THE COAL MINES AND THE PUBLIC

A Popular Statement of the Legal Aspects of the Coal Problem, and of the Rights of Consumers as the Situation exists Sept. 17, 1902

BY

HEMAN W. CHAPLIN

Charles Rowe
Amsterdam
N.Y.

J. B. MILLET COMPANY

BOSTON NEW YORK

1902

THE COAL MINES AND THE PUBLIC

It may not be amiss, at the present time, to attempt to make a careful statement of the legal situation in respect of the coal strike and the actual and prospective coal famine, and to present suggestions with regard to the power of the courts of law to afford relief to the consumer under existing Federal and State Laws, without further legislation.

The writer will first endeavor to state such of the material facts as are familiarly known and are unquestioned, and will then refer to certain principles of law, and cite judicial authorities, which appear to him to point out a natural and simple solution of the pending difficulty, without recourse to any extension of the functions of government, and without invoking any novel procedure; for the writer believes that the present difficulty, in so far as it affects the convenience and the necessities of the coal-consuming public, and the rights of that public in respect of supply and price of coal, involves no greater complication and no greater legal difficulties than are daily being encountered and overcome in ordinary litigation.

The Facts.

The material facts as commonly understood are as follows:

1. Practically the whole existing and available source of supply of anthracite coal for more than twenty

millions of people in the Eastern States is in a territory of five hundred square miles, more or less, in the State of Pennsylvania.

2. The mines within this region are owned by a very limited number of corporations and individuals; and at least two-thirds of the whole mining property, in capacity of output, is owned or held under lease by one or another of seven railroad corporations: the Philadelphia & Reading, the Central Railroad of New Jersey, the Lehigh Valley, the Delaware, Lackawanna & Western, the Delaware & Hudson, the Pennsylvania, and the New York, Ontario & Western, — these railroad corporations holding, either directly and in their own names, or through subsidiary corporations of which they own the stock. Not only is the ownership of the mining region thus limited and close, but these corporate owners, abovementioned, by arrangement among themselves or their stockholders, are for practical purposes a unit: for the Philadelphia & Reading owns a control of the Central Railroad of New Jersey, and both companies have the same president; the Philadelphia & Reading holds a lease for a term practically perpetual of the Lehigh Valley, while a controlling interest in the Philadelphia & Reading itself is in a voting trust, consisting of J. Pierpont Morgan, C. L. W. Packard, and Frederick P. Olcott, and a control in the capital stock of the Erie is in a voting trust, consisting of J. Pierpont Morgan, Louis Fitzgerald, and Charles Tennant, — thus uniting, in two voting trusts, of each of which J. Pierpont Morgan is a member, the Erie, the Philadelphia & Reading, the Central Railroad of New Jersey and the Lehigh Valley; and the Erie has, it is said, acquired the whole capital stock of the leading independent mine owner, — namely, the Pennsylvania Coal Company, — thus adding that company to the syndicate above mentioned.

3. With the exception of a brief period between May, 1900, and March, 1901, the railroad corporations above mentioned — all penetrating this coal region — controlled practically all the coal-carrying business from the mines. In May, 1900, a new railroad company was promoted by independent operators, and was incorporated, under the name of the Delaware Valley & Kingston Railroad, to be operated into the coal region by connection with a then existing railroad called the Erie & Wyoming Valley Railroad, then owned by the Pennsylvania Coal Company, above mentioned, which at that time was an independent operator.

4. About six months ago all these railroad corporations and the coal corporation above mentioned, formed a combination between themselves and substantially all the independent mine owners and operators in the region, under which the railroads were not to compete with each other, and a uniform price was to be fixed monthly for coal delivered free on board vessels at tide-water. Representatives of the various members of this combination or pool have, since the formation of the pool, held regular monthly meetings at New York, and fixed the price of the different kinds of coal for the ensuing month.

5. There are limited sources of anthracite coal supply in other parts of the world — for example, in Wales; but the cost of delivering coal from any such points upon the eastern seaboard of the United States is almost, if not quite, double what the average price of Pennsylvania coal has been for the past few years, and is, to a great part of the public, a prohibitory cost; and, aside from that fact, and assuming that sufficient quantities could be mined, it would be a very long time before transportation and shipping arrangements could be revolutionized so as to be adapted to an economical, speedy, and

sufficient supply of anthracite coal from outside this country. Nor would transportation interests, or other kinds of interests, be justified in making this revolution, with the enormous attendant expense, when the new system could be made worthless at any time by an arbitrary drop in the price of Pennsylvania anthracite, by the managers of the combination of coal-mine owners and railroads. It results from this, that for the coming winter, at least, and for years to come, for all practical purposes, the Pennsylvania coal mines, above referred to, will have a monopoly of the anthracite supply of the United States, and that the management of that supply, in the matters of time and amount of production and shipping, and of price, will be in a single hand, — namely, the knot of individuals who for the time being are the managers of the combination of coal-mine owners and railroads.

6. The situation above set forth is the result of slow and gradual processes on the part of successive owners of the present coal mining region; of legislatures, in chartering and permitting the consolidation or leasing of railroad and coal corporations; of mine owners and operators, and of the general public; and the upshot of the situation, in this respect, is that the present members of the coal combination (including, as it does, the coal carrying roads and the owners of mines) and their predecessors in title and in business, have, during fifty years or more, invited the public to build and plan their business and domestic affairs upon the expectation of a constant supply of enormous quantities of anthracite coal from this region and the delivery of it out of the mining region, at proper shipping points, all at a price affording a proper compensation for the coal, the mining of it, and the transportation of it to these

shipping points, but a price also consistent with the practical continuance of use of it by the public for business and domestic purposes. Upon this reasonable expectation and reliance on the part of the public — an expectation and a reliance invited and encouraged by the mine owners and the coal-carrying companies — is founded the whole industrial and domestic economy, — one might almost say, the existing form of civilization — of the population of the eastern part of the United States, — including in this not merely the conduct of private business, such as manufacturing; not only the domestic requirements of cooking and heating; not only, to a large extent, the land and water transportation system, including the transit of the mails, but also, in countless forms, the requirements of the National, State, and municipal governments, which, among them, for government buildings proper and for myriads of schools, and the like, — are, to a large extent, absolutely dependent, as conditions now are and for some time must remain, upon a continuous supply of anthracite coal in a manner that can be depended upon. From this it follows that from a situation arising out of their own invitation, the mine owners and the coal-carrying companies — that is to say, the members of the coal combination — hold practically in one hand (and subject in fact to the control of their small representative body) one of the three or four chief bases of the existing forms of public and private life and conveniences as now conducted and existing within the Eastern part of the United States, with a population of over twenty millions of people.

7. For many months past there has been practically an absolute cessation of production of coal from this region; very little coal is now being mined; the winter is close at hand; such accumulations of anthracite

coal as there were have been practically exhausted; the price of anthracite coal — when it can be got at all, in limited quantities — is twice the normal price, and is a price almost prohibitory for a great part of the population; and a re-commencement of mining, on the largest possible scale, at the present moment, would barely, if at all, meet requirements which, within the next six weeks, will become absolute and imperative. The scarcity is such, and the requirements are so great, that a resumption to the fullest extent at the present moment would not relieve, but would only soften the difficulty; because all wharfage, railroad, and other transportation provisions are based upon the theory of a steady and uniform transportation of coal through the summer, for the requirements of the winter; and it would be impossible to mass vessels at the receiving wharves, and to mass and run freight trains on the coal-carrying roads and on the distributing roads outside the coal region, so as to give anything like a convenient provision of coal for the coming winter. Such would be the situation, if mining were resumed at the present moment; but no resumption of mining, to any considerable extent, is in sight. Announcements are made of a production of a few thousand tons a day; of a slight, gradual increase, and of an expected further increase in the immediate future; but production on this scale is insignificant in comparison with the enormous demand.

8. The reason of this long and still existing cessation of mining is in the unwillingness of the combination which owns or controls the mines and the coal carrying companies to yield to certain demands as to rate of wages, hours of work, and other conditions, made by the miners who have hitherto been working in the region. The writer does not propose to enter into the merits

of this controversy. As will be seen from the nature of his suggestions made below, the merits of this controversy need not now be considered by the public. Reference may, however, properly be made here to the fact that the President of the United States, acting under authority of law, appointed a Federal officer familiar with questions of labor to investigate the merits of the controversy; that it is to be assumed that if the merits of it as between the coal operators and the miners had been plainly with the operators, and if the operators have been and still are justified in their cessation of mining, and if the facts in that respect have been and were as clear as the operators claim them to be, this Federal officer could easily have ascertained the situation to be such. His report, however, — while extremely general in its terms, — so far from expressing any view to this effect, discloses an opinion on his part that, as between the coal operators and the miners, the miners are in fairness entitled to important modifications of present conditions.

Upon the view of the present article, however, this whole matter is immaterial; and the public, in calling for coal, are not required to go into the merits of the controversy between the coal miners and the operators.

So much for the facts. Now for the rights of the public, and the remedy to which the public is entitled.

Rights and Remedies of the Public.

It has been publicly assumed by President Baer, who appears to be the recognized spokesman of the coal combine, and it seems to be assumed by Mr. J. Pierpont Morgan, by his refusal, as member of a voting trust, or otherwise, to interfere with the present situation, that the owners of the mines and the owners of the coal-carrying roads stand on the footing of an ordinary private owner of real estate or vehicles; that they are under no obligation to the public to produce coal, — or that any obligation or implied contract that they have towards the public in this respect must be assumed to contain a "strike clause" in it, exempting them from liability to produce or carry coal pending a strike; and that, therefore, the pending situation presents nothing but a controversy between two sets of individuals, — employers on the one hand, and employees on the other, — in which third persons, including the public, have no right to interfere; and that the coal operators, acting through their combination, may keep the public without coal for a time absolutely unlimited, and let the price of imported or other coal rise to any figure, however extravagant, unless and until the coal operators acting through their combine can induce the miners to accede to terms which the coal operators acting through their combination may be willing to agree to.

The coal now in the mines is, of course, in the eye of the law, real estate, like the houses and trees and rock and soil within the region. It is bought and sold and mortgaged by deeds, like other real estate. The coal operators' view of the situation evidently is — or at least it necessarily involves the theory — that the owner of real estate

can do as he will with it, providing he does not use it in a manner affirmatively offensive to his neighbors, and that among his inalienable rights in respect of it, is the right to let it lie idle, — or, pushing their theory to its logical result, — that, except in the ordinary case of an express or constructive trustee, holding subject to the equitable interest of a particular individual or individuals, the legal owner of real estate necessarily owns it absolutely, and not subject to any trust in behalf of the public generally.

This view of the situation, necessarily involved in the present attitude of inaction of the coal operators' combination, is unsound, root and branch, and not only unsound, but in conflict with most elementary and familiar principles of law, which are in operation, and are being invoked, at every moment, by millions of people.

Ownership of Property not Absolute.

It will be convenient here first to state some of the more familiar and elementary principles of law which radically conflict with this attitude of the coal operators; then to present some specific decisions of the Supreme Court of the United States which are closely pertinent, and which apply these principles to modern conditions such as that now existing in the coal situation; *and finally to point out a form of remedy which is now and at once open to the public, and to any individual of the public having substantial requirements for coal, under existing laws and existing legal machinery.*

First. Speaking in the broadest sense, and speaking of all real estate, and not merely of real estate having peculiar features, it is utterly untrue that the legal title of

any private owner is an absolute title, but, on the contrary, *all real estate, of whatever character, is subject to the right of the public in many respects to restrict the use of it, or to require affirmative action in respect to it on the part of the owner.* Thus, the use by a man of his real estate may constitutionally be made by statute to depend upon the existence of proper motive on his part, — and, therefore, while he may have a right to build to a great height upon the extreme edge of his land, the legislature can, without any allowance to him for damages, forbid him to build from improper motives; that is, to build such a structure as is commonly known as a "spite fence." (Rideout *v.* Knox, 148 Mass. 368; Hunt *v.* Coggin, 66 N.H. 140.) So, although an owner of real estate has the right to build upon his land, — a right which cannot be taken away without compensation in damages, — that right may be, and constantly is, enormously restricted, without compensation to him, by building-laws so-called, providing for specified, and often very costly, requirements in materials and structure. (Atty. Genl. *v.* Williams, 178 Mass. 330.) So, without compensation in damages, owners of buildings may be compelled to equip their buildings with costly fire-escapes, at their own expense. (Cincinnati *v.* Steinkamp, 54 Ohio St. 284; McCulloch *v.* Ayer, 96 Fed. 178.) So a railroad company, without any right reserved to the State in the charter, may be compelled, without provision for any compensation therefor, to fence its road, at its own expense. (Minn. & St. Louis Ry. *v.* Emmons, 149 U.S. 364; Missouri, etc., Ry. Co. *v.* Humes, 115 U.S. 512.)

Second. Passing now from property in general, without peculiarity in its character or use, we come to a second class of property, — namely, property which the owner voluntarily invites others to use or to avail

themselves of in any way. It has been universally held, and in a multitude of cases, that a person who invites others to make use of his property in any form — even merely to the extent of entering upon it — thereby exposes himself under the law to a liability towards such persons, — a positive liability to put and to keep his property in a condition consistent with good faith in giving the invitation. That is to say, — stating the principle of "invitation," as it is technically known in the law, in a broad form, — it is this: that every man, by inviting others to deal with his property, creates himself, to that extent, a trustee of his property towards such persons, and puts himself and his property under a limitation, and — where affirmative action is required by good faith — under obligations of affirmative action.

Third. A principle underlying the rule of invitation, or closely allied to it, has been in force from the earliest times, in the law of England and of this country, and is to the effect that when a person voluntarily devotes his property to a public use, and invites the public to make use of it, he cannot back and fill with the public, but the public's right in his property will control his own.

Thus, in England and in this country, from time immemorial, a man holding forth his house as an inn, and offering entertainment for man, or for man and beast, as the case may be, becomes thereby subjected to the right of every respectable traveller to enter the house, to sleep there, to be fed there, and — where the inn comprises a stable — to have his horse lodged and fed; and to this extent his right to the possession of a part of the eating-room and to a bed-chamber is superior to and obliterates the owner's right of possession and occupation of his building.

The same thing is true of the vehicles and other means of transportation belonging to a common carrier. The moment one sets up in business as a common carrier and holds himself out as such, his vehicles are no longer his own; they are his only subject to the rights of travellers to get into them and ride in them upon paying a reasonable charge.

The public rights just referred to are exercised in millions of instances, every day, in this country, and millions of people, in travelling, are protected, not merely by the feelings or wishes of innkeepers or common carriers, but by an ancient, well-defined, and absolute legal right, to which the property of the innkeeper and of the common carrier is subjected, and subject to which it is held in trust.

Although the case of innkeepers and common carriers furnishes a familiar illustration of the principle, and one constantly before our eyes, the principle of voluntary subjection of property to the rights of the public in it is by no means limited to inns and carriers. It has constantly been applied to wharves, to vehicles not of common carriers (such as hacks in cities), to mills, and to other classes of real and personal property.

Fourth. Not only may a person by voluntarily entering into a certain line of effort and occupation subject his real and personal estate to rights of other people in it, but he may subject himself personally to a duty of affirmative action in behalf of the public, — action either in connection with his real or personal property, or action independent of any property.

Thus, one who sets up to be a common carrier or an innkeeper cannot abruptly, and without proper notice, retire from the scene upon the approach of a traveller, and leave the inn or the vehicle to the traveller, but he is bound himself to operate the inn or the vehicle for the traveller. On this principle it has been decided that though a given carrier may not be under obligation to transport all kinds of goods, and may, after having transported as a common carrier, a certain class of goods for some time, be at liberty to cease to carry such goods, yet, until notice is given, the carrier is bound to continue transporting all goods of that class which are properly tendered; nor can he avoid this duty by announcing when the goods are tendered that he has ceased to carry goods of that class.

Fifth. These principles are not limited in modern life to the specific forms or application of them which were made by the early law, but exist and are capable of being applied, up to the fullest requirements of their spirit, to new conditions arising in modern society.

This last doctrine has a striking application in a decision of the Supreme Court of the United States, rendered in 1876. (Munn *v.* Illinois, 94 U.S. 113.)

That case is so striking in its doctrine, and so pertinent to the present controversy as to the rights of the public in the coal mines, that it should be fully stated.

The facts were as follows:

In 1862 the firm of Munn & Scott in Chicago erected a grain elevator, and thereafter continuously carried on in that elevator the business of storing and handling grain for hire, receiving, as compensation, rates of storage agreed upon by the different elevators in Chicago and publicly announced in the newspapers. The grain of different owners was not kept separate, but was stored and mixed together.

Such being the situation, the State of Illinois, in 1870, adopted a new Constitution, by which it was provided, among other things, that all grain elevators such as the

one above described were declared to be public warehouses; that public statements should be made by them, and that the General Assembly of the State should pass certain laws to effectuate this constitutional provision. In 1871 the General Assembly passed a statute which required among other things that the owners or managers of such elevators should take out a license (which should be revocable in case of adjudicated misconduct) and should give bond in the sum of $10,000 for the faithful performance of their duties as public warehousemen, *and which also provided a maximum charge for storage and handling of grain.*

Munn & Scott, in 1872, still owning and managing the elevator, disobeyed the Act in three particulars: they undertook to conduct their business without taking out a license; they did not give a bond; and they charged rates higher than those fixed by the statute.

Munn & Scott were prosecuted for violation of the statute, were found guilty, and were fined. Thereupon they appealed the case to the Supreme Court of Illinois; and, that court having decided adversely to them, they took the case to the Supreme Court of the United States.

In their appeal to the Supreme Court of the United States they claimed that those features of the statute which they had violated were void, upon the ground, among others, that they were repugnant to the provisions of the Fourteenth Amendment to the Constitution of the United States, which ordains that no State shall "deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Their contention was, that as they had owned and had conducted the elevator prior to the passage of the State Constitution of 1870, they had, at the time of the passage of that Constitution, a vested right in and ownership of the elevator, which necessarily comprised the right to make their own terms with customers as to price and other provisions of storage, and that this right and this liberty so to conduct their business, thus existing prior to 1870, could not, by the Constitution of 1870, or the Act passed under it, be cut down or restricted, by a statutory fixing of rates, or by a statutory requirement that they must get a license and give bond as a condition of operating their elevator.

In behalf of the State of Illinois, on the other hand, it was contended that:

> "Whenever any person pursues a public calling and sustains such relations to the public that the people must of necessity deal with him, and are under a moral duress to submit to his terms if he is unrestrained by law, then, in order to prevent extortion and an abuse of his position, the price he may charge for his services may be regulated by law," and that the grain warehousemen in Chicago had voluntarily entered into and sustained "such relations to the public that all the grain consigned to 'the greatest grain market in the world' must necessarily pass through their hands;" and that therefore the State of Illinois had power to prescribe maximum rates of storage.

It will be observed that the question thus presented to the Supreme Court of the United States was not affected by the fact that the limitations placed by the State of Illinois upon grain elevators were specifically provided for by a *Constitution* of Illinois, rather than by a mere *statute*; because the proprietors of the elevator, in the case in question, had their building and were engaged in the business, prior to the passage of the constitutional provision; and the Fourteenth Amendment to the Con-

stitution of the United States would protect them just as completely against a new State constitution, as against a new State statute.

The Supreme Court of the United States sustained the constitutionality and validity of the Illinois statute, the opinion being delivered by Chief Justice Waite.

In respect of the contention that the Illinois statute invaded the Fourteenth Amendment (which ordained that no State should deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws), the opinion of the Court proceeded in substance as follows:

When one becomes a member of society, he necessarily parts with some rights or privileges which, as an individual not affected by his relations to others, he might retain. *The public have no power to control rights which are "purely and exclusively private," but has the power to require each citizen "to so conduct himself, and so use his own property, as not unnecessarily to injure another."*

> "Under these powers," say the Court, "the government regulates . . . the manner in which each shall use his own property, when such regulation becomes necessary for the public good. In their exercise it has been customary in England from time immemorial, and in this country from its first colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, innkeepers, etc., and in so doing to fix a maximum of charge to be made for services rendered, accommodations furnished, and articles sold. To this day statutes are to be found in many of the States upon some or all these subjects; and we think it has never yet been successfully contended that such legislation came within any of the constitutional prohibitions against interference with private property. With the Fifth Amendment in force, Congress, in 1820, conferred power upon the city of Washington "to regulate . . . the rates of wharfage at private wharves, . . . the sweeping of chimneys, and to fix the rates of fees therefor, . . . and the weight and quality of bread," 3 Stat. 587, sect. 7; and, in 1848, "to make all necessary regulations respecting hackney carriages and the rates of fare of the same, and the rates of hauling by cartmen, wagoners, carmen, and draymen, and the rates of commission of auctioneers," 9 id. 224, sect. 2.
>
> "From this," say the Court, "it is apparent that, down to the time of the adoption of the Fourteenth Amendment, it was not supposed that statutes regulating the use, or even the price of the use, of private property necessarily deprived an owner of his property without due process of law. Under some circumstances they may, but not under all. The amendment does not change the law in this particular: it simply prevents the States from doing that which will operate as such a deprivation."

The Court then lay down, in striking language, the doctrine of public right in private property.

> "Looking then to the 'Common Law,'" they say, "from whence came the right which the Constitution protects, we find that when private property is 'affected with a public interest, it ceases to be *juris privati*, [the subject of mere private rights] only.' This was said by Lord Chief Justice Hale more than two hundred years ago . . . . and has been accepted without objection as an essential element in the law of property ever since. *Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the*

community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but so long as he maintains the use, he must submit to the control.

"For this purpose we accept as true the statements of fact contained in the elaborate brief of one of the counsel of the plaintiffs in error. From these it appears that 'the great producing region of the West and Northwest sends its grain by water and rail to Chicago, where the greater part of it is shipped by vessel for transportation to the seaboard by the Great Lakes, and some of it is forwarded by railway to the Eastern ports. . . . Vessels, to some extent, are loaded in the Chicago harbor, and sailed through the St. Lawrence directly to Europe. . . . The quantity [of grain] received in Chicago has made it the greatest grain market in the world. This business has created a demand for means by which the immense quantity of grain can be handled or stored, and these have been found in grain warehouses, which are commonly called elevators, because the grain is elevated from the boat or car, by machinery operated by steam, into the bins prepared for its reception, and elevated from the bins, by a like process, into the vessel or car which is to carry it on. . . . In this way the largest traffic between the citizens of the country north and west of Chicago and the citizens of the country lying on the Atlantic coast north of Washington is in grain which passes through the elevators of Chicago. In this way the trade in grain is carried on by the inhabitants of seven or eight of the great States of the West with four or five of the States lying on the seashore, and forms the largest part of interstate commerce in these

States. The grain warehouses or elevators in Chicago are immense structures, holding from 300,000 to 1,000,000 bushels at one time, according to size. They are divided into bins of large capacity and great strength. . . . They are located with the river harbor on one side and the railway tracks on the other; and the grain is run through them from car to vessel, or boat to car, as may be demanded in the course of business. It has been found impossible to preserve each owner's grain separate, and this has given rise to a system of inspection and grading, by which the grain of different owners is mixed, and receipts issued for the number of bushels which are negotiable, and redeemable in like kind, upon demand. This mode of conducting the business was inaugurated more than twenty years ago, and has grown to immense proportions. The railways have found it impracticable to own such elevators, and public policy forbids the transaction of such business by the carrier; the ownership has, therefore, been by private individuals, who have embarked their capital and devoted their industry to such business as a private pursuit.'"

The Court then proceeded to apply the foregoing principles to these facts.

"Under such circumstances," say the Court, "it is difficult to see why, if the common carrier, or the miller, or the ferryman, or the innkeeper, or the wharfinger, or the baker, or the cartman, or the hackney-coachman, pursues a public employment and exercises 'a sort of public office,' these plaintiffs in error do not. They stand, to use again the language of their counsel, in the very 'gateway of commerce,' and take toll from all who pass. Their business most certainly 'tends to a common charge, and is become a thing of public interest and use.' Every bushel of

grain for its passage 'pays a toll, which is a common charge,' and, therefore, according to Lord Hale, every such warehouseman 'ought to be under public regulation, viz., that he . . . take but reasonable toll.' *Certainly if any business can be clothed 'with a public interest and cease to be* juris privati *only,' this has been. It may not be made so by the operation of the Constitution of Illinois or this statute, but it is by the facts.*"

One important consideration remained to be noticed by the Court, — namely, the consideration that there was no judicial precedent in favor of such a right of control as the State of Illinois had undertaken to exercise. The language of the Court, upon this point, is highly significant and pertinent in the highest degree to the coal situation of September, 1902.

> "Neither is it a matter of any moment," say the Court, "that no precedent can be found for a statute precisely like this. It is conceded that the business is one of recent origin, that its growth has been rapid, and that it is already of great importance. And it must also be conceded that it is a business in which the whole public has a direct and positive interest. It presents, therefore, a case for the application of a long-known and well-established principle in social science, and this statute simply extends the law so as to meet this new development of commercial progress. There is no attempt to compel these owners to grant the public an interest in their property, but to declare their obligations, if they use it in this particular manner.

This doctrine, thus announced by the highest tribunal in the land, completely disposes of the objection — which might naturally be made — that no decided case

may be found specifically recognizing the rights of the public in coal mines, or the duty of affirmative action on the part of owners of coal mines. If the principles thus applied by the Supreme Court to *warehouses* are, in character, applicable to *coal mines* and *coal mining*, as conducted in 1902, it is no argument whatever against the application of them, that they have never been applied to coal mines and coal mining.

Lastly, the Court took up for consideration the fact that the elevator had been built and the business established prior to the constitutional and statutory provisions of Illinois, which were in question. All that the proprietors of the elevator had done prior to the passage of these enactments,

> "was," say the Court, "from the beginning, subject to the power of the body politic to require them to conform to such regulations as might be established by the proper authorities for the common good. They entered upon their business and provided themselves with the means to carry it on subject to this condition. If they did not, wish to submit themselves to such interference they should not have clothed the public with an interest in their concerns. The same principle applies to them that does to the proprietor of a hackney carriage, and as to him it has never been supposed that he was exempt from regulating statutes or ordinances because he had purchased his horses and carriage and established his business before the statute or the ordinance was adopted."

Acting upon the principles thus laid down, the Supreme Court of the United States affirmed the constitutionality and validity of the Illinois statute, and thus illustrated, in a striking application, the principle that whoever so

conducts his property or his business as to enter into relations with the public, and leads them to depend upon his services and the use of his property, thenceforth holds his property and his services no longer as private property, but subject to a superior and dominating interest in the public, — that is to say, holds them in trust for the public, and subject to public control.

The doctrine of Munn *v.* Illinois, was again elaborately considered by the Supreme Court in Budd *v.* New York (143 U.S. 517). After reviewing numerous cases in the Federal and State courts in which Munn *v.* Illinois had been criticised, or approved and followed, the Supreme Court emphatically reaffirmed the doctrine. It was established still more firmly in the Texas "Reagan" cases (154 U.S. 362, 413, 418, 420) in 1894; in Smyth *v.* Ames (169 U.S. 466, and 171 U.S. 361) in 1897, and, in 1899, in Chicago, M. & St. Paul R.R. *v.* Tomkins (176 U.S. 167). See also Cotting *v.* Kansas City Stock Yards Co. (183 U.S. 379).

The following kinds of property or business have been held by the United States Supreme Court to be so affected with a public interest as to be subject to a regulation of rates by the State: railroads, water supply, toll bridges, turnpikes, and grain elevators; by other Federal courts, or State courts: ferries, grist mills, gas, electric light, telegraph, stockyard, street railway, and telephone businesses.

A public regulation in the Stateof Alabama has fixed a maximum price of bread sold by bakers; and the validity of the provision was sustained by the highest court of that State. (Mayor of Mobile *v.* Yuille, 3 Alabama, 139.)

It is undoubtedly true — and allusion is made to it in the opinion above quoted from — that the public right in one's property or services, being dependent upon the

fact of the holding out of the property or the services to the public, may be terminated by a withdrawal of the property from an offer of public use. That is to say, one who owns a hotel may go out of the hotel business and use the building for his private dwelling; or a vehicle-owner who is a common carrier may cease to be a common carrier and resume exclusive use of his vehicles for domestic purposes; but this exception is obviously subject to the qualification that one cannot abruptly, and without reasonable opportunity to the public to change their own affairs accordingly, terminate his relations with the public. For example, an innkeeper could not lawfully make a sudden stop of innkeeping in the middle of a winter night, or a common carrier suddenly leave the business and abandon his passengers or freight by the roadside; and the character of property, in a given instance, may be such, or the character of the dealings with the public may have become of such character and so intricate, that it may not be possible for a very long period, and indeed may not be possible at all, to withdraw the property from the public use.

Applying this qualification to the Pennsylvania coal mining, it is apparent that the relations between the owners of the coal mines and the coal mines themselves, on the one hand, and the inhabitants of the United States, on the other hand, have been of such slow growth and have become so intimate, and have reached so far down toward the very roots of the existence of modern society in the United States in its present form, and involve such an infinite number of details of distributive shipping by land and water and wholesale and retail distribution to the ultimate consumers, that from this point of view alone the owners of the Pennsylvania coal mines, if they could by any means free themselves

from the public easement, could do so only after granting years of full notice and of opportunity to the public to arrange the fabric of modern society upon a basis other than that of Pennsylvania anthracite coal.

Moreover, the question of the right of withdrawal of one's property or services from the public use is not actually pertinent in the present connection, for the reason that the mine-owners or coal-carrying railroads do not, and will not, propose or attempt to *retire* from public business, but are now undertaking, and will in future do nothing further than undertake, to exercise the right of temporary stoppage of public use and employment, answering to the temporary stoppage of an ordinary railroad.

Thus far — and particularly in the discussion of the Illinois grain elevator case — the writer has emphasized only one feature of the qualifications voluntarily created by the Pennsylvania coal mine-owners upon their properties. That is, he has emphasized the fact that they, like the owners of the Chicago grain elevator, and like a common carrier or an innkeeper, had voluntarily entered into relations with the public. It remains, however, to consider another feature of the subjection of their private rights to the rights of the public, — namely, the feature of *virtual monopoly*.

The grain elevator which was in question in the Chicago case did not *by itself* have a monopoly of the elevator business. There were other elevators in Chicago; and it was not contended that they were not sufficient to accommodate the business without the Munn elevator, or that if the Munn elevator should upon due notice withdraw from the business, other elevators, if necessary, would not be built in its place. Anybody had a right to build an elevator in Chicago and the

right, upon compliance with the Illinois statute, to carry on the business. From the nature of the case, therefore, there was not, and could not be, a *complete* monopoly. It did appear, however, in that case, that the elevators of Chicago, taken together, did, at any given moment, and without the building of new elevators, necessarily have a *practical* monopoly of the storage of a large part of the grain used in the whole world. The Court alluded, in its opinion, to this feature also of the situation, as a feature *in and of itself* subjecting the property to rights of the public.

> "In this connection," say the Court, "it must also be borne in mind that, although in 1874 there were in Chicago fourteen warehouses adapted to this particular business, and owned by about thirty persons, nine business firms controlled them, and that the prices charged and received for storage were such 'as have been from year to year agreed upon and established by the different elevators or warehouses in the city of Chicago, and which rates have been annually published in one or more newspapers printed in said city, in the month of January in each year, as the established rates for the year then next ensuing such publication.' Thus it is apparent that all the elevating facilities through which these vast productions 'of seven or eight great States of the West' must pass on the way 'to four or five of the States on the seashore' may be a 'virtual' monopoly."

But if the situation there presented created a "virtual" monopoly for the time being, and a monopoly subjecting the property to a public right, how much more definite is the subjection of the coal mines to a public right upon this ground; for not only is the Pennsylvania anthracite region practically the only actual producing region of anthracite coal at the present moment, but it is, as far as we know, the only possible source of considerable sup-

ply for the United States; and we have, therefore, the situation, not merely of a present actual monopoly, but at least, for a long time ahead, — and as far as we know, permanently,— of an absolute and inextinguishable "virtual" monopoly. If, therefore, the "virtual" monopoly feature for the time being of existing elevators in Chicago presented such an element of monopoly as to subject the elevators of Chicago to public rights in them, far more does the monopoly feature of the Pennsylvania coal mining region operate, in and of itself, and apart from other considerations, to subject the property to rights of the public, when the public have once been led by the original owners of the mining lands and their successors down to and including the present owners, to base their business and domestic conditions on a reliance upon this source of supply.

This decision of the Supreme Court of the United States was of course a decision merely upon the effect of the Constitution of the United States, and would not necessarily establish the proposition that there might not be a constitutional provision in some one State, securing to property owners within that State — to the extent of the power of the State — exemption from subjection to such public burdens. This, however, is not material here; for there is no provision in the Constitution of Pennsylvania, — the State to be considered, — which, in language or legal effect, goes more strongly in favor of owners of property than the Fourteenth Amendment to the Constitution of the United States; and the mine owners of Pennsylvania, therefore, if they should invoke in their own defence the State constitutional provisions, would find none affording them any stronger protection than the Federal provision considered by the United States Supreme Court in the Munn case.

Furthermore, the trust or right in the public to which the Pennsylvania mine owners have subjected their property and their services, run in behalf, not merely of citizens of Pennsylvania, but of citizens of the whole eastern part, at least, of the United States, and in favor of every one of those citizens. Citizens of other States are not limited to the Courts of Pennsylvania in seeking enforcement of the trust or right in their favor, but, if they have interests of any considerable amount, may seek enforcement of them in the Courts of the United States; and the Courts of the United States would probably treat as inoperative, as against citizens of other States, any provisions, if such there were, of the Constitution of Pennsylvania which, as construed by the Pennsylvania Courts, might undertake to limit the extent to which the owner of property in Pennsylvania could create a trust in it in favor of non-residents. This, however, is mere academic discussion; for the Constitution of Pennsylvania contains, as we have seen, no such provisions, but on the contrary, in so far as it deals with the matter at all, discloses an intention to reserve to the fullest extent to the public all such rights as upon general principles of law exist in them or would accrue to them in the mines.

One feature of the Chicago grain elevator case remains to be considered. In that case, in the view of the Supreme Court of the United States, not only did there exist a right in the public to control the grain elevators, but the State had, by statute, undertaken to exercise that right and *to fix prices*. It may be urged that the Munn case is not applicable to the present coal situation, for the reason that the State of Pennsylvania *has not passed a statute* declaring and particularizing and undertaking to exercise the public right. It can easily be shown, however, by numerous authorities and by the

opinion in the Munn case itself, that this statute added nothing to the rights of the public in the elevator.

Looking at this matter, in the first place, from the standpoint of principle, it is to be observed that the Supreme Court of the United States in the Munn case founded their decision upon principles of law already existing and long previously applied in the case of common carriers, innkeepers, wharfingers and others; and that in all such cases the rights of the public in the property or to the services of those persons have always been and are enforceable in the courts, without the aid of any statute; and that when, in any given instance, the question has arisen as to whether the traveller was of such character as to be entitled to be received in a respectable hotel, or what price one was bound to tender in a given instance as the condition of receiving food or lodging at an inn, or having transportation for himself or his goods, those questions, in the absence of statute (and in general they have not been dealt with by statute) have been left in each instance to be settled by the judicial tribunals — the rule being that a traveller, or the intending employer of a common carrier, must comply with *reasonable* conditions, and be willing to pay a *reasonable* price, and that the details of the conditions and the amount of reasonable price must be fixed, in case of a controversy, by the courts.

Viewing the matter, in the second place, from the standpoint of decisions, it has been held in many cases not only that the familiar classes of statutes which require gas companies, water companies, telegraph and telephone companies and others within the rules above stated as to public rights, to provide certain facilities upon certain conditions and at certain prices essential to the enjoyment of the right by the public, are valid; but that in the absence of such statute any such corporation

may, under the general principles of law, be compelled by the ordinary legal tribunals to afford equal and fair service to all, upon reasonable compensation (to be fixed in the absence of statute by the courts), or be subjected to the payment of damages for refusing to grant such privileges.

This principle received a repeated and striking application, for example, in what are known as the "Gold Ticker" cases. The Gold and Stock Telegraph Company, a corporation, went into the business of providing stock brokers and others having similar requirements in the large cities with tickers. No statute regulated the business, in the way of fixing a price for the use of tickers, or of giving individuals the right to have tickers in their offices. The company undertook arbitrarily to exclude certain brokers from the right to have tickers, and, moreover, certain persons desiring tickers were unwilling to pay the price which the company demanded. It was held in various cases that the company, providing it remained in the business at all, must provide tickers for all persons who desired them, in the cities where the company operated, and within the region of operation; and also that the company could not itself fix prices, but the courts could fix a maximum price which an intending patron should be obliged to tender. (Friedman *v.* Gold & Stock Tel. Co., 32 Hun. 4; Smith *v.* Gold & Stock Tel. Co., 42 Hun. 454; see also City of Mobile *v.* Bienville Water Co., 30 So. Rep. 445 (Ala.); 2 Shearm. & Redf., sect. 528 *et seq.*)

Indeed, the principle that *all* persons engaged in a business of importance to the public, enjoying a practical or absolute monopoly, whether as a result of legislation or merely from the existing circumstances, may be compelled to perform their duties to the public impartially and on reasonable terms, is much older in the com-

mon law than is generally supposed by lawyers. In the case of Allnut *v.* Inglis, in the English King's Bench in 1810, Lord Ellenborough held that the London Dock Co., which enjoyed a monopoly of the business of receiving and warehousing imported wines, was bound to furnish its services for reasonable compensation; and that, without any statute relating to the prices to be charged for such services, a court of common law could enforce the obligation just stated. What is, however, still more significant and carries the doctrine back to a much earlier period, is the dictum of Lord Hale, quoted and relied on by Lord Ellenborough, that where the king or a subject has a public wharf to which all persons must come who come to that port to unlade their goods, either

> "because they are the wharves only licensed by the Queen, *or because there is no other wharf in that port, as it may fall out;* in that case there cannot be taken arbitrary and excessive duties for cranage, wharfage, etc.; neither can they be enhanced to an immoderate rate."

Lord Hale's reason is,

> "for now the wharf and crane and other conveniences are affected with a public interest, and they cease to be *juris privati* only."

In the third place, the fact that the absence of a statute of Pennsylvania specifically recognizing and particularizing the public right, and specifically providing for its enforcement in a particular mode, is not essential to the public right, is expressly laid down in the opinion of the Supreme Court of the United States in the Munn case. In fact, as will be seen from the citations now about to be made from that opinion, the existence of a statute in Illinois, so far from being presented in that case as a vital condition of the enforcement of a

public right, was presented in argument by the counsel for the grain elevators as having crippled the private right. The counsel for the elevators, as appears from the citations about to be made, contended that if a public right in the elevators existed, *it was for the courts, and not for a legislature,* in the case of such a public right, to fix and prescribe the terms and prices upon which it could be exercised. That is to say, the counsel for the elevators admitted in argument that if a public right existed, it could, in the absence of a particular statute, be enforced through the courts, and that the courts could fix the reasonable conditions of doing the business and a reasonable price to be paid by the patrons of the elevators and contended that this was the only way in which those particulars could be fixed. In overruling this proposition the Supreme Court, as will be noted, not only affirmed the capacity of the legislature to deal in a reasonable manner with such questions, but also recognized the soundness of the proposition conceded by the counsel for the elevators, that *where the right exists, and there is no statute, the right may be enforced through the ordinary courts of justice, and the particulars and prices may be fixed by the court.*

> "It is insisted, however," say the court (page 133) [that is, insisted by the counsel for the elevators], "that the owner of property is entitled to a reasonable compensation for its use, even though it be clothed with public interest, and that what is reasonable is a judicial and not a legislative question.
>
> "As has already been shown, the practice has been otherwise. In countries where the common law prevails, it has been customary from time immemorial for the legislature to declare what shall be a reasonable compensation under such circumstances, or, perhaps more properly speaking, to fix a maximum beyond which any charge made

would be unreasonable. Undoubtedly, in mere private contracts, relating to matters in which the public has no interest, what is reasonable must be ascertained judicially. But this is because the legislature has no control over such a contract. *So, too, in matters which do affect the public interest, and as to which legislative control may be exercised, if there are no statutory regulations upon the subject, the courts must determine what is reasonable.* The controlling fact is the power to regulate at all. If that exists, the right to establish the maximum of charge, as one of the means of regulation, is implied. In fact, the common law rule, which requires the charge to be reasonable, is itself a regulation as to price. Without it the owner could make his rates at will, and compel the public to yield to his terms, or forego the use.

"But a mere common-law regulation of trade or business may be changed by statute. A person has no property, no vested interest, in any rule of the common law. That is only one of the forms of municipal law, and is no more sacred than any other. Rights of property, which have been created by the common law, cannot be taken away without due process; but the law itself, as a rule of conduct, may be changed at the will or even at the whim of the Legislature, unless prevented by constitutional limitations. Indeed, the great office of statutes is to remedy defects in the common law as they are developed, and to adapt it to the changes of time and circumstances. To limit the rate of charge for services rendered in a public employment, or for the use of property in which the public has an interest, is only changing a regulation which existed before. It establishes no new principle in the law, but only gives a new effect to an old one.

"We know that this is a power which may be abused; but that is no argument against its existence. For protection against abuses by legislatures the people must resort to the polls, not to the courts."

From the principles and authorities above stated and cited, and in particular from the decision of the Supreme Court of the United States in the Chicago grain elevator case, it seems to follow without question that the anthracite coal mines in Pennsylvania, legal title to which as parcels of real estate is in various corporations and individuals referred to at the beginning of this pamphlet, are held by them subject to the right of the coal consuming public of the United States to have a continuous supply of coal from them at reasonable prices; and that the railroad corporations abovementioned, in their aspect and capacity of common carriers, are bound to take out of the anthracite region all the coal thus mined, and to delivér it at the proper and customary general shipping points from which consumers may get it, and that — there being no particular statute of Pennsylvania upon the subject — the right is one which may be enforced through the ordinary tribunals of justice.

It remains to be considered how the right may be enforced.

Where a trust right in the real estate of another exists, a court of equity, in the absence of statute, can enforce that right. Where the right claimed is *merely* a matter of title and peaceful possession, a court of equity will enforce it by a binding adjudication confirming the claimant's title or interest, and such court, or a court of law, will then protect his possession by injunction or by judgment. Where the claimant's right is a right to active operations, a court of equity will, where it is necessary, protect him in the exercise of his right by injunction against interference with him; or will, if more convenient, itself exercise the right in his behalf by appointing a receiver of the property and putting such receiver in charge of the property and having him operate it for the benefit of all concerned, upon such terms and in

such manner and with such agents and servants and with such rates of wages and other conditions of employment and at such prices for goods produced and sold, as the court from time to time shall adjudge proper — just as the courts of justice are constantly operating in the interest of bondholders great railway systems through receivers.

In particular, where others than the titular owners of a property have rights in it and in the working of it, and the titular owners, from whatever cause, whether from their own fault or not, and whether due to facts beyond their control or to their own lack of sagacity and efficiency, cannot work the property, then a court of equity, without proof of any blameworthy conduct on the part of the titular owners of the property, may take possession, through a receiver, simply on the ground that third persons have a right to have it worked for their benefit, and that the owners either will not or cannot work it. Such a situation not unfrequently occurs where joint owners of a piece of property or members of a co-partnership come to a deadlock in respect of management of the property or business, and it is necessary for the common interest or in the interest of creditors that something be done. In such a case a court of equity will take up the management of the property or business, through a receiver, on the application of one of the owners or co-partners (or, where the rights of creditors are involved, on the application of a creditor), without inquiring into the rights of the controversy among the different joint owners or co-partners, — upon the ground that the property must be operated or the business managed, and that if no one else can see his way clear to manage it, the court of equity will manage it, and so save the property or business and the interest connected with it from destruction or injury. (High, Receivers, sect. 585 *et seq.*)

The mere matter of the magnitude of an enterprise has never interfered with the exercise of power by the courts of justice. In 1894 about one-fourth in mileage and in amount of capitalization of the railroad system of the United States was under the direct management of courts of justice, through receivers.

It follows that since the public have a right in the mines — a right to have coal forthwith mined for immediate consumption — and have a right to have that coal immediately transported out of the mine regions by the coal carrying roads — a court of equity, if no other solution of the difficulty is open, has authority to, and, upon the application of a representative proportion of the public, undoubtedly would, appoint a receiver or receivers to take into his or their hands the whole business now in the hands of the anthracite coal combine, and to run it in their place. This would be neither nationalism nor socialism, and would introduce no unfamiliar principle of law or of practice, and would not extend one whit the magnitude of the powers heretofore lately exercised by the courts of justice in great enterprises. In fact, receivership procedure has repeatedly been applied in the past to one of the principal members of the present coal combination, — the Philadelphia and Reading Railroad, — instituted on different grounds, but still receivership procedure.

Certain Theoretical Difficulties.

Of course a situation might theoretically arise in which a receiver, acting under instructions from the court, would find it impossible to operate the mines, by reason of the absolute impossibility of getting labor upon terms and conditions consistent with proper management of the mines — a situation, for example, such as would arise if all the men in the country competent and willing to work

in mines should leave the country, or absolutely refuse to work on any terms, and no other persons of competency could be got. In that situation, of course the public would either have to go without coal or else go and get it themselves as best they could. Such a situation as this, however, never will arise. It is unnecessary to discuss the question of what will happen when larks fall from the sky.

It is proper, however, at this point, to consider a possible situation in which *inconvenience* in getting labor might arise from *illegal* features, if such there are, of the miners' combination. The courts of justice would know no distinction between mine owners and miners. While enforcing rights against mine owners, by receivership, they would at the same time enforce the laws by injunction against the miners, in respect of such illegal features, if any, in their combination, and those illegal features being removed, the receiver would be able to get labor free from the inconvenience. Such was the situation and such was the result in the case of the famous railroad injunctions during the second Cleveland administration, where the Circuit Court of the United States secured railroad labor, and kept the roads in operation, by various injunctions against railroad men and railroad organizations — the episode out of which arose the now familiar phrase "government by injunction." This does not mean that the courts can order a man to work in a coal mine. It simply means that *if* a combination of miners has, as a part of its agreement, an *illegal* feature interfering with the employment of labor, that illegal feature can be enjoined and its operation nullified.

In a receivership the question would of course at once arise as to the prices to be charged for the different classes of coal. This question would necessarily present

itself in a variety of forms, and involve a variety of considerations. There would have to be considered, the actual cost of production of the coal at the mouth of the mine, in the form of wages to the miners and the like; the cost of loading it there upon cars; and the cost of transportation to particular shipping points or other delivery points outside the mining region.

If the stoppage in the supply of coal had now only just begun, and a receivership would thus be practically contemporaneous in its commencement with the beginning of the stoppage, the matter of fixing prices would be comparatively simple. At least, it would present no greater difficulties than are being daily dealt with by receiverships in courts of equity, State and Federal, throughout the country. In such a situation there would be added, in figuring out the proper prices to be charged by the receiver for the coal, not only the cost of actual production and handling, but also the item of a fair return to the mine owners for the coal itself, as it exists in the earth, and for the capital invested in the mines in the form of shafts sunk, machinery, and the like. If it be true, as many people believe, that the combination of mine owners had, before the strike, artificially forced up the price beyond a reasonable amount, and that coal should, and with free and fair competition among mine owners would, be furnished to the public at $4 or $4.50 a ton, for example, instead of $5 or $5.50 per ton, a receiver would be ordered to sell it at such lower price and thus to reserve for and pay to the mine owners and the railroads only a proper compensation for their property and investment and transportation.

But the hypothetical situation above suggested — namely, that of a receivership commencing immediately upon a stoppage of operations by the mine owners — does

not exist; and the question, therefore, as to the mode of fixing the price of coal to be charged by the receiver to the public, at the usual points of delivery outside the mining region, might have to be fixed upon different principles. Of course the features of wages to miners, actual cost to the railroads of transportation in the form of wages to railroad employees, and the like, and similar actual disbursements to be made by the receiver or by the mine owners or the railroads under orders of the court, would first have to be paid; but this would present no difficulty. For instance, the question of a difference in wages to miners of ten or twenty cents a ton, above what has been paid in the recent past, would simply reflect itself to the extent of ten or twenty cents a ton in the price to be charged to the consumer, and it would be only to some such slight extent as that, if at all, that the price of coal f. o. b. at tidewater would have to be raised, by the receiver, above the prices that have prevailed in years past. But the question of actual cost of production of the coal having been fixed, the question would immediately arise of the proper allowance to the coal owners and the coal carrying roads under the head of compensation for the original coal, and compensation for use of their plant and investment; and at this point two widely divergent theories would be presented to the court. On the one hand, the mine owners would undoubtedly contend that the present market price for coal is twice what it was a year ago, and twice what it would be to-day had there been no strike; that they are entitled to the full market price, and that the receiver, although the coal might cost him to produce only a trifle, if anything, more than it would have cost a year ago, should, nevertheless, charge a price such as would result in a retail price to the consumer on the seaboard,

of not, say, \$5.50 or \$6 a ton, but \$11 or \$12 a ton for domestic coal. This would mean a claim on the part of the mine owners that they were in no fault for the stoppage of the past six months, and — being free from blame — would have a right to the present market price: first, because it is the market price; and second because, upon their such view of the matter, they would be entitled to reimbursement in that form for the losses actually or theoretically sustained by them during the past six months. Furthermore, it would almost necessarily be the case, as the winter progresses, that owing to the necessity of rushing the delivery of coal, there would be blockades of freight cars and constant car famines at different points, and blockades of vessels seeking cargoes at the shipping points, and an endless delay of vessels waiting for berths at which to take on coal, and similar blockades and delays at railroad and seaboard points of delivery of cargoes of coal; so that owing to the stoppage of the last six months, if the law of demand and supply were alone considered, coal would remain extravagantly high during the winter. In such case the mine owners would probably contend that the receiver should be compelled to tax the public through his prices, in view of the circumstances just stated, and to make them pay for the inconvenience which they have not created.

This position would be attacked by the consumers bringing suit. They would say that they, certainly, are not in fault for the stoppage of the last six months, and should not be compelled to pay such abnormal prices, and that the receiver ought not to charge prices higher than what would have been normal prices, aside from the strike, at this time of the year. Indeed, it would not be strange if some consumers who have suffered much should, upon tasting once more the free air, feel en-

couraged to go further, and to present another contention. They might say that during a great part of the last six months they have been subjected to grave expense and damage by reason of the failure of the mine owners to produce coal; that the coal carrying railroads are themselves mine owners, and are thus involved in whatever liability there is; and that as there is no other covenient way for the consumers of the country, as a class, to get even with the mine owners and coal carrying railroads in respect of this past damage, coal should now be shipped and sold by the receiver at simply the cost of production and transportation, without any allowance to the mine owners or the coal carrying railroads for any profit or dividends to themselves, unless perhaps to the extent of the actual value of the crude coal existing in the earth prior to being taken out. The writer does not think it necessary at this time to discuss the merits of such possible contention. It may have no merits at all. He simply suggests, in support of its possible soundness, that if — as will be pointed out below — the mine owners and coal carrying railroads are liable to all the individual consumers of the country in damages at least for such excessive prices as the consumers respectively have had to pay, and may in the future have to pay, on account of the stoppage of mining, then this allowance to the public by the court in the form of furnishing coal without profit to the mine owners or the coal carrying railroads would be, not a spoliation of those individuals and corporations, but a substitute for damages; and that consequently every person who should avail himself of such abnormally low prices of coal would by such a course be barred from maintaining an action against any of the mine owners or coal carrying railroads for damages. It is not uncommon for a short cut to be made by courts of justice, in this manner, adjusting rights in one suit to

avoid other suits, this being done, in the legal phrase, to avoid "circuity of action;" and it is entirely familiar procedure for courts of equity to adjust damages as an incidental feature of an equity suit, and also to deal with large bodies of persons as a unit, through representative plaintiffs.

Conclusion.

It seems clear, therefore, from the foregoing discussion of familiar every-day rights and familiar every-day processes of law, that any and all of the coal consumers of the United States, in so far as they continue to await the pleasure of the coal operator's combine, do so only in what they deem the exercise of proper patience, and from choice, and that a simple and familiar remedy lies open to them.

PROCEDURE.

As this pamphlet is intended to present, not mere speculative suggestions or mere theories, but a simple and practical remedy, open to the public, it may be proper to point out some of the channels through which the machinery of the court might most readily be put in operation.

A suit in equity may be brought in any jurisdiction where the necessary defendants can be found. All the parties defendant, in the present instance — that is to say, all the mine owners and the coal-carrying roads in question — can be found for purposes of judicial service in the State of Pennsylvania. Suit could, therefore, be brought there.

But that is not the only jurisdiction in which suit could be brought. A suit in equity, even a suit to enforce a trust in real estate, can be brought, not merely within the limits of the State where the land lies, but in any State where the owner can be found or subjected to processes;

for a court of equity, thus getting jurisdiction of the owner, can compel him to act in the State where the land lies, and can also make an adjudication, as between the complainant and him, of the complainant's rights in the land.

The question of the choice of tribunals, as between a State court and a United States court, in respect to any given suit, would have to be determined for the particular suit according to various considerations; but in case of any general concerted movement on the part of the public to enforce their right to an immediate supply of coal, and at a proper price, the controversy would probably find itself ultimately centred in a Circuit Court of the United States sitting within the State of Pennsylvania.

By whom such Suit might be Instituted.

The sufferers from the inaction of the mine holders are, in the last resort, the consumers of coal.

Indirectly many other persons are also sufferers, as, for example, coal dealers. It is not necessary now to consider the question how broad a class the number of complainants is, and whom it includes. It is enough, for the present, to say that the whole class of consumers or would-be consumers are directly interested and have direct rights in the coal mines and in the operation of them, and are the proper persons to bring suits.

Co-operation of Claimants in a Suit.

It is obvious that if millions of consumers were required by the rules of judicial procedure to bring separate suits, in order that each of them might enforce his right to a supply of coal, the procedure would break down under its own weight. The machinery of our legal system, however, presents no such impossible requirements.

It is a familiar rule of procedure that where there is a large body of persons interested in the manner immediately above referred to, they need not bring suit either separately or together, but that a small number of representative persons of a class may bring suit in their own names, in behalf of the whole class. Of course no person not an actual party of record to the suit would be affected by it unless and except in so far as he chose to avail himself of its advantages; but a suit of that nature would be viewed by the court as prosecuted in the interest of all persons of the class, and a decree would be rendered in such form as to avail and protect all such members of the class as might desire its benefits, whether such persons were or were not plaintiffs on the record. (Story, Eq. Pl., sects. 107, 109, 113.)

Question of Damages.

The question now pressing most urgently upon the public is, of course, not the question of reimbursement to them in respect of losses and damages that they have sustained through shortage of coal and abnormally high price of coal during the last six months, and such losses and damages as they may continue for some time in the future to sustain, but the question of getting an immediate supply of coal, before the winter sets in and the slight remaining remnants of supply are exhausted. Nevertheless, in order to deal with some completeness with the whole subject, it is proper in this connection briefly to allude to the question of such damages.

In the first place there would seem to be no reason to doubt that if the mine owners and the coal carrying railroads, or any of them, are in fault in respect of the cessation of production during the last six months, — either by reason of unreasonable inaction on their own

part in mining, or of failure themselves to apply to the courts for relief, by receivership or otherwise, — every one who has been thereby forced to pay an abnormal price for coal, or who has otherwise suffered direct pecuniary damage by reason of shortage of coal, has a right of action against each and every one of the corporations and individuals who have been concerned in producing the result: for it is a broad rule that the failure to perform a duty toward another creates a liability to recompense the sufferer for any loss or damage sustained. Thus innkeepers who have refused, without lawful excuse, to receive a guest have been held liable to him in damages.

Ordinarily such damages must be sought in actions at law, each person who has suffered damage bringing an action at law to recover his individual damages. It is, however, a settled principle of equity jurisprudence, that when a court of equity has taken jurisdiction of a controversy for one purpose, — as for the purpose of issuing an injunction or creating a receivership, — it draws to itself as an incidental matter claims of damages directly created with and rising out of the transactions upon which the court has taken its jurisdiction; and if such a court, in a receivership proceeding, could not give such damages by selling coal at the bare cost of production and transportation, without allowance of profit to the coal operators, nevertheless there are strong grounds for contending that the court, in such a receivership suit, could refer the case to a Master (as such officer of the court is called) to hear, in a summary and informal manner, all claims of damages, from any and all of the vast multitude of people who may claim to have suffered damage, and that the court would have power, in the receivership proceedings, to pass upon and to award such

damages. The mere fact that claimants might in number be legion would be no bar to this.

But there is another familiar principle under which these claims might be entertained *en masse*, by a court of equity, if not in such receivership suit, then in a separate equity suit brought by a few representative consumers for themselves and others; namely, the principle that where there is such a multiplicity of claimants that the judicial procedure would be seriously embarrassed by a multitude of distinct suits, each of which, presented by itself, would have to be an action "at law," and could not be brought "in equity," a bill in equity may be brought, under which a court of equity, by its convenient elasticity of operation, can deal with the whole matter. (Pomeroy, Eq. Jur., sects. 261, note, 269.)

Proceedings by Public Law Officers.

Thus far we have been discussing the procedure by which private consumers of coal might seek their remedy in the courts. There is, however, another method available which might perhaps appeal to the public as more convenient or desirable. There are many forms in which *present legal representatives of the public* might take action. The United States Government and the various States of the Union, and all subordinate governing bodies, such as counties, cities and towns, school boards, hospital, almshouse and prison trustees, or boards, are not only political corporations or bodies but large consumers of coal, and almost all of them from the United States Government down, have power to contract for coal and to buy coal, and, in case they cannot get coal, through unlawful action or inaction of others, power to enforce their right to coal. It needs no statute or new authorization of any kind for any of these bodies, or the official law

officers of such of them as have official law officers, to initiate proceedings such as are suggested above. It is, therefore, open to the public of the country, — if and in so far as they, in considerable numbers, in any locality, desire to force this matter to an issue, — to set the ball rolling through their existing public representatives; and it is in the power of those public representatives, of their own motion, if they feel that public sentiment so desires, at once to institute proceedings. The President of the United States may direct the Attorney General to have the United States, in its capacity of a consumer of coal, file a bill in equity asking for a receivership, in order that the United States may have coal, — not as a sovereign, but as a purchaser, — to warm the White House and the Capitol and the Federal buildings scattered throughout the country. The Attorney General of a State, or the official law officer of any political subdivision of a State, may so proceed, and any city, town, county, school board, prison board, or almshouse board which may not have a formal and regularly employed law officer, but employs counsel from time to time as it has need, may employ such counsel and itself proceed to enforce its supply of coal.

Mandamus.

Although the remedy through a court of equity, by a receivership, has been suggested above as the most effective one, it is proper to allude to the remedy which exists in such cases by the process known in the law as *mandamus* (command).

This procedure, which some court, in almost every jurisdiction, is authorized to entertain, is a procedure through which a corporation which is failing to exercise its functions may be compelled to do so by a writ of *mandamus*,

so called, directed to it. (2 Spelling, Extraordinary Relief, sect. 1591, *et seq.*) The powers of the courts of the United States, in respect of this procedure, are limited; but the Courts of Pennsylvania possess the power in its full breadth. (2 Pepper and Lewis, Dig. Pa. Laws, 2856.) This class of jurisdiction, in a court which possesses it to the ordinary extent, includes suits to compel the furnishing of commodities for public use, and the like. (2 Spelling, cited above, sect. 1592, *et seq.*)

Although the practice in the different States of this country is not uniform on this point, the weight of authority is to the effect that in such case the proceeding may be instituted by any private person having a direct interest in the matter (United States *v.* Hall, cited above, at p. 355); and the statutes of Pennsylvania expressly authorize this course. (2 Pepper and Lewis, cited above, 2856.)

Although the Circuit Courts of the United States have, in general, limited powers in respect to *mandamus*, the case of Hall *v.* United States, cited above, — a decision of the Supreme Court of the United States, — may properly be stated here, to show what the range of the process is, as instituted by a private individual, in the absence of a restrictive statute; for the suit in that case was instituted under a special act of Congress (17 U.S. Statutes at Large, 509), which was held by the court simply to leave the Federal courts free, in that instance, to exercise *mandamus* power according to the general rules of *mandamus*; so that the decision and the opinion of the court declare and illustrate the extent of *mandamus* where it is not limited. In that case it was the duty of the Union Pacific R.R. Co. to operate its railroad along certain lines, and all of them.

It was failing to operate a certain portion of the lines. Hall & Morse, the petitioners for relief, were merchants in Iowa, having frequent occasion to receive and ship goods over a portion of the mileage of the Union Pacific R.R. Co.; having, however, no interest other than such as belonged to others engaged in employment like theirs. It was held that it was competent for them, without the assent or direction of the Attorney General of the United States, or any other Federal law officer, to bring a suit in a Circuit Court of the United States (which was, in that instance, the proper tribunal), asking for a writ of *mandamus* against the Union Pacific R.R., commanding it to operate its line to the extent of receiving and shipping goods of the petitioners

This principle applies not merely to the running of a railroad, but to the doing of any other act which it is the duty of a corporation to perform, as, for example, the building of a bridge. (New Orleans Railway *v.* Mississippi, 112 U.S. 12; People *v.* Boston & Albany R.R., 70 N.Y. 569; Northern Pacific R.R. *v.* Dostin, cited above, at p. 499.)

The writer has suggested receivership proceedings instead of *mandamus*, not because *mandamus* might not be availed of in the present case, but for three reasons: first, because the procedure in *mandamus* is much less elastic than the procedure in equity; second, because it might be necessary, in *mandamus*, to seek a State court; and third, because, in *mandamus*, probably *immediate provisional relief* could not be had, pending the determination of the cause, but the complainants, in addition to their *mandamus* suit, would very probably be obliged still to institute a suit in equity, — either an independent suit, seeking relief by receivership, or, at least, an ancillary suit in aid of the *mandamus* proceeding. It is, however, proper to allude to the *mandamus* procedure, partly because of its close pertinency to the matters now in question, and partly for the reason that — without regard to the question of *immediate* relief — a *mandamus* proceeding might offer a convenient form of compulsory arbitration, which many persons are now calling for, in that it might open up an investigation of the right of the corporations in question to cease operations as they have done during the last six months, including an investigation into the merits of the coal strike as between the operators and the miners, — an investigation which might be of great value for the future, and might not prove necessary to be gone into in a receivership suit.

The Sherman Act.

The ordinary and familiar principles of law presented above are so broad and of such effective capacity that it is not necessary, for immediate and effectual relief, to invoke the Sherman Act, passed by Congress in 1890.

It may, however, be proper to point out that that Act is applicable to the present situation, and could be invoked to make the procedure in some respects more convenient, and to put on a pressure.

Before discussing the applicability of that Act it will be proper to refer to the provision of the Constitution of the United States, upon which it is passed, and then to state briefly the nature of the Act.

The Constitution of the United States, Art. I., Sect. 8, vests in Congress power to "regulate commerce among the several States." "Commerce" in this connection is practically synonymous with the word "trade." It has a broad signification, covering not merely buying and selling, or what would ordinary be called "commercial" transactions, but almost all forms of communi-

cation which are not confined from beginning to end within the limitations of a single State, but are carried on partly in one State and partly in one or more other States. Dealings of this character are known as "Interstate Commerce," and they include an immense variety of forms of activity, such as transmission of messages across a State line by telegraph or telephone, or the running of a railroad or an express line or a line of steamers from one State through or into another. Over all this class of commerce and dealings Congress has practically unlimited power of legislation, and power, in its discretion, to take control to the exclusion of the States. This power has been exercised by Congress in many matters of great importance, as, for example, in the Interstate Commerce Act, so called, under which the rates of charge of all the railroad companies of the country, except such small railroad lines as operate exclusively within the limits of a single State, are regulated, and may be compulsorily fixed.

In 1890, Congress, acting under this clause of the Constitution, passed the Sherman Act, so called, which, among other things, makes illegal every combination, conspiracy or contract in restraint of trade among the several States, and every monopoly or attempt to create a monopoly of such interstate trade, or of any part of it.

The words "in restraint of commerce" in the statute have been very broadly construed by the Supreme Court of the United States; and it has been laid down by the court that the phrase means, not merely *unreasonable* restraint, but *any* restraint, and that the statute, therefore, forbids absolutely any combination which tends to restrain interstate trade or commerce, as well as any attempt to monopolize any part of it.

This statute is probably the most radical statute in

character that has ever been passed by Congress. In a variety of particulars it departs from the settled rules of judicial procedure, which apply to all, or practically all, the vast body of other congressional legislation. It has seven distinct operations, as follows:

First. It makes all such combinations illegal and null.

Second. It makes participation in them criminal, and punishable by heavy penalties.

Third. It authorizes prevention by injunction of the acts forbidden, thus radically departing from the general principle of law that a court of equity will not interpose by injunction to prevent the commission of a crime.

Fourth. Such preventive power is vested in all the circuit courts of the United States, in whatever State sitting, without regard to the question of locality of the wrongs or of the persons accused.

Fifth. The Act makes it the duty of the several District Attorneys of the United States, under the direction of the Attorney General of the United States, to commence proceedings in equity to enforce its provisions.

Sixth. It provides for seizure and forfeit of any "property owned under any such unlawful contract, or by any such unlawful combination, or pursuant to any such unlawful conspiracy, and being the subject thereof, and being in the course of transportation from one State to another."

Seventh. Any individual injured in his business or property by reason of anything forbidden or declared unlawful by the Act, may sue therefor in a circuit court of the United States, without regard to the amount in controversy (that is, however small his damage may be), and may recover, *not merely the damage he has suffered, but threefold the damages that he has sustained, and*

also, in addition to the ordinary costs of suit, his reasonable disbursements in the employment of counsel, — a provision found, it is believed, in no other statute of the United States.

The Act in express terms applies not only to individuals, but to corporations and associations existing under the laws of the United States, or of any Territory, or State, or foreign country; so that the mere fact that violation of the Act is by a corporation, wherever organized, affords no defence against the operation of the Act.

The question now arises whether the combination of coal operators is within the operation of the statute.

The Combination of Mine Owners and Coal-Carrying Railroads, Commonly Known in its Present Form as the "Coal Trust," a Combination or Conspiracy Illegal, Punishable and Preventable Under the Sherman Act.

The whole matter of combinations like this has been thoroughly covered by decisions of the Supreme Court of the United States. (United States *v.* Trans-Missouri Freight Assn., 166 U.S. 290; United States *v.* Joint Traffic Assn., 171 U.S. 508; Addyston Pipe & Steel Co. *v.* United States, 175 U.S. 211.) Upon this point, therefore, the only question that can possibly be considered as open at the present time is, whether the object of the combination of mine owners and coal carrying companies deals with interstate commerce. That question will now be considered.

If a number of mine owners, or mine owners and railroads, within the State of Pennsylvania, producing and carrying coal for, and selling it exclusively to, people within the State of Pennsylvania for consumption there should form such a combination as now exists, their action might be illegal under the laws of Pennsylvania, but would not deal with interstate commerce, and would not be within the Sherman Act. Such, however, is not the case.

In the first place, the combination comprises not merely mine owners, but coal carrying railroads; and the agreement is a unit, dealing not merely with the production of coal at the mines, but with the transportation of it out of the State of Pennsylvania to shipping points on the seaboard in other States, and deals with this whole matter as a unit, going so far as to fix a price for the coal (free on board vessels) outside of the State of Pennsylvania — a price which includes the price of coal, and the transportation outside of Pennsylvania. The combination is, therefore, a combination dealing directly with interstate commerce, and restrains interstate commerce in coal, *in that it fixes a price below which coal will not be transported out of Pennsylvania into those other States* upon the natural lines of traffic.

It is difficult to see how a case could come more closely within the Sherman Act.

Mention is constantly being made of what is called the "Knight Case," as if it were a case directly opposed to the operativeness of the Sherman Act, in any situation where *any* feature of operation is confined to one single State. That case (Knight *v.* American Sugar Refinery Co., 156 U.S. 1) decided in 1894, was a suit brought by one Knight, against the American Sugar Refining Company and four other sugar refining companies, alleging that the first-named company had purchased all the stock of the other four; that the resulting combination would represent 98 per cent. of the output of refined sugar in the country, and would thus have practically a

monopoly of the business; and that such a monopoly would violate the provisions of the Sherman Act relating to combination in restraint of interstate trade. The bill asked for rescission of the purchase and sale referred to.

The Supreme Court of the United States in that case, held that upon the facts *as presented to the court by the bill in equity*, — not, it will be observed, upon the facts as they may have existed, or upon the facts universally known then and now to the public, — the acts complained of were not within the Sherman Act, inasmuch as the facts alleged and proved showed only a monopoly of *manufacture*, and not of *interstate trade or commerce*. Even from this interpretation of the plaintiff's statement of the case, two of the judges dissented, holding that the plaintiff had made out a case. That this case is nothing but a decision upon the particular limited and narrow presentation of facts made by Knight in his particular bill in equity, and that it in no way narrows the interpretation of the Sherman Act, clearly appears from a subsequent case in the same court, where a situation much broader than the present was carefully and skilfully presented by the plaintiff, and where the court held the Sherman Act applicable, and restrained the combination in question as a combination in restraint of interstate commerce. That case was Addyston Pipe, etc., Co. *v.* United States, decided in 1899 (175 U.S. 211). It was a proceeding in equity by the United States against certain manufacturers of iron pipe to restrain them from carrying out a combination for abolishing competition in bids, and thus enhancing prices. The court discussed the Knight case at some length, and effectually disposed of any hope which that case might otherwise now afford to the coal companies.

In their opinion the Court say (p. 240):

"The direct purpose of the combination in the Knight case was the control of the manufacture of sugar. There was no combination or agreement, in terms, regarding the future disposition of the manufactured article; nothing looking to a transaction in the nature of interstate commerce. The probable intention on the part of the manufacturer of the sugar to thereafter dispose of it by sending it to some other market in another State, was held to be immaterial and not to alter the character of the combination. . . . The case was decided upon the principle that a combination simply to control manufacture was not a violation of the Act of Congress, because such a contract or combination did not directly control or affect interstate commerce, but that contracts for the sale and transportation to other States of specific articles were proper subjects for regulation, because they did form parts of such commerce.

"We think the case now before us involves contracts of the nature last above mentioned, not incidentally or collaterally, but as a direct and immediate result of the combination engaged in by the defendants.

"While no particular contract regarding the furnishing of pipe and the price for which it should be furnished was in the contemplation of the parties to the combination at the time of its formation, yet it was their intention, as it was the purpose of the combination, to directly and by means of such combination increase the price for which all contracts for the delivery of pipe within the territory above described should be made, and the latter result was to be achieved by abolishing all competition between the parties to the combination. The direct and immediate result of the combination was therefore necessarily a restraint upon interstate commerce in respect of articles manufactured by any of the parties to it to be

transported beyond the State in which they were made."

The decision of the Knight case is thus put entirely upon the absence of any agreement, in terms, regarding the disposition of the manufactured article. As has been pointed out, such an agreement exists in the case of the coal companies, and indeed, as appears from the passage just quoted, the agreement in the Addyston case attained its object of enhancing prices by a much less direct method than the agreement, above described, of the coal companies.

If, as appears to be clearly established by the Addyston case, the Sherman Act is now applicable, it will be seen from the summary of the Act given above, that it gives an enormous extension of remedies, — partly in that it gives greater liberty to complainants as to the court in which they may sue; partly in that, being a criminal statute, it permits the indictment, prosecution, and punishment by fine or imprisonment of all persons concerned in the combination; partly in that it permits a seizure and confiscation of the coal mines and plant, and perhaps of railroad property, concerned in the combination; and, lastly, in that it expressly gives a right of action for damages to all persons who have suffered damage, gives to them all liberty to sue in circuit courts of the United States, and gives each of them right to threefold damages, and his reasonable expenditures for counsel.

If representative consumers desire to have these remedies, including the more drastic of them, invoked, to shorten the agony, it will become the duty of the Attorney General of the United States, upon application to him, to apply the remedies.

The Sherman Act applies not merely to combinations of capitalists, but to combinations of workingmen; and if, in the existing combination of miners, there are illegal features, they may be subject to procedure under the Act. It was the Sherman Act that was enforced in the Chicago riots in 1894, in the Debs case, against officers of Labor Unions.

It would not be necessary in seeking relief in a court of the United States, by a bill in equity, to choose between the remedies afforded by the general principles of law and those afforded by the Sherman Act. In a bill in equity filed in a court of the United States within a District properly chosen, reliance could be placed upon those general principles, and also upon the Sherman Act, and relief could be had either under those general principles or under the Sherman Act, or under both, according as the court might view the law and the requirements of the situation.

STATUTORY PRICE OF COAL.

As either the coal famine itself, or the effects of it, will continue to be felt for a considerable time yet to come, it is important that the public should have before their minds the proposition — stated above, in an incidental manner, and in another connection — that Congress, in respect of that vast proportion of the coal trade which takes the form of interstate commerce, and the legislatures of the several States, in respect of that part of the coal trade, wholly or partly conducted within their own borders, which is not interstate commerce, have the power — a power not restricted by our existing National and State

Constitutions (unless possibly in the case of some one State or some very limited number of States) — to fix by statute a maximum price that may be charged for necessaries of life, when, and in so far as, for any locality, larger or smaller, a virtual monopoly exists in the hands of a limited number of persons. In the Chicago Grain Elevator case, referred to above (Munn *v.* Illinois, 94 U.S. 113), the court, in their opinion, refer with approval to legislation passed by Congress, in 1820, conferring power upon the city of Washington to regulate the rights of wharfage at private wharves; the charge for the sweeping of chimneys; the weight and the quality of bread; to fix fares and rates of charge of hackmen, cartmen, wagoners, car men and draymen; and at the same point (page 125) the court refer to the fact that in this country, from its first colonization, it has been common to regulate, among others, bakers and millers, and in so doing to fix a maximum charge for services, accommodations, or goods sold; and express the opinion that such legislation is not within any of the constitutional prohibitions against interference with private property. Numerous other authorities might be cited in support of this view. In fact, the proposition may be called an elementary proposition of American constitutional law. It is, therefore, unnecessary to seek for amendments to the National or the State Constitution. As those constitutions now stand, it is competent to enact legislation fixing the price of coal, as of other necessary supplies in so far as any of those necessaries are controlled by virtual monopolies. The great bulk of the trade in coal is interstate commerce. In respect of such commerce, it is competent to the President at once to call a special session of Congress, and for Congress, thus being called together, to pass immediately a statute fixing the prices

of different kinds of coal at different points, and all particulars of price which necessarily enter into the ultimate cost to the consumer — with proper allowance for differences in transportation to different points — and incidentally to fix prices for carrying coal from one State through or into another. Such a statute would protect everybody, unless citizens of Pennsylvania.

The State of Pennsylvania may also pass such a statute to fill the gap and protect the consumers in Pennsylvania.

Not only may Congress and the State of Pennsylvania fix a maximum price respectively for consumers out of and in Pennsylvania, but the same result may be reached in a different manner. It is of course perfectly competent to Congress, under the interstate clause of the National Constitution, to provide that no corporation with a mere State charter shall, after a certain date, engage in interstate commerce in coal (or in interstate commerce of any character that may be specified); to pass a national general corporation act, under which corporations may be formed for interstate commerce, and to restrict corporate dealings in interstate commerce to corporations formed under that act. Under such an act, it would be competent to Congress entirely to obliterate for practical purposes the present great corporations, for Congress could in the end limit the capitalization of any one corporation to a moderate amount, or it could impose any other limitation that it chose as a feature of the charter. The matter is perfectly simple and matters of less importance but of precisely similar legal aspects, are being dealt with constantly in National and in State legislation. For example, the right to conduct an interstate commerce in beef is subject to a regulation of Congress under which

every "side of beef" bears the inspection seal of a Federal officer, and cannot be transported or sold without it.

Legislation such as is above proposed would not be in violation of existing rights of any existing corporation. No corporation and no individual has a vested right to continue a business or to continue a present use of property except in conformity with such "police" regulations, as the legal phrase is, — and the regulations above suggested are of this class, — as may in the future be prescribed by law. This was expressly decided (as has been pointed out above) in the Chicago Grain Elevator case, and has been decided in many other cases. This proposition is also well illustrated in another decision of the Supreme Court of the United States (Boston Beer Co. *v.* Massachusetts, 97 U.S. 25).

At a time when fear is so generally expressed in respect to the powerlessness of present or possible future laws to protect the public and isolated individuals against immoderately large combinations of capital, it is a matter of satisfaction to realize that these apprehensions are groundless; that the common law of England, as it exists in this country, is a heritage of principles and remedies, not only available for situations of the past, but of such breadth and vitality as to lend itself instantly to the most marked and intricate developments of modern life; that it is within the power of the people of the country, acting as a whole through Congress, or of the people of any State of the Union, to invoke these principles; that any individual or group of individuals agreeing, may themselves invoke them; and that under the generous protecting breadth of those principles, convenient and specific and directly operative applications of them may be made by statute, whenever the people desire that such statutes shall be passed. The matter is in respect of the law

neither difficult nor complicated. The only occasion for any considerable length in this pamphlet has been the necessity of explaining and illustrating in detail for the general reader principles which need only to be briefly suggested to the well-read lawyer.