1893

Combinations in Coal with Special Reference to the Late Reading Combination

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Combinations in Coal with special Reference to the Late Reading Combination.

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1893.
Coal was discovered in the Wyoming Valley, Pa., soon after its settlement, and the first authentic record of its development was in 1768, when two blacksmiths named Gore, opened a small mine, and used the product in their "forges". Eight years after two mines were opened near Wilkesbarre and the coal loaded in barges, in which it was floated down the river to the Government Arsenal at Carlisle, where it was used to great advantage during the Revolutionary war. It was also used successfully by the locksmiths, and blacksmiths, in their forges; but owing to the difficulty in burning it, its domestic value did not become apparent until "Judge Sell", a resident of Wyoming Valley, invented a "grate" in 1808—in which as the natives called it, he was able to successfully burn stone coal. Then began the demand, which
has been increasing ever since; and during the year 1800, coal sold in the market of Wilkesbarre for three dollars ($3.00) per ton, which, when the difficulty in mining, the utter lack of mining implements and improved machinery, together with the cumbersome method of transportation is taken into consideration, we wonder at its cheapness.

Without doubt the first mine was opened, and worked by an individual, but within a few years the coal lands were to a large extent bought up by corporations—and at first this was a benefit not only to the original owner of the land, but also to the producer and the consumer. The first reported attempt by these corporations to unite, and by their united efforts raise the price of the article in which they were so deeply interested, was in 1845: "Hooker vs. Vandewater," (a) decided in 1845. In this case an agreement between the owners of five lines of boats doing business on the Erie Canal was in question. By this agreement they entered into a combination and prescribed one schedule of rates for passengers and freight charges, and also provided that the total proceeds of the business should be divided among

(a) 4 Denio, 349.
the different lines at a fixed proportion. Each of these lines was to carry passengers, and freight at the rate fixed by the schedule, and obey all other restrictions of the agreement, which was entered into by all of them. This agreement was held void and illegal under the provisions of the New York Revised Statutes, which made it a misdemeanor for any two or more persons; to conspire together to do an act that was injurious to trade or commerce. The interpretation put upon this agreement by the court was: "That since it did away with competition, it created such a combination as to constitute an act injurious to trade and commerce, within the meaning of the New York Revised Statutes. The result of this combination was to fix prices arbitrarily. The people were deeply interested in having transportation rates subject to competition, and hence any combination doing away with such competition must be injurious and illegal; so since the agreement itself was illegal and consequently void; and any enforcement, or relief sought for under it would be refused." This case was decided on purely statutory grounds, but the follow-
ing case, is one in which for the first time coal directly formed the subject matter of the agreement.

Morris Penn. Coal Co. vs. The Barkley Coal Co., (b) : decided in 1871. In this case five Coal companies, incorporated under the laws of Penn.: agreed to combine and place their business under one management, and to divide the profits in a certain proportion, agreed to by all of them. In pursuance of this agreement a committee was appointed to manage the business, said com-
also had the sole power to fix the price at which the coal was to be sold, and the proportion each company should contribute to the stock—to be sold: While the individual companies could sell their own coal they were obliged to sell at the price agreed upon by the committee and only within the limit of their proportion. The companies bound themselves not to ship or sell any coal except according to the provisions of their agreement. These five companies practically controlled the output of this particular kind of coal, which was extensively used and a necessary article in manufacturing. The Coal companies claimed that the purpose of the combination was (b) 68 Pa. St., 173.
to reduce expenses in production and transportation; but
the court in the course of the opinion said "That the
reason or the necessity in forming the combination was
immaterial, since the important fact remained that the
combination controlled the output: and in that way made
the coal bring a greater price than it naturally would
if the business had been left free to competition; and
that further it concerned an article of prime necessity.
That its operation was general, in a large territory, ef-
flecting as it did all those who used coal, either in their
homes, or for purpose of manufacturing. Any one of these
five companies might have taken any lawfully means ten-
ding to increase the price of this article, yet all five
combined could not be permitted to take the same steps.
There is a potency in numbers when combined in one en-
terprise which the law cannot overlook nor fail to appre-
ciate its force and effect; when injury is the direct re-
sult of such combination: and the combination before the
court, being wide in its scope, and general in its effect
could only result in injury to the public. Hence it
must be considered as contrary to Public Policy. A con-
tract is criminal in its nature when it tends to prejudice the public, or oppress individuals by subjecting them unjustly to the powers of the combination or by giving effect to the purposes, and designs of such whether it be extortion or otherwise."

The case last cited has been reported somewhat at length, and the object in so doing is to demonstrate that the idea of controlling the production, transportation and sale of coal, is not of recent origin. That in fact almost since its discovery attempts have been made to enhance its price, by artificial means, and in nearly every instance have the promoters of the combination given the same reasons, namely: "that they sought to cheapen the production, to reduce transportation rates and finally as their most humane argument, to help the poor, and often starving miner: by regulating the output, to prevent an overstocking of the market, and a consequent reaction in the mine; compelling the company either to close down entirely or run on half or three-quarter time. In a large number of instances all the arguments advanced are hollow shams, and only serve to cover the
averice and greed of the corporations. The good that they have ever done seems indeed small when compared with the great and lasting misery they have brought upon those who are the least able to bear it, namely the poor. The mischief in combinations does not always lie in the fact that prices are raised, but in the fact that the combination is in a position to raise and control the price.

To quote Senator Bayard, "Never in human history was the creation of material wealth so easy—and so marvelously abundant—its consolidation under forms of incorporation, creating vast units of force, which result in monopolies, which absorb and withdraw individual and independent rivalries. Here is a danger which it will behoove us to gravely contemplate and consider the forces which shall be summoned to counteract them."

Within six years after the last combination was declared illegal, the New York Court of Appeals was called upon to pass upon another attempted combination to control the traffic in coal. Arnot vs. Pittson and Elmira Coal Company: decided in 1877, (a) The question arose out of the agreement between the two Coal

(a) 68 N.Y., 358.
companies, The Pittson and Elmire Coal Co. and the Butler Coal Co.: by which the latter agreed not to ship any coal into the state of New York except such as it sold to the former company; and by the terms of the contract it could only ship two thousand (2,000) tons into the territory in any event. The Butler Coal Co. could sell the coal any where it could except in the state of New York; and it was not obliged to ship any into that state, but such as it did ship must be subject to the terms of the contract above mentioned. This company produced largely in excess of two thousand (2,000) tons per month and the purpose of the Elmire company in this case was to keep out of the New York market all the coal mined by the Butler company except such as it could control.

Similar agreements were entered into by the Elmire Company by other coal producing companies. The courts said "That such a contract was prejudicial to the interests of the public; and contracts designed for such a purpose are contrary to public policy and therefore void. Every individual dealer has the right to use all legitimate efforts to obtain the best price for his wares, but he has no
right to endeavor by artificial means to enhance the price as by suppressing or keeping out of the market the product of others; and any endeavor he may make to bring about such a state of things is contrary to Public Policy--if such contracts or agreements were sustained there would be nothing to prevent the price of an article of prime necessity from being advanced and the article sold at a ruinous figure. In this case if the Butler Company had sold its coal at a certain figure, or had sold its whole output the contract would have been good since the Butler Coal Co. like any individual has the right to sell its goods, or product, to the best advantage, even if the vendee intended to make an improper use of the goods--but if the vendor himself or through his agents did anything to help this unlawful purpose; he would be held to be *particeps criminis* and could not recover the contract price at which he sold the goods. This is the present case. The Butler Coal Co. made no certain and definite sale; but simply agreed to keep the coal out of the Elmira Coal Company's market; or if it did come in it was to be subject to that company's control. Thus knowing the il-
legal purpose, namely unduly enhancing the price of coal in the New York markets by stifling all competition, and furthering its purposes, by agreeing to keep its own coal out, or if not keeping it out, practically putting it in the control of the one corporation: it was guilty of aiding in the commission of an unlawful act, and hence a party to the wrong—so for coal sold under this contract, or agreement, the Butler Co. could not recover the selling price—and the court went still further in its peal to crush this monopoly, and held that the assignee of the Butler Co. could not recover.
The foregoing cases have been reported somewhat at length to demonstrate the fine position which the judges invariably took against the flagrant monopolies: however the reported cases on this subject are few in number principally because the corporations realized that the courts did not favor their position but they none the less existed to a greater or less extent. This has been shown, when the latest attempted combination of coal roads were made public—We refer to the Reading combination—and to a proper conception of this combination and its manifestedly injurious effects, it will be necessary to examine first: The place of operation: second, the operators: and thirdly, the extent of the operation.

I. The anthracite coal region is situated within the State of Pennsylvania, and comprises an area of about 477 square miles. The capacity of the collieries situated in this region is estimated by experts to amount to about 50,000,000 tons annually and the actual output amounts to about 41,000,000 tons annually. These coal
fields being definitely ascertained to be within a limited territory of small extent, the tendency has been for years past for the transportation companies in one way or another to acquire the ownership of these coal lands. This was done originally by direct purchase but subsequently by the acquisition of stock in coal producing corporations, which are termed ancillary companies. There is not a railroad company now penetrating the anthracite region that does not own coal producing lands directly or does not absolutely control coal producing lands through the ownership of, practically, the entire stock of an affiliated coal producing company. So it is that the process of absorption has continued until the great bulk of the coal output, which appears to be 95%, (by the testimony submitted to the Congressional Committee) is directly or indirectly controlled by the railroad companies and whatever loss or profit is sustained goes to their companies. Individual and independent mine owners at this time do a very small proportion of the anthracite coal producing business; and the tendency with increasing force is in the direction of the entire absorption, in the man-
ner described, of the entire anthacite coal fields and collieries by the common carriers who transport it to market.

II. The anthacite coal region of Pennsylvania is penetrated by the following lines of railroads:— New York, Lake Erie and Western; The New York, Susquehanna and Western; The Delaware, Lackawanna and Western; The New York, Ontario and Western; The Central Railroad of New Jersey; The Lehigh Valley Railroad; The Pennsylvania Railroad; and The Philadelphia and Reading Railroad; and also The Delaware and Hudson Railroad.

It is estimated that at least 35 per cent of the annual production (41,000,000) is transported to tide water by these roads, while the remainder is distributed along the lines of the above mentioned railroads between tide water and the anthacite fields, by the same and connecting roads to interior markets. There was a virtual monopoly exercised by the above named roads before the ambitious schemes of Mr. Mcelroy were even thought of. (a) "The committee in its investigations have not been able to develop any direct stipulation, contract or agreement,

(a) Congressional Report on the Alleged Coal Combine.
between the transportation companies by which they are obliged to fix and determine both the output and price of Anthracite coal. However, it is not always necessary to find written stipulations, resolutions, or minute entries in order to determine the existence of a business combination: such combinations for business reasons frequently grow out of the environments of the situation and the opportunities presented. When it is considered that the law of business is for each proprietor to pursue his own interest it necessarily follows that proprietors who have a common interest will act in common—and it requires no stipulation to bind them. After a careful examination the conclusion is reached that the Railroad corporations engaged in the mining and transportation of coal, are practically in a combination to control the output and fix the price which the public pays for this important and necessary article of consumption. The combination is not confined to the Reading and the Lehigh Valley, but embraces all the Railroads connecting the Anthracite Coal-Regions with tide water. There is substantially no competition existing between these com-
panies. The only limitation to their demands is the indisposition of the public to buy the product at an exorbitant price." This effective combination is operated in rather an interesting way. Each corporation directly owning coal producing land, and each affiliated coal producing company sends a representative to meetings which for years have occurred monthly. These meetings are exceedingly informal and are not convened in pursuance of any resolution or agreement; but are the result of a tacit understanding between the parties in interest. No minutes of these meetings are kept, and the proceedings are not of record, and not made known to the public. However, the fact is true that at these meetings the monthly price and output of coal are determined, and in pursuance of the conclusions arrived at by these meetings the producing companies and the transportation companies act in concert.

These monthly meetings may perhaps explain the reason why the output of coal is annually 10,000,000 tons than the capacity of the mines. It is impossible to say what amount of anthracite coal it would take to supply the market if the price was lower; but it is a fact that the
public will not take the entire output at the price made by these monthly conferences. Again it is quite evident that the natural law of supply and demand does not govern the output, but at these meetings it is estimated what the demand will be at a certain price and in this way both the output and the price are regulated. This state of affairs is not brought about by the coal producers but by the transportation companies who control them. The freight agents who determine or fix the schedule rates of the several railroads are the men who practically govern the situation. Where the railroads own the mines it makes no difference whether the business of mining pays or not; for the profit on freights yields a satisfactory return. The interesting fact, notwithstanding coal can be handled with less labor and transported with less cost and risk than almost any other kind of freight: the freight charges so solidly agreed upon by all the transportation roads are far in excess of those upon any of the other and more valuable products of the country. That so bulky a product involving so little risk in transportation and of such small value at
the point of production upon which the freight constitutes such a large percentage of the cost at the point of consumption, can and should be carried at the lowest possible rate cannot be disputed: yet the freight charges on coal are twice that of wheat and cotton. The foregoing facts were established in the case of Cox Bros. vs. The Lehigh Valley Railroad, tried before the Interstate Commerce Commission. The Commission fixed as a reasonable and remunerative compensation, as an average on all kinds of coal to tide water the price of $1.40 per ton. But this monthly committee decreed that the price per ton to tide water should be $1.90—A net profit of .50 cents per ton to the transportation companies no wonder that they are able to crush all individual productions. Unfortunately this very just and reasonable decision of the Inter-State Commerce Commission could not be enforced owing to the imperfections of the law, under which they are obliged to work.

Philadelphia.
The Pennsylvania and Reading Railroad was chartered by the State of Penn. on April 4th, 1883. Its original line was sixty miles in length, extending from
Philadelphia to Reading. It, however, extended its lines by purchase and lease and acquired extensive coal fields; and in time became one of the largest coal carriers in the country. When Franklin B. Gowen was elected president he became filled with ambitious schemes for the development of the property and attempted such as Mr. McLeod has done, to secure a monopoly of the coal trade. This was in May, 1880, and at this time the stock was selling at 31 5/8; but on the 21st day of May in the same year the company defaulted in the payment of its maturing obligations and three days later was placed in the hands of a receiver and the stock fell to 17 1/4. By careful management the property was again put into shape and on the 28th day of February, the receivership was dissolved: and George De B. Kinin was elected president. He immediately started in to repeat Mr. Gowen's tactics and within three months had leased the Central Railroad of New Jersey for 999 years, at an annual rental equal to the fixed charges and 6% interest on the capital stock. Other roads were acquired for a like time and business went merrily forward until June 2nd, 1884, when another receiver wa
was appointed: This time Diexel, Morgan, and they were induced to undertake the second reorganization and presented a plan which after a long delay was adopted by the stock holders, and on Jan. 2nd, 1888, the company was again restored to the hands of its owners with the stock selling at 37 1/8. Austin Corbis was then elected President and retained the position until he was succeeded by Alexander H. McLeod, in 1890. A prominent feature of the Diexel reorganization plan was the lodging of the control of the company in a voting trust, which held proxies for the majority of the stock. Mr. Morgan was a trustee under this arrangement and had a voice in the management until Sept., 1891, when the trust was dissolved and the control reverted directly to the holders of the stock. Mr. McLeod's presidency was uneventful until Feb 1st, 1892, when transactions in Reading, Lehigh Valley, and Jersey Central gave an indication that some combination had been effected, and on Feb. 10, the announcement came that the Reading had leased two other roads for a period of 999 years, and thus was in a position to control 75 per cent of the competitive anthracite
coal trade of Pennsylvania.

The terms of the lease with the Lehigh Valley were that the Reading assumed the obligation of interest, rentals, etc., and guaranteed the stock of the Lehigh Valley dividends at the rate of 5% a year up to July 1st, 1890. A dividend of 6% for the next year, and of 7% a year thereafter. All profits in excess of 7% were to be divided equally between the Reading and Lehigh Valley until the latter earned 10%. The surplus above that figure was to go the Reading.

The Central Railroad of New Jersey was leased by the Post Reading Railroad, which was organized in Nov., 1890, in the interest and controlled by the Reading, to build a road of twenty miles in length from (Band Bowh) to Staten Island where extensive terminals were planned. The terms of the lease were that the Central Railroad of New Jersey was to receive 7% a year on its stock and half of the surplus earnings above that figure; but the Reading was to obtain the other half. These leases were advantageous to all parties concerned, for the Central Railroad of New Jersey in 1887, only paid a dividend of
3% and in 1890 it paid six (6): by this lease they were assured of at least seven and a possibility of more. That this combination was effectual and realized Mr. McLeod's expectations in raising and keeping up the price of coal is shown by the following statement. Between the months of February 1892, when the combination went into effect, and November of the same year, the following advance had been made in the whole sale prices of coal used by house keepers:—

<table>
<thead>
<tr>
<th>Kinds of Coal</th>
<th>Feb. 1892</th>
<th>Nov. 1892</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grate, per ton</td>
<td>$3.50</td>
<td>$3.85</td>
</tr>
<tr>
<td>Egg, do.</td>
<td>$3.60</td>
<td>$4.25</td>
</tr>
<tr>
<td>Stove, do.</td>
<td>$3.25</td>
<td>$4.60</td>
</tr>
<tr>
<td>Chestnut, do.</td>
<td>$3.25</td>
<td>$4.50</td>
</tr>
</tbody>
</table>

This advance is not due to any unusual conditions of supply and demand, or to increased cost of production but is solely the effect of the combination which they have been able to maintain. The price of coal used by house keepers has been advanced in ten months $1.25 to $1.35 a ton, which advance has been well sustained by all the parties to the combination agreement. They have
been enabled, partly perhaps, to accomplish this result by wiping out as many individual operators as possible, and while there were originally 34 individual operators along the line of the Philadelphia and Reading Railroad, prior to February 1892, five have since been obliged to retire from the business, notwithstanding the advance in the price of their product; and probably a similar decrease has occurred along similar lines. When the public realized the power of the combination and how completely they were under its control and at its mercy; a storm of protests arose and centered in New Jersey, whose Legislature, composed of, doubtless exceptions to the usual honest class of legislators, men possessing a price, passed a resolution legalizing the lease of the Jersey Central; but Governor Abbott was beyond approach even by a corporation with the power that the Reading controlled and he gained the gratitude of all outside the combination, by vetoing this bill.

The Attorney General of Pennsylvania on March 15th, 1892, filed a bill in Equity in the Dauphin Co. Courts against the Philadelphia and Reading, which was in
fact a bill praying for the discovery of the leases. Another action was started about the same time and to the same end in Lycoming Co. Mr. Matthias H. Arnott, a citizen. In June 1892, in Northampton, a bill was filed by certain stock holders of the Lehigh Valley against that corporation and other parties to the combination, alleging that the leases were ultra vires and unconstitutional, and praying for a discovery of the leases and agreements for restraint by preliminary injunction and the appointment of a receiver etc. The court denied the motion for a receiver and held (a) that it was not a case for a preliminary injunction. But the honor of declaring these leases void and unenforceable remained for the Equity Courts of New Jersey was through Chancellor Mc Gill declared that the lease was ultra vires and to prevent the appointment of a receiver the Central Railroad of New Jersey abrogated its lease and announced its withdrawal from the combination.

"John B. Stockton Attorney General of New Jersey, vs. Central Railroad of New Jersey, the Post Reading and the Philadelphia and Reading Railroad, in Chancery of N.J."

(a) Gummers Case, 1 District Rep., 585 (Penn.).
On an order to show cause why an injunction should not issue heard upon information, exhibits and affidavits. The object of the information is to have a certain indenture of lease made between the Central Railroad of New Jersey and the Post Reading Railroad company and the Philadelphia and Reading, and also a certain tripartie agreement between the same roads declared to be ultra vires and therefore void. And void also upon the ground of Public Policy in that they tend to create a monopoly of the anthracite coal trade within the State by stifling competition between the competing corporations, and thereby to increase the price of anthracite coal to the inhabitants of the State. And to effectually destroy such leases and agreements under which the property and franchises of the Central Railroad of New Jersey have already been delivered to the Post Reading Railroad company. It seeks a mandatory decree which shall enjoin the Post Reading Railroad to surrender and return the said corporate property and franchises; and a restrictive decree which shall perpetually restrain the Post Reading Railroad Co. from hereafter controlling or
inter-meddling with such franchise or property; and the three corporate defendants from all future combination to do that which will arbitrarily increase or tend to increase the price of coal to the inhabitants of New Jersey.

The opinion of the Chancellor; "It is a cardinal rule of law of corporations--that a corporation created by statute can exercise no powers and has no rights except such as are expressly given or necessarily implied" and it may also be considered as settled that a corporation cannot lease or dispose of any franchise needful to the performance of its obligations to the state without legislative consent. It has been held in Stewart vs. Lehigh Valley R.R.Co., that no such sanction is to be implied, it must rest upon the legislative intention. It must be gathered, in the first place, from the words which the Legislature has used upon the subject and if these words construed according to their usual signification declare the purpose to authorize a lease to a foreign corporation, or a class of corporations which include the Plaintiff: effect must be given to such purpose. The court had no right to add to the words of the Legislature ar to
substitute other words for them in order to widen the power conferred—nor has it any right to strike out words or detract from their fair and ordinary meaning for the purpose of restricting the grant. The duty of the Court is one of interpretation only. To the same effect is the holding in the United States Supreme Court. (Thomas vs. New Jersey R.R.Co., 101 U.S., 71;) Penn.R.R.Co. vs. St.Lewis etc. R.R.Co., 118 U.S., 290; Green Bay R.R.Co. vs. Minn.Steam Boat Co., 107 U.S., 38; Central Transportation Co. vs. Pullman Co., 139 U.S., 24.)

In the case at bar the validity of the leases made between the Jersey Central and the Reading is questioned and it has not been seriously contended that lease can be sustained until clear legislative sanction is found. It has been claimed that such sanction was given by the amendment of March 11, 1880, to the seventeenth section of the General Railroad Act, entitled "An Act to authorize the formation of Railroad Corporation and to regulate the same." That section as far as it bears upon the present question was in this language: "And it shall be lawful for any corporation incorporated under this act; at
any time during the continuance of its charter to lease etc." In 1880, it was amended by having interpolated in it after the words "under this act" the words "or under any of the laws of this state." So the amended section now including the words which follow the word lease, which remains in the act reads as follows:- "And it shall be lawful for any corporation incorporated under the laws of this state at any time during the continuance of its charter to lease its roads or any part thereof to any other corporation or corporations if this or any other state, or to unite and consolidate as well as merge its stock, property, franchises and road with those of any other company, of this or any other state or to do both: and such company or companies are authorized to take, operate and use the road so leased or consolidated----." (a)

The Attorney General insisted that the Legislature intended to give to corporations incorporated under the general laws, only, the right to become either the lessor or the lessee of other railroads, and did not extend this privilege to corporations created by special laws; but the Chancellor held that although the act of 1880 may

(a) Rev. of N.J. Laws, 950; Sup. Rev., 828.
confer this power, it is not necessary to decide in the case under discussion, because from the character of railroad corporations—as quasi public bodies, is limited to leases designed for the public welfare and does not warrant a lease in furtherance of a scheme to prevent competition and to create a monopoly.

Corporate bodies that engage in a public or quasi public occupation are created by the state upon the hypothesis that they will be a public benefit—they enjoy privileges which an individual can not have. Perpetual (a) or certain life is accorded them. Usually the right of Eminent Domain is delegated to them, often to be exercised in whatever locality they may be pleased to designate. The use of the common highways is frequently subordinated to their operations and indeed the individual is compelled even in his own home to submit to discomforts, incident to their lawful operation, which he would not be (b) required to tolerate from other sources. Thus they are given special privileges because of the benefits they are presumed to confer upon communities. While the state confers special privileges upon these favorites it at

(a) National Dock etc. R.R.Co. vs. R.R.Co., 24 Vroom.217
(b) Baseman vs. Penn.R.R.Co., 23 Vroom., 221.
same time exacts from them duties which also tend to the public welfare. The whole scheme of the laws of their organization is to equip and control them as instruments for the public good. Such corporations hold their powers not only in trust for the pecuniary profit to be realized by their stockholders; but also in trust for the public weal. The impress for Public Good is stamped upon their very being, and becomes a duty, which, though not prescribed in the express language of the law is to be implied from the nature of every power conferred. When it appears therefore that such corporation is unmindful of this plain duty, acts prejudicially to the public, in order to make undue gains and profits for its stockholders, it uses its power in a manner not contemplated by the law which confers them. The use becomes abuse and is tantamount to excess of power. In regard to the lease in question as it actually existed—Equity looks at the substance and not merely at the outward form. The transaction of the 12th, of Jan. 1892, between the three defendants consists in form of the lease between two of them, and a guarantee of that lease, coupled with a traf-
fic agreement of which all three are parties to it. Such is the form, but when a law which in its terms prohibits a lease to a foreign corporation without Legislative sanction is contemplated and regard is had to the character and relation of the contracting parties, and to the terms of the instrument they have entered into and the simultaneous execution of those instruments, a substantial status differing from the form is disclosed. The statute forbade a lease to the Philadelphia and Reading, a foreign corporation, until a law should be enacted which would approve of such a lease—but it did not prohibit a lease to a domestic corporation.

The Philadelphia and Reading Railroad Company through its officers and agents had promoted the organization of the Post Reading Railroad Company under the general railroad law of this state for the purpose of building and operating a short railroad in connection with its system. The capital of that company is $2,000,000, and the road is only twenty miles in length, when the lease was made it was but partially constructed. Upon such assets as it then had, there existed a mortgage for
$1,500,000, an amount probably in excess of the real value of those assets. No one can for a moment believe that the Central Railroad Company of New Jersey would commit its extensive railroad, with its depots, stations, terminals, rolling stock, ferries, and forty auxiliary roads: in all representing assets valued at nearly $70,000,000, to the keeping of such an irresponsible lessee and depend upon it alone for the security of that property, and the payment of a rental which in a single year will exceed the value of the lessee's entire property. The lessee was not only irresponsible under the trust but not in a position to afford the Central Railroad even temporary benefit from an alliance with it without the sustaining arm of the Philadelphia and Reading—a lease would not have been thought of.—It must not be thought that courts are powerless to strip off disguises to thwart the purposes of the law. Whenever such disguises in fact appear, they can be readily disrobed. The difficulty is in showing the disguise, not in penetrating them when they do appear. (a)

The commodity in which these companies deal is

a necessity of life in this state; it is the principal fuel for its homes and factories. The slightest increase in price is felt by a population of hundreds of thousands of persons, for their necessity compels them to pay the increase. If once a complete monopoly is established by the destruction of competition, whether that be through a lease or through co-operation, the promoters of it or sharers in it, may have whatever price their cupidity suggests. The disaster which will follow cannot be measured; it will permeate the entire community, furnaces, factories, forges, homes, leaving in its trail murmurs of discontent with a government that will tolerate it—and all other evil effects of oppression. Enough has been said to demonstrate that the act complained of is ultra vires, the only question is to define the extent of the injunction prayed for.

This is a preliminary application, its object is to do no more than prevent a threatened, irreparable injury until the cause can be explained, and it should go no further in disturbance of the existing situation than the effectual prevention of the injury apprehended will
admit. But the danger is serious and I do not see how I can effectually prevent it in any other way, than by forbidding all operation under the lease and triparte agreement; and also the performance of the covenants those instruments contain-- and that the Post Reading Railroad Company and the Philadelphia and Reading Railroad Company do desist and refrain from continuing the control of the Road, property and franchises of the Central Railroad Company of New Jersey; and from further, in any wise, intermeddling therewith; and that the Central Railroad Company of New Jersey do desist and refrain from permitting the Post Reading Railroad Company and the Philadelphia and Reading Companies to use, control or operate its road, property and franchises and that the Central Railroad do again resume control of all its property and franchises and the performance of all its corporate duties.

When Chancellor Mc Gill handed down the decision just quoted he struck the death knell of the combination and the hopes of Mr. McLeod were doomed; for without the Central Railroad of New Jersey the combination could not maintain their former arbitrary prices even at tide water
Before the crash the Reading had obtained control of the Poughkeepsie Bridge and made an alliance with the Boston and Maine Railroad, thus securing the bulk of the Anthracite trade to the east. Everything promised well, but too many demands were made at the same time; and for the third time the Reading Road passed into the hands of a receiver, February 27th, 1893. The court appointed Judge Paxton, then chief Justice of the Supreme Court of Penn., who resigned his position as judge: Mr. McLeod of the Reading and one of the managers of the Lehigh Valley. The receivers immediately took charge of the road with its auxiliary connections. They have since been authorized to issue $5,000,000 of receiver's certificates which takes precedence of the bonds and stock, and accounts for the drop in the stock of this corporation. Since Diexel, Morgan & Co. have resumed their former intimate relations with the road, its future safety is assured for the report of 1891 showed a net profit of 90% of the operating expenses, a clear gain of at least 85% and thus too before the widely known combination went into effect: however, the financial pressure since its fall has been so great that one of the receivers has been compelled to
resign; and the battle has now been transferred to the courts. It has been conclusively shown that the Reading Railroad as such could not maintain this monopoly but it remains to be seen whether the courts of the state will be able to fulfill the contracted obligations or not.

At an early stage of this discussion it was mentioned that as long as "the Inter State Commerce Act" remained in its present form, monopolies would continue to flourish. The following amendments have been proposed, which if adopted will, it is thought, successfully check the increasing number and force of all combinations.

These amendments are as follows:

"First:-- Exempt from prosecution parties called as witnesses: so that they cannot refuse to testify on the ground that they will criminate themselves.

"Second:-- Provide for indictment and punishment of railroad corporations who violate the law.

"Third:-- Provide that it shall be an offence which shall be punishable for any witness, properly called, to refuse to come before the Commission.

"Fourth:-- Provide that all testimony taken be-
fore the Commission shall be in writing, filed and preserved as part of the record in the proceedings.

"Fifth:- Provide that in all cases where the action of the Commission is brought into court for review that the same shall be tried on the evidence adduced by the Commission; unless it appears that some material evidence has appeared.

"Sixth:- Amend the act so as to define the word line in the long and short haul clause by providing that where connecting lines by any arrangement transport freight for a long distance at a named rate, no less number of lines shall transport the same freight for a short distance at a greater rate."