we are now considering. Munn v. Illinois, 94 U. S. 113, 153.

Our act is almost a literal copy of an act passed by the legislature of Pennsylvania on June 29, 1881. Laws Pa. 1881, p. 147 In Godcharles v. Wigeman, 113 Pa. St. 431, 6 Atl. Rep. 354, the supreme court of that state declared the first four sections of that act unconstitutional and void. The court, in its opinion, says: "The first, second, third, and fourth sections of the act of June 29, 1881, are utterly unconstitutional and void, inasmuch as by them an attempt has 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 alike of the rights of the employer and the employe. 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 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." In Millett v. People, 117 Ill. 294, 7 N. E. Rep. 631, the supreme court of Illinois, in a well-considered opinion, held unconstitutional and void an act of the legislature of that state which required the owners or operators of mines to provide scales for weighing their coal, and make the weight of coal the basis of the wages of miners. A part of the syllabus is as follows: "It is not competent for the legislature, under the constitution, to single out owners and operators of coal mines, and provide that they shall bear burdens not imposed on other owners of property or employers of labor, and prohibit them from making contracts which it is competent for other owners of property or employers of labor to make. Such legislation cannot be sustained as an exercise of the police power."

In view of what the courts have uniformly held in respect to this class of legislation, it is needless to prolong this discussion. It is a species of sumptuary legislation which has been universally condemned, as an attempt to degrade the intelligence, virtue, and manhood of the American laborer, and foist upon the people a paternal government of the most objectionable character, because it assumes that the employer is a tyrant, and the laborer is an imbecile. "Such legislation," as is well said by the court in Re Jacobs, 98 N. Y. 114, "may invade one class of rights to-day and another to-morrow; and, if it can be sanctioned under the constitution, while far removed in time, we will not be far away in practical statesmanship from those ages when governmental prefects supervised the building of houses, the rearing of cattle, the sowing of seed, and the reaping of grain, and governmental ordinances regulated the movements and labor of artisans, the rate of wages, the price of food, the diet and clothing of the people, and a large range of other affairs long since, in all civilized lands, regarded as outside of governmental functions. Such governmental interferences disturb the normal adjustments of the social fabric, and usually derange the delicate and complicated machinery of industry, and cause a score of ills while attempting the removal of one."

For the reasons aforesaid, I am clearly of opinion that the said third section of the act aforesaid is unconstitutional and void. In arriving at this conclusion, we have not been unmindful that the power of the courts to condemn legislative acts as unconstitutional is one of great delicacy, and to be exercised with extreme caution, and even with reluctance. But, as said by Chancellor Kent, (1 Kent, Comm. 450,) "it is only by the free exercise of this power that courts of justice are enabled to repel assaults and protect every part of the government, and every member of the community, from undue and destructive innovations upon their charter rights." The statute itself being, as we have seen, unconstitutional and void, there could be no valid indictment founded upon it; and consequently the circuit court erred in overruling the demurrer to the indictment in each of these cases; and for that reason the judgments of the circuit court are reversed, and the defendants discharged.

ENGLISH and BRANNON, JJ., concurred. GREEN, J., absent.

(33 W. Va. 188)

STATE v. FIRE CREEK COAL & COKE CO.

(*Supreme Court of Appeals of West Virginia. Nov. 18, 1889.*)

CONSTITUTIONAL LAW—REGULATION OF PRIVATE BUSINESS.

The fourth section of chapter 63, Acts 1887, which prohibits persons and corporations engaged in mining and manufacturing, and interested in selling merchandise and supplies, from selling any merchandise or supplies to their employes at a greater per cent. of profit than they sell to others not employed by them, is unconstitutional and void, because it is class legislation, and an unjust interference with private contracts and business.

(*Syllabus by the Court.*)

J. W. St. Clair, for plaintiff in error. *Atty. Gen. Caldwell*, for the State.

SNYDER, P. Writ of error to a judgment of the circuit court of Fayette county, pronounced on September 29, 1887, upon an indictment against the Fire Creek Coal & Coke Company, a domestic corporation. There was a motion to quash, and a demurrer to the indictment,—each of which were overruled,—a trial by jury and conviction, and a fine of $25 imposed upon the defendant. The indictment is under the provisions of the fourth section of chapter 63, Acts of 1887, which provides, in substance, as follows: That it shall be unlawful for any person, firm, company, corporation, or association engaged in mining or manufacturing, and who shall be interested in merchandising, to knowingly and willfully sell any merchandise or supplies whatsoever to any employe at a greater per cent. of profit than merchandise and supplies of the like character, quality, and quantity are sold to other customers, buying for cash, and not employed by them. The violation of this section is made a misdemeanor, punishable by a fine not exceed-

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ing $100 and not less than $25. In State v. Goodwill, ante, 285, (decided by us at the present term,) this court held it is not competent for the legislature, under the constitution, to single out owners and operators of mines, and manufacturers of every kind, and provide that they shall bear burdens not imposed on other owners of property or employers of labor, and prohibit them from making contracts which it is competent for other owners of property or employers of labor to make. Such legislation cannot be sustained as an exercise of the police power. And we also held, in that case, that the third section of the same act, under which the indictment now under consideration is founded, is unconstitutional and void. In that case we referred to the constitutional provisions, both state and federal, and reviewed at some length the decisions of the courts in respect to the power of the legislature to enact laws such as the one here in question. The provision of the statute which we declared invalid in that case was an attempt to prohibit persons engaged in mining and manufacturing from issuing, for the payment of labor, any order or paper, except such an order as is specified in the act. The chief ground upon which we held that section void was that it discriminated against a class of employers, and interfered with the right of contract between citizens in respect to matters purely private. Having held that section of the act void, as an abridgment of the guarantied rights and privileges of the citizens of this state, it seems to me that the fourth section of the same act—the one now in question—must, for the reasons and upon the authorities and principles set forth in the opinion in the said case of State v. Goodwill, be also held unconstitutional and void. There are many considerations for selling goods or supplies at less per cent. of profit to one customer than to others. The goods may be of the "like character, kind, quality, and quantity," and still there may be considerations, entirely proper, why the sale should not be at the same price in all cases, —such as the character and promptness of the customer; the risk of loss or time of payment, the aggregate amount of purchases by the same person of different kinds of goods or supplies. It may be more profitable to sell a large bill of different kinds of goods to a large consumer than to sell one of the same kind of articles to one who buys nothing else. The statute is a Procrustean bed. It consigns all sizes and conditions to the same measure of treatment, regardless of their differences. It excludes all freedom in trade, and all considerations of mutual benefit, and even charity. If the employer sells goods to the family of some friend, in indigent circumstances, at less than cost, then, under this statute, he must sell at the same price to all his employes. But it is unnecessary to illustrate the vices, the crudities, and the injustice of the statute. That it is an attempt to do for private citizens, under no physical or mental disabilities, what they can best do for themselves, is apparent. It selects miners and manufacturers as a class, and denies to them privileges which are not only proper and legitimate in themselves but to some extent necessary and unavoidable in the conduct of business; privileges which concern private affairs solely, and which are enjoyed by all other classes and citizens. It is an attempt on the part of the legislature to do what, in this country, cannot be done; that is, to prevent persons who are *sui juris* from making their own contracts. The act is an infringement alike of the right of the employer and the employe. More than this, it is an insulting attempt to put the laborer under legislative tutelage, which is not only degrading to his manhood, but subversive of his rights as a citizen of the United States. Godcharles v. Wigeman, 113 Pa. St. 431, 6 Atl. Rep. 354.

In condemning this statute, we do not wish to give countenance to the idea that any employer, whether he is engaged in mining, manufacturing, or any other business, has the right to discriminate against his employes, by selling to them goods or supplies, under similar circumstances, at a greater per cent. of profit than he does to his other customers. Such a discrimination is not only unjust, but it is subversive of the first principles of trade; and no employe should buy from such employer. The remedy is in the hands of the employe. He is not compelled to buy from his employer; and the general law, without any special statute, will fully protect him in his refusal to do so. The ground on which this act is condemned is that it is class legislation, and an unjust interference with the rights, privileges, and property of both the employer and the employe, and places upon both the badge of slavery, by denying to the one the right of managing his own private business, and assuming that the other has so little capacity and manhood as to be unable to protect himself, or manage his own private affairs.

For these reasons, and upon the principles announced in the opinion of this court in State v. Goodwill, hereinbefore referred to, we hold the said fourth section of the act aforesaid unconstitutional and void. The judgment of the circuit court is reversed, the demurrer to the indictment sustained, and the defendant discharged.

ENGLISH and BRANNON, JJ., concurred. GREEN, J., absent.

(33 W. Va. 191)

BALTIMORE & O. R. CO. v. VANDERWERKER.

(*Supreme Court of Appeals of West Virginia* Nov. 18, 1889.)

EXECUTION OF DECREE—REMOVAL OF CAUSES—DISCHARGE OF RULE.

1. Though a decree be final, its finality will not prevent any proceedings by the court necessary and proper to carry it into complete execution.

2. Under the circumstances of this cause, it was erroneous to dismiss a certain rule absolutely, without providing that such dismissal should not prejudice other proper proceedings to accomplish the relief sought by the rule.

3. Where in a cause a petition is filed to obtain relief as to part of a fund in the hands of a receiver, under decrees in the cause, and that petition is removed for decision to another county, though there had been a final decree in the case, if it be doubtful whether the circuit court intended to remove the entire cause, or only the petition, it will be consid-