THE "EIGHT-HOUR LAW."

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Before entering upon a discussion of the language and construction of Act of August 1, 1892, known as the "Eight-Hour Law," a brief review of the acts of Congress relating to the governmental control of the number of hours service that shall constitute a day's work on the part of persons, employed in certain capacities, by, or on behalf of the United States, may be of service in suggesting its intended scope and effect.[1]

The first act, in point of time, that of July 16, 1862 (12 Statutes at Large, 576) provides that the hours of labor and wages of employés in the navy yards of the United States shall conform, as nearly as may be consistent with the public interest, with those of private establishments of a similar nature. "These provisions," the court held, in Averill *v.* The United States (14 Court of Claims R. 200), "were made in order that the wages of such employés should conform, as nearly as practical, with those paid by individuals in other establishments, and to prevent a disturbance of the prevailing rates in the immediate vicinity." That is to say, the government desired to adopt the rates established and generally accepted, rather than to pursue a course which might lead to dissatisfaction among the employés of individuals.[2]

The next Act, that of June 25, 1868 (15 Statutes at Large, 77), declares that "eight hours shall constitute a day's work for all laborers, workmen and mechanics, now employed, or who shall be employed, by, or on behalf of the United States." It was discussed at length, in the case of Averill *v.* The United States (*supra*), the court saying, that: "The eight-hour law resulted from an entirely different object" than the Act of 1862, "and was passed, in deference to a spirit of philanthrophy, which prevails, and which at times is urged with great earnestness by its supporters, that eight hours' labor is enough to be performed in

1 Siemen *v.* Sellers, 123 U. S. 276.
2 Collins *v.* The United States, 24 Court of Claims R. 340.

any one day, and that the condition of laboring people would be greatly improved and elevated if their physical work were restricted to that extent," leaving their compensation, however, "to be determined by the inexorable laws of business."[3]

In effect, this act, entitles the laborers and mechanics therein specified, to receive a day's wages for eight hours' labor, in the absence of an agreement on their part, providing that a day's work shall consist of a greater number of hours, and to receive additional *pro rata* compensation, in the event of their being called upon to work for a longer time in a calendar day. But, although it is in the nature of a direction to officers and agents of the United States, the act does not forbid them to make special agreements with laborers and mechanics, on behalf of the United States, by the terms of which a day's work may consist of more or less than eight hours.[4]

The courts of States where similar laws have been enacted, have reached the same conclusion. In Connecticut, the Supreme Court of Errors, when called upon to construe the Act of 1867 (General Statutes of Connecticut, 1875, page 194) which provides that eight hours shall be deemed a lawful day's work, unless otherwise agreed upon by the parties, held that: "The only effect of the statute, where a case falls within it, is to release the laborer from work and entitle him to his compensation for a day's labor, at the end of eight hours.."[5]

Throughout it seems to have been the policy of the courts to construe laws tending to establish the duration of a day's work, strictly, and to confine their operation to those cases alone which fall directly within their provisions. Thus, in a case where a laborer who had worked more than eight hours daily in the employ of one who was engaged in cutting and finishing granite, under contract with the United States, brought suit against the United States to recover additional compensation, it was held that the Act of 1868 (*supra*) did not apply, for the reason that there was no privity of contract between him and the United States, and that he was not employed by it, or on its behalf.[6]

With the exception of the Act of March 30, 1866 (First Supplement to R. S. U. S. 582) which directed the public printer "to rigidly enforce the eight-hour law," in the department under

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3 Collins *v.* The United States (*supra*).
4 United States *v.* Martin, 94 U. S. 400.
5 Luske *v.* Hotchkiss, 39 Connecticut, 219.
6 Driscoll *v.* The United States, 96 U. S. 421.

his charge, there was no further legislation upon this subject until the enactment of the law now under consideration. Congress, nevertheless, was beset by labor organizations, wishing to procure legislation which would imperatively require the enforcement of the Act of 1868. The President, also was called upon to issue a proclamation commanding the heads of the Executive departments and other officers of the government to adopt the eight-hour standard. But the attorney-general, when the matter was submitted to him by the President, gave it as his opinion that the Act of 1868 was "no more and no less, in legal effect, than if Congress should provide that in all contracts for the purchase of coal, by officers of the United States, two thousand pounds should constitute a ton;" that it did not forbid officers of the United States to pay additional compensation for additional labor; that the President was without authority to regulate the performance of duties imposed by law upon subordinate administrative and executive officers, and that the relief sought could only be obtained through additional legislation.[7] At length the House of Representatives, yielding to the pressure brought to bear upon it, passed the following bill, after a considerable debate; in the Senate it was passed with little or no opposition, and finally it was signed by the President, thus becoming a law on August 1, 1892:

"AN ACT RELATING TO THE LIMITATION OF THE HOURS OF DAILY SERVICE OF "LABORERS AND MECHANICS EMPLOYED UPON THE PUBLIC WORKS OF THE "UNITED STATES AND OF THE DISTRICT OF COLUMBIA.

"*Be it enacted by the Senate and House of Representatives of the "United States of America in Congress assembled*, That the service and "employment of all laborers and mechanics who are now or may hereafter be "employed by the government of the United States, by the District of Colum- "bia, or by any contractor or subcontractor upon any of the public works of "the United States or of the said District of Columbia, is hereby limited and "restricted to eight hours in any one calendar day, and it shall be unlawful for "any officer of the United States Government or of the District of Columbia "or any such contractor or subcontractor whose duty it shall be to employ, "direct or control the services of such laborers or mechanics, or require or per- "mit any such laborer or mechanic to work more than eight hours in any "calendar day, except in cases of extraordinary emergency.

"SEC. 2. That any officer or agent of the Government of the United "States or of the District of Columbia, or any contractor or sub-contractor "whose duty it shall be to employ, direct or control any laborer or mechanic "employed upon any of the public works of the United States or of the Dis- "trict of Columbia who shall intentionally violate any provision of this act, "shall be deemed guilty of a misdemeanor, and for each and every such

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7 19 Opinions of the Attorneys-General, p. 685.

"offense shall upon conviction be punished by a fine not to exceed one thou-
"sand dollars or by imprisonment for not more than six months, or by both
"such fine and imprisonment, in the discretion of the court having jurisdiction
"thereof.

"SEC. 3. The provisions of this act shall not be construed so as to in any
"manner apply to or affect contractors or sub-contractors, or to limit the hours
"of daily service of laborers or mechanics engaged upon the public works of
"the United States or of the District of Columbia for which contracts have
"been entered into prior to the passage of this act."

This is in derogation of the common law right of both the employers and employés, therein described, to fix the duration of a day's labor, by contract. It is also on its face a penal statute. Therefore it must be construed strictly, and at the same time, if possible, given the effect obviously intended by Congress.[8]

There has been some question whether the law applies to all laborers and mechanics employed by the Government of the United States and by the District of Columbia, or only to those so employed upon the public works. The phrase "upon the public works of the United States, or the District of Columbia," following the word "sub-contractor," in the first section of the act, may be taken either as qualifying all the preceding part of the section, or as quallifying only the words "contractors and sub-contractors." The title of the act favors the latter view, and "where doubt exists as to the meaning of a statute, the title may be looked to, for aid in its construction.[9] Yet perhaps the most conclusive evidence of the intention of Congress is to be obtained from "the condition of the country and existing legislation."[10]

We have seen that the law was enacted at the solicitation of a powerful class of citizens, who desired the adoption and enforcement of the regulation suggested by the "eight-hour law" of 1868, which applied to "all laborers, workmen and mechanics, employed by, or on behalf of the United States." It also appears from the record of the debates in the Senate and House of Representatives[11] that it was understood, by the adherents and opponents of the present act, in both houses, at the time of its passage, that its provisions included all "laborers and mechanics employed by the government of the United States and by the District of Columbia." Strictly, the record of these debates would not be admissable in

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8 United States *v.* Reese, 92 U. S. 214; Respublica *v.* Weidle, 2 Dallas, 88.

9 Smythe *v.* Fiske, 23 Wallace, 380.

10 Soon Hing *v.* Crowley, 113 U. S. 703; Smythe *v.* Fiske, *supra.*

11 Congressional Record, pp. 6, 357 *et seq.*, and 7, 638.

evidence to prove the legislative intention.[12] But nevertheless, it is worthy of note that the actual understanding of the legislators is in accord with the interpretation of the act, supported by the most satisfactory proof. It is reasonable, therefora, to conclude from the mandatory character of its first section and from the penal character of its second section, that Congress intended by the Act of August 1, 1892, to make it impossible for any officer, or agent of the United States lawfully, to require any laborer or mechanic, employed by the Government of the United States or by the District of Columbia, to work more than eight hours, in a calendar day, or even to permit him to do so voluntarily, and for additional compensation, "except in case of extraordinary emergency." It is equally clear that Congress intended to extend the rule to contractors and sub-contractors, "upon any of the public works of the United States, or of the District of Columbia." Without doubt the power delegated to Congress by the Constitution, includes the right to impose duties upon subordinate officers of the government, and to prescribe penalties for the non-performance of such duties, as it has done by the above act. But it is a question, and a serious one, whether this right extends to persons who contract with the government in the same manner as they would with an individual. If it should be so held, it would mean that governmental paternalism will be carried to an almost unlimited degree.

It is the law that where a statute contains unconstitutional provisions, if the valid and invalid portions are susceptible of separation, only the latter shall be disregarded.[13]

Although the provision contained in the second section, which declares the intentional violation of any provision of the act, by any contractor or sub-contractor, upon any of the public works of the United States, or the District of Columbia, a misdemeanor punishable by fine, imprisonment or both, may be held to be unconstitutional and void; yet the provision contained in the first section to the effect that "it shall be unlawful for * * * such contractor, or sub-contractor * * * to require or permit any such laborer or mechanic to work more than eight hours in any calendar day," is susceptible of separation from the former, and it may be held that the latter provision constitutes a contract obligation, undertaken by every person who enters into contract with the United States, or the District of Columbia, upon the public

12 Soon Hing *v.* Crowley, *supra.*

13 Albany County *v.* Stanley, 105 U. S. 305; Presser *v.* Illinois, 116 U. S. 252.

works. For "the laws which exist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it."[14]

The operation of the act in any event is limited to contractors and sub-contractors of the class expressly described, for it is a general rule of interpretation that general words, when used in connection with those which are more specific, are controlled and limited by the latter,[15] and it must be held, that all contractors and sub-contractors, other than those engaged upon public works of the United States and the District of Columbia, are not affected.

It only remains then to ascertain the "locus" or "orbit" of matters properly described as "public works" of the United States and of the District of Columbia, in order to determine the scope and effect of the act.

The statutes of the United States class as public works:—

The construction, repair and furnishing of public buildings. (R. S. U. S. §§ 3663, 3733, 3734, and 5503);

The construction, repair and preservation of harbors, rivers and channels (Act of August 13, 1892, entitled "an Act making appropriations for the construction, repair and preservation of certain public works.");

The construction and renovation of light-houses (R. S. U. S. § 4664.);

The construction of permanent military works and public roads (R. S. U. S. § 1287.);

The maintenance of the Washington Aqueduct and the appurtenances and fixtures connected therewith (R. S. U. S. § 1800.); *and*

The improvement of streets, avenues and government reservations in the District of Columbia (R. S. U. S. § 1813.)—

In the "Public Works Loans Act" (38 and 39 Victoria, p. 80) the following public works are mentioned: Baths and wash-houses, provided by local authorities; light-houses, cemeteries, rivers and harbors; lunatic asylums; prisons, and work-houses.

In its generally accepted use, the term "public works," relates to "works whether of construction or adaptation and carried out by the national, State, or municipal authorities and designed to subserve some purpose of public necessity, use, or convenience,

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14 Walker *v.* Whitehead. 16 Wallace 314.

15 Endlich on the Interpretation of Statutes, § 400 *et seq.* Maxwell on Statutes, § 407 *et seq.*

such as public buildings, roads, aqueducts," etc.,[16] or in other words, "all fixed works, built by civil engineers for public uses, as railroads, canals, water-courses, roads," etc. "But, strictly, military and civil works, constructed at the public cost."[17]

These definitions unquestionably include the matters described as "public works," in the statutes above referred to, and indicate that there are others; yet it follows as a natural inference, if not a necessary consequence, that all must possess the characteristics common to those expressly named.

The characteristics common to all, are:

First: The work done is in connection with the improvement of realty, or the construction, repair, or improvement of easements and fixtures appurtenant thereto.

Second: The work done is of a fixed and permanent nature; *and*

Third: The title to, or the ownership of the property upon which the work is done, is vested in the government from the outset and does not merely pass to it upon the completion of the work or upon its acceptance by the government.

Although the term "public works" has never been judicially defined, yet in several instances Courts of Last Resort have maintained that the above characteristics are essential. In the matter of The Executive Communication of February 6, 1871,[18] where, in answer to a call from the governor for its opinion upon the question, whether railroads were public works, within the meaning of a constitutional provision, that "the Legislature shall have power to provide for issuing State bonds, bearing interest," * * * "for the erection of State buildings, support of State institutions, and perfecting public works," the Supreme Court of Florida replied, that there can be no doubt that a railroad owned by individuals to whom the State has delegated its duty to make provision for transportation from one part of the country to another, and over which the State exercises a supervisory control, should be so considered. But distinctions were noted between a railroad and a line of stages, for while the former, being a permanent thing, connected with the soil, may "obtain a public character," the latter, being movable and perishable, cannot; and between public works and "private enterprises having a public aspect." The decisions in the cases of Siebert *v.* Cavendar, (3 Missouri Appeals, 427) and Louisville Gas Co. *v.* Citizen's Gas Co. (115 U. S.

16 Black's Law Dictionary, p 964.

17 Webster's Unabridged Dictionary, p. 1057; Century Dictionary, p. 4830.

18 13 Florida, 699.

683) embody the same principles. It is evident too, that they have been accepted and followed by Congress, for in the Act of March 3, 1875 (First Supplement to R. S. U. S., p. 82), a line of demarcation is drawn between "contracts for material" and "contracts for public improvement."

An interpretation of the Act of August 1, 1892, in accordance with these principles, must exclude from its operation the vast number of contracts which are entered into each year by the United States and the District of Columbia, for the construction of vessels, the furnishing of clothes, supplies and equipment for the army and navy, and for a variety of things, too numerous to mention. If a broader interpretation were given, the increase of the government's expenses would be enormous. It is already very large — according to statements made by the heads of bureaus in the government departments and by prominent manufacturers before the House of Representatives Committee on Appropriations, it will increase the cost of work, by fifteen per-centum. Yet if the law had included all persons contracting with the United States and the District of Columbia, and their sub-contractors, its operation consequently had extended to the weaver who furnished cloth, under contract to a contractor for uniforms, and possibly to the wool-grower, who, in turn, supplied the weaver; to the iron-works which supplied material to the contractor on a government vessel; and similarly to all those more or less remotely connected with other contracts; it is impossible to estimate the increased cost of everything required. In fact, it is not improbable that the largest manufacturers would refuse to have any dealings with the government on account of the confusion and discontent which would inevitably result from the employment of two distinct sets of men upon work of the same nature; one set, engaged upon the government work, laboring only eight hours, and the other, engaged upon work for individuals, laboring ten hours. Nevertheless, the heads of some departments are acting upon the assumption that the latter interpretation is correct. But it has been decided by the Supreme Court of the United States[19] that "under a contract for supplying labor and materials, and for making a chattel, no property passes until the chattel is completed and delivered. This is a general law, it must prevail in all cases, unless a contrary intent is expressed or clearly implied from the terms of the contract," and that although, by the terms of a contract, the United States

[19] Clarkson *v.* Stevens, 106 U. S. 505.

advanced sums out of the purchase money, for the cost of the work as it progressed, and all material used in the construction should be inspected and accepted, before being used; these provisions did not constitute conclusive evidence of an intent that any property in the chattel should pass, prior to its final delivery and acceptance; and, furthermore, that a provision to the effect that the contractor was required to give security for the performance of his contract, indicated the intention of the United States to reserve the right to reject the chattel altogether, in the event of its failing to fulfil the contract requirements, and to recover upon the security taken, the amount of the sums advanced.

From this it is apparent that the supplying of materials and the construction of chattels are not public works and that the Act should be interpreted in its more restricted sense.