tioned in that [Fourteenth] amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned." [88]

The Court, however, did sustain some labor regulations by acknowledging that freedom of contract was "a qualified and not an absolute right. . . . Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community. . . . In dealing with the relation of the employer and employed, the legislature has necessarily a wide field of discretion in order that there may be suitable protection of health and safety, and that peace and good order may be promoted through regulations designed to insure wholesome conditions of work and freedom from oppression." [89]

Still, the Court was committed to the principle that freedom of contract is the general rule and that legislative authority to abridge it could be justified only by exceptional circumstances. To serve this end, the Court intermittently employed the rule of judicial notice in a manner best exemplified by a comparison of the early cases of *Holden v. Hardy* [90] and *Lochner v. New York*.[91] In *Holden v. Hardy*,[92] the Court, relying on the principle of presumed validity, allowed the burden of proof to remain with those attacking a Utah act limiting the period of labor in mines to eight hours per day. Recognizing the fact that labor below the surface of the earth was attended by risk to person and to health and for these reasons had long been the subject of state intervention, the Court registered its willingness to sustain a law that the state legislature had adjudged "necessary for the preservation of health of employees," and for which there were "reasonable grounds for believing that . . . [it was] supported by the facts."

Seven years later, however, a radically altered Court was predisposed in favor of the doctrine of judicial notice. In *Lochner v.*

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[88] 165 U.S. at 589.

[89] Chicago, B. & Q. R.R. v. McGuire, 219 U.S. 549, 567, 570 (1911). *See also* Wolff Packing Co. v. Industrial Court, 262 U.S. 522, 534 (1923).

[90] 169 U.S. 366 (1898).

[91] 198 U.S. 45 (1905).

[92] 169 U.S. 366, 398 (1898).