CONSTITUTIONALITY OF MINIMUM WAGE LAWS.—During the year 1913 the legislatures of many states, realizing the economic and social evils resulting from the underpayment of women employees, and following the example of England, Germany, New Zealand and Austria, enacted legislation establishing a minimum wage for such employees. See the Laws of 1913 in the following states: California (Ch. 324); Colorado (Ch. 110); Minnesota (Ch. 547); Oregon (Ch. 62); Utah (Ch. 63); Washington (Ch. 147); and Wisconsin (ch. 712). The act passed by the Nebraska Legislature (Ch. 211), is very similar to the Massachusetts act, Laws 1912, Ch. 706 as amended by Laws 1913, Ch. 672, in that these acts are not compulsory. In Connecticut, Indiana and Ohio commissions are investigating the problem and it is likely that these investigations will result in legislation upon the subject. And in New York and Michigan provisions have been made for the investigation and study of the question.

The vital question in regard to these acts is their constitutionality, and a decision upon this point has been awaited with great interest. The case of *Stettler* v. *O'Hara et al,* 139 Pac. 743, decided by the Supreme Court of Oregon, upholds the constitutionality of such legislation, and contains an able treatment of a question of first impression. Prior to this decision the only discussion of the question was contained in dicta of cases where the question directly before the court was the power of the legislature to fix a minimum wage for workmen employed by private persons upon a public work, or for employees or officers of a municipality. In these cases it was assumed that the legislature had no right to fix wages in strictly private employment. See *People* v. *Coler,* 166 N. Y. 1.

The Governor of Oregon, pursuant to Laws 1913, Ch. 62, appointed the defendants members of the Industrial Welfare Commission. A conference was held, recommendations made and approved, and an order issued, all the steps being taken in accordance with the above act. The part of this order, material to this discussion, provided, in the case of women employees in certain factories, that nine hours a day and fifty hours a week should be the maximum hours of employment, that there be a noon hour lunch period of forty-five minutes, and that there be paid a minimum wage of $8.64 a week for an experienced adult woman worker in such establishments. The plaintiff brought suit to annul and vacate this order, but the court held the legislation to be a valid exercise of the police power of the state.

The basis for this decision is shown by the words of the court. "Every argument put forward to sustain the maximum hours law, or upon which it was established, applies equally in favor of the constitutionality of the minimum wage law as also within the police power of the state and as a regulation tending to guard the public morals and the public health."

It is apparent from that portion of the opinion first quoted that the decision rests upon the assumption that the regulation of hours of employment of women is a valid exercise of the police power. The position of the court is supported by authorities most numerous, among which is *Muller* v. *Oregon,* 208 U. S. 412, 52 L. ed. 551, 28 Sup. Ct. 304, 13 Ann. Cas. 957. This case also involved the constitutionality of an Oregon statute fixing the

hours of employment of women. Justice BREWER, in his opinion, after pointing out the vital differences between men and women, said, "Differentiated by these matters from the other sex, she is properly placed in a class by herself, and legislation designed for her protection may be sustained, even when like legislation is not necessary for men and could not be sustained. It is impossible to close one's eyes to the fact that she still looks to her brother and depends upon him. Even though all restrictions on political, personal, and contractual rights were taken away, and she stood, so far as statutes are concerned, upon an absolutely equal plane with him, it would still be true that she is so constituted that she will rest upon and look to him for protection; that her physical structure and proper discharge of her maternal functions—having in view not merely her own health, but the well-being of the race—justify legislation to protect her from the greed as well as the passion of man. The limitations which this statute places upon her contractual powers, upon her right to agree with her employer as to the time she shall labor, are not solely for her benefit, but also largely for the benefit of all. Many words can not make this plainer. The two sexes differ in structure of body, in the functions to be performed by each, in the amount of physical strength, in the capactiy for long-continued labor, particularly when done standing, the influence of vigorous health upon the future well-being of the race, the self-reliance which enables one to assert full rights, and in the capacity to maintain the struggle for subsistence. This difference justifies a difference in legislation and upholds that which is designed to compensate for some of the burdens which rest upon her."

The most recent case upon the subject of maximum hours for women is *Riley* v. *Massachusetts*, 232 U. S. 671. Massachusetts Laws of 1909, Chap. 514, Sec. 48, provided for ten hours a day and fifty-six hours a week as the maximum hours of labor for women in any manufacturing or mechanical establishment, permitting a different apportionment for the sole purpose of making a shorter day's work for one day of the week. A further provision required the employer to post a notice in a conspicuous place stating the hours of labor for women and forbidding the employment of women at a time other than specified in such notice. The specific charge against the defendant was that women were found employed at 12:55 P. M. contrary to the posted notice which specified 12 M. to 1 P. M. as the noon hour. The maximum hour provisions were sustained on the authority of *Muller* v. *Oregon*, supra. As to the further provisions the court said, "The end of the statute is the protection of women within constitutional limits, and the requirement that the hours posted in the notice shall be followed is a means to effectuate the attainment of that end. In other words, the purpose of the posting of the hours of labor is to secure certainty in the observance of the law, and to prevent the defeat or circumvention of its purpose by artful practices."

A full discussion of the constitutionality of maximum-hour legislation will be found in 8 MICH. L. REV. 1, 9 MICH. L. REV. 44, and also in the annotations to *Com.* v. *Riley*, 210 Mass. 387, 97 N. E. 367, in Ann. Cas. 1912 D, 388.

The rules of law applicable to the question of a minimum wage are few and well settled. These rules are best set forth in *Lochner* v. *New York*, 198 U. S. 45, 49 L. ed. 937, 25 Sup. Ct. 539, and are as follows. The right to purchase and sell labor is a part of the "liberty" protected by the fourteenth amendment. This right to "liberty" is, however, subject to such reasonable restraint of action as the state may impose in the exercise of the police power for the protection of the health, safety, morals and general welfare. The legislation enacted by virtue of the police power must have a direct relation to the end to be attained, reasonably adapted to accomplish that end, and the end itself must be appropriate and legitimate. And these minimum wage laws must be sustained unless the court can find that there is no fair ground, reasonable in and of itself, to say that there is material danger to the public health or safety, or to the health or safety of the employees, or to the general welfare, in permitting women to work in a manufacturing establishment for less than a weekly wage of $8.64.

There is no doubt that the purpose of the minimum wage legislation for women is within the police power of the state, in that the aim of such legislation is to better the health, morals and welfare of the community by improving the conditions of women employees in certain occupations. *Barbier* v. *Conolly*, 113 U. S. 27, 28 L. ed. 923, 5 Sup. Ct. 357; *Webber* v. *Virginia*, 103 U. S. 343, 26 L. Ed. 565.

The real question, then, is whether or not such legislation is directly related to the end to be accomplished and reasonably adapted to attain that end. From the investigations carried on in both this country and abroad the result has been that the commissions have reported a direct connection between wages on the one hand, and health, safety, morality and general welfare among employees on the other hand in many occupations. And many commissions have further reported that in certain industries the women employees were receiving less than the cost of living and the reasonable provision for maintaining their health. The realization of the number of underpaid women employees, the effect of low wages upon health, morality and welfare, and the particular need of protecting women as set forth in *Muller* v. *Oregon*, supra, induced the legislatures of many states to pass these minimum wage laws. As the commissions of various states presented reports sufficiently convincing to cause the legislators to act, this fact would tend to show that there was a real connection between wages paid to women in certain occupations and health and morality. These facts should have a great influence upon the courts as tending to uphold this legislation, particularly so in view of the rule applicable to such a situation. For if the end which the legislature seeks to accomplish is within its power, but the means employed are not the wisest or the best, yet if those means are not plainly and palpably unauthorized by law the court can not interfere. *Lochner* v. *New York*, supra, *Patterson* v. *Kentucky*, 97 U. S. 501, 24 L. ed. 1115.

The holding of the Oregon Court in *Stettler* v. *O'Hara et al* is an excellent illustration of the fact that courts not only progress but keep abreast

of the social and economic development of the country. In reading the opinion one can not but be impressed by the court's extended treatment of the economic and sociological aspects of the situation before it. There is no doubt but that this decision will have a very great influence upon the final determination of the question. G. E. K.

LIABILITY OF A HOST FOR NEGLIGENCE CAUSING INJURY TO A GUEST RIDING IN HIS AUTOMOBILE.—A recent decision of the Kentucky Court of Appeals presents a very interesting discussion of this novel and important question. The plaintiff was riding as a guest in the defendant's machine in the city of Louisville when it collided with a pile of brick stacked in the street. She was thrown to the floor of the back seat and severely injured. She brought suit against the defendant for her damages and recovered a verdict of seventeen hundred and thirty-two dollars. The lower court instructed, in substance, that it was defendant's duty to use ordinary care not to injure the plaintiff, and that if he failed, he was liable in damages for the injury resulting to plaintiff from his negligence. On appeal, the judgment of the lower court was affirmed on the ground that it was appellant's duty to appellee to use ordinary care not to increase the danger of her riding with him, or to create any new danger, and that appellant violated this duty by fast and reckless driving, thereby creating a new danger. *Beard* v. *Klusmeier,* (Ky. 1914) 164 S. W. 319.

The appellant contended that the appellee stood in the position of a licensee upon the land of another, and that the only duty owing to a mere licensee is the exercise of slight care, and that there is, consequently, no liability to a licensee except for gross negligence. This was the theory of the defendant, and was supported by the evidence of himself and his three companions. But to avoid a reversal on the ground that the lower court failed to instruct on the defendant's theory, the Court of Appeals, though styling the plaintiff an invited guest, so frames its decision as to make the rule of law laid down therein applicable to plaintiff though she were a mere licensee. The controlling question then, is what degree of care was owing by the appellant to the appellee under the circumstances.

It is said in SHEARMAN & REDFIELD, NEGLIGENCE, (Fifth Ed. Sec. 706), "The host should always be held responsible to the guest for gross negligence." In COOLEY, TORTS, (Students Ed. p. 731) it is said, "And the general rule supported by the authorities is that the owner or occupant of premises owes no duty to licensees and tresspassers, further than to refrain from wilful acts of injury."

The court in its opinion states that the rule of these authorities has been frequently applied in cases between host and guest in the use of the host's vehicle, but that the authorities are not entirely satisfactory or uniform. It then proceeds to an analysis of two cases as authoritative on the proposition of law laid down by it. The first is the case of *Mayberry* v. *Sivey,* 18 Kans. 291, where the plaintiff was riding with defendant in the latter's buggy and injured through his negligence. The court in holding