vote stood 66 to 49 in its favor. This is but one of the many illustrations that might be given of the unwisdom of placing such a clause in a constitution, unless it is coupled with another clause making attendance on each daily session obligatory upon the members, and the vote of all members present to be counted. Much really valuable legislation has been thus killed by the stay-aways, who, lacking the courage of their convictions, have endeavored in this manner to avoid placing themselves on record.

Factory Inspection Act of 1889.

Though so little interest seems to have been aroused by the factory inspection bill of 1887, quite the reverse was the case in 1889.

Mrs. Florence Kelley, later chief factory inspector of Illinois, and now secretary of the National Consumers' League; Mrs. Werner (since deceased), wife of Mr. Louis Werner, editor of the Tageblatt; Mrs. Holman and a few other Philadelphia ladies organized a society called the Working Women's Association, whose chief purpose at this time was to support the bill. In a letter to the writer, Mrs. Kelley states that the Working Women's Association was a very small body that winter, and that the daily papers

[6] A majority of all the members elected: Art. III, sec. 4.

gave it space out of all proportion to its size. But certainly, if the society is to be measured by what it accomplished, it deserves a large place in the story of the beginning of Pennsylvania factory inspection. Mrs. Kelley, Mrs. Holman and Mrs. Werner were sent to Harrisburg as a lobby, and the passage of the bill was very largely due to their efforts. They appeared before the Senate and House committees and did a great deal of personal work with the members of both houses.

Besides this society, the New Century Guild indorsed the bill, and was represented at Harrisburg by Mrs. Holman; and the New Century Club, which was chiefly interested in the appointment of women inspectors, was represented by Mrs. Blankenburg and Mrs. Charlotte Pierce. The Women's Christian Temperance Union gave the use of its rooms at Thirteenth and Arch Streets for meetings in the interest of the bill, and at its state convention indorsed the measure.

As in 1887, the Knights of Labor maintained a lobby at Harrisburg, which gave its aid, although its attention was of course divided between that and other labor measures. It must not be thought that all the lobbying done was in favor of the bill. Various manufacturers and merchants sent a strong lobby, who did all in their power to secure its defeat.

The bill was introduced in the Senate January 24th, and was in great peril during its stay in the hands of the Committee on Corporations. Mrs. Holman secured a letter from the officers of the Atlantic Sugar Refining Company to the Senator who had the deciding vote in the committee. After reading the letter he voted to recommend the bill favorably. The next danger was from amendments. As introduced, it limited the hours of labor of minors to ten hours per day, but this was amended to read sixty hours per week, a much weaker provision, and in the House the excellent restriction that no minor should clean machinery

while in motion was limited to minors under sixteen years of age. The bill had been loosely drawn, and some other amendments were necessary to make it consistent and constitutional, and on the third reading in the House a strong effort was made to defeat the bill on the ground of unconstitutionality. But its defenders succeeded in amending it at the last minute, the Senate concurred, and with the Governor's signature, May 20th, Pennsylvania received her first factory inspection law. Five other states, Massachusetts, New Jersey, Ohio, New York and Wisconsin, had preceded her in this branch of legislation.

This act[7] forbade the employment of any minor in factories or mercantile establishments for more than sixty hours per week, unless for the purpose of making necessary repairs. No child under twelve[8] years of age might be employed in factories or mercantile establishments, and employers must keep a register containing the name, birthplace, age and residence of every employee under sixteen years of age. No such establishment might employ any child under sixteen unless there was first provided and placed on file for inspection an affidavit made by the parent or guardian, or by the child, if he or she had no parent of guardian, stating the age, date and place of birth of said child.

Every person, firm or corporation employing women and children, or either, in any factory or mercantile establishment, should keep posted in a conspicuous place in every room where such help was employed a printed notice stating the number of hours per day for each day of the week required of such persons, and in every room where children under sixteen years of age were employed a list of their names with their ages.

No person, firm or corporation employing less than ten[9] women or children was deemed a factory or mercantile

[7] P. L. 1889, No. 235, p. 243.

[8] In the factory inspection bill of 1887, it was *thirteen*.

[9] In the factory inspection bill of 1887 it was *five*.

establishment within the meaning of this act. The Governor was empowered to appoint, by and with the consent of the Senate, a factory inspector, at a salary of $1,500 per year, whose term of office should be three years. The inspector was empowered to visit and inspect, at all reasonable hours and as often as practicable, the factories, workshops and other establishments in the state employing women or children, where the manufacture of goods was carried on, and to report to the Bureau of Labor Statistics on or before the 30th day of November of each year the name of the factory, the number of such hands employed, and the number of working hours each week. It should also be the inspector's duty to enforce the act and to prosecute all violations. The necessary expenses of the inspector, to the amount of $2,500, were to be paid from the funds of the state.

It was made the duty of the owner, agent or lessee of any such factory or mercantile establishment where hoisting shafts or well-holes were used to cause the same to be properly and substantially enclosed or secured, if in the opinion of the inspector it was necessary to protect the life or limbs of those employed; proper trap or automatic doors must be provided at all elevator ways; and, at the discretion of the inspector, automatic shifters or other mechanical contrivances for throwing on or off belts on pulleys. All gearing and belting must be provided with proper safeguards, and no minors under sixteen years of age might clean machinery while in motion.

All fatal or serious accidents occurring to employees in the factory must be reported by the employer within forty-eight hours to the factory inspector, stating fully the cause of the injury.

Suitable wash-rooms and water-closets must be provided for females, and the water-closets must be separate and apart from those used by the males, must be properly screened and ventilated, and at all times kept in a clean condition.

Not less than forty-five minutes were to be devoted to the noonday meal in factories, unless the factory inspector or any of his deputies issued a permit allowing a shorter mealtime, which permit must be conspicuously posted, given for good cause, and revocable at any time.

If the inspector found that the heating, lighting, ventilation or sanitary arrangements of any shop or factory were such as to be injurious to the health of the employees, or that the means of egress in case of fire or other disaster was not sufficient or in accordance with all the requirements of law, or that the machinery was so located as to be dangerous to employees and not sufficiently guarded, or that structures filled with molten metal or hot liquid were not properly guarded, he should notify the proprietor to make the necessary alterations within sixty days; and if it were not done within sixty days, or within such time as the alterations could be made with proper diligence, the proprietor or agent should be deemed guilty of violating the provisions of the act.

The inspector was empowered to appoint six deputies, one-half of whom must be females and one of whom might be a clerk in the main office, and whose powers were the same as those of the factory inspector, subject to his supervision, their salaries to be $1,000 per year, and their traveling expenses paid by the state. He was to divide the state into districts, assigning the deputies to the districts as he saw fit, and he might remove any of the deputies at any time.[10] A factory inspector's office at the Capitol was provided for.

A printed copy of the act must be posted by the inspector in each workroom of every factory affected by the act, and the penalty for the violation of the act was a fine not exceeding $100.

[10] In the factory inspection bill of 1887 the chief might remove his assistants, but only for cause.

Operation of Act of 1889.

The two years intervening between the sessions of 1889 and 1891 were full of interest to those concerned in factory inspection. The Legislature had failed to make an appropriation for the expenses of the department or for the salary of the chief inspector. In spite of this obstacle, Governor Beaver appointed Mr. William H. Martin chief, and told him to go ahead, trusting that at the next session the Legislature would reimburse him, which it did.

After visiting the departments of factory inspection in Massachusetts and New York, Mr. Martin established his office in Harrisburg and appointed his first deputy, Miss Mary Wagner, who was assigned to the position of office deputy—a position she still holds. Twenty-three blank forms for enforcing the different provisions of the act were drawn up and sent to as many manufacturers as they could locate (the report does not mention mercantile establishments in this connection), numbering about 7,000.

Mr. Martin districted the state according to its three military divisions and appointed the other five deputies, assigning one male and one female deputy to each district, though, as Miss Wagner was employed in the office, there was left only one deputy for the outside work in the middle district. The number of inspectors was entirely inadequate to the work to be performed, but it was at least a beginning, and the department deserves credit for the work accomplished under so great difficulty.

The inspectors generally met with courteous treatment on the part of employers. Only two arrests were made between the time of the organization of the department, about March 1, 1890, and the date of the first report, November 30th. One of these cases was settled without coming into court, and the other, the prosecution of a firm of Pittsburg glass manufacturers, accused of employing children under age and of failing to keep records, etc., was decided in favor of the commonwealth.

In order to know what establishments were under the authority of the department, Mr. Martin was obliged to ask the opinion of the Attorney General as to the meaning of the word "children" in the phrase "persons who are women or children." The opinion was given by the Deputy Attorney General, Mr. John F. Sanderson. As the act regulated the hours of labor of all minors and the conditions of employment of females, the only logical construction of the clause would seem to be that the act applied to all factories employing ten women or minors, making children mean all under twenty-one years. But Mr. Sanderson, after declaring that "there is no general and definite legal limit to the age of childhood," decided that "from a consideration of the general scope and purpose of the act" the term children in that clause meant those under sixteen years of age. This left a gap in the application of the act between the ages of sixteen and twenty-one. A factory might employ ten persons of that age, but if it did not also employ ten who were either adult females or between the ages of twelve and sixteen the inspectors could not enforce the act within that factory.

Mr. Martin also requested an opinion as to the authority of his department in the matter of fire-escapes, and received the following answer, this time from the Attorney General, Mr. W. S. Kirkpatrick. The jurisdiction of the department was confined to the establishments coming under the act, and in those establishments a certificate granted by the fire commissioners was conclusive that such person had complied with the requirements of law respecting fire-escapes. However, if such escapes were out of repair, the inspector should require them to be put in order.

In 1890 a Democratic Governor, Robert E. Pattison, was elected in Pennsylvania, and on June 1, 1891, Mr. Martin, who had been appointed by a Republican Governor in 1889 for a term of three years, according to the act, was

dismissed from office, and Mr. Robert Watchorn[11] appointed in his stead. Mr. Watchorn's appointment was sent to the Senate May 27th, and rejected by that body, which was Republican, whereupon the Governor commissioned him to hold office until the end of the next session of the Senate—an extraordinary one—ending November 11, 1891. The day after its adjournment the Governor renewed Mr. Watchorn's appointment, to continue until the end of the next session, that of 1893. At that session Governor Pattison again sent in the same appointment for confirmation, whereupon the Senate, still Republican, appointed an investigating committee, and on its reporting the facts given above passed the following resolution: "That an action of the Governor relative to the office of factory inspector has been derogatory to the rights of the Senate as a co-ordinate branch of the government, and has not been in accordance with the constitutional requirements relative to appointments which he is authorized by section 8, Article IV, of the constitution to make."

Mr. Watchorn's nomination as factory inspector was never confirmed. In the light of this partisan opposition it was in the nature of a personal triumph for Mr. Watchorn that, on the completion of his four-year term of office, the last Legislature which had refused to confirm should have passed a unanimous vote of congratulation on the success of his administration, accompanied by the gift of his official desk and chair. His pay was never suspended; in fact, at the end of the first two years his salary was doubled.

Factory Inspector's Reports for 1891-1892.

An amendatory factory inspection measure came near passing in 1891 which would have restored the minimum age limit from twelve to thirteen years, would have laid down more stringent requirements for the safety of elevators, and would have doubled the number of deputy inspec-

[11]Now Commissioner of Immigration at the Port of New York.

tors. But improvements in the general factory law were not to come till the following session, and they can best be understood in the light of the factory inspector's reports for 1891 and 1892, as the changes made by the amendments of 1893 were suggested in those reports.

Mr. Watchorn recommended limiting the hours of labor of women as well as minors, and placing that limit at ten hours per day instead of sixty per week. In 1892 he reported that "Many employers have adopted the relay system, or, in other words, they work two sets of minors. When one lot have worked their sixty hours they are then dismissed for the week, while the adults, men and women alike, are continued at work overtime."[12]

He also favored an abatement of four hours on Saturday, concerning which he says: "The change on Saturday is rather a radical one, but it is very necessary, for so great is the desire for a Saturday short day that in very many places fifteen or thirty minutes are added to the first five days, and special requests for the shortening of the meal-time each day are made, in order that fifty-four or fifty-five hours may be worked at the conclusion of Friday's work."[13]

Among his suggestions were: Raising the age at which children might be admitted from twelve to fourteen; including laundries under the act; abolishing the section which limited the act to places employing ten women or children; increasing the salaries of deputies from $1,000 to $1,200, and the number of deputies from six to twelve.

He complained that the duties of the factory inspectors conflicted with those of the fire commissioners, and suggested that the factory inspectors should either be required to report to the fire commissioners or be given full authority in all establishments coming under their jurisdiction. That the latter alternative was altogether the better one had been

[12]Factory Inspector's Report for 1892, p. 14.

[13]Bureau of Industrial Statistics Report for 1891, p. E 83.

shown in the recent case of *Commonwealth* vs. *Emsley,*[14] on indictment for not providing sufficient fire-escapes on a factory.

Says Judge Mitchell, who rendered the opinion: "It is conceded that the defendant has not complied with these provisions [which he had already quoted] of the law, either in the number of external escapes or the mode of fastening the interior chains and ropes. But he has had his premises examined, and has received a certificate of approval from the Department of Public Safety, which, under the present charter of the city [Philadelphia] exercises the powers of the former Board of Fire Commissioners.

"We have, therefore, to consider the effect of such a certificate. . . . It is plain that the law intends to create a tribunal whose duty it is to see to its proper enforcement at once, and to settle in advance the sufficiency of the compliance with its requirements, without waiting for unfortunate accidents to call attention thereto. Again, the law looks to uniform and systematic administration, so that the citizen may know when he has complied with his duty and may rest secure. . . . But whatever the legislative reasons may have been, the language is too clear to admit of any other construction . . . than that the certificate is a full defense."

In rendering a decision in another fire-escape case, that of *Commonwealth* vs. *Kitchenman,*[15] a year later, Judge Finletter added his testimony to the lax enforcement of the law in Philadelphia. The decision itself is not important in this connection, but what he says concerning the violation of the law is worthy of note.

[14]Court of Quarter Sessions, Philadelphia County. Opinion delivered August 11, 1888, by Mitchel, J., Judges Hare and Fell concurring. Philadelphia Reports, Vol. XIX, p. 546.

[15]Court of Common Pleas No. 3, Philadelphia County. Opinion delivered July 1, 1889, by Finletter, P. J. Philadelphia Reports, Vol. XIX, p. 564.

"There never was a greater necessity and public demand for legislation than for the act of June 1, 1885. The causes which led to this enactment, its objects and purposes, sternly require its rigid enforcement. That it has not been sufficiently complied with and enforced is evident upon all sides. It is four years since it went into operation, and an honest desire to comply with its provisions on the part of owners, or a vigorous enforcement by the authorities, would have left no unsafe places in this city. When the next great holocaust occurs we will be aroused to a sense of violated law and duty, and a few more fire-escapes will be erected."

But to return to the factory inspector's report. There was one arrest under the factory inspection law in 1891, that of Mr. Hugh French, of Philadelphia, owner of a building sublet to various tenants, who manufactured cotton and woolen waste.

The sanitary conditions of this factory were thus described by Mr. Watchorn: "The closets are situated in a back yard, a sort of barricaded cow stable, and the employees (many of whom are women and girls) in order to use the same have to come down several flights of stairs, from a room heated to from 70 to 90 degrees, and traverse a back yard which is very often wet, muddy and unfit for passage. . . . In addition to the above, the only wash room he has provided is a solitary hydrant in the same back yard, where scores of girls must take their turns to get a wash."

The case was brought before Judge Fell,[16] who decided that Mr. French as owner of the building was not amenable, but that his tenants were. The tenants carried out the orders of the department without further litigation; and this decision as to responsibility resting on the "owner in possession"—except as to fire-escapes, the erection of which had been specifically placed on the owner in fee or for life of the building used as a factory, by the act of 1885—has governed the department ever since.

[16]See Factory Inspector's Report for 1892, pp. 4 and 5.

In 1892 several cases were brought into court. The department had some trouble in securing the service of warrants, and two Philadelphia police magistrates dismissed the cases in the face of positive evidence of the guilt of the employers. But the general effect of the prosecutions was to secure the enforcement of the law. The practice was then begun, and has since continued, of withdrawing suits whenever the employer would agree to pay costs and would give a written promise to obey the law in future.

Age Limit Applied to Elevator Boys (1893).

The great number of elevator accidents noted in the reports of the factory inspector were no doubt largely instrumental in securing the strengthening of the clauses providing for automatic doors, etc., in the amendatory bill of 1891. And the subject was again brought up in 1893, in an act passed forbidding the employment of any minor under the age of fourteen in and about elevators.

Amendatory Factory Act (1893).

Another attempt, this time successful, was made to amend the factory act of 1889. Like the act of 1889 and the amendatory bill of 1891, this new measure originated in the Senate; and, in general, it followed the suggestions of Mr. Watchorn. As passed by the Senate the bill limited the hours of labor for minors and females to ten hours a day, and forbade the employment of children under fourteen years of age; but while the bill was before the House committee a deputation representing the manufacturers of Philadelphia appeared against the bill, and succeeded in having the regulation of the hours of labor for women stricken out and the age at which children might begin work changed to thirteen years. As finally passed the act enlarged the scope of the act of 1889 by adding laundries and renovating establishments, and limited the number of hours which a minor

might work in any one day to twelve. It raised the age of admission from twelve to thirteen years, extended the act to factories and mercantile establishments employing five persons (instead of ten), increased the salary of the chief inspector from $1,500 to $3,000, the deputies from $1,000 to $1,200, and the allowance for expenses of the department from $2,500 to $4,000.

The factory inspectors were given power to order the erection of fire-escapes, regardless of the exemption granted by any other authorities; but, unfortunately, in the clause concerning fire-escapes and the guarding of machinery only factories and workshops were mentioned, mercantile establishments being omitted.

Operation of Factory Act of 1893.

In the enforcement of this new law Mr. Watchorn exercised some discretionary power. There were at the time of its passage about 5,000 children legally employed between the ages of twelve and thirteen, and he decided not to order their discharge, as within a few months all would reach the legal age, but simply to forbid any further engaging of children under thirteen years of age. This was no doubt a wise decision.

During the year 1893 the legal status of factory inspection received still further development. Mr. Watchorn appealed to the Attorney General, Mr. W. U. Hensel, as to the meaning of "usually employed" in the phrase "In which employees or operatives are usually employed at work in the third or any higher story," from the fire-escape act of 1885. He had endeavored to enforce the act in factories where the third floor was used for storing stock, and where, "in order to get the stock to and from the rooms, it is necessary for several people to be constantly going to and from said rooms, and remain there for stated intervals arranging stock or goods," but in several such places the owners had claimed to be exempt from the act. The Attorney General's answer

was that such places were not exempt, but were "unquestionably within the terms of the acts of 1885 and 1889."

The new factory act of 1893 had been as badly drawn as its predecessor, and much needless friction was caused by the difficulty of determining what places were amenable. The title is, "An act to regulate the employment and provide for the safety of *women* and *children* in manufacturing establishments, mercantile industries, laundry or renovating establishments," etc.; but section 4 declares that "No person, firm or corporation employing less than five *persons* shall be deemed a factory, manufacturing or mercantile establishment within the meaning of this act."

Mr. Watchorn instructed the deputies to inspect all places coming under the definition in section 4, and was immediately met by a large number of protests, which he submitted to the Attorney General. In view of the restricted title of the act, Mr. Hensel considered the inspector's authority to be limited to establishments employing more than five women or children.[17] Some of the protesting firms employed five or more minors between the ages of sixteen and twenty-one, and in these cases he overruled the decision of his predecessor and decided that children meant minors of either sex. The omission of mercantile establishments from the clause giving the inspectors authority over fire-escapes, was interpreted to exempt such places from the jurisdiction of the department in that respect.

Mr. Watchorn's suggestions for further legislation in the report of 1894 (p. 19) were:

First. The employment of children to be contingent on a standard of intelligence instead of attested age, and if this could not be done, then the minimum to be fourteen years.

Second. Provisions to be made for placing "sweat shops" under the jurisdiction of the factory department.

[17]Since section 4 which he was interpreting exempted places employing *less* than five, why did he begin with *more* than five? What became of the place employing five?

Third. An increase of at least three inspectors to prosecute this additional work, with proportionate increase of appropriation.

Fourth. Saturday half-holiday.

Fifth. Amendment of semi-monthly pay law.

CHAPTER VI.

Expansion of Factory Legislation (1895-1901).

Sweat Shop Act of 1895.

The legislative session of 1895 is notable for the large number of labor bills introduced and defeated. One important measure, however, was passed: the act commonly known as the "Sweat Shop Act." In the summer of 1894 the Factory Inspection Department undertook the work of investigating the sweat shops of Philadelphia, in order to obtain necessary information before suggesting legislation at the next session. The act of 1893, in reducing the number of women and minors necessary to constitute a factory, had brought some of the larger sweatshops under the law. Miss Mary O'Reilly at that time had charge of the district containing most of those places, and when the investigation was undertaken it was intrusted to her, assisted by two other deputies, Mr. Donohue and Mr. O'Keefe.

The sweat shop evil has been so often and so vividly described that perhaps nothing need be said as to the conditions they found. "The part of the city wherein most of these shops exist is south of Pine Street and North of Washington Avenue, and between Tenth Street and the Delaware River."[1] The results of their investigation were widely published in the newspapers, public opinion was aroused on the subject, and the legislation of 1895 was the result. The bill passed both Senate and House within a month, without argument and with only one dissenting vote.

The act forbade the use of any room or apartment in any tenement or dwelling house, except by the immediate members of the family living therein, for the manufacture of

[1]Factory Inspector's Report for 1894, p. 24.

coats, vests, trousers, knee-pants, overalls, cloaks, hats, caps, suspenders, jerseys, blouses, waists, waist-bands, underwear, neckwear, furs, fur trimmings, fur garments, shirts, hosiery, purses, feathers, artificial flowers, cigarettes or cigars. No person, firm or corporation might hire any person to work in any room or apartment in any rear building, or building in rear of a tenement or dwelling house, at making, in whole or in part, any of the articles above mentioned, without first obtaining a written permit from the factory inspector or one of his deputies, stating the maximum number of persons allowed to be employed therein. This permit must not be granted until after an inspection of the premises was made, and might be revoked whenever the health of the community or of those so employed required it. It must be framed and posted in a conspicuous place in the room, or in one of the rooms to which it related. Every person, firm, company or corporation contracting for the manufacture of any of the articles mentioned in this section, or giving out the incomplete material from which they were to be made, or to be wholly or partially finished, must keep a written register of the names and addresses of all persons to whom such work was given to be made, or with whom they might have contracted to do the same; and this register was to be produced for inspection and a copy thereof furnished on demand of the inspector.

The proviso was added, that seamstresses might be employed by any family to manufacture articles for family use. Two hundred and fifty cubic feet of air space to each person, and sufficient means of ventilation, must be provided in every workroom coming under the act, the inspector being authorized to notify the *owner, agent* or *lessee* of the need for such provision and to prosecute if such notification was not complied with in ten days.

The appointment of eight additional deputies, with the same power and compensations as those already appointed, was authorized by this act.

Any person who violated any of the provisions of this act, or who suffered or permitted any of the articles hereinbefore described to be made in violation of its provisions, should be deemed guilty of a misdemeanor, and on conviction should be punished by a fine of not more than $500 or less than $100 for each offense.

Operation of Act of 1895.

Before this act went into effect (April 11, 1895) there was a change of administration in the Factory Inspection Department, Governor Hastings having appointed Mr. James Campbell chief inspector. Of the eight additional deputies authorized by the act, four were assigned to the sweat shop section of Philadelphia. They began work in the second police district,[2] having been furnished with interpreters by the Director of Public Safety. In this district they visited three hundred places and found that about ninety per cent were in violation of the law; and many others were discovered where, from a sanitary point of view, the inspector's work was equally necessary, but where no workers were employed outside the family. In the third district[3] two hundred and twenty shops were found, besides numerous wholesalers who distributed the work to operators.

As in the law of 1893, some discretion was exercised in the enforcement of the act. The ignorance and helplessness of those who were violating the law made "an immediate enforcement appear inexpedient, if not unjust,[4] and therefore some time was allowed for the necessary changes of quarters to be made."

In reply to a request from the chief inspector, the Deputy Attorney General rendered an opinion as to the

[2] *i. e.*, Second, Third and Fourth Wards: Broad Street to Delaware River, and South Street to Wharton Street.

[3] *i. e.*, Fifth Ward: Seventh Street to Delaware River and Chestnut Street to South Street.

[4] Factory Inspector's Report for 1895, p. 39.

meaning of the phrase "Any room or apartment in any rear building, or building in rear of a tenement or dwelling house." After stating that the act was not specific in its definition of the term "rear building," and that the department must adopt some uniform rule for the enforcement of the law, he suggested that "Under the term 'rear building' might be included all such rooms or apartments as are connected with the tenement or dwelling house where the family resides, but which are separated from the other part of the house by walls, partitions, or doors. A building in the rear must be held to be one that is built separate and apart from the tenement or dwelling house proper, and in the rear of it."

An opinion was also asked as to the authority of the department in the matter of condemning unsafe buildings, and the answer was that there was nothing in the act giving the department the right to condemn them, although the inspector might call the attention of those in charge to the defects.

The sweat shop act said nothing as to the authority of the inspectors to compel the erection of fire-escapes on the buildings placed under their supervision by the act. The Deputy Attorney General decided, "In the absence of more specific legislation upon this subject, I would not feel warranted in advising you to instruct your deputies to have fire-escapes erected under the provisions of the act of 1895." He suggested an indirect way of obtaining the desired result, which was to withhold the permit provided for in the act until the fire-escape had been erected.

Sweat Shop Acts of 1897, 1899, 1901.

The serious defect in the act of 1895 was found to lie in the clause italicised in Section 1, which read: "Be it enacted, etc., That no room or apartment in any tenement or dwelling house shall be used, *except by the immediate members of the family living therein,* for the manu-

facture of coats, vests, trousers," etc., etc. It is needless to say that the attempts at evasion, by means of this unfortunate exception, were many and various. And where the law was enforced, these exempted family shops "work a wrong and injustice on those whom the law has compelled to take workshops. The family operator, and there are many of them, with but one rent to pay, makes the offer to dealer to make garments at a reduced price. The keen competition that this makes interferes considerably with the execution of the law, . . [and it] also tends to discourage those who desire and make the effort to comply with the law's demands."[5] In his report for 1896, Inspector Campbell recommended that this family exemption clause be stricken out by the incoming Legislature (1897), and this request was complied with.

But there was still one thing desired to make the sweat shop law complete, namely, that the inspectors should have the power to confiscate and destroy all clothing that was being made in unhealthful or unsanitary places, and especially where there were contagious or infectious diseases. This having been recommended by Inspector Campbell, in his report for 1898, and its importance forcibly brought to the attention of the next Legislature, such addition was made in 1899.

In the course of the debate on this measure a letter[6] of recent date from former Deputy Inspector Milligan, whose work had been so largely in a sweat shop district, to Inspector Campbell was offered in evidence. This letter advocated the plan of confiscating goods made in violation of the law. The writer held that competition had "made some of the manufacturers indifferent as to how or where clothing is made, so they can have it done cheaply." He then pointed out the weakness in the existing legisla-

[5]Report of Deputy Inspector Milligan: Factory Inspector's Report for 1896, p. 25.

[6]For this debate, and the letter, see Legislative Record, pp. 2113-14.

tion. "It might be said there are penalties now imposed by law; true there are, but they are cumbersome. Information must be lodged, warrants issued; against whom? Most likely the poor operator, who is the least of the offenders. He is arrested, held in bail for court, or perhaps sent to jail in default, while the clothing he has made in violation of law is returned to the manufacturer, who puts it upon the market, scattering with it disease and vermin; while the operator suffers, he, the manufacturer, seeks out others, who work under the same vile conditions. Should the manufacturer be arrested, he enters bail; with the overcrowded condition of our courts his trial is delayed. The witness when called, after this long delay, with only convenient memories at time of trial, and no regard for truth, there is no conviction, and the purposes of the law are not accomplished. . . . Should he [the manufacturer] be made to pay a fine, many of these violators of the law would pay the same, and continue the work in the old way for the money that is in it. The confiscation of goods would the more quickly and surely bring all concerned to a realization that the law must be respected. . . . The lesson taught would make all interested cleaner and better citizens."

How much needed this "lesson" was, we learn from the factory inspector's report for 1899. Between July 1, 1898, and October 31, 1899, sixty places were found in which it was necessary to seize and destroy clothing that was being made where contagious diseases prevailed.

The act of 1901 made no changes except to provide specifically as to hearings and appeal.

Bakeshop Acts of 1897, 1901.

No sooner had workshops—generally known as "sweat shops"—been brought within the oversight and control of the Department of Factory Inspection, in 1895, than Inspector Campbell began to urge[7] that the bakeshops of the state

[7]See Factory Inspector's Report for 1896, p. 7.

should be similarly placed. The need of such legislation had long been apparent, not only to the department, but to all who had made even the most casual acquaintance with the bakeshop evils.

What these evils were is perhaps best depicted in the bakeshop law of 1897, passed in immediate response to the recommendations[8] of Inspector Campbell and others.

"Section 1. Be it enacted, etc., That no employee shall be required, permitted or suffered to work in a biscuit, bread or cake bakery, confectionery establishment more than six (6) days in any one week, said week to commence on Sunday not before six o'clock post meridian, and to terminate at the corresponding time of Saturday of the same week. No person under the age of eighteen (18) years shall be employed in any bakeshop between the hours of nine (9) o'clock at night and five (5) o'clock in the morning. Excepted from this rule shall be the time on Sunday for setting the sponges for the night's work following.

"Section 2. All buildings occupied as a biscuit, bread, pretzel, pie or cake bakery, or macaroni establishment, shall be drained and plumbed in the manner directed by the rules and regulations governing the house drainage and plumbing, as prescribed by law, and all rooms used for the purpose aforesaid shall be ventilated by means of air shafts, windows or ventilating pipes, so as to insure a free circulation of air. No cellar or basement, not now used for a bakery, shall hereafter be occupied and used as a bakery unless the proprietor shall have previously complied with the sanitary provisions of this act.

"Section 3. Every room used for the manufacture of flour or meal food products shall have an impervious floor, constructed of cement, or of tiles laid in cement, or of wood of which all the crevices shall be filled in with putty. The inside walls and ceiling shall be plastered, and either be painted with oil paint, three (3) coats, or be lime-washed,

[8]To be found in Factory Inspector's Report for 1901.

or the side walls plastered and wainscoted to the height of six (6) feet from the floor, and painted or oiled; when painted, shall be renewed at least once in every five years, and shall be washed with hot water and soap at least once in every three (3) months; when lime-washed, the lime-washing shall be renewed at least once in every three (3) months. The furniture and utensils in such room shall be so arranged that the furniture and floor may at all times be kept in a thoroughly sanitary and clean condition. No domestic or pet animal shall be allowed in a room used as a biscuit, bread, pie or cake bakery, or in any room in such bakery where flour or meal products are stored.

"Section 4. The manufactured flour and meal food products shall be kept in perfectly dry and airy rooms, so arranged that the floors, shelves and all other places for storing the same can be easily and perfectly cleaned."

Sections 5 and 6 ordered that wash-rooms and water-closets should be provided, "apart from the bakeroom or rooms;" and that the sleeping rooms of the employees should be kept "separate and apart from the room or rooms where flour or meal food products are manufactured or stored." Following sections prohibited the employment of persons affected with consumption, scrofula, or venereal diseases—it being made the duty of the Board of Health to enforce this provision—and authorized the factory inspector to issue a "certificate of satisfactory inspection" to all persons conducting a bakery in compliance with the act.

Upon the owner, agent or lessee fell the duty of making all needful alterations. Violation of any of the provisions of this law was made a misdemeanor, and the offender was liable to a fine of $20 to $50 for first offense; of $50 to $100, or imprisonment of not over ten days, for second offense; while for a third offense the fine should be "not less than two hundred and fifty ($250) dollars and more than thirty (30) days imprisonment."

This statute was soon found to have two weaknesses.

One of these, an important detail, was the alternative in section 3: "or the side walls plastered and wainscoted to the height of six (6) feet from the floor, and painted or oiled." In his report for 1900 Mr. Campbell called such a wainscoting "a harbor for roaches and vermin," and insisted that "a plain, plastered wall would be much better." Accordingly, in the bakeshop act of 1901 this clause was omitted.

The other weakness—if it is so to be regarded—of the act of 1897 was fundamental. This was the clause that prohibited Sunday work before six o'clock p. m., except for the setting of sponges. The enforcement of this part of the act was bitterly resisted, Jules Junker, of Philadelphia, going so far as to violate the law deliberately, on the ground that section 1 "permitted him to work his men after six o'clock p. m. on Saturday, providing that he started his workmen at a corresponding time at the beginning of the week."[9]

On application of Inspector Campbell for an official interpretation of section 1, Attorney General McCormick rendered a decision adverse to Mr. Junker's contention. He says: "This language is not ambiguous. . . . It seems clear that the week may commence at any time on Sunday after six o'clock in the evening, and will terminate at the corresponding hour on Saturday evening of the same week."[10]

The case came to trial before Judge Wilson, in the Court of Quarter Sessions, Philadelphia County,[11] in September of the same year (1897).

It was argued for the defense that the act was unconstitutional: first, in that the title was not so worded as to be inclusive of all the distinct subjects contained in the body of the act; and, second, in that it was special law regulating labor and manufacturing. Emphasis was placed on the

[9] Factory Inspector's Report for 1897, p. 12.

[10] Factory Inspector's Report for 1897, p. 13.

[11] *Commonwealth* vs. *Junker*, Pennsylvania County Court Reports, 1898 (Vol. 20), p. 503.

latter point, the contention being that the act was limited not only to a particular trade, but to certain members of that trade. For a baker who was able and willing to do his own work, assisted perhaps by his immediate family, could work during the proscribed hours; while his competitor who needed to employ outside help was cut off from the possibility of supplying his customers with fresh bread on Sunday morning. In the case of Mr. Junker, and of many others, this would be a great hardship.

As a sort of after-thought, the attorney for the defense[12] advanced the technical point that the first section of the act prohibited that which could not possibly occur, as there could not be "more than six days in any one week, said week to commence on Sunday not before six o'clock post meridian, and to terminate at a corresponding time on Saturday of the same week," unless the length of a day were to be reckoned at less than twenty-four hours. And that the indictment was senseless because it charged that the unlawful labor occurred on a Sunday (August 8), which was alleged to be a part of a week ending on the previous day (August 7).

To the surprise of the attorney, but in accordance with what seems to be frequent preference on the part of our judges, the constitutional arguments were passed by, and the indictment was quashed on the ground that (as just pointed out) the language used in section 1 of the act was "meaningless and absurd."

The judge assumed that the purpose of the Legislature was to enact that an employer "should not require more than six days in an entire week, beginning at six o'clock in the afternoon of Sunday, the effect of which would be to prevent the requirement of work between six o'clock on Saturday afternoon and the same hour on Sunday afternoon." But as the statute was a penal one, its terms must be so clear as

[12]James L. Stanton, Esq., Philadelphia, who has kindly furnished the information on this subject.

not to "require a court to add a substantial part of the provisions which would justify or require imposition of punishment."

It is unfortunate that a little too much sentiment got mixed up with this bakeshop act of 1897, so far as adults were concerned. There seems to have been little occasion for this interference with their work on Saturday nights. When carried to an extreme, factory legislation is bound to provoke a reaction, as in this case. For in the new bakeshop law of 1901 not only was this unwarrantable provision stricken out, but along with it went the admirable clause prohibiting the employment of persons under eighteen years of age between the hours of nine p. m. and five a. m., section 1 of the bakeshop act of 1901 being made to conform with section 1 of the factory act of the same year.

Thus perished the first attempt by the Commonwealth of Pennsylvania to protect children from the evils of night work, an attempt not renewed till four years later.

Factory Acts of 1897, 1901.

Having traced the progress of factory legislation through its various amplifications—fire-escape, payment of wages, workshop, bakeshop, etc.—we come back to our starting point, namely, the so-called factory acts. These were radically amended in 1897, and again in 1901.

The changes in 1897 were, briefly, as follows:

First—Adult women were added to the list of persons whose hours of labor were restricted.

Second—The act was extended over printing offices and workshops.

Third (doubtful)—Mercantile industries seem to have been included in the fire-escape provision of this statute; but, as they were omitted from the fire-escape act of 1897, with which this act must be construed, there was an apparent discrepancy between the two laws.

Fourth—Minors under sixteen years of age, not able

to read and write the English language, must present a certificate of having attended during the preceding year an evening or day school for sixteen weeks, this certificate to be signed by the teacher or teachers.

Fifth—Seats were to be provided, and their use permitted, wherever women or girls were employed. Thus there was made effective, by placing under the authority of the factory inspectors, a regulation which had been on the statute books since 1887.

Sixth—Boiler inspection was placed with the department, with power to prohibit the use of dangerous boilers. This had been recommended by Mr. Campbell in his report for 1896.

Seventh—All reservation was dropped as to minimum number of women and children employed which should bring the establishment under the law. As already noted, this number was placed at ten by the act of 1889 and reduced to five by the act of 1893.

The factory act of 1901 was an inconsistent and unsatisfactory piece of legislation. To begin with, the plain educational provision of the act of 1897 was stricken out, and its place was taken by the requirement that "after a careful examination by persons authorized to administer oaths, if a child is found unable to read and write the English language, or has not attended school as required by law, or is under thirteen years of age, it will be unlawful to issue a certificate." In interpreting this section the question arose: What is the meaning of the clause, "or has not attended school as required by law?" Is the notary supposed to examine into the school attendance of the child since he came under the compulsory school law? The factory inspectors found it expedient to place the emphasis on the ability to read and write the English language.

The section giving inspectors, in case of accidents in factories, the right to subpœna witnesses and administer oaths, was a commendable one; and so was that part of the

act which assigned to the inspectors the duty of enforcing the prohibition against minors under fourteen years of age operating or otherwise having the care or custody of elevators. This prohibition dated from 1893, but was now for the first time rendered certain of enforcement.

Sections 7 and 13 were partly neutralized by section 14. Section 7 added school buildings and hospitals to elevator inspection; while section 13 added hotels, school buildings, seminaries, colleges, academies, hospitals, storehouses, public halls and places of amusement to the fire-escape jurisdiction of the inspectors. But now came section 14, with its unfortunate proviso that the portions of the act providing for elevator, fire-escape and boiler inspection by the factory inspectors "shall not apply to municipalities, . . . where, under the existing law, the boiler inspectors, the building or elevator inspectors, the fire marshal, or other officers are vested with like authority. This was a distinctly retrograde step, as thereby cities of the first and second class were exempted from commonwealth oversight and control.

Taken as a whole, the factory law of 1901 was decidedly weaker than the preceding act of 1897. It was hoped, however, that this set-back was only temporary, and that the "game of politics" was not going to be played with interests so vital as those comprehended in factory legislation.

Decision as to Adult Women (1899).

Before leaving the factory acts of 1897 and 1901 we must stop to rejoice at a signal victory won in a Philadelphia court in 1899, and confirmed by the Superior Court soon after, on the issue as to the constitutionality of those sections of the act of 1897 which limited the working day for adult women.

In 1895, Miss O'Reilly (in her report to Chief Campbell)[13] had deplored the apparent inability of our legisla-

[13] Factory Inspector's Report for 1895, p. 17.

tors to "learn for themselves the great need there is for the limiting of the hours of labor for women as well as minors. Could they know, as we do, how these creatures crave for this boon, they would certainly concede it." This "boon," as we have seen, was granted in 1897; and within two years thereafter its constitutionality was tested in the Court of Common Pleas No. 1 of Philadelphia.[14] To Judge Biddle is to be ascribed the honor of rendering a decision in accord alike with English and American precedent[15] and with the spirit of the age.

The defendants contended that "the act, in so far as it applies to adult women, is contrary to the Constitution of the State of Pennsylvania, because it is an unjust interference with her right to acquiring and possessing property and pursuing her own happiness; that it is also contrary to the Constitution of the United States, because it is an attempt to deprive her of liberty and property without due process of law."

In negativing this contention, Judge Biddle pointed out that by its very title the object of the enactment was to provide for "the health and safety of men, women and children" in certain fields of labor; and that this was, accordingly, an exercise of the police power of the state. Hence, the case resolved itself into the query as to whether that power had been properly exercised in this instance.

After citing precedents drawn from Massachusetts, the United States Supreme Court,[16] and finally Pennsylvania

[14] *Commonwealth* vs. *Beatty*, County Court Reports, Vol. XXIII, p. 300.

[15] The Massachusetts Supreme Court, *e. g.*, had decided that women were wards of the state, and that a law limiting their hours of labor was constitutional.

[16] The reference here was to a decision upholding the constitutionality of the Utah eight-hour law for workers in underground mines, smelters, etc.: *Holden* vs. *Hardy, Sheriff*, Supreme Court Reporter, p. 383.

In this opinion, Mr. Justice Brown notes that the police power of the state is expanding rapidly, "owing to an enormous increase in the

itself, the judge turned to the state constitution, one section[17] of which provides that the exercise of the police power of the state shall "never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the state." And then Judge Biddle adds: "Surely an act which prevents the mothers of our race from being tempted to endanger their lives and health by exhaustive employment, can be condemned by none save those who expect to profit by it. The complaint of violated constitutional rights, it will be observed, does not come from those who are employed, but from those who employ them. . . . We think that this act is clearly within the police power of the state, and the exercise of it in this case justified by the interests of the individual and the community."

This eminently just and well-grounded decision was confirmed, a little later, by the Superior Court.[18] In this opinion high ground is taken on the subject of the protection that the state may afford to labor, through the exercise of its police power. "It is the prerogative of the Legislature to prescribe regulations founded on nature, reason and experience in determining the kind of labor and the length of time it shall be permitted by either men, women or minors.

number of occupations which are dangerous or so far detrimental to the health of employees as to demand special precautions for their well being. . . . " Toward the close Justice Brown lays down this sweeping dictum, which is bound to give the state large powers of interference between employer and employee: that "the fact that both parties are of full age, and competent to contract, does not necessarily deprive the state of the power to interfere, where the parties do not stand upon an equality, or where the public health demands that one party to the contract shall be protected against himself. . . . The whole is no greater than the sum of its parts, and when the individual health, safety and welfare are sacrificed or neglected, the state must suffer."

[17] Art. XVI, sec. 3.

[18] Superior Court Reports, Vol. XV, p. 6.

Sex imposes limitations to excessive or long-continued physical labor, as certainly as does minority, and the arrested development of children is no more dangerous to the state than debilitating so large a class of our citizens as adult females by undue and unreasonable physical labor." And again: "In view of our many mining and manufacturing industries, the solicitous care of government over the health and safety of the laborers is an important branch of legislative duties. It is not a denial of the right to contract."

CHAPTER VII.

Child Labor Campaign (1903-1905).

Legislation of 1903.

The legislative session of 1903 saw three distinct attempts in the field of factory legislation. The first bill[1]—and the only one to pass—increased the number of deputy inspectors from twenty-five to thirty-seven. As introduced in the Senate, the more modest number of five additional deputies was asked for, but the House saw fit to increase the number to twelve. The increase was vigorously attacked from both sides of the house, as a piece of spoils legislation,[2] but whatever the motive, the additional force was certainly needed by the department.

The second effort at factory legislation was made by the State Federation of Women's Clubs, and took the form of a child labor bill. Its history is as follows: While the Legislature was in session a conference was called by the State Federation of Women's Clubs, at Philadelphia, February 2, looking to the improvement of the conditions of child labor in the state. At this conference a committee was appointed to frame a law which would raise the minimum age from thirteen to fifteen years, supplement effectively the compulsory education law—which would itself, in turn, need revision—and secure the abolition of night work for young people. Or, if the drafting of a new bill should be considered inadvisable by the committee, it was to suggest means for securing the enforcement of existing legislation. This committee was composed of the following: Mrs. Ellis Lewis Campbell, chairman; Mrs. Howard Lippincott, Mrs.

[1]Senate bill 140; House bill 258.
[2]Legislative Record, pp. 1687-8.

Frederick Schoff, Mrs. Joseph P. Mumford, Miss Mary E. Garrett, Mrs. Florence Kelley. The committee soon reached the conclusion that the only way to draw attention to the sad plight of the child workers, and to set people thinking, was to introduce a bill of its own. Accordingly, the services of Alexander Simpson, Jr., Esq., were secured, a child labor bill was drafted, and through the kind offices of Senator Sproul of Delaware County the measure came before the Senate,[3] where it died in committee.

Since this child labor bill served as a pattern for the one incorporated in the act of 1905, it must receive our careful consideration. As originally drawn up, the bill forbade the employment of any child under fourteen during the hours the public schools were in session, or of any minor for more than ten hours a day or fifty-five hours a week, or of any male child under sixteen or female child under eighteen between nine p. m. and six a. m., or of any child between fourteen and sixteen who could not read and write simple sentences in the English language and who had not complied with the education laws of the commonwealth, or of any minor under eighteen who had not filed with the employer certificates and affidavits of age as outlined in the bill.[4]

As finally presented to the Senate, the bill was wisely shorn of its confusing distinctions between male children and female children and between sixteen and eighteen years of age, the age of sixteen years being accepted as the industrial dividing line between the protected and the unprotected workers. Thus amended, the bill forbade the employment, "at any labor or service whatever," (1) of any child under fourteen, or (2) of any child under sixteen more than ten hours a day or fifty-five hours a week, or (3) of any child under sixteen between nine p. m. and six a. m., or (4) of any child between fourteen and sixteen who could

[3]Senate bill 255.

[4]From an original copy, furnished by the Pennsylvania Child Labor Committee.

not read and write simple sentences in the English language or who had not complied with the education laws of the commonwealth, or (5) of any child between fourteen and sixteen who had not filed with the employer certificates and affidavits of age as outlined in the bill itself. The affidavit was to be made by parent, guardian or custodian of the child seeking employment, and must set forth date and place of birth, and of baptism if any. The certificate of birth must be taken from the records kept by a religious association or public authority, or of baptism as kept by the former; or, with a foreign-born child, from the passenger manifest, passport or other official record filed at the office of the commissioner of immigration. Both affidavit and certificate "must be approved by an attendance officer residing in the same school district as the child, or, if no attendance officer exist in that district, by the secretary of the district school board, which approval shall only be given after careful inquiry and consideration, aided, if deemed necessary, by a medical examination of the child, without charge therefor." Such affidavits and certificates were subject to the inspection of attendance officer or secretary of school board, or of any factory inspector, at all times during employment of child. "Wilful false swearing" as to an affidavit was to constitute perjury. A violation of this act constituted a misdemeanor, punishable, on second offense, by both fine and imprisonment, at the discretion of the court.[5]

Here we have the first open recognition in Pennsylvania of the ineffectiveness of the mere affidavit of age, which had come to be more a temptation to easy and safe perjury than a protection to the child under the legal age. And here, for the first time, we have also an enlisting of the school authorities on the side of factory legislation: a movement which can end only by a frank acknowledgment that a child labor law and a compulsory education law are but complements

[5]From an original copy, furnished by Mrs. Ellis Lewis Campbell.

of each other—co-ordinate steps in the great movement making for the emancipation of childhood.

The third measure presented at this session is *sui generis.* It was an attempt to provide for volunteer inspectors, and ran as follows:[6]

"Section 1. Be it enacted, etc., That on and after the first day of July, one thousand nine hundred and three, it shall be the duty of the Governor, upon application of the Pennsylvania State Federation of Labor, to issue to such persons as are recommended by the latter commissions as factory inspectors to serve without pay from the state.

"Section 2. This class of inspectors shall be known as voluntary inspectors, and shall be possessed of the same powers and authority at law and otherwise as are now given to the deputy factory inspectors at present in commission of the state.

"Section 3. That these volunteer factory inspectors shall be subject to the provisions of the chief factory inspector in the same way as the deputy factory inspectors now are, with the exception that a voluntary inspector shall not be subject to removal unless upon application therefor from the Pennsylvania Federation of Labor or the Central Labor Union of the districts for which he has been commissioned.

"Section 4. That the number of commissions to be issued to volunteer inspectors shall be regulated as follows: In cities of the first class the maximum number of voluntary inspectors to be in commission at the same time shall be twenty; in cities of the second class . . . ten; in cities of the third class . . . six; in boroughs and townships . . . two.

"Section 5. That these voluntary factory inspectors shall be supplied with such stationery, report forms and other paraphernalia of office as are now supplied to deputy factory inspectors, but it shall only be obligatory upon a

[6]House bill No. 807.

voluntary inspector to make report to the chief factory inspector at such times as he may deem necessary for the enforcement of the factory laws."[7]

This attempt to provide by law for an unofficial, partisan spy system on the Factory Inspction Department was not allowed to come to a final vote, but was cautiously "postponed for the present."

Pennsylvania Child Labor Committee Organized (1904).

The child labor bill, which received such scant courtesy at the hands of the 1903 legislators, had served a twofold purpose, in drawing some attention to the problem and in clarifying and unifying the views of those organizations which were to line up in defense of the movement at the next legislative session (1905).

And now there occurred an event that was to have an important bearing upon the fortunes of the child labor movement in Pennsylvania. This event was the investigation conducted by the Anthracite Coal Strike Commission, whose sessions were held at Scranton, Pa., in December of 1903.

But few people, comparatively, would have read the carefully collected data of a special investigation on the evils of child labor; but everybody was interested in this coal strike investigation, and everybody read the newspapers. And when ample testimony was elicited to the effect that children of eleven and even ten years of age, the sons and daughters often of well-to-do miners, were slaving in the silk mills of the neighborhood, taking their turn on night shifts and for twelve hours a day; and when the honored chairman, Judge Gray, was constrained to characterize such action on the part of parents as a giving of their consent "to coin the flesh and blood of their children into money to help their income when there is no absolute necessity for it," then the public conscience was stirred, the enormity of the system was perceived in its true light, and the advocates of

[7]Legislative Record, p. 3606.

the right to childhood could feel that the way was paved for a child labor campaign in 1904 which should end in a legislative victory the following year.

In the spring of 1904 Mrs. Campbell was approached by certain Philadelphia people outside her committee—the Child Labor Committee of the State Federation of Women's Clubs, already described, which had secured the drafting and introduction of the child labor bill of 1903—and requested to take the initiative in an investigation of child labor conditions, which should precede the proposed legislation of 1905. Though at first disposed to place all responsibility for needed legislation on the new chief factory inspector, Captain J. C. Delaney, Mrs. Campbell promptly called her committee together for a conference with the representatives of several outside organizations.[8] Two such conferences were held, April 14 and May 5, Inspector Delaney participating in the latter. This large body, known as the Pennsylvania Child Labor Committee, soon found it advisable to appoint a sub-committee from its own membership, called the executive committee.

In December of the same year (1904) the general committee, acting on the advice of its executive committee, merged all its authority in the latter, which was empowered hereafter to use the title "Pennsylvania Child Labor Committee," and to add to its number such "representative citizens" as would insure it influential support in the campaign already begun. The authorized increase in membership took place soon after.

Meanwhile, on April 15, 1904, there had been formally organized in the City of New York a National Child Labor Committee, with Dr. Felix Adler as chairman. Its member-

[8]These included the following: Consumers' League, Mothers' Congress, Women's Christian Temperance Union, Public Education Association, Children's Aid Society, Pennsylvania Society to Protect Children from Cruelty, Society for Organizing Charity, Pennsylvania Association of Women Workers, Civic Club, New Century Club, College Settlement.

ship, as in the case of the Pennsylvania committee, was fairly representative—except of labor itself, in whose immediate interest this whole movement is so largely conducted! Pennsylvania was represented by Dr. Talcott Williams. At this time fifteen states had made recent gains in child labor legislation, and only one of the southern industrial states (Georgia) had failed to make a start in this direction. A number of states had child labor committees; and the national committee was not "to act as substitute for local committees, nor undermine local initiative," but to co-ordinate and strengthen their work and to call state committees into existence where they were wanting.[9] The consent of the Hon Samuel McCune Lindsay to act as secretary was finally secured. And this was fortunate, not only for the national committee, but also, as will appear later, for the Pennsylvania child labor movement.

Child Labor Committee Investigation of 1904.

An investigation into the condition of child labor was undertaken during the summer and fall of 1904, conducted by the secretary, Miss Helen Marot, who had gained invaluable experience in a similar movement in New York State the year before, and with the active co-operation of Miss Richmond, the resourceful general secretary of the Philadelphia Society for Organizing Charity.

How elaborate and complete was the preparation is well summarized in the first annual report (1904-5) of the committee:[10] "In Philadelphia, Miss Edith Jones, with the experience of a probation officer, gave three months to the investigation. She interviewed the children personally, as well as others who knew them as school children, club children, employees; who knew them at home and as friends. The Rev. Peter Roberts, a resident of the east-central part of the state, a well-known student and writer of labor condi-

[9]See "Charities," Vol. XII.

[10]Pp. 5 and 6.

tions in his own locality, spent six months on a special investigation for the committee. A teacher of South Pittsburg, well acquainted with the children who worked in glass houses, gave a month to the investigation in that locality. Mr. Owen R. Lovejoy, assistant secretary of the National Child Labor Committee, also investigated and reported on the condition of children in glass houses in the western part of the state, in connection with the cross-state investigation of the glass industry. Mr. Lovejoy's valuable report was placed at the disposal of the committee. A special investigation, undertaken for the committee, was made by the Public Education Association [of Philadelphia]. . . . A dozen or more superintendents of schools, as well as superintendents of parochial schools; the officers of school boards, teachers of both parochial and public schools; Sunday-school teachers; . . . teachers of working boys' and working girls' clubs; the residents of settlements in both the eastern and western part of the state; superintendents and visitors of charitable societies; eminent physicians,[11] as well as physicians acquainted with the working people; manufacturers; managers of telegraph and district messenger offices, and trade unionists, were all consulted, and all furnished the committee with data which threw light on the various phases of child labor. Aside from the expert testimony which the individual investigations brought together, the records of the Boys' House of Refuge were carefully examined, as well as the records of the court officers in the eastern and western parts of the state. . . . The Philadelphia Bureau of Compulsory Education, at the suggestion of the committee, noted in its school census the kinds of labor performed by children between thirteen and sixteen years old."

This material reached the secretary, she tells us in the report, "in the form of notes and schedules;" and from these she was able to compile reports which were given wide circulation by the National Child Labor Committee, in the form

[11] *e. g.*, Drs. J. H. Musser and W. W. Keen, of Philadelphia.

of pamphlets whose titles are indicative of their contents: "Children Who Work at Night," "Illiteracy Promoted by Perjury," "The Cost of Child Labor," "Dependent Parents," "The Unprotected Children." The first three of these were chiefly devoted to picturing the evils of child labor and its enormous social cost; the fourth attacked one of the stock arguments of the advocates of child labor, while the last-named pamphlet pointed out the line of advance to be followed by the Legislature in order that all children still the victims of a greed that is without pity should be reached and protected. And, finally, the Pennsylvania Child Labor Committee itself more completely popularized the whole subject in an illustrated pamphlet entitled "The Working Children of Pennsylvania." What the committee discovered by all this painstaking research is well brought out in these publications.

Mr. Roberts investigated the records of school attendance in a large number of industrial towns, and found a great falling off between the sixth and eighth years of school life. This falling off reached fifty per cent in several of the towns investigated and as high as eighty-five per cent in West Easton. Not twenty per cent of children in the factory towns of less than 6,000 population finished their education in the common English branches.

The lack of education on the part of the children was even greater than would be indicated by the age at which they went to work. An investigation of the school records of Philadelphia showed that the average age of the children who left to begin work was eleven years, and that the average grade was the third, while the average age of the public school children in that grade was nine years.

The question naturally suggests itself: Why are these working children two years slower than the average school boys and girls? Lack of proficiency in the English language, lack of home care, both physical and mental, and an interrupted school attendance—all present themselves as

causes of this unfortunate discrepancy noted by the investigators. And it is not strange that children leaving school with the intellectual equipment of an ordinary child of nine should have been found to have forgotten what little they had learned and to have become almost illiterate.

Children thirteen years of age might legally work twelve hours in any one day or sixty hours a week, even in the occupations covered by the factory acts; while messenger boys, newspaper boys and girls, bootblacks, bowling alley tenders, errand boys and girls, and all other non-protected children might work as long as tired nature permitted, since there was no prohibition (before 1905) of night work in Pennsylvania. The early breakfast and late supper were often insufficient and hurriedly eaten, while the noonday meal was cold except in those few places where provision was made for a hot luncheon. Some employments were found to be particularly dangerous to the health of the young workers, especially those in which the employees must breathe a lint- or dust-laden atmosphere. The handling of hot metals by the children was as difficult and dangerous as might be expected from the weakness and heedlessness of youth.

To illustrate how rapidly the factory used up what the school had been saving and developing, the following interview may be quoted at length from an unpublished report of the Pennsylvania Child Labor Committee. The superintendent of the Lehigh Manufacturing Company "very kindly discussed their attitude toward the question of child labor. He said they were in favor of raising the age limit to fourteen years, and that now they permitted no night work in their mills. He contended, however, that there was something to be said in favor of child labor. The drawback to raising the age limit, he said, was that between thirteen and fourteen years children learn more quickly than at any subsequent period. . . . He also said that they found difficulty in using children from other mills. They

wanted them fresh from school. One of his forewomen said the girls were difficult to manage after they were sixteen, and that they lost ambition."

Mr. Nibecker, superintendent of the House of Refuge located near Philadelphia, stated that a school boy was a rare exception in his institution, and that "the lines of commitment and lack of schooling run parallel." A large number of the boys were illiterate. Larceny was the most common crime, and a desire to do something exciting after a day of drudgery was often the motive.

Other evil moral results of early working were discovered. Mr. Roberts found that the physicians of factory towns concurred in testifying to the prevalence of social evils among the young operatives. Dr. Gerhardt, of Allentown, said: "There are more unhappy homes, ruined lives, blasted hopes and diseased bodies in Allentown than in any city of its size, because of the factories here."

What do the parents of the working children receive for this labor, performed at so terrible a cost to the laborers in intellect, health and morals? An investigation of the wages paid to a large number of children between eleven and sixteen years of age gave an average of $3.70 per week, and this low wage probably corresponded fairly well with the value of the service rendered. And these young workers, with their stunted minds and bodies, would remain comparatively inefficient throughout all their working life.

Each new study of the problem only revealed the fact more clearly that, wherever introduced, child labor was displacing adult labor. As the Pennsylvania Child Labor Committee puts the case, in one of its unpublished reports: "Young women have been taking the place of men in knitting and weaving, and now children are filling places formerly held by women, and at each turn the wages have fallen." If, then, not even the parents themselves are benefited by this "slaughter of the innocents," but receive only economic harm, in the long run, how can society at large be justified in an attitude of indifference?

It is not always a sign of the extreme need of the family when the children are put to work at an early age. It was found that they often entered the mills because their mates had done so. In many cases lazy or drunken parents were making use of this means of support, though abundantly able to bear the burden themselves. The number of instances in which the child's wages were sorely needed were surprisingly few and far between.

It may be interesting to note, in passing, that in 1904 children were employed in at least seventy different kinds of factories alone, not to speak of outside occupations; and in considerable numbers in five-sixths of the counties of the state. Nor were these child workers necessarily past the legal age. They were simply those whose parents or guardians had managed to secure for them employment certificates, though sometimes the children were working without any certificates whatever. The committee had reason to speak sharply of the system in vogue in 1904, when perjury on the part of parents had been elevated to a fine art, and when the examination as to ability to read and write the English language had become a farce.

"The employment certificate as now issued," says an unpublished report of the committee, "is the effective and final weapon of defense of the child who does not want to go to school; of the parent disposed to exploit his child for selfish purposes; of the employer in search of cheap labor. The employment certificate effectually defeats the purpose of the compulsory school attendance law, and of the factory law, as it relates to children. Children of eight, nine, ten, eleven and twelve years, armed with employment certificates which testify to their having reached their thirteenth birthday, may wave them in defiance at their teachers and face with indifference truant officers or factory inspectors who attempt to enforce the laws—the laws which compel school attendance up to thirteen years and prohibit the work of children under that age."

An "appalling decrease in school attendance following the first grade," as revealed by the school records for Philadelphia, was attributed in great part by the committee to these certificates. This decrease was shown by the following per cents of attendance of an average class during each of the prescribed school years (6 to 13 years): First year, 100; second year, 73; third year, 66; fourth year, 50; fifth year, 42; sixth year, 29; seventh year, 20. During the years of compulsory school attendance eighty per cent had dropped out; only twenty per cent remained. No wonder the committee asked what had become of this eighty per cent. After making a liberal allowance for deaths, for removals from the city or to private schools, and for those whose progress had been checked by failure to secure promotion, it would be safe to assume that at least sixty-five per cent of the original 35,000 had managed to evade the law before reaching the thirteenth birthday. And all these children were, as the report asserts, either (1) at work, on fraudulently acquired certificates; or (2) at work, legally or illegally, on no certificates at all; or (3) at home, for some domestic purpose. Unfortunately, this record for Philadelphia was almost paralleled in other industrial centers, especially in the mining regions of the state, where the public was even more indifferent.

That children under age found their way into the factories was admitted, and deplored, by the employers themselves. A prominent manufacturer of Wilkes-Barre in March of 1904 wrote to Dr. Woodward, chairman of the Pennsylvania Child Labor Committee: "There is no doubt considerable truth in the statement that children of ten and eleven years find their way into the mills. . . . The parents perjure themselves and we have no way to disprove their sworn statements, and if the parents are willing to go to such lengths to put their children to work they will manage to do it by hook or by crook, no matter what the laws." That this manufacturer was not vitally interested

is evident from the fact that the only improvement in the factory law he had to suggest was one which, standing alone and without change in the enforcement provisions, would but accentuate the desire to evade the statute, namely, that the minimum age be raised to fourteen years.

Bill of Child Labor Committee (1905).

With this material gathered, or the greater part of it, the next logical step was taken, in the appointing of a subcommittee which should draft a child labor bill. This committee—consisting of Dr. Woodward, Miss Richmond and Miss Platt, and with the active co-operation of Miss Marot—held numerous conferences with various city and state officials, including Factory Inspector Delaney, and actually redrafted its bill twenty-two times before submitting it to the Legislature of 1905. Mr. Alexander Simpson, Jr., who had drafted the child labor bill in 1903, offered valuable criticisms on this one, as did also two other lawyers of distinction (members of the committee), Mr. Lyman D. Gilbert and Mr. J. Percy Keating.

The committee's annual report for 1904-5—which is a valuable source of information for the period it covers—informs us[12] that three points were considered of primary importance by the framers of this bill:

1. A true age limitation, through certificates based on record evidence of age rather than on affidavits.

2. Prohibition of night work for all children under sixteen years.

3. Extension of legal protection to all children regularly employed in industry and commerce.

The provisions of the bill bear out this contention. In fact, on comparing this child labor bill with the one of 1903, we find that other advances than the three enumerated were to be postponed till a "more convenient season." For ex-

[12] P. 8.

ample, in the bill of 1903 the minimum age was put at fourteen years, but in 1905 it was left at thirteen; in 1903 the protected workers might be employed only ten hours a day or fifty-five hours a week, while in 1905 the hours were twelve a day or sixty a week. The limits for night work were the same in each, namely, children under sixteen, and nine p. m. to six a. m.; as, also, were the requirements that child workers between fourteen and sixteen must be able to read and write simple sentences in the English language, and should have complied with the education laws of the commonwealth; while the possibility of a medical examination lay in the background. Both measures required not only the old-time affidavit of age from parent or guardian, but also a certificate of age taken from public or church records. In order that these two should together constitute an employment certificate, there must be added—according to the bill of 1903—the formal approval of the district attendance officer or secretary of school board; while by the bill of 1905 the matter of issuing the employment certificate (also including both age affidavit and age certificate) was turned over to the school authorities, or to a factory inspector. The later bill contained a provision not found in the earlier one, setting up an alternative education test where no proof of age was obtainable.

Bill of Philadelphia Central Union of Textile Workers (1905).

Another active and deeply interested participant in this legislative agitation of 1905 was the Central Union of Textile Workers of Philadelphia. At a regular meeting of the union, on June 2, 1904, a temporary committee on legislation was appointed, consisting of three members; and on the 30th of the next October a permanent "Trades Union Legislative Committee of Pennsylvania" was organized, with an executive committee of seven. In the report issued later by this Trades Union Legislative Committee we are

informed that fruitless negotiations were entered upon with Dr. Samuel McCune Lindsay, representing the Pennsylvania Child Labor Committee; with Senator Penrose and Speaker Walton, and with Chief Factory Inspector Delaney, in order to "avoid a conflict of interests." The first named would only "agree to a composite bill with the fifty-five hours' provision omitted, and bring that up on the floor of the Legislature as an amendment," thus avoiding the danger of having the child labor bill swamped by the fifty-five-hour clause. This proposition was rejected by the union. The next two parties to be approached promised everything—and did nothing. The last, as we shall soon discover, followed the example of the second and third. The bill which the Central Union of Textile Workers was so industriously pushing, with the active assistance of Messrs. McCollam, Hall, Thornton, Snee, Donnelly and others, provided: (1) That no woman or minor should be employed in any factory, workshop, store, laundry, renovating works or printing office, except between seven and twelve a. m. and between one p. m. and six p. m., and not after twelve o'clock noon on Saturdays, thus securing a fifty-five-hour week with the Saturday half-holiday; and (2) that the minimum age for child labor in the above-mentioned industries be raised from thirteen to fourteen years. The union leaders rightfully claim the credit for the raising of the minimum age to fourteen, which was not originally contemplated by the Pennsylvania Child Labor Committee or by Inspector Delaney. But the fifty-five-hour provision, on which their hearts were set, and for which they had led a six months' strike not long before, was "lost in the shuffle" when the final compromise was effected.

Bill of Chief Factory Inspector Delaney (1905).

While the Pennsylvania Child Labor Committee and co-operating societies were devoting themselves to the preparation of a child labor bill, and the Kensington (Philadelphia) textile workers were actively lobbying for their fifty-

five-hour measure, Inspector Delaney and his advisers were engaged in outlining a sort of code which should touch the field of factory legislation at all points. As first drawn up, Captain Delaney's bill was so radical in places as to stand little chance of favorable consideration by the Legislature. For example, no minor of either sex might be employed between the hours of seven p. m. and six a. m.; though a proviso was later inserted, mainly for the glass factories, allowing night work to male minors under sixteen where it was supposedly necessary "to prevent waste or destruction of said material." No female, or minor of either sex, was to be employed for over sixty hours in any one week *or over ten hours in any one day,* the last clause preventing the employees from working a little longer each of the other days in order to secure a Saturday half-holiday. The Kensington people, already referred to, assert that this "ten hours in any one day" provision was planned to go with their "fifty-five hours in any one week" scheme. And in proof of their assertion they produce an original copy of a written agreement to that effect between their leaders and Captain Delaney, duly signed by the contracting parties.

No provisos to exempt cities of the first and second class in the matter of elevators, fire-escapes and boilers are to be found in the Delaney bill, though they appear in the act as passed. While a proviso in the bill which would have limited the operation of the sweat shop clauses to a workshop where more than five persons were employed disappears in the final act. And, finally, the child labor portion of Inspector Delaney's bill followed the old lines as to the enforcement clauses: the employment certificate to be issued by any person having authority to administer oaths, as formerly. The only addition to the old law worth noting was a proviso—of doubtful value because optional with the examiner—that "if from any cause the party administering the oath has reason to doubt the truth of the statement made by the parent, guardian or custodian as to the age of said

child," a certified copy of birth, baptism or circumcision was to be required, and the same forwarded at once to the chief factory inspector.

With the exception of the clauses already noted, Inspector Delaney's bill was incorporated bodily into the compromise measure finally agreed upon by the Department of Factory Inspection and the Pennsylvania Child Labor Committee. It is unnecessary, therefore, to give further details at this point, as the present factory law (1905) will be discussed in detail.

Public Education Association Scholarships (1905).

In order to meet what might be termed the "poor widow" argument against raising the minimum age of child labor from thirteen to fourteen years, so far at least as Philadelphia was concerned, the Public Education Association of Philadelphia addressed a letter, on March 7, 1905, to the chairman of the House committee (Judiciary General) which was then considering the new factory bill. This communication contained a pledge on the part of the Public Education Association, acting for certain guarantors, to provide for each dependent family in Philadelphia affected by the law, for whom other solution could not be found, a weekly sum equal to the amount the child would be able to earn—usually from two to three dollars, and to continue this "scholarship" until the child reached the legal working age.

The conditions imposed were: (1) That the father was either dead or incapacitated from supporting his family; (2) that the wages of the child (who must be between twelve and fourteen years of age) were necessary for the adequate support of the family, after the family resources had been developed by careful investigation and assistance; and (3) that a weekly certificate of regular attendance and diligence in study, secured from principal or teacher, was

presented to the person acting as agent for the association. The experience of Chicago was cited in the letter, where the women's clubs had made a similar guarantee, and where it was discovered that only a small percentage of the applicants really came within its provisions.

It was hoped that this "scholarship" idea would be taken up by the other large cities of the state, wherever the need was apparent. But whether the example were followed or not, it was intended that the offer should smooth the way for the passage of the bill. How much effect it had in this direction is problematical, but it figures as one of the stones not left unturned in the fight for a child labor law that should be good for something.

The prompt passing of the compromise bill, and the signing of the act on May 2, 1905, brought to an end a most interesting and successful child labor campaign, lasting over two years; and at the same time set the seal of the commonwealth on a factory act which, taken as a whole, is worthy of commendation.

This legislation was not secured without well-organized and determined effort on the part of those citizens who composed the Pennsylvania Child Labor Committee, and the expert assistance which they employed. Working through the Pennsylvania committee, and back of all its efforts, stood the national committee, which concentrated its attention for a considerable period upon the legislative situation in Pennsylvania. The secretary of this latter committee, Professor Samuel McCune Lindsay, was present at Harrisburg during the critical periods of the bill's history. And the Pennsylvania committee's report keeps well within the truth when it asserts (p. 9): "It was Dr. Lindsay's skilful handling of the situation at Harrisburg which gave Pennsylvania the new statute."

With the historical part of this work on Pennsylvania factory legislation brought to an end, there remains the

necessity of making a careful analysis of the new factory code, section by section. By such a piecemeal operation, alone, will it be possible to discover the elements of strength and weakness in what is really a complex piece of social legislation. Only through constructive criticism of what *is* may we hope to secure a point of departure for what *is to be*. In the following discussion the child labor clauses will be reserved for the last, as they are new and untried and take us into the dangerous realm of prophecy.

PART II.

ADMINISTRATION.

CHAPTER VIII.

Present Factory Law (Exclusive of Child Labor).

Establishment Defined.

Section 1. *Be it enacted, etc.,* That the term "establishment," where used for the purpose of this act, shall mean any place within this Commonwealth other than where domestic, coal mining or farm labor is employed; where men, women or children are engaged, and paid a salary or wages, by any person, firm or corporation, and where such men, women or children are employees, in the general acceptance of the term.

Presumably, only domestic service and farm labor were intended to be exempted from state supervision, mining being already taken care of by a separate code and a separate department of inspection. "For the first time in Pennsylvania, bowling alleys, the messenger service and theatres are brought under the provision of the child labor law."[1] But soon after the act was passed the Attorney General ruled that the child labor provisions did not apply to newsboys, even when they were regularly employed as carriers and not selling on their own account. In the case[2] which called forth the opinion the boys were employed for only about one hour a day, in the late afternoon, so that their schooling

[1]Second Annual Report of the Pennsylvania Child Labor Committee, p. 11.

[2]That of the Reading Telegram, an evening paper. Opinion rendered July 21, 1905.

was not in the least interfered with. And they certainly were not, as the opinion pointed out, employed "in or about an establishment where the attendance of the employees and the receipt of wages by them constitutes a continuous daily employment and the main means of support;" nor was the employment "of a kind which confines or restrains them as employees are confined or restrained in a manufacturing or kindred establishment." The Attorney General took care, however, to limit his ruling to the particular case in hand, and to state that he was "not dealing with general propositions of the employment of minors under the age of fourteen."

This opinion has not been subjected to the test of a court decision, the Factory Inspection Department not only accepting it unhesitatingly, but even attempting to extend the scope of the exemption to messenger boys in the employ of the great railway corporations.[3] Even with this newsboy exemption, the scope of the act is far more comprehensive than if the attempt had been made, as in earlier statutes, to enumerate all the varieties of places to which it should apply.

Seats for Women.

SECTION 7. Every person, firm or corporation employing girls or adult women, in any establishment, shall provide suitable seats for their use, and shall permit such use when the employees are not necessarily engaged in active duties.

The only weakness in this section, and one that is hard to overcome, is the latitude left the employer by the term "necessarily." It is apparent to any observant customer that most of the stores where he is trading construe this word very liberally; in some cases so liberally that no seats

[3]Mr. Delaney goes so far, in one instance, as to express his "heartfelt sympathy for those whom the law injuriously affects." And he informs the mother that she may take the boy and his (Delaney's) letter to the Pennsylvania Railroad Company's office and "assure the officials that he will not be disturbed by this department."

at all are provided at many of the counters, the saleswomen (we must infer) being always "necessarily engaged in active duties." And in reputable stores the floor-walker will sometimes dare to sneer openly at a tired saleswoman who ventures to make use of the seat provided. Some stores and some factories are generous in this regard, and seats are placed at every available point. The Department of Factory Inspection is not over zealous in enforcing this provision, though a few of the deputies make frequent and ingenious suggestions as to the possible location of seats at factory machines. The Consumers' League of Pennsylvania is bringing pressure to bear on the department stores in the larger cities, and with good results.

Toilet Accommodations.

Section 8. Every person, firm or corporation employing males and females in the same establishment, shall provide for such employees suitable and proper wash and dressing-rooms, and water-closets for males and females; and the water-closets, wash and dressing-rooms used by females shall not adjoin those used by males, but shall be built entirely away from them, and shall be properly screened and ventilated; and all water-closets shall at all times be kept in a clean and sanitary condition.

In some parts of the state water-closets are now kept in fair condition, and those for males are separated from those for females. But flagrant violations of the law are particularly in evidence in certain of the inspection districts of Philadelphia and in the anthracite mining region. Some of the deputies complain that the section is not specific enough in its requirements, either as to water-closets or as to wash and dressing rooms: that such an expression as "suitable and proper," for example, leaves too much leeway for difference of opinion as between the inspector and the one responsible for improvements. But the example of a state like Massachusetts, where powers as general in their wording are found ample to insure satisfactory conditions, would

indicate that the enforcement in Pennsylvania may be as thoroughgoing as the head of the department wills that it shall be. A few model establishments in the state are now setting an example which all the others should be made to follow.

Noon Hour Intermission.

SECTION 9. Not less than one hour shall be allowed for the noonday meal in any establishment. But the Chief Factory Inspector may, for good cause, reduce the time for the noonday meal in establishments where all the other provisions of this act are observed, which entail duties upon the part of the employers.

A few deputies are active in the enforcement of this section and inquire into the matter at every factory or other establishment, while others seem to forget about the noon hour restriction and seldom ask about it. One deputy says that he has no need to inquire, for the reason that he would surely be informed confidentially in case the employer undertook to shorten the noon hour arbitrarily.

At almost all factories where women and young persons are employed the desire for a Saturday half-holiday is keen; and where the working week is a sixty-hour one the workers simply must begin a little earlier each morning, and also shorten the noon hour, in order to secure this holiday. For overtime work in the morning and at night no permission is needed, provided the twelve-hour day and the sixty-hour week limitations of section 3 are complied with.

The labor unions deplore the granting of a shorter time permit for the noon period, though recognizing that the demand for it comes from the employees themselves. The unions contend that they cannot make headway against such an insidious performance as working a little overtime each day, while they could prevent Saturday afternoon labor, whether it had been made up for on the preceding five days or not. In other words, if only a straight ten hours and no

more were to be worked each day up to Saturday, the unions believe they could force the stopping of work at noon on that day, thus securing the fifty-five-hour week and the Saturday half-holiday for all alike.

Posting of Notices.

SECTION 10. Every person, firm or corporation employing men, women or children, in any establishment, shall post and keep posted in a conspicuous place, in every room where such help is employed, a printed copy of the factory laws, a printed notice stating the number of hours per day for each day of the week required of such persons; and in every room where children under sixteen years of age are employed, a list of their names, with their ages.

This section is very generally observed in factories and workshops, where it is most needed. The old factory law, printed on a big sheet, was often framed and nearly always conspicuously placed. The new law, being in pamphlet form, is suspended by the upper left hand corner, a copy in each room. The notice stating the number of working hours a day is also posted, together with a list of all children requiring employment certificates. In retail stores the above requirements are not nearly so well lived up to.

Safeguarding of Machinery.

SECTION 11. The owner or person in charge of an establishment where machinery is used shall provide belt-shifters or other mechanical contrivances for the purpose of throwing on or off belts or pulleys. Wherever practicable, all machinery shall be provided with loose pulleys. All vats, pans, saws, planers, cogs, gearing, belting, shafting, set-screws, grindstones, emery-wheels, fly-wheels, and machinery of every description shall be properly guarded. The floor space of no working-room in any establishment shall be so crowded with machinery as thereby to cause risk to the life or limb of an employee, nor shall there be in any establishment machinery in excess of the sustaining power of the floors and walls thereof. No person shall remove or make ineffective any safeguard around or attached

to machinery, vats or pans while the same are in use, except for the purpose of immediately making repairs thereto, and all such safeguards so removed shall be properly replaced. Exhaust fans of sufficient power, or other sufficient devices, shall be provided for the purpose of carrying off poisonous fumes and gases, and dust from emery-wheels, grindstones and other machinery creating dust. If a machine or any part thereof is in a dangerous condition, or is not properly guarded, the use thereof may be prohibited by the Chief Factory Inspector or by his deputy, and a notice to that effect shall be attached thereto. Such notice shall not be removed until the machinery is made safe and the required safeguards are provided, and in the meantime such unsafe or dangerous machinery shall not be used.

Section 11 contains what should be regarded as the very heart of the inspector's duties. Any deputy not sufficiently familiar with machinery to be able to detect omissions in its proper safeguarding and to suggest remedies therefor, is utterly unfit for the office. Nor is this a light requirement or an unimportant one, since it calls for the skill of an expert.

It is a fair statement of the case to assert that this vitally important function is one which, taking the department as a whole, is sadly neglected. And it is equally safe to attribute this negligence to two main causes: politics and incompetency, of which the latter is the corollary of the former. In the fall of 1905, Mr. Hugh O'Donnell, then special deputy for the Pittsburg region, declared[4] that "there has not been placed in the mills of the Pittsburg district one device for lessening the chances of taking human life except those ordered by the coroner after some poor fellow had lost his life." He made the further assertion[5] that 3,885 accidents had occurred in the mills and factories of that city during the preceding year, of which thirty-one per cent were fatal; and that only three of these accidents were investi-

[4] See Philadelphia Record, September 12, 1905.
[5] See Philadelphia Record, September 11, 1905.

gated by the department, and those by himself. The statement is so incredible that one feels like deducting half for possible exaggeration due to the strained relations then existing between O'Donnell and the chief inspector.

It is easy to fling statistics, especially of the unsupported and sweeping variety. And if the conditions which come under our own observation were not so shocking we would remain incredulous. The records of the child labor committee and of other societies interested in the child worker are full of cases of terrible suffering and permanent incapacitation for self-support, due to preventable accidents; and where no prosecutions by the department followed, and no relief was afforded the sufferer by the offending employer except as the result of a suit for damages. Philadelphia's accident record is as damaging to the Department of Factory Inspection as is that of Pittsburg, when the former city's proportionately larger force of deputies is taken into consideration. But the safeguarding of machinery, shamefully as it is neglected in Pennsylvania, is far better looked after than is that equally important provision of this section for exhaust fans to carry away poisonous gases, emery-wheel dust, and the like, whose deadly effects are so manifest in the form of tuberculosis.

In what has been said as to the protection of employees from dangerous machinery, exception must be made in favor of that small minority of the inspectors who are competent and fearless. The writer has one deputy in mind whose eye travels unerringly to the point of slightest danger, and whose command in regard thereto is intelligent and imperative. But, in going about with the deputies, one is often impressed with the painful truth that the sort of machinery with which they have the best working knowledge is that of their respective wards and voting precincts. This lack of technical training will be referred to again in another connection.

Before leaving the subject it is of interest to note the

fact that the machinery which comes from England, where the Department of Factory Inspection is almost an ideal one and where public opinion is educated in this matter, is far better guarded than is the machinery turned out by American manufacturers. A knowledge of this fact forces the conclusion that America's worship of industrialism has been so absorbing as to blind her to the crying evils of the system: evils which are the greater disgrace because so unnecessary.

Elevators.

SECTION 12. The owner, agent, lessee, superintendent, or other person having charge or managerial control of any establishment, hotel, hospital, apartment house, or other building, where elevators, hoisting shafts, lifts or well-holes are used, shall cause the same to be properly and substantially enclosed, secured or guarded; and shall provide such proper traps or automatic doors, so fastened in or at all elevator-ways, except elevators enclosed on all sides, as to form a substantial surface when closed, and so constructed as to open and close by action of the elevator in its passage, either ascending or descending. The cable, gearing or other apparatus of elevators, hoisters, or lifts, shall be kept in a safe condition: *Provided,* That the provisions of this section shall not apply to cities of the first and second class.

It will be noticed that this elevator section is wide in its application, extending as it does over all manner of buildings requiring elevators. It will also be noted that cities of the first and second class—namely, Philadelphia, Pittsburg and Scranton—are specifically exempt from its restrictions. The reason for this exemption is that in those cities only are there distinct departments of public safety, which are supposed to look after elevators. Section 22 does the same thing as to the fire-escape provisions of the factory law; while section 19, though not in express terms, frees those cities from the boiler inspection requirements. Comment on this threefold exemption is reserved for section 22.

Wherever the department has jurisdiction, elevator shafts are fairly well guarded by automatic gates and trapdoors, and the cables are kept in a generally safe condition.

Light and Sanitation.

SECTION 13. The owner, agent, lessee, or other person having charge or managerial control of any establishment, shall provide or cause to be provided, not less than two hundred and fifty cubic feet of air-space for each and every person in every work-room in said establishment, where persons are employed, and shall provide that all work-rooms, halls and stairways in said establishment be kept in a clean and sanitary condition and properly lighted.

The two hundred and fifty cubic feet of air space for each worker is usually provided, though it is easy to find factories where this is not observed. Moreover, in factories where there is no overcrowding the windows are often kept closed, sometimes on account of the fabric, so that the air becomes vitiated; but this is the exception rather than the rule. The inspectors complain that the latter part of this section resembles section 8 in being too indefinitely worded: that "clean and sanitary condition," and "properly lighted," are both expressions which leave so wide a latitude as to deter the deputy from insisting upon his own standard of "sweetness and light." But to this complaint the same answer must be made as in section 8. No doubt a few prosecutions would be necessary to convince rebellious owners or superintendents that the courts will uphold any reasonable demands made by the inspectors in the interest of health and morals. The abominable condition, from a sanitary standpoint, of many Philadelphia and Pittsburg factories especially, is a standing indictment of the department which has allowed such a state of affairs to continue. Some of the worst factories in Philadelphia have been compelled, of late, to do better in the matter of cleanliness and sanitation.

Sweat Shops.

SECTION 14. No person, firm or corporation engaged in the manufacture or sale of clothing or other wearing apparel, cigars or cigarettes, shall bargain or contract with any person, firm or corporation for the manufacture, or partial manufacture, of any of said articles or goods where the same are to be made in any kitchen, living-room or bed-room in any tenement house or dwelling house, except where the persons bargaining or contracting to make or partially make any of the aforesaid articles or goods are resident members of the family, residing in such tenement house or dwelling house where the said articles or goods are to be made or partially made, and who have furnished the person, firm or corporation engaged in the manufacture or sale of said articles or goods, and with whom the bargain or contract is to be made, a certificate from the board of health of the city or town in which such tenement house or dwelling house is situated, that the same is free from any infectious or contagious disease; which certificate may be revoked by the board of health whenever the exigencies of the case shall require: *Provided,* That the term "family" in this section shall include only the parents and their children, or the children of either.

SECTION 15. No person, firm or corporation engaged in the manufacture or sale of any of the articles or goods enumerated in section fourteen of this act shall bargain or contract with any person, firm or corporation for the manufacture, or partial manufacture, of any of the said articles or goods in any workshop, not part of a tenement or dwelling house, unless the said workshop shall have been inspected by the Chief Factory Inspector or by one of his deputies, and who shall have issued a printed permit to the person in charge of such workshop, stating that the same is in a clean and safe and sanitary condition, and fixing the maximum limit to the number of persons who may be employed therein; the permit to be posted and kept posted in a conspicuous place in such workshop: *Provided,* That this section shall not apply to any workshop wherein the aforesaid articles or goods are manufactured for the general trade, and are to be sold and delivered in or upon the premises, and are not manufactured, or partially manufactured, under a bargain or contract with any person, firm or corporation employed in the manufacture and sale of the article aforesaid.

SECTION 16. Whenever the sanitary conditions of any

workshop, as defined in section fifteen, is dangerous to the health and safety of the employees therein or to the public, the Chief Factory Inspector or his deputy shall cancel the permit aforesaid, and shall order that the workshop be vacated until the provisions of this act shall have been complied with and the workshop restored to proper sanitary condition.

These sections are the old sweat shop act, in a nutshell. It should be noticed that a wise distinction is drawn between a tenement or dwelling *house,* on the one hand, and a work *shop,* on the other. Only a single family may work in the first, and its supervision is placed with the local board of health; while no restriction as to outsiders is placed on the second, and its oversight is left with the Factory Inspection Department. The drastic provision in the sweat shop laws of 1899 and 1901, allowing the confiscation and destruction of all clothing found being made in unsanitary places or where there were contagious or infectious diseases, is omitted from this act. It may, however, be regarded as in full force and effect for work shops, since it is not inconsistent with any provisions of the new law; but tenement houses, having now come under local jurisdiction, are probably no longer affected by it. The idea of destroying all clothing which is being made where contagious disease exists is coming to be regarded as unnecessary—since disinfection will answer the purpose of safeguarding the public health, as a sheer economic waste, and as failing to provide the proper punishment for the offense.

Philadelphia and Pittsburg are the only sweat shop localities in Pennsylvania. In the Greater Pittsburg the conditions have been thoroughly bad. Special Inspector O'Donnell made some startling disclosures, not long ago, about some of these shops, where indecency was paving the way to immorality. And the cellar factories where so many of the famous "Pittsburg stogy" cigars are manufactured are equally in need of stricter supervision.

In Philadelphia, where over twenty articles are manu-

factured, in whole or in part, in tenement or dwelling houses, the story of sweat shop regulation and control is one not creditable to the Department of Factory Inspection. Shortly after the first sweat shop law (1895) was enacted, one of the deputies fell into a habit which we can scarcely condemn—that of issuing almost any order to the foreign workers that seemed for their good; and these orders were promptly obeyed, until the opportunity came to resume the old practices. It was a daily fight, in which the unfortunate worker felt himself caught between a police officer on the one hand and a heartless employer on the other.

The writer has listened to some pitiful tales of the brutal callousness of the contractor, even when, as in one instance, that contractor represented one of the most respectable stores in Philadelphia. This Chestnut Street clothing house—which long advertised "no sweat shop work," and whose salesmen were ostentatiously taking their customers to the top floor to show them the light, airy tailor shop where all their work was done—was driving the sharpest possible bargains with defenseless victims who must work or starve. It is a pleasure to record that within the past year this particular establishment has fallen into the clutches of the law, through its violations of the child labor code, and been heavily fined. But this store, it should be remembered, differed from the other big clothing houses only in its pharisaism—and it had no monopoly of that!

But to return to our honest inspector, who *really cared* whether his people lived or died. He was soon called away to a higher salary if not a wider field of usefulness, and his successors have not lived up to the example he set. Permits have been exchanged for hard cash: not granted as of right because the law's conditions had been complied with. The state of affairs engendered by negligent inspection at last became so malodorous that Captain Delaney recently sent two of his inspectors, upon whom he thought he could depend, into the Manayunk district, where they speedily

unearthed some unpleasant facts about factories and workshops. The latter were found to be unsanitary to the last degree, even where expensive clothing was being made. Equally deplorable conditions exist in the southeast section of the city.

The Board of Health in Philadelphia, with an absurdly inadequate force of inspectors, is making a heroic but futile attempt to grapple with the tenement house end of this sweat shop evil. As the law does not require that the bureau of health permits shall be conspicuously posted, they are rarely in sight, and apparently are regarded by the workers as transferable from one house to another. Children ten to fourteen years of age, including "half-timers" in the public schools, continue as of old to spend, contrary to law, many a weary hour at the sweater's toil.

After all, is not Mrs. Florence Kelley right when she says:[6] "It is utterly impossible to keep the system of manufacture in the tenements, and to avoid its evil consequences." And why is this system kept in the homes of the defenseless workmen and workwomen? Mrs. Kelley has told us exactly why.[7] "These materials [of the sweaters' industry] are owned by rich and powerful employers, strongly organized locally and nationally, and are foisted upon the meager dwellings of the poor solely for the purpose of saving to the employers the cost of heat, light, cleaning and, far more important, rent of workrooms. For the convenience of the powerful, the weakest industrial factors in the community . . . have been invaded by industry and inspectors."

But while waiting for public opinion to reach the plane of the ideal, a step in the right direction might be taken by a revision of the present law that should hedge about the owner of the goods with so many restrictions as to reduce materially the output of tenement manufacture. The follow-

[6] Some Ethical Gains Through Legislation, p. 238.
[7] Some Ethical Gains Through Legislation, pp. 245-6.

ing suggestions are offered, as being in line with the more advanced thinking on this particular phase of the factory law:

Regulations for Tenement Manufacture.

1. No room or apartment in tenement or dwelling house to be used for the purpose of making, altering or repairing articles of any description, for sale, except by immediate members of family dwelling therein.

2. Such family to procure license from Department of Factory Inspection, the same to be issued to some adult member of family.

3. Said license to be granted only on presentation of certificate from local Board of Health that house contains no infectious or contagious disease, and after factory inspector has ascertained by personal inspection that apartments occupied by applicant, as well as public parts of building (halls, stairs, etc.), are in a clean and sanitary condition, and well lighted and ventilated. Factory inspector to notify Board of Health immediately on granting of such license.

4. No license to be transferable from one person or house to another.

5. License to be valid for six months only, and renewable only after reinspection by factory inspector; and to be revocable by Departemnt of Factory Inspection *at any time* for failure to comply with provisions of the law.

6. License to be shown *on every occasion* to person giving out unfinished articles of merchandise or materials for same, whether such person be owner or sub-contractor.

7. Every owner of articles so given out, and every sub-contractor, to keep register of names and addresses, plainly written in English, of all persons so contracted with by owner or sub-contractor: copies thereof to be sent at regular intervals to local Board of Health and to Department of Factory Inspection.

8. Articles of merchandise found in foregoing places when these places are unsanitary, or unclean, or infected, to be taken into custody by factory inspector and not returned to owner until disinfected at owner's expense.

9. A room or apartment in tenement or dwelling house not used for living purposes, and not connected with any room so used, and having separate and distinct entrance from the outside, to be regarded as a factory or workshop, and not subject to provisions of foregoing sections.

10. Additional force of deputy factory inspectors.

CHAPTER IX.

Present Factory Law (Continued).

Bake Shops.

Section 17. All persons, firms and corporations engaged in the manufacture or baking of bread, cakes, crackers, pastry, pretzels or macaroni, for public sale, shall keep their room or rooms for baking, mixing, storing, or sale of flour or other grain products, separate and apart from any sleeping-room, water-closet, urinal, defective drain or sewer pipe, and shall not permit the harboring of any domestic animal therein. The floors of all baking, mixing, storing and salesrooms shall be kept clean and tightly joined and free from crevices, and the walls and ceilings shall be painted, kalsomined or whitewashed as often as twice in each year, and oftener if, in the opinion of the Chief Factory Inspector or his deputy, the safety of the employees or the public shall require.

Section 18. When the foregoing provisions of section seventeen are complied with, the Chief Factory Inspector or his deputy shall issue to the owner or person in charge of such bakeshop a permit, stating that the same is in a clean and sanitary condition; which permit shall be posted and kept posted in the office or salesroom of the bakeshop aforesaid; but when any of the foregoing provisions of section seventeen are not being complied with in any bakeshop, the Chief Factory Inspector or his deputy shall issue to the person in charge, or his representatives, a written order to comply with the law aforesaid, within ten days; or he may order the closing of any such bakeshop until the order shall have been complied with, should the safety of the employes or the public, in his opinion, so require.

These sections comprise the old bake shop act, in brief compass. In point of importance this ranks as a close second to the workshop law. Thanks to a fairly rigid enforcement, the old basement shop—dark, foul, disease laden—is a thing of the past: so changed for the better as to be unrecog-

nizable. Section 7 of the old bake shop law (1901), forbidding the employment of any person suffering from consumption, scrofula or venereal diseases, is omitted. But as the present law repeals no previous acts or parts of acts not inconsistent with itself, that inhibition is to be regarded as still in force. How carefully it is observed by employers, or insisted upon by the inspectors, it would be hard to say. The conspicuous instances of its infraction are becoming fewer from year to year.

Boilers.

SECTION 19. All boilers used for generating steam or heat in any establishment shall be kept in good order, and the owner, agent or lessee of such establishment shall have said boilers inspected by a casualty company in which said boilers are insured, or by any other competent person approved by the Chief Factory Inspector, once in twelve months, and shall file a certificate showing the result thereof, in the office of such establishment, and shall send a duplicate thereof to the Department of Factory Inspection. Each boiler or nest of boilers used for generating steam or heat in any establishment shall be provided with a proper safety-valve and with steam and water-gauges, to show, respectively, the pressure of steam and the height of water in the boilers. Every boiler house, in which a boiler or nest of boilers is placed, shall be provided with a steam-gauge properly connected with the boilers, and another steam-gauge shall be attached to the steam-pipe in the engine house, and so placed that the engineer or fireman can readily ascertain the pressure carried. Nothing in this section shall apply to boilers which are regularly inspected by competent inspectors, acting under local laws and ordinances.

In the act of 1901 the deputies were to satisfy themselves, by personal inspection, of the condition of boilers in any establishment, except where boilers were "regularly inspected by competent inspectors acting under local laws and ordinances"—which meant cities of the first and second class. Subject to the same exemption, all responsibility for annual boiler inspection is now placed on the owner, agent

or lessee, who must report to the Factory Inspection Department. This change in the law is being brought to the attention of the responsible parties by the inspectors, often accompanied by inquiries and explanations. It is too early to determine whether the change is a wise one from the standpoint of safety to the employees.

Reporting of Accidents.

SECTION 20. It shall be the duty of the owner or superintendent of any establishment to report, in writing, to the Chief Factory Inspector every serious accident or serious injury done to any person in his or her employ, where such accident or serious injury occurred in or about the premises where employed, within twenty-four hours after the accident or injury occurs, stating as fully as possible the cause of such accident or injury; and in all fatal and serious accidents the Chief Factory Inspector or his deputy may subpœna witnesses, administer oaths, and do whatever may be necessary in order to make a thorough and complete investigation of the same: *Provided, however,* That the provisions of this section shall not be construed as interfering with the duties of coroners, under existing laws.

The department is now instructing manufacturers and others amenable to the factory law not to report minor accidents, such as bruises, cuts or burns not of a serious nature. This is a perfectly reasonable interpretation of section 20, provided at the same time the department is severe with those employers who venture to construe this order more loosely than is intended, and so fail to report any accidents at all except those which are fatal or which are widely advertised by the newspapers; and provided, also, that employers are not thereby encouraged to a gross carelessness in the matter of safeguarding their machinery, such as now prevails in the larger cities of the state. Where life and limb are at stake, no letting down of the bars could be considered for an instant. That influential manufacturers have

played fast and loose with the department—and hence with the public—in the reporting of serious preventable accidents, is generally believed by those who have had occasion to get at the facts.

Right of Inspection.

SECTION 21. It shall be the duty of the owner, superintendent, assistant or person in charge of any establishment to furnish, from time to time, to the Chief Factory Inspector or his deputy any information required by the provisions of this act, and the Chief Factory Inspector and his deputies shall have authority to inspect any such establishment, at any time, for the purpose of enforcing the provisions of this act.

In the face of this permission accorded a deputy to visit an establishment officially at any time, it is curious that some manufacturers should deny this right and attempt to bar out the inspector when his call is inopportune or is not made by way of the office. Yet such is the experience of probably every inspector who really inspects. Interesting stories might be told illustrative of the virtuous indignation excited in the breasts of law-defying manufacturers, some of whom are posing as philanthropists or leaders in political reform. But the points to be emphasized are: First, that without this plenary visitorial power a deputy would be helpless; and second, that certain of the deputies, both men and women, fail to take advantage of this right, and hence get but meager results. The factory inspector is a police officer, with vitally important duties to perform. He is clothed with ample powers, and if he fails the blame is his.

It is only fair to add that manufacturers and other employers usually exhibit a wholesome respect for the law, and the inspector find little trouble in securing prompt compliance with his orders and suggestions. In fact, many employers are glad to have a high standard enforced, provided they can be sure that the enforcement is general and uniform.

Fire-Escapes.

SECTION 22. That wherever the law makes it the duty of the owner, lessee, or other person in charge of any building, or room or rooms in any building, to erect and maintain fire-escapes, or appliances for the extinguishment of fire, or for proper and sufficient exits in case of fire or panic, the Chief Factory Inspector or his deputy shall inspect all said buildings, or the room or rooms in said buildings, and notify the owners, lessees, or other persons in charge of same, to comply with said law. And all fire-escapes, exits and fire extinguishing appliances shall be provided and located by order of the Chief Factory Inspector or his deputy, and shall be subject to the approval of the Chief Factory Inspector or his deputy: *Provided,* That the provisions of this section shall not apply to cities of the first and second classes.

This fire-escape section must be taken in connection with previous enactments. The jurisdiction of the factory inspectors in the matter of fire-escapes is determined by section 13 of the law of 1901, and includes all "hotels, school buildings, seminaries, colleges, academies, manufacturing establishments, mercantile industries, laundries, renovating works, printing offices, hospitals, storehouses, public halls, and places of amusement and workshops, all of which are required by law to provide and maintain fire-escapes and appliances for the extinguishment of fire." And the section provides, further, that the fire-escapes "shall be erected and located by order of the factory inspector or his deputy, regardless of the exemption granted by any board of county commissioners, fire marshals or other authorities." By the proviso in section 22 of the new law cities of the first and second class are, of course, exempted from the above.

The character of the fire-escapes to be erected is laid down in the amendatory acts of 1885, as modified by the additional amendatory act of 1897. Two sorts of escapes are provided for: First, an "outside, open, iron stairway of not more than forty-five degrees slant, with steps not less than six inches in width and twenty-four inches in length;"

the number of these stairways to be roughly proportioned to the number of inmates of the building. And, second, an additional method of escape, mainly for the use of hotels and lodging houses, by means of the familiar chain and rope apparatus, placed at as many windows as seems necessary for safety.

As to the desirability of the outside fire-escapes, Inspector Campbell wrote in 1901 :[1] "Experience has demonstrated beyond a doubt that for buildings four or more stories high, the outside, open, iron fire-escape is not always a safe means of escape in case of fire. The late disastrous fire in Market Street, Philadelphia, . . . proved that this means of escape in case of such a fire was of no account, from the fact that a number of people were burned to death in attempting to descend the escapes. The General Assembly should enact a law providing for better means of egress in case of fire for high buildings. The tower escape, recommended to the Legislature in 1897 . . . is the safest and most complete means of egress yet presented to the public." In traveling about the state one often runs across the apparently ideal fire-escape, especially in new factory buildings. It consists of a spiral iron stairway, enclosed within a wall of solid masonry, which extends from the ground to the top floor of the building, the enclosure pierced only by iron doors on each floor. But it is to the discredited outside fire-escape, and the still less reliable chain and rope, that the Legislature pins its faith; and hence it is these, the erection of which is enforced by the Factory Inspection Department, together with the use of patent fire extinguishers. No part of the factory law is looked after more conscientiously by the inspectors. And now that the responsibility for neglect is so definitely placed by statute on the owner, in fee or for life, the enforcement is comparatively easy.

The deputies have been repeatedly approached by enterprising agents, and occasionally by the manufacturers of

[1]Annual Report of the Factory Inspector, 1901, pp. 8 and 9.

fire-escapes themselves, with the request that they recommend the use of a certain type of fire apparatus, these solicitations sometimes taking the form of covert attempts at bribery. The writer has been assured that the deputies might very considerably augment their modest salaries by yielding to these importunities, and the public would be none the wiser. Nor could such a form of graft well be prevented by legislation. It is probable that most of the inspectors are above the reach of this temptation.

That cities of the first and second classes are exempt from the jurisdiction of the Department of Factory Inspection in the matter of fire-escapes is even more to be deplored than the like exemption (already noted) for elevators. It is beside the point, in either case, to claim that this is necessary in order to avoid conflicts of jurisdiction between commonwealth and municipal authorities. The two, when occupying the same field, are not co-equal, neither are they mutually exclusive. The former is the superior; the latter, the inferior. When advisable, the latter may be given authority to execute the law, in first instance; but the former should never abdicate its function of administrative supervision and control. The police power of the state is to be delegated to the lesser political units only with careful reservations. And these units—counties, townships, cities—are not defrauded when held to a strict accountability.

Penalty.

SECTION 23. Any person who violates any of the provisions of the foregoing sections of this act, or who suffers any female, minor or a child to be employed in or about his or her establishment, in violation of any of the provisions of the foregoing sections of this act, or who, being authorized to administer oaths, shall violate any of the provisions of sections five and six of this act, shall be deemed guilty of a misdemeanor, and on conviction, shall be punished by a fine of not less than twenty-five dollars and not more than five hundred dollars, or an imprisonment in the county jail for a term not less than ten days nor more than sixty days, for each and every

such violation. In all cases the prosecution shall be instituted, in the name of the Commonwealth, by the deputy factory inspector of the district where the offense is alleged to have been committeed, and the hearing shall be conducted by the alderman, justice of the peace or other committing magistrate before whom the information is lodged. After full hearing of the parties in interest, the alderman, justice of the peace or other committing magistrate shall, if the evidence warrants it, impose the penalty herein provided, which shall be final to the party against whom the penalty is imposed, unless the party upon whom the penalty is imposed shall furnish good and sufficient bail for his or her appearance at the next term of the court of quarter sessions of the county wherein the offense is alleged to have been committed.

It should be observed that the duty of prosecuting offenders against the factory law is laid solely upon the deputy inspector of the district wherein the offense was committed, thus excluding a private citizen from taking the initiative. Under the present régime no action is ordinarily brought by a deputy until approved by the chief inspector. Such permission is usually granted as a matter of course; but more than once, of late, zealous deputies have learned to their chagrin that they were "going it alone," and that nothing was left for them but ignominious retreat. The justices of the peace or magistrates before whom the offenders are brought have not hesitated to impose reasonably heavy fines, though not imprisonment.

Disposal of Fines.

SECTION 24. All fines imposed and collected for any violation of this act shall be forwarded to the Chief of the Department of Factory Inspection, who shall pay the same into the office of the State Treasurer, for the use of the Commonwealth.

The import of this section is that the office of chief inspector is wholly a salaried one, without additional perquisites.

Administrative Duties of Chief Inspector.

SECTION 25. The Chief Factory Inspector shall prepare the form of the employment certificate for children, and the permits, blanks, orders and notices required by this act; the same to be printed in accordance with the laws regulating printing and publishing, under the supervision of the Superintendent of Public Printing and Binding. He shall also divide the State into inspection districts, and assign one of the deputy factory inspectors to each district, and may transfer any of the said inspectors from one district to another, and make such rules and regulations governing their employment as the best interests of the service shall require. And he, the deputy factory inspector, and those employed in the office of the Chief Factory Inspector, shall have the same power to administer oaths or affirmations as is now given to notaries public, in all cases where any person desires to verify documents necessary and incident to the issuing of employment certificates for children.

In accordance with the power given to divide the state into inspection districts, Captain Delaney organized an eastern district, with headquarters at Philadelphia, and a western district, with headquarters at Pittsburg. Such a geographical division was a most natural and proper one, allowing the chief himself to keep in touch with both districts from his central location at Harrisburg. But in the appointment of district supervisors Mr. Delaney made two serious blunders. The first was that, instead of promoting two of his most efficient deputies to these responsible positions, he selected his own sons, neither of whom possessed the necessary qualifications or experience for so important an assignment.

The second blunder, as the writer interprets the factory law, was in failing to redistrict the state so that the remaining thirty-seven deputies (of the thirty-nine provided for in section 27) should cover the entire field. Instead, the new appointees were additional deputies. Mr. Delaney claims that his authority for this proceeding is found in an enact-

ment of April 15, 1903,[2] providing for the inspection of all passenger vessels "navigating the lakes within the jurisdiction of this commonwealth," except those which are subject to inspection by Federal laws. This work, curiously enough, was placed in the hands of the Factory Inspection Department, and two deputies were provided "for the purpose of carrying out the provisions of this act." The duties of these two special inspectors, as laid down in this statute, are of so technical a character—including the setting of all manner of tests known only to engineers—as to indicate plainly that only technically trained men were expected to receive the appointment. In fact, section 20 of the act definitely states that these inspectors "shall have a practical knowledge of marine engines, boilers and machinery." Apparently, the Messrs. Delaney were these special deputies! Certain it is that no men with the technical knowledge specified in the act have been included among the force, though the inspections called for are being made in a perfunctory way by certain of the deputies.[3]

And even if we allow the Captain a total of forty-one deputies, what about Special Deputy Hugh O'Donnell, of Pittsburg, or Special Deputy Tobias Hall, of Philadelphia, both of whom were badly enough needed to add their moral courage and aggressiveness to the force? At times there have been forty-two, or possibly forty-three, field inspectors on the payroll simultaneously. It is only just to the department to add that two assistant inspectors should be provided by law, to be chosen from among the body of deputies on a well-defined merit system.

There are now thirty-nine deputies[4] scattered over the state (thirteen in Philadelphia alone), one for each inspec-

[2]P. L. No. 147, pp. 201-7.

[3]The steamboat inspection act has not been included among the regular factory acts, for the reason that it is an anomaly, at best, in this field, and has not been regarded seriously thus far by the department itself.

[4]Besides the additional deputies above mentioned.

tion district. The only crossing of districts is caused by the attempt to relieve some of the women inspectors from the unpleasant duty of visiting iron, steel and cement works. This plan has not been successful in practice, though correct and thoughtful in theory. The man who is supposed to cross over into the woman's territory usually does nothing of the sort, and after waiting a reasonable time for the expected assistance the latter takes up the burden herself. If factory legislation is to follow the mechanical trend outlined in the next chapter, women inspectors will be at a greater and greater disadvantage, except for retail stores and tenement house manufacture—so long as the latter shall be allowed to exist, for both of which they have peculiar qualifications.

A crying abuse in the department is that of allowing the deputies to carry on outside occupations. One Philadelphia deputy runs two amusement places in that city and a third one in New York; and his office hours at the two Philadelphia places, if regularly kept, would absorb practically all of the working day.[5] The fact that this particular deputy has energy enough to be one of the most efficient inspectors in the city only shows how low the standard really is and how effective he could be if compelled to drop his conflicting interests. The practice is a bad one, at best, and should be stopped; and this would be no hardship if better salaries were paid.

Annual Report.

SECTION 26. After the first day of January, in each year, the Chief Factory Inspector shall compile or cause to be compiled a succinct statistical and narrative report, to be addressed to the Governor of the Commonwealth, of the work of his department for the year ending December thirty-first.

This "statistical and narrative report" furnishes considerable interesting material, especially in the annual letters

[5]See Philadelphia Public Ledger, October 19, 1905.

of the chief and his deputies, which have often pointed the way for future legislation. But for purposes of comparative study, year by year, the statistics given are not of much value, owing to the continual changes both in the scope of the law and in the administrative methods of the various chief inspectors. The present incumbent has so altered the form of the report that, although it gives some important facts which his predecessors did not give, comparison with former reports is rendered impossible except for a few items.

Any one who has waited until near the close of the following year for a copy of the report for any given year, will echo the sentiment that the chief inspector or the state printer or the somebody else who is responsible for the annual hold-up should be investigated forthwith. Ancient history has its place, but not in the ordinary state report.

Appointment and Salaries.

SECTION 27. To more effectually secure the observance of the provisions of this act and the fire-escape laws, the Governor shall appoint, by and with the advice and consent of the Senate, a Chief Factory Inspector, for a term of four years, at a salary of five thousand dollars per annum; and who shall appoint a chief clerk, at a salary of two thousand dollars per annum; a statistician, at a salary of eighteen hundred dollars per annum; an assistant clerk, at a salary of fourteen hundred dollars per annum; a messenger, who shall be a typewriter, at a salary of twelve hundred dollars per annum, and thirty-nine deputy factory inspectors, five of whom shall be women, at a salary of twelve hundred dollars each, per annum, and their necessary traveling expenses; the Chief Factory Inspector and his appointees, aforesaid, to constitute the Department of Factory Inspection.

When it comes to the question of salaries, a glaring discrepancy is found between the five thousand dollars paid to the chief factory inspector and the twelve hundred dollars paid to the field deputies. The larger sum is twice as great as that given the corresponding official in any other

state in the Union—unless we except New York, where the commissioner of labor, whose duties are more comprehensive than those of a factory inspector, receives thirty-five hundred dollars. In Illinois, where the chief receives two thousand dollars, the deputies receive half that sum; while in Massachusetts the deputies are paid fifteen hundred dollars and all traveling expenses. The salary of the chief inspector should be reduced to three thousand dollars, from which it was raised by the last factory act, or possibly to thirty-five hundred dollars, while that of the field deputy should be raised to not less than fifteen hundred dollars. At the same time the department should be placed under civil service protection, with the possibility of promotion for merit. This latter result could be attained, first, by a graduated salary which should steadily rise from twelve hundred dollars to fifteen hundred or even eighteen hundred dollars; and, second, by confining the appointment of chief clerk, assistant inspectors and even chief inspector to those who had seen hard service for a number of years out in the field, and had fairly won the distinction. Too long, in the vernacular of practical politics, has this department been regarded as a "plum tree" to be "shaken" for the benefit of the "faithful." The marvel is that anything has been accomplished, and that the force now contains, and has contained from the start, men and women who deserve a promotion they cannot hope to receive.

CHAPTER X.

Child Labor Code.

We come now, in this and the following chapter, to a discussion of that portion of the factory law which relates to child labor.

Minimum Age of Child Labor.

Section 2. No child under fourteen years of age shall be employed in any establishment.

Pennsylvania has at last joined a goodly company of commonwealths[1] which have not feared to raise the minimum working age to fourteen. As already seen, the restriction applies to all occupations except domestic service, farm labor, and the selling of newspapers outside of school hours.[2] If enforced, this ensures an elementary education for every boy and girl. For the bright student it means the completion of the grammar school; for the plodder, the end of the fifth or sixth year above the kindergarten. It would be of great interest, if statistics were available to aid us in forming an estimate, to know for how many children the invaluable schooldays were at once prolonged one year by this far-sighted enactment.

In the practical interpretation of this new minimum age limit Captain Delaney wisely determined not to interfere with those child workers who had secured an employment certificate under the old law, provided no proof were forth-

[1]See the National Consumers' League Handbook for 1906, p. 5.

[2]Newsboys should be regulated by police ordinance in the cities of the state, as they are in New York City, where each boy secures his permit from the Department of Education and must wear his badge while selling papers.

coming that the old certificate had been obtained through perjury for a child then under thirteen. At the end of one year from the passage of the act—*i. e.,* after May 2, 1906—this exemption would expire, all working children having presumably reached the age of fourteen years. When we come to sections 5 and 6 we shall discover how this section is enforced.

Public Education Association Scholarships.

In Chapter VII an account is given of the promise made to the Legislature of 1905 by the Public Education Association of Philadelphia, to furnish "scholarships" to those Philadelphia families which, after careful investigation, were found to be in actual need of the two or three dollars a week earned by a thirteen-year-old member of the family, which income would be cut off if the minimum working age were raised to fourteen years. This promise, made to further the passage of the factory bill, has been scrupulously kept by the association. And a brief discussion of the results of this "scholarship" plan, whose effect was to make possible the immediate enforcement of the new statute *in every case,* throughout the city, will throw light on the working of this section.

To begin with, it must be kept in mind that the amount of the scholarship has varied with the earning capacity of the child, *i. e.,* from two to three dollars a week; that these scholarships have been awarded only where the father was dead or disabled; and, finally, that they have been given only as the last step in a general plan which promised a decent maintenance for the family, and its eventful self-support. A few statistics,[3] covering the first year the scholarship plan has been in operation, will show how carefully these wise conditions have been observed:

[3]Kindly furnished by the Secretary, Miss Dora Keen. For additional information see Twenty-fifth Annual Report Public Education Association of Philadelphia, pp. 48-51.

Number of applications, 132; awards, 27; amounts, $2, $2.50 or $3 per week; duration, 19 for periods of less than one year, 9 (out of the 19) for less than six months; nationalities, varied: Irish, American, Jewish, German, Italian, Polish, Austrian, about in the order named, together with a sprinkling of English, French, Russian and Bohemian; school grades of the twenty-seven to whom scholarships were granted, one of the second grade, eight each of the third and fourth grades, four of the fifth grade, three of the sixth grade, one of the seventh grade, and one in the high school; sources of applications, about two-thirds from the Bureau of Compulsory Education and the rest from school principals, factory inspectors, charitable societies and private individuals; violations of child labor law, frequent and would have been more common except for refusal of employers to hire children unprovided with work certificates.

From a list of typical reasons for awarding or refusing scholarships, submitted by the secretary, it appears that an award was made only where the total family income—including the earnings of the mother or older children, and the assistance of relatives and the church interested—was inadequate to maintain the family, and where the home conditions were such as to call for every effort possible to keep the family together; and that the award was refused where the family earnings were sufficient to maintain the family decently, or where relatives or the church stood ready to make good the deficiency or there was an insurance balance large enough to tide over the crisis, or where the mother's incompetence justified the breaking up of the family group, or simply because the truth could not be ascertained on account of objections being interposed to any investigation whatever. Unless co-operation could be obtained, the matter was dropped.

It will be observed that awards were made in only one case out of every five (twenty-seven out of one hundred and thirty--two). And the number of applications is de-

creasing: from forty-five the first three months to twenty the last three, or over fifty per cent. This leads the association to the inevitable conclusion that the scholarship plan is "a *temporary expedient,* not a permanent necessity;" that the community will soon adjust itself to the new requirement; and that "to spread abroad expectation of compensation is to do the poor an injury by undermining independence and self-sufficiency."

Vacation Permits.

Section 2 was the one depended on by its framers to keep all children under fourteen from securing employment (domestic service and farm labor excepted) even in the summer vacations. This prohibition of vacation work for boys or girls from twelve to fourteen years of age seems like a hardship to many needy families; and it is so regarded by some of the factory inspectors and by many school superintendents and principals, as well as by thousands of parents throughout the state. Family need was the more common reason advanced by the parents during the first summer the new law was in operation (1905), for the insistent demand that their twelve- or thirteen-year-old children be allowed to work for wages. But in a surprising number of instances the parents frankly stated that it was to keep their boys off the streets and out of bad company that they wanted work permits. Satan is still expected to find mischief for idle hands.

But, granting the actual financial distress in a few instances,[4] and the possibility of moral injury in many others, the case for the vacation permit is not established. To begin with, wherever the experiment has been tried, it has been found that the difficulty experienced by attendance officers in getting the young workers back to school in the fall was almost insurmountable. The employers were loath to part

[4]The scholarship investigations indicate that it is overestimated.

with their services, the parents were unwilling to forego the additional family income, and the children were just as unwilling to surrender their newly-found privileges. The freedom enjoyed, including the use of at least a portion of their wages as spending money, made the routine of school life seem tame and irksome. At one bound the young person had been lifted out of the school-day period and thrust into that of the worker for wages. The boy was too suddenly a man.[5] New York State tried the experiment of vacation permits, found out its mistake, and hastened to repeal the law. Even if such permits were to be granted, there would need to be a lengthy list of prohibited occupations, or a short list of those allowed.

However, if the right of the growing boy or girl to a normal, healthful childhood and youth is to be secured, then the state or the municipality must look after the young people during the long summer vacations, and must assume a large measure of responsibility for their welfare. This the City of Philadelphia is seeking to accomplish, by means of its seven vacation schools, its ten school gardens and its forty separate playgrounds. Every city in the state, large or small, must pattern after this admirable example, and organize its educational forces so as to carry the boys and girls over the dangerous vacation period, not only without harm, but with much positive good. The need is urgent: the duty of educators and of social workers and of *city councils* is perfectly clear in the matter.

Working Day for Minors and Females.

SECTION 3. No minor under sixteen, and no female, shall be employed in any establishment for a longer period than sixty hours in any one week, nor for a longer period than

[5]This psychical change in the boy or girl, by which the period of subjective childhood is prematurely cut off, appears to the writer as even more serious than the physical strain to which the immature child worker is subjected. And both alike bring moral evils in their train, from which it is hard to escape.

twelve hours in any one day. No minor under sixteen shall be employed in any establishment between the hours of nine post meridian and six ante meridian: *Provided,* That where the material in process of manufacture requires the application of manual labor for an extended period after nine o'clock post meridian, to prevent waste or destruction of said material, male minors over fourteen years of age, and who have not been employed in or about such establishment between the hours of six ante meridian and nine post meridian, may be employed, for not more than nine consecutive hours in any one day, after nine post meridian: *And provided further,* That in establishments where night work is hereby permitted to prevent waste or destruction, and where the nature of the employment requires two or more working shifts in the twenty-four hours, males over fourteen years of age may be employed, partly by day and partly by night: *Provided,* Said employment does not exceed nine consecutive hours: *And provided further,* That retail mercantile establishments shall be exempt from the provisions of this section on Saturday of each week, and during a period of twenty days beginning with the fifth day of December and ending with the twenty-fourth day of the same month: *Provided,* That during the said twenty days preceding the twenty-fourth day of December, the working hours shall not exceed ten hours per day, or sixty hours per week.

Section 3 (notable chiefly for its unfortunate provisos) is wholly bad, and for the following reasons:

1. Strictly on the merits of the case, and regardless of its effect on the fifty-five-hour movement (mentioned in Chapter VII), no minor under sixteen years of age, and no female of whatever age, should be employed for *more* than ten[6] hours in any one day or *more* than fifty-five hours in any one week.

2. The exemption of glass works and foundries—for that is what the "to prevent waste or destruction" proviso amounts to—from the prohibition of night work for male minors under sixteen is infamous! No boy under that age

[6]No other state (except North Carolina, which allows eleven) which has reached the point of limiting the working day for children allows more than ten hours per day.

ought to be working at night in any establishment, or in a glass factory even in the day time.[7] This was a compromise which the friends of the child labor bill were forced to accept in order to secure the rest, and which never received even grudging approval from anyone having the real interests of the working children at heart. Moreover, by first allowing night work, under certain conditions, for boys over fourteen, and then providing further that this child labor may be employed "partly by day and partly by night," a rigid enforcement of the prescribed nine-hour day is rendered almost out of the question. The inspector would need to be on duty in the glass factory or foundry twenty-four hours in the day.

3. The exemption of retail stores from the same prohibition, for the three weeks preceding Christmas, is as bad in principle as the other. In this case the work usually ceases by eleven o'clock; it is perhaps less exhausting for the worker, and it lasts for only a short time and to meet a special emergency. But even so, the exemption is unnecessary and unjustifiable; and public opinion will soon insist that employees over sixteen years of age be found for this extra night work, and the others be sent home at the usual hour.

That the factory inspector has made no systematic attempt to grapple with the former problem is perhaps excusable, with the odds so strongly against him. But with the active and continuous assistance which the Consumers' League stands ready to afford throughout the state, Mr. Delaney should undertake to compel the retail stores to obey the ten hour a day restriction, which is binding on all stores from December 5 to December 24, whether they are

[7]The boys in the glass houses work all day one week and all night the next. They cannot go to day school or night school. They grow up ignorant and lead an irregular life."—Scott Nearing, Secretary Pennsylvania Child Labor Committee, in Charities and the Commons for February 3, 1906.

open evenings or not. At least, the Captain might postpone for a few days the annual midwinter recess of his deputies, which he thoughtfully granted them last year for the fortnight beginning December 20. During this same Christmas season of 1905 the Philadelphia Consumers' League reported to the factory inspector twenty-eight violations of the ten-hour limit[8]—and the deputies on vacation!

But it is not alone the glass works, foundries and retail stores which dare to disobey the prohibitions of this section. For example, cotton and silk mills and paper box factories, all of which employ large numbers of children between fourteen and sixteen, are sad offenders during the rush seasons. In the silk mills of the anthracite region, especially in the Lackawanna Valley, young boys and girls are working nights on twelve-hour shifts. In justice to the department, it must be stated that most of these children claim to be sixteen years old. In both Philadelphia and Pittsburg the time limit is constantly disregarded. So general is this defiance of the law at certain seasons of the year as to justify the statement made in the second annual report (1905-6) of the Pennsylvania Child Labor Committee,[9] that factories "do not hesitate to work overtime whenever it may suit the convenience of the manager."

Employments Prohibited to Minors.

SECTION 4. No minor under sixteen years of age shall be permitted to clean or oil machinery while in motion, or to operate, or otherwise have the care or custody of, any elevator or lift.

Both these restrictions have met with favor on the part of employers generally, and have given the inspector little trouble to enforce. A much larger list of prohibited occupations should appear in the next factory act.

[8]See the Fifth Annual Report of the Philadelphia Branch of the Consumers' League of Pennsylvania, pp. 8 and 9.

[9]P. 8.

Employment Certificates.

SECTION 5. It shall be unlawful for the owner, superintendent, lessee, or other person in charge of any establishment where persons are employed for wages or salary, to employ any child between the ages of fourteen and sixteen years, unless there is first provided, and placed on file in the office of the establishment where said child is employed, a certificate in the form provided by the Chief Factory Inspector, which certificate shall be uniform throughout the State. It shall be the duty of the Factory Inspector or any of his office force, the deputy factory inspectors, or of the city or borough common school superintendents within their various jurisdictions, or of the principal teacher of the common schools in localities not under the jurisdiction of any city or borough superintendent, or of their respective duly authorized deputies, to issue the employment certificate hereinafter prescribed. No principal teacher shall be authorized to issue said employment certificate within any district over which a superintendent has jurisdiction. The district of such city or borough superintendent or principal teacher shall be the same as that in which the child seeking an employment certificate resides.

SECTION 6. The employment certificate shall state the name, age, date, place of birth, and description (including color of eyes, hair and complexion) of said child, its residence, and the residence of its parent, guardian or custodian, and the ability of said child to read and write simple sentences in the English language, that it has complied with the educational laws of the Commonwealth, and is physically able to perform the work to be required of it.

Provided, That before any such certificate of employment is issued, the person authorized to issue the same shall first demand and obtain of the parent, guardian or custodian of said child an affidavit, sworn to before any officer authorized to administer oaths, made by him or her, stating the age, date and place of birth of said child; and shall further demand and obtain a certificate of said child's birth, as kept by any public authority, or, transcript of the record of its birth, baptism or circumcision, as kept by any religious denomination, or, in the case of a foreign-born child (if such evidence of age be lacking), a true copy of the passenger manifest, passport or official record filed at the office of the Commissioner of Immigration at the port of arrival, as corroborative evidence of the

truth of the facts set forth in the affidavit; and shall note in his statement, as aforesaid, the character of such record and by what public or religious authority the same is issued: *Provided, however,* That where no such transcript of public or religious record, or passenger manifest, passport or official record, as aforesaid, of said child's age is obtainable, the same may be substituted by a statement signed by the principal teacher of the last school which said child attended, certifying that said child has received instruction in reading, spelling, writing, English grammar, and geography, and is familiar with the fundamental operations of arithmetic and has completed the course of study in the common schools prescribed for the first five years, or a course of study in other schools equivalent thereto. At the time of the issue of the employment certificate, the person so issuing the same shall make one copy thereof, which copy shall be filed, within ten days from the date of its issue, in the office of the common school superintendent in the district in which the child holding the certificate resides; and in districts not having such a superintendent, the said copy shall be filed in the office of the Chief Factory Inspector, and shall be subject to the inspection of the public. The certificate of the registration of birth, baptism or circumcision, or, in the case of a foreign-born child, the copy of passenger manifest, passport or official record, as hereinbefore prescribed, or, in the absence of such transcripts, the statement of the principal teacher, certifying that such child has received instruction as prescribed, as well as the affidavit of the parent, guardian or custodian, shall be filed with a copy of said employment certificate. The certificate when issued shall be the property of the said child, who shall be entitled to a surrender of the certificate to him or her by the employer whenever said child shall leave the service of any employer holding the certificate.

These two enforcement sections were the ones upon which the greatest stress was laid in the child labor campaign described in Chapter VII; and though a recent decision of the Superior Court, to be referred to later, has declared a portion of section 6 unconstitutional, admirable results were obtained while the law stood, and progress still lies in the same direction. Results were sought to be accomplished

(1) by transferring the power to issue the employment certificates from the aldermen and justices of the peace, or the factory inspectors, to the public school superintendents and principal teachers, or the factory inspectors; (2) by removing the temptation of a fee for each certificate issued; and (3) by requiring, in addition to the former affidavit of the parent or guardian, corroborative evidence of age, or, in default thereof, the completion of five years of school. A further requirement, that each work certificate should contain a careful description of the holder, was expected to prove valuable for purposes of identification, and so to put a stop to the unscrupulous practice of substituting one child for another when the certificate was applied for.

The old law put a premium on perjury, as success was almost certain and the risk of punishment if detected practically nothing. Many parents, especially foreigners, may not have realized the character of an oath when they took affidavit so glibly; but may have thought, as the Public Education Association has suggested,[10] that they had merely "bought the certificate off a man at the corner for a quarter." In actual practice that was all it amounted to, and the performance was one not calculated to train for good citizenship.

Early Operation of Law.

A somewhat detailed study of the practical administration of this child labor law will disclose both its strength and its weakness. Unfortunately, the act went into effect immediately (May 2), before the necessary blank forms could be printed; and the first ones to be issued from Harrisburg were faulty and had to be revised. To add to the confusion, certificate forms were sent to notaries and others who had no official use for them, but who forthwith began to issue employment certificates on simple affidavit in the

[10] In a letter to the members of the Legislature, dated March 8, 1905.

good old way. Nor would they stop until several of them had been prosecuted by the department and fined.

Again, it took some time for principal teachers to understand that they must not attempt to issue certificates in districts having city or borough superintendents, and for county superintendents to perceive that (for some inscrutable reason) they were out of it altogether. And, finally, by the time the blanks had been corrected and the intricacies of the law explained and the parents had learned where to go for the new certificates, the schools had closed and the teachers had scattered to the four winds. Even as late as the latter part of July the new system was hardly in working order, but by the middle of September it was going smoothly. This was partly due to the educational work of the Pennsylvania Child Labor Committee, which had been sending copies of the new law with explanations to notaries public, school superintendents and associations of manufacturers throughout the state; and to work of a like sort, by the Consumers' League, among the larger retail stores of the commonwealth.

In Philadelphia the factory inspectors, who had begun the work of issuing employment certificates, were ordered by their chief to refrain from issuing the certificates, which were hereafter to be procured only at the City Hall from the Bureau of Compulsory Education. But after a few months this regulation was partially relaxed, so that later some certificates were issued by the deputies. Throughout the rural sections of the state, where the deputies remained but a few hours or a day in a locality, they found it especially inconvenient to exercise this function of their office, and were glad to turn it over to the school authorities, who are accessible at all times.

A matter over which there was contention was the construction of the phrase "or of their respective duly authorized deputies" (section 5). This same section authorized city and borough superintendents, or principal teachers, to

deputize the performance of this duty; but it also forbade a principal teacher "within any district over which a superintendent has jurisdiction" to issue a certificate. Query: Might such principal teacher act as deputy for a superintendent when he or she could not act in the capacity of principal teacher? Persons back of this child labor law, and who helped to frame it, said "No." Superintendents and others interested said "Yes." The point has received no judicial decision. Superintendents deputized their teachers, attendance officers, probation officers, and even the borough chief of police.

Educational Tests.

In practice, the provision requiring the examiner to test the child's ability to "read and write simple sentences in the English language" was satisfied by permitting the child to stumble along through a piece of reading that a third grade pupil should handle with ease, and then telling him to sign his name to the application blank.[11] Even at the Bureau of Compulsory Education, Philadelphia, no harder test was applied or thought necessary.

The following clause, requiring that the applicant should have "complied with the educational laws of the commonwealth," was usually neglected altogether or else applied only to the preceding year. But the superintendent of schools at Pottsville declared that it meant far more than the preceding year. He stretched the time to the full extent prescribed by the compulsory education law, *i. e.*, from the eighth to the thirteenth birthday; and he concluded that any normal child who had attended school regularly during that period must have completed the fifth year, the grade required of all children who could not bring proof of age. He therefore held all to that standard, and issued no employ-

[11]For this latter performance the child had, if necessary, been carefully coached.

ment certificate to a child who had not completed the fifth year of school.

This superintendent defended his position by two main arguments: First, that the prescription either meant all that it implied or else it was meaningless, since there was no logical half-way point to stop at. And second, that only by such broad interpretation was the American boy or girl given the same protection afforded the foreign-born child, the one who was least likely to be able to produce corroborative evidence of age.

Physical Test.

The physical examination requirement was practically a dead-letter throughout the state, only the most conspicuous weakness or deformity receiving any attention from the examiner. As a result, some wretchedly frail specimens of childish humanity were permitted to enter the ranks of the workers and assume that heavy burden.

Corroborative Evidence of Age.

There was a definite, prescribed order in the corroborative evidence of age required. The plainly expressed preference was for the record as kept by a public authority, usually the board of health, or by a religious denomination, or by the commissioner of immigration. And only in lieu of such record should the statement of the principal teacher as to the grade reached by the child be accepted. As carried out by the examiner, and sanctioned by the chief factory inspector, these were put on a par, with the school record playing quite as important a part as the others.

There is a marked difference in the ability of various foreigners to produce evidence of age from their home government or their church. Italians, for example, have an easy time of it; Russians a hard time. Often when a foreign parent has a birth record of his child it is an ornate

official document issued by his native state, and he declines to part with it to the examiner as the act (section 6) seems to require. Accordingly, in such cases, a copy was made and filed with the affidavit, and the original was returned to the owner. This was a substantial compliance with the law, and worked no injustice.

Fees for Certificates.

It probably has been noticed that no remuneration was provided, not even a small fee, for issuing these employment certificates; and this was naturally objected to by those upon whom the new burden had largely fallen. The claim was even made that this part of the act was unconstitutional, in that no local official could be compelled to perform commonwealth duties without pay. But it hardly needed a decision by Judge Wheaton[12] on a similar provision in the anthracite[13] mine law of May 2, 1905, to assure us that this contention was not well founded. The public school is of more than local concern, and its officers have a corresponding status and cannot escape the responsibilities. And, further, there was a short-sighted objection to the new law on the ground that it tended to bring the school and its teachers into disrepute, or even to excite active hostility against them.

Child Labor Law Overthrown.

The excellent results obtained under this first effective child labor law known to Pennsylvania were cut short by a new development arising from a decision of the Superior Court (already referred to) in the case of *Collett* vs. *Scott,*[14] confirming the decision given by Judge Wheaton, of the Luzerne County Court of Common Pleas, to the effect that

[12] Luzerne County Court of Common Pleas. Opinion rendered October 13, 1905 (not reported).

[13] There is a separate code for the bituminous mines.

[14] 30 Pa. Superior Court, p. 430. Opinion rendered March 12, 1906.

the employment-certificate clauses of the anthracite mine act of May 2, 1905,[15]—similar to the corresponding clauses of the factory act of same date—were in violation of section 1 of the fourteenth amendment to the Federal Constitution.

It is significant for the future of child labor restriction that Judge Rice should begin by conceding the claim that the Legislature has power "to prohibit the employment of minors under a certain age in or about anthracite coal mines," and that it also may "prescribe certain educational qualifications as a condition precedent to the right of minors who have reached the specified age to be so employed, without imposing the same restrictions upon minors before engaging in other employment."

"But," says the justice, "there remains the serious objection . . . that the legislative provisions under consideration make a discrimination between minors of the same sex and age, the same mental and physical ability, the same experience in this avocation [vocation?] and the same educational qualifications, permitting members of one class to obtain employment certificates, without which no minor can be employed at all, upon much easier terms than are required of members of the other class." The opinion then enumerates the members of each class, as described in the law under examination, pointing out the additional requirements [safeguards, the judge might well have termed them] of an educational character imposed upon Class II, *i. e.,* those who are unable to furnish the prescribed corroborative proof of age. "The first section of the fourteenth amendment does not prohibit classification of the subjects of legislation, and the application of different regulations to different classes." But, adds the judge significantly, "Arbitrary selection can never be justified by calling it classification." And "where it is apparent that it [the legislative classification] is not based on any reasonable ground, or any difference which bears a just and proper relation to the subject

[15]P. L., 344.

with reference to which the classification is attempted, but is a mere arbitrary selection, it will not relieve the statute from the equality clause of the fourteenth amendment."

The contention of counsel for the Pennsylvania Child Labor Committee, at whose instance the appeal was taken,[16] that "the differences in the requirement for the certificate were merely differences in the manner of establishing the age of minor children applying for the employment certificates as provided in the act," seems a trifle far-fetched. And the decision does not justify the stricture made upon it by Mrs. Florence Kelley, in the opening sentence of her article in Charities and the Commons for May 5, 1906:[17] "The right to ignorance has been judicially vindicated." It would have been more to the point to say: "The obligation resting on those who would frame legislation, not to confuse 'arbitrary selection' with 'classification,' has been judicially confirmed." Nor is Mrs. Kelley justified in assuming that "the age limit is not a workable restriction in Pennsylvania," when (as already noted) Judge Rice begins by conceding the right of the Legislature to impose both *age* and *educational* qualifications upon the labor of children. But we heartily concur in, and advocate in the following chapter, a later suggestion of Mrs. Kelley's: "If the difficulty in Pennsylvania lies in the partial and discriminatory nature of the recent statute, by all means let *all* the candidates for employment be uniformly required to reach a given stature and to accomplish a specified amount of school work."

The imperative need for a new child labor statute, that shall meet all requirements of law and humanity, will be apparent when we trace the remaining steps that followed logically upon this decision of the Superior Court. A few weeks later Captain Delaney, in response to his application to the Attorney General, received from that official a ruling to the effect that this decision implied the unconstitutionality

[16] See editorial in Charities and the Commons for February 10, 1906.

[17] P. 189, article entitled "Judge-Made Ignorance in Pennsylvania."

of the similarly worded employment-certificate sections (5 and 6) of the factory act. Armed with this ruling, Mr. Delaney issued[18] a circular letter of instructions to *"Deputy Factory Inspectors (and others concerned)"* in which, after referring to the recent decision of the Superior Court, he states that the Attorney General's ruling based on the same confirms his own judgment that the new child labor law is "unconstitutional in two particulars: first, in its double educational standard for children of the same age; second, in its limiting the employment of children in Pennsylvania to those who have complied with the educational laws of the commonwealth." The first contention is in plain agreement with Judge Rice's opinion; the second is just as plainly in direct contravention of it. Useless and almost mischievous, as we have discovered that provision to be, it is *not* unconstitutional.

Captain Delaney then goes on to direct that his deputy inspectors and others who issue employment certificates "shall no longer require an age affidavit to be corroborated by a transcript from a public or a religious record of birth, baptism or circumcision;" and that they "shall no longer require a statement of any kind whatsoever from a teacher as to a child's educational qualifications." And then, to put the matter more definitely still, the letter adds that hereafter "the only conditions required in order to issue an employment certificate to a child are the following: a parent's, guardian's or custodian's affidavit showing that the child is at least fourteen years of age; ability on the part of the child to read and write the English language, and physical ability in the child to perform the proposed labor." In a word, the old-time scandalous condition of affairs which prevailed before the new law went into effect is restored. The old lying affidavit, with the accompanying farcical test of the applicant's ability to read simple sentences and write his

[18]About June 1, 1906.

own name, and with virtually no physical test, is once again in effect.

The Philadelphia Board of Education refused compliance with these directions until it had received an official ruling from the City Solicitor. Its Bureau of Compulsory Education then fell into line, and is now grinding out work certificates by the hundreds. Unscrupulous parents and guardians are having their innings, and scores of certificates are being issued in Philadelphia alone to persons who would hardly have dared to apply while the provisions requiring corroborative evidence of age were in force. The writer is informed that similar lamentable conditions have come to prevail in the state at large, and there is every reason to believe that such is the case.

Mr. Delaney might have refrained from pushing this matter to an issue by requiring a ruling from the Attorney General, and have gone on enforcing the new law in its entirety until stopped by legal process. But this would have been only a postponement of the crisis, which must be met eventually.[19]

[19]Proof of which is the decision handed down in July (1906) by Judge Staake, Court of Quarter Sessions, Philadelphia, in the case of *Commonwealth* vs. *MacMillan Hoopes.* Though believing "that a well-considered, thoroughly digested and carefully drafted child labor act is beneficial to the commonwealth," Judge Staake was forced to the conclusion reached by Judge Rice (whose opinion is quoted at length) that "arbitrary selection can never be justified by calling it classification;" and that the certificate section of the child labor act was contrary to the equality clause of the Fourteenth Amendment to the Federal Constitution, and therefore void.

CHAPTER XI.

Child Labor Code (Continued).

Relation to Compulsory Education Law.

Though the temporary protection afforded the child worker by the factory act of 1905 has been largely withdrawn through the overthrow of the enforcement provisions of that act, friends of the children are resolved that Pennsylvania shall not lose step with the national movement which is making for the children's release from toil or their safeguarding while at work. Accordingly, a new child labor code is in process of construction, and the writer has reason to believe that the suggestions offered in the last chapter and in this are not far astray from the trend that new legislation will take.

To begin with, those portions of the child labor law which relate to the minimum age of employment and to the intermediate period (fourteen to sixteen) during which the alternative is either a work certificate or school, are but supplements of the compulsory education law. Accordingly, the two should be merged, or brought into harmony with each other, and the resulting code should then be enforced in its entirety by the school authorities throughout the state.[1] Each school district should be obliged to maintain an efficient corps of attendance officers, proportional to its school population. The jurisdiction of the Department of Factory Inspection over that part of the factory law whose real intent is the prolongation of school life should thereupon cease.

[1]In Connecticut the enforcement of the child labor law is in the hands of agents appointed by the State Board of Education, with additional inspection by the town authorities.

In an article in "Charities" for August 26, 1905, on "Child Labor and the Schools," based on her experience as a social worker and including a three months' inquiry which she had just completed, Miss Sanville[2] declares: "Each new fact disclosed by the three months' inquiry arrays itself on the side of the Compulsory Education Bureau as an adequate working machine to keep children out of work, as well as in school, rather than the factory department. The schools are the natural guardians of the children, and concern themselves solely with their welfare; and an attendance officer has, or should have, no other duties than looking after the children in his district. On the other hand, the factory inspectors have required of them many other duties than the enforcing of child labor legislation. Again, the school has always some information on hand concerning a child to assist in keeping track of him, and by simply determining whether or not he is attending school, can also determine whether or not he is complying with the law; while a factory inspector knows merely that he discharges a child from a given place, but has no means of ascertaining whether he immediately proceeds to obtain employment elsewhere . . . there to wait another chance visit from an inspector. Finally, the attendance officer has, both in the school record and in his contact with the home of the child, some sort of a gauge of the child's age; but the factory inspector must judge solely by his appearance—and on this very unsound basis alone can question the legality of his certificate. . . . The upshot of the whole matter is, . . . that the chief responsibility for our working children rests with the schools rather than with the factory department. . . . If the children are at school, they are not at work; it is all that is needed."

How slight is the hold over the working boy now possessed by the factory inspector, receives ample illustration

[2]Secretary of the Philadelphia Branch of the Consumers' League of Pennsylvania.

every week in the year. A lad driven out of one factory, in the annual or semi-annual roundup of the deputy, soon bobs up serenely either in the same or another factory, or in a railroad office clothed in that magical suit of blue which renders him invisible to the official eye—a messenger boy's uniform! And, even if the youngster is routed out of his new position, the present gap between factory inspector and attendance officer is not filled: there is no assurance that the child *no longer at work* means the child *at school.* The divided responsibility must be united, and assumed by the school. With the school authorities issuing the work certificates and attendance officers acting on them, it would not be long before parents, children and employers alike would come to understand that these certificates simply "declare that the child has complied with the school laws and is, therefore, from the school point of view, legally qualified to work."[3] In other words, the *educational* and not the *industrial* side of child life would receive the emphasis, and that is exactly what should be insisted upon for growing children.

A further advantage would accrue from this partial merging of the child labor and the compulsory education laws, namely, that the minimum age for work and that for conditional exemption from school attendance would rise together. We could not have the present unfortunate discrepancy between the two which allows a child of thirteen, provided his regular employment be domestic service or farm labor, to leave school, while children who engage in other occupations are protected by the state to the extent of an additional year of school. Consistency between the two laws can now be obtained only by two distinct legislative processes, often separated by a number of years, to the great confusion of the entire movement. The logical oneness of the two laws is perhaps best seen when they are tem-

[3] See "Charities" for June 10, 1905, article by Miss Marot entitled "Progress in Pennsylvania."

porarily out of harmony with each other. Another strong reason for taking this step is that thereby the Department of Factory Inspection itself can hardly fail to be greatly improved. A most serious drawback under the present arrangement is that the inspector's duties are not homogeneous, so as to call for uniform qualifications for all the deputies. The best man for searching out children under age may be the poorest for looking after dangerous machinery and the like. Rarely is the same man suited for both. With the child labor duties eliminated—except as to hours of labor for workers under sixteen—the inspector could concentrate his attention more closely than ever before upon machinery, elevators, fire-escapes, sanitation, light and air arrangements, etc. It would then be clearly recognized, as it is not now, that the prime requisite for a factory inspector is a practical knowledge of machinery and a fair amount of technical skill; and it could then be seen that a civil service test is both necessary and practicable. In fact, we might hope in time to evolve a factory inspector of the type found in England, where he is a thoroughly trained man, a graduate of one of the great universities or of a technical school, and a student of the law in addition; and where the position is a life one, carrying some distinction for the incumbent. Of course, we ought not to get all this for twelve hundred dollars a year!

Age Certificate After Sixteen.

But even as they stand, these sections are faulty. In the first place, it is not enough that children under sixteen shall be provided with certificates. To strengthen the hands of those who are trying to enforce the new law one serious defect should be remedied by the insertion of a clause providing that any child worker claiming to be sixteen years of age or older shall, on demand of the inspector, produce an age certificate properly certified and substantiated by

appropriate corroborative evidence.[4] Otherwise, in time there will be no boys or girls between fourteen and sixteen except honest ones and small ones. At present the mere statement by a child that he or she is sixteen years old must be accepted by a deputy, unless there is legal evidence to the contrary. In that case the child might be dismissed, though it is doubtful whether the employer could be prosecuted unless his previous knowledge of the facts were proven.

Issuing and Filing of Certificate.

Then, again, the matter of issuing employment certificates should be left with school superintendents—city, borough *or county*—only, with power given them to deputize for the actual performance of the duty.[5] This is done in cities and boroughs, but not in the counties at large, where the work is assigned to "principal teachers." This created a great deal of unnecessary friction and distress during the summer of 1905 in the villages and rural districts, where the teachers were miles away and no one was at hand to issue the certificates. Had the power to do this been in the hands of the county superintendent, a responsible party whose headquarters are fixed and well known, he would have appointed a deputy in each school district, whether a teacher or not, just as the city or borough superintendent arranged for in his own bailiwick.

And with this admission of the county superintendent to a share in the responsibility of issuing employment certificates there would go a corresponding change in section 6, to the effect that certificates issued outside the limits of a

[4]This requirement is laid down in the New York law, and must be adopted by any state which prefers to place the emphasis on age rather than on mental and physical proficiency.

[5]A happy combination of state and local power might be effected by placing the responsibility for the issuing of employment certificates upon the State Superintendent of Public Instruction, who would, in turn, carry out the law through the aid of the city, borough and county superintendents.

city or borough, and hence by the county superintendent and his various deputies, should be filed in the office of the county superintendent where they would be fairly accessible to any who might have occasion to examine the records. The present arrangement, by which such rural certificates must be filed at the factory inspector's office in Harrisburg, is a great inconvenience to all concerned and an unintentional discrimination in favor of the boroughs and cities.

Requirements for Certificate.

The first paragraph of section 6, describing the certificate itself, while imposing a rather onerous burden upon the party who fills it out, is unobjectionable as to the personal description and residence requirement, and also as to the one relating to physical ability. But as to the educational provisions of this paragraph, namely, ability to read and write simple sentences in the English language and compliance with the educational laws of the commonwealth, the first is valueless as a means of discovering the child's ability to read or write *comprehendingly, intelligently,* as befits a child whose school days are at an end; and the possibilities of the second, as we have seen,[6] have been developed by only one man in the state. The path that leads straight out of all this difficulty is to require all alike to have completed a certain prescribed year of our public schools, or its equivalent in private or parochial schools, in addition to having reached the fourteenth birthday. This would be plain and definite, and would act as a spur for indifferent or careless parents, and so aid in solving the truancy problem.

A properly conducted state bureau of vital statistics would aid in establishing proof of age for all children born within the commonwealth. But it is hard to discover any generally applicable method for obtaining corroborative evidence of age for those unprovided with such evidence by church or state. Partly because of this recognized difficulty,

[6]Chapter X.

and partly because after all a minimum age requirement is but a rough approximation of the average period at which society believes the working life may safely begin, there is a growing recognition of the fact that the imposition of such an age test is of far less importance than the prescription of a definite standard of mental and physical development. Such a standard would seem to call for the completion of the fifth, or a higher, school grade, properly attested by superintendent or teacher; and for a physical examination by a responsible physician, which should discover a minimum height of five feet and a minimum weight of eighty pounds, together with a fair degree of health and strength.[7] No boy or girl who fails to establish by proper evidence that he or she has reached the age of sixteen years should be exempt from this requirement.

Is it too much to hope that in the not distant future Pennsylvania (along with other progressive commonwealths) will not allow her future citizens to cut short their scholastic preparation for the responsibilities of citizenship until they shall have completed the *grammar school*, or its equivalent, or have reached the age of sixteen years? With special "rush" classes for the foreign children of our cities, and with proper enlargement of our public school curriculum, through manual and other training, which shall stimulate the interest and develop the powers of every normal child, this high requirement would prove no hardship.

A decade of years ago Mrs. Florence Kelley, then chief factory inspector of Illinois, in an address before the twenty-third National Conference of Charities and Correction, expressed a hope that will come in time to have the force of prophecy: "Let us have every child in school every day of the school year, until he or she is sixteen years of age. Let us have manual training all the way up, and technical training the last two years. Let us prohibit all employment of children for wages until they are sixteen years of age, except

[7] See the National Consumers' League Handbook for 1906, p. 42.

at farming or gardening. Then, after ten years of rigid enforcement of this, let us see whether we have not taken an unexpectedly long step in the direction of solving several problems connected with delinquency, the tramp difficulty, and the incompetency of the unemployed."

Age Affidavit.

Whether the provision for an affidavit of the child's age by parent or guardian should remain in force is doubtful. As a means of getting at the truth it was long ago proved worthless, and its educational value for the one taking the oath is still more questionable. However, if the affidavit is to be retained, by all means let it be taken before the same school authority who issues the employment certificate, and to whom should be given the power to administer oaths. The affidavit would then be taken before the party who was most immediately concerned with the educational welfare of the child, and the one who possessed, or should possess, the best evidence available as to the children's ages.

This information is supposed to have been secured to the school authorities by section 4 of the act of July 11, 1901,[8] which enacts that "the assessors of voters of every district, when not notified . . . to the contrary by the school board," shall make a "careful and correct list" of all children of school age (between six and sixteen years) in his district. This list must contain the name, date of birth, sex, nationality, residence, etc., together with the name and address of the parent or guardian, and the name and location of the school where the child is enrolled, or the reason for non-enrolment; and, finally, the name and address of the employer of any child under sixteen, when the child is regularly employed. This enumeration, after being approved by the secretary of the school district, is to be sent by the assessor to the county commissioners, who shall send

[8] P. L., p. 661. School Laws and Decisions, 1903, pp. 89-91.

it to the secretary of the school district. It is probably intended that the secretary of the school district shall pass all this information on to the various principals or teachers in the district. What the law actually says is that the secretary "shall immediately furnish the principal or teacher of each school with a correct list of all children in his or her district who are subject to the provisions of this act." Such a "correct list" could be of little value unless it contained the data on which the list itself was based.

The law explicitly states that the assessors are to make up their lists "at the spring registration of voters, or as soon as possible thereafter;" and that the county commissioners shall send certified copies of these lists to the school district secretaries "prior to July 15 of each year," the latter, in turn, to make up their lists for the superintendents and teachers "immediately"—say, not later than August 15 or September 1. But the superintendents complain that, through gross negligence somewhere, they actually receive the lists in November or December, when the school year is well advanced. Were the city, borough and county superintendents to get this information at the beginning of the school year, and were it as detailed as that secured by the assessors, it is easy to see how completely the superintendents would be masters of the situation in the granting of certificates.

Fortunately, there is an excellent proviso in this school law, to the effect that, "prior to February 1 of any year, any board of directors or controllers of any school district may authorize such enumeration to be made by the attendance officers or other persons . . . under the same conditions as . . . for assessors." And, further, attendance officers or school superintendents or school board secretaries have power to add to the list from time to time. Certain boroughs are planning to do their own enumerating hereafter, so as to have the information more reliable and in time to be of use.

Fees for Certificate.

All fees now paid in the securing of employment certificates should be abolished. If no affidavit were required of parent or guardian, the notary's fee (twenty-five cents) would disappear. If the (future) State Bureau of Vital Statistics were compelled to place copies of its birth records for each county, borough or city in the hands of the respective superintendents, the fee so often paid for corroborative evidence would likewise drop out. Nor should the school superintendent or his deputy, who alone ought to have the power to issue these certificates, be recompensed by a fee—and for two reasons. In the first place, a considerable number of the applicants can ill afford to pay twenty-five or fifty cents for the mere privilege of working. And, in the second place, there would be no guarantee against the reappearance of the abuses which prevailed under the old law. Accusations that certificates had been handed out for the sake of the fees would certainly be made, no matter how unjustifiably, and the burden of proof would somehow be shifted from the accuser to the accused. However, the task is a heavy one, especially in manufacturing districts, and the overworked and underpaid school men and women should not be asked to assume an additional burden without additional pay. In the cities and boroughs this would perhaps take the form of a clerk or clerks supplied and paid by the school district or by the state, the number of said clerks depending on the school enrolment. Even in the rural districts the same arrangement might be feasible, the attendance officer serving as clerk when requested so to do. The active support and co-operation of the school authorities is indispensable in this matter, and the best way to retain it is not by abusing their patience.

IN CONCLUSION.

So many times has the name of Captain Delaney been used in the last few chapters, and often in words of implied censure, that the reader may have inferred that the existing evils are to be laid at the door of the chief factory inspector. Such an inference is only a half-truth, at best. For example, it was unfortunate for Mr. Delaney, as he must have discovered before this, that at the time the child labor fight was on he should have pursued a course which was regarded as not straightforward,[1] and that since the act went into operation he should have assumed at times an unfriendly attitude toward certain requirements of the very law he had sworn to uphold.[2] It is a point in Mr. Delaney's favor, however, that during the first five months of his administration, and under the old law, he should have dismissed nearly two thousand children found to be illegally employed, as against some two hundred dismissed by Mr. Campbell during the preceding seven months. Several times as many children have been dismissed by the Captain's deputies as by those of all his predecessors together; and since about the beginning of the year 1906, with the co-operation of the Pennsylvania Child Labor Committee, heavy fines have been imposed, even in Philadelphia, where prominent manufacturers and merchants had so long been permitted to set the

[1] See Chapter VII.

[2] "The features which you object to were forced on us against our most vigorous protest by the child labor organization. . . . . The frills and nonsensical features that you protest against are to be eliminated from our certificate. . . . Our next legislature will undoubtedly correct the worst evils of that part of the present law known as the child labor certificate."—Quoted from a letter of Captain Delaney, in *National Glass Budget* of May 26, 1906.

law at defiance. However, the attempts at enforcement have been too spasmodic, and the ratio between prosecutions and violations (about one in every fifty for 1905) too disproportionate.

It may be conceded that a man of the Roosevelt type would have achieved results not dreamed of under the present régime. But his path would have been a thorny one. He would have discovered that, like the way of the transgressor, the way of the reformer is hard. To begin with, he never could have gotten the appointment!

The present incumbent of the office is a perfectly legitimate product of spoils politics—of "The System," as it has so aptly been styled. His political training and point of view are of the old order, which we would like to think is being rapidly replaced by a new standard of political ethics. Personally, Mr. Delaney is a man of pleasing address, who says frankly that he is a politician, and adds that no one but a politician could run the office he holds. Certain it is that none other than a cautious politician could have remained in the office at all, subject as it has been to boss domination.

We may, then, get our final perspective on the department in a wholly impersonal way, without fearing to do injustice to any man. Viewed in this light, it is hardly too much to say that the people of Pennsylvania are getting just as good an administration of the office as they insist upon having, or even, perhaps, as they want. The writer has heard a doubt expressed, by a close student of political affairs and especially of the subject we are discussing, whether a majority of the citizens of Pennsylvania really care for an effective enforcement of the factory law, and would stand by the man who would give them such an administration. It is probably nearer the truth to say that there has existed an active and unscrupulous minority which was personally interested in the perpetuation of certain abuses, and

that an apathetic majority could not realize that executive officials need the hearty co-operation and sympathy of those who stand for righteousness, to offset the forces of evil which are so vigilant in their own defense.

Is the great industrial Commonwealth of Pennsylvania determined that the Department of Factory Inspection shall be run in the interest of those, *and those only,* whom the factory law was enacted to protect? Pennsylvania should assume her rightful place of leadership in this splendid experiment in the realm of social politics.

APPENDIX.

Factory Legislation in England (1802-1847).

The counties in England where water-power was most abundant were those of Derbyshire, Nottinghamshire, and especially Lancashire. As these were but sparsely inhabited, the sudden demand for thousands of workers had to be met by importations from the more populous districts of England and Scotland. Accordingly, the custom soon arose of procuring apprentices from the parish workhouses of the large towns, and, once off their hands, the overseers of the parish paid no further attention to the offspring whom they had thus bound out. The children were worked in day and night shifts, were badly fed, clothed and housed, were treated with great cruelty by their masters, and rarely was any attention paid to their health, education or morals.

At length, malignant fevers broke out in some of the factory districts, creating general alarm; investigation followed, and the demand soon arose for legislative interposition. Whereupon, the elder Sir Robert Peel—himself an employer of children to the number of nearly a thousand—secured the passage in 1802 of his so-called "Health and Morals Act," the first of the English factory laws.

This act, which applied only to apprentices, restricted the hours of labor to twelve a day; forbade any labor between the hours of nine p. m. and six a. m.; required the walls of factories to be whitewashed twice a year, and that enough windows should be provided to supply fresh air; compelled the masters to furnish each apprentice with a new suit of clothes yearly; insisted upon the attendance of the apprentices at divine service; and, finally, ordered that they should be instructed in reading, writing and arithmetic. The justices at quarter sessions were authorized to appoint visitors of such factories, with suitable powers.

The act had little other effect than gradually to do away with the employment of apprentices, and this was made possible by the removal of the factories from the more remote parts of the country to the centers of population, attendant upon the substitution of steam for water power. The children of the immediate neighborhood were now employed, and their condition soon became nearly as bad as that of the apprentices had been.

Further agitation of the matter was postponed by the breaking out of the Napoleonic wars, so that it was not until 1815 that the matter again came before Parliament. And it was only after two investigating committees (H. of C. 1816, H. of L. 1818-19) had reported in favor of factory legislation that an act no longer restricted to apprentices, but applying only to cotton mills, was passed in 1819.

This statute provided that no child might be employed under nine years of age, and that no person under sixteen years might be employed at night work for more than twelve hours a day.

The next English factory act (applying, like the former, only to cotton mills) was that of 1825, which strengthened the preceding act by compelling the attendance of witnesses at trials; by requiring proprietors to keep a record book containing the names of all children "suspected by the proprietor of being under nine years of age," with the signature of parent or guardian to the statement that such child was over nine years, which statement should exempt the proprietor from the penalties as to minimum age; and by lessening the number of working hours a week for children under sixteen, through an abatement of three hours on Saturday, thus initiating the Saturday half-holiday movement in England.

In 1831 the maximum age of restricted labor (in cotton mills) was raised from sixteen to eighteen years, and night work was now prohibited to all under twenty-one years of age. And an act was passed "to prohibit the payment, in

certain trades, of wages in goods or otherwise than in the current coin of the realm." This "Truck Act" applied to the manufacturers of cotton, woolen, linen, silk, fur, iron, steel, brass, leather, glass, etc.

As none of these acts provided for factory inspection,[1] they were as little enforced as were similar laws later on in Pennsylvania, and something more had to be done. The ten hours movement, then rising in England, found its Parliamentary champion in that well-known Irish Tory, Mr. Michael Thomas Sadler, whose investigating committee of 1832 brought to light the pitiable condition of the factory children in a way that roused the English public to a realizing sense of its duty toward them. And though the opponents of factory legislation were able to postpone further enactments for a brief time, by securing the appointment of the royal commission of 1833, yet the movement was not to be sidetracked for long. This commission, after a careful investigation, reported unequivocally in favor of further legislation, and the government was compelled to pass the Althorpe act that same year (1833).

This act—which was extended to cotton, woolen, flax and silk[2] mills—provided for an eight-hour working day for children between nine and thirteen years of age, and two hours of school attendance each day; lowered the maximum age for night work from twenty-one to eighteen years; substituted a surgeon's certificate for that of a parent or guardian; and, above all, authorized the crown to appoint four factory inspectors, who should have charge of the enforcement of the act. England had now set the pattern for all effectual factory legislation, by providing for a Department of Factory Inspection. .

In 1840 Lord Ashley secured the appointment of two commissions, one to inquire into the working of the present

[1]Except the act of 1802, and the "visitors" therein authorized were rarely appointed, and their visits (when made) usually perfunctory.

[2]The silk mills received certain favoring exemptions.

factory act, the other to investigate the condition of children working in mines and in factories not covered by the existing legislation. The first of these commissions, under the presidency of Lord Ashley, found that there had been a decided improvement in the condition of factory children since the last inquiry, but recommended several changes in the law, many of which were embodied in the act of 1844.

Part II of the second report[3] showed that in the unregulated trades children commenced work at from four to seven years of age, that they were often badly treated, and that the hours of labor were long and exhausting. The first of these trades to be regulated was that of dyeing and printing, in 1845, and others followed some years later.

The inquiry into the working of the act of 1833 was followed by the passage of Sir James Graham's act of 1844, which limited the hours of labor of women, as well as children, to twelve hours a day; reduced the hours of child labor from eight to six and a half; provided for the fencing of machinery, and the prompt reporting of all accidents to the district inspector; and materially strengthened the enforcement clauses.

At last, in 1847, Lord Ashley and his co-workers succeeded in gaining that for which they had so long been striving: the ten-hour working day for women and young persons. And this was the status of factory legislation in England at the time when Pennsylvania made its first attempt in the same direction.

NOTE.—For more extended information on factory legislation in England, see the following:

1. English Factory Legislation. Ernest von Plener.
2. The Modern Factory System. W. Cooke Taylor.
3. The Life and Work of the Seventh Earl of Shaftesbury. Edwin Hodder.
4. Evils of the Factory System. Charles Wing.
5. The Curse of the Factory System. John Fielden, M. P.

[3]Part I related wholly to mines.

6. The History of the Factory Movement from the Year 1802 to the Enactment of the Ten Hours Bill in 1847. "Alfred" (Samuel Kydd).

7. The Factory Acts. Alexander Redgrave.

8. The Reign of Law. Duke of Argyll.

9. "Capital" (pp. 365-515). Karl Marx.

10. The Condition of the Working Class in England. Frederick Engels.

INDEX