ANNUAL REPORT

OF THE

Attorney General of Ohio

TO THE

GOVERNOR OF OHIO

FOR THE

Period from January 1, 1910 to January 1, 1911

COLUMBUS, O.:
THE F. J. HEER PRINTING CO.
1911.

Attorneys General of Ohio.

Henry Stanberry.....1846-1851
Joseph McCormick.....1851-1852
George E. Pugh.....1852-1854
George W. McCook.....1854-1856
Francis D. Kimball.....1856-1857
C. P. Wolcott.....1857-1861
James Murray.....1861-1863
Lyman R. Critchfield.....1863-1865
William P. Richardson.....1865
Chauncey N. Olds.....1865-1866
William H. West.....1866-1870
Francis B. Pond.....1870-1874
John Little.....1874-1878
Isaiah Pillars.....1878-1880
George K. Nash.....1880-1883
D. A. Hollingsworth.....1883-1884
James Lawrence.....1884-1886
Jacob Kohler.....1886-1888
David K. Watson.....1888-1892
John K. Richards.....1892-1896
F. S. Monnett.....1896-1900
J. M. Sheets.....1900-1904
Wade H. Ellis.....1904-1908
U. G. Denman.....1908-1910

Attorney General's Department.

U. G. DENMAN.....*Attorney General*

W. H. MILLER.....*First Assistant Attorney General*

CLARENCE D. LAYLIN.....*Second Assistant Attorney General*

H. W. CHERRINGTON.....*Chief Clerk*

FREEMAN T. EAGLESON.....*Special Counsel*

*JUSTICE WILSON.....*Special Counsel*

JOHN A. ALBURN.....*Special Counsel*

FRED H. KIRTLEY.....*Special Counsel*

S. L. McMILLAN.....*Special Counsel*

RALPH A. McCANN.....*Willis Tax Clerk*

CLARA K. CAREY.....*Stenographer*

AGNES G. McMILLAN.....*Stenographer*

LUELLA P. CHASE.....*Stenographer*

EDWIN T. STOWE.....*Messenger*

JACK GANTZ.....*Janitor*

*Resigned November 15th, 1910.

Annual Report of the Attorney General of Ohio for the Year 1910.

COLUMBUS, OHIO, January 1, 1911.

HONORABLE JUDSON HARMON, *Governor of Ohio:*

DEAR SIR:—I submit herewith the annual report of the Attorney General for the calendar year 1910. Immediately following this introductory note will be found the Attorney General's preliminary report submitted to you under date of December 29, 1910, covering the time from December 15, 1909, to December 15, 1910, and which contains:

First. A review of the more important work of the department for the year beginning December 15, 1909, and ending December 15, 1910, with some recommendations suggested by our experience in the conduct of the work of this department throughout that period.

Second. A statement as to the actions and prosecutions pending or disposed of during that period.

Third. A general statement of all collections and disbursements for the period covered by that report from December 15, 1909, to December 15, 1910, and,

Fourth. A general statement as to the official opinions rendered during such period.

It has been customary in the past for the Attorney General in his annual printed report to insert an introductory general statement of the work in the department during the year covered by the report and this preliminary report, above mentioned, submitted to you under date of December 29, 1909, is inserted in this printed volume for the year 1910 as such general statement for that year down to December 15th thereof.

No cases in litigation were disposed of nor, with one exception, were any begun calling for special mention during the month of December 1910, nor during that time was there any other work in the department requiring particular comment in this preface. The one case which has been instituted as above referred to since December 15, 1910, is mentioned in the preliminary report immediately following herein, and it may be stated that the principal work of the department since that date has been to so arrange the work of the department in such manner

as that it may be properly turned over to my successor whose term will begin on January 9, 1911.

This volume of printed report for the year 1910 contains:

First. A general review of the more important work of the department for the year 1910 with recommendations suggested by experience in the conduct of that work as found in the preliminary report above referred to.

Second. A list of all actions and prosecutions brought, pending or disposed of during the year, with a statement of the respective courts in which the litigation is being or was conducted.

Third. A detailed statement of the collections and disbursements by the department for the year, and,

Fourth. All official opinions rendered during the year.

In submitting my report for the year 1909, we were of the opinion in the department that the work of that year was perhaps as great in amount and difficulty as would ever be encountered in subsequent years, but the work of the past year has been greater in volume and more intricate and difficult in nature than for the year 1909. In the prefatory note to my last report in commenting upon the amount and nature of the work performed, I made the following observation with respect to the assistants, special counsel and others employed in the department:

> "And in making this statement I feel it my duty to here expressly give credit to each of the persons who have been associated with me in the performance of that work. I am pleased to say that without exception the assistants, special counsel, the chief clerk, stenographers and other persons connected with the department have, at all times, evidenced but one desire or purpose, viz., entire faithfulness to the work, and each of them has intelligently and with dispatch performed his or her part in the work of the year. There has been no instance of any reluctance or hesitancy on the part of any of them at any time to willingly perform to the very best of his or her ability any work assigned, nor has there been, so far as I have been able to discern, any other than the closest of friendship and good will among the respective members of the department. I do not mean to convey the impression that no errors have been committed nor that from the experiences of the year instances could not be named wherein improvement on certain particular work might not be made, but I do feel justified in saying that their work collectively and individually has been performed with complete fidelity and with ability far above the average."

What was said of the work of my helpers for that year, as quoted above, is equally true and applicable of their assistance given during the year 1910, and I am more than gratified to say that because of their experience through another year their work has been more efficient than theretofore, and the same spirit of not only a willingness but of an earnest desire to faithfully and intelligently perform every duty which came to

hand has characterized the conduct and work of each and every member in the department during the year. This testimonial to their work is no more than they justly deserve, and I should fall short of what I feel to be my duty at this time should I fail to give expression here in their behalf in terms less commendatory.

Respectfully submitted,

U. G. DENMAN,
Attorney General.

Department of Attorney General.

PRELIMINARY REPORT.

COLUMBUS, OHIO, December 29th, 1910.

HONORABLE JUDSON HARMON, *Governor of Ohio:*

SIR:—I submit herewith a report of the Attorney General for the period beginning December 15th, 1909, and ending December 15th, 1910.

This report is similar in character and scope to the report submitted to you from this department under date of December 29th, 1909, covering the period from January 1st, 1909, to December 15th of that year, and will contain,

First: A review of the more important work of the department for the year beginning December 15, 1909, and ending December 15, 1910, with recommendations suggested by our experience in the conduct of the work of this department throughout that period.

Second: A statement as to the actions and prosecutions brought, pending or disposed of during that period. In the printed report hereafter to follow a complete list of all such actions, except those in magistrates' courts will be given under their respective titles, and the courts in which they were or are pending respectively.

Third: A statment of all collections and disbursements for the period covered by this report, and,

Fourth: A statement as to the official opinions rendered during such period.

I

IMPORTANT WORK OF THE YEAR.

(a) ORGANIZATION OF THE DEPARTMENT: The organization of the assistants, special counsel and other employes, and the assignment to them respectively of the work of the department have been maintained through the past year in conformity to the plan outlined in my last report. The assistants, special counsel and other employes who give their whole time to the work of the department in the Capitol are the same as at the time of the last report with the exception of Mr. Justice Wilson, then second special counsel in the department, resigned his position on November 15th of this year. At the time of the last report the office force was as follows:

U. G. Denman.....Attorney General
W. H. Miller.....First Assistant Attorney General
John A. Alburn.....Second Assistant Attorney General
F. H. Kirtley.....Chief Clerk
Freeman T. Eagleson.....First Special Counsel
Justice Wilson.....Second Special Counsel
Clarence D. Laylin.....Third Special Counsel
S. L. McMillan.....Fourth Special Counsel
R. A. McCann.....Willis Tax Clerk
Clara K. Carey.....Stenographer
Agnes G. McMillan.....Stenographer
Luella P. Chase.....Stenographer
Edwin T. Stowe.....Messenger
Jack Gantz.....Janitor

In order that he might devote his time to his personal interests in other lines of business, which at the time imperatively demanded his attention. Mr. Wilson was compelled to resign his position here, to the great regret of myself and each member of this department. Upon Mr. Wilson's retirement, Mr. John A. Alburn, then second assistant attorney general was appointed second special counsel to fill the vacancy; Mr. Clarence D. Laylin, then third special counsel, was appointed second assistant attorney general; Mr. F. H. Kirtley, then chief clerk, was appointed third special counsel and Mr. Henry W. Cherrington was appointed chief clerk.

The personnel of the department each giving his or her whole time to the work thereof is now as follows:

U. G. Denman.....Attorney General
W. H. Miller.....First Assistant Attorney General
Clarence D. Laylin.....Second Assistant Attorney General
Henry W. Cherrington.....Chief Clerk
Freeman T. Eagleson.....First Special Counsel
John A. Alburn.....Second Special Counsel
F. H. Kirtley.....Third Special Counsel
S. L. McMillan.....Fourth Special Counsel
R. A. McCann.....Willis Tax Clerk
Clara K. Carey.....Stenographer
Agnes G. McMillan.....Stenographer
Luella P. Chase.....Stenographer
Edwin T. Stowe.....Messenger
Jack Gantz.....Janitor

Certain work is assigned to each lawyer in the department, and under that assignment each of them is designated as the legal adviser in every respect to certain departments of state, boards and officers. His work is to give such oral advice as may be asked for by the head of any department so assigned to him, or any officer or employe therein upon call by such officer or employe at this department. He is to prepare all written opinions requested by any department, board or officer to

whom he is thus assigned as the legal adviser, and he is to prepare and try all law suits affecting the respective departments to which he is so assigned. In other words, he is the lawyer in every respect for each of the departments, boards or officers thus apportioned to him.

When an assistant or special counsel other than the first assistant writes an opinion upon any subject affecting any department, such opinion goes first to the first assistant attorney general for his criticism or approval. When the opinion is finally drafted so as to meet the approval of the first assistant he marks it "approved" and lays it upon the desk of the Attorney General for signature, change or revision. If the Attorney General agrees with the opinion as thus approved it is signed by him personally and sent forward, but if he does not agree with it, it is then reconsidered among the lawyer writing it, the first assistant attorney general and the Attorney General, and it is finally forwarded after being re-written to meet the views of the Attorney General if such re-writing is necessary. All opinions go out over the personal signature of the Attorney General, except that in case he is absent from the Capitol they are signed personally by his first assistant.

The assignment of the work of the department is shown by the names of the respective lawyers therein with the names of the departments, boards and officers assigned to each set opposite their respective names as follows:

U. G. Denman:	Governor. Municipal affairs, including work of Mr. Joseph Tracey thereon in the Department of Uniform Accounting. Executive management of the office in all its departments, including inspection, revision and signing of all opinions from the department.
	* * *
W. H. Miller:	Prosecuting attorneys in county affairs including matters relating to the Bureau of Uniform Accounting under Mr. Peckinpaugh. State institutions. Auditor of State. Fish and Game Commission, including employment of attorneys therefor. State Fire Marshal, including employment of attorneys therefor. Special cases to be assigned
	* * *
Clarence D. Laylin:	Tax Commission. Secretary of State. Medical Board. Pharmacy Board. Dental Board. Adjutant General. Special cases to be assigned.

Freeman T. Eagleson:	Railroad Commission. Superintendent of Banks. State Board of Health. Matters relating to taxation. Treasurer of State. Board of Accountancy. Special cases assigned.
	* * *
John A. Alburn:	Insurance Department. Board of Public Works. School Commissioner. Township and school district affairs. State Board of Agriculture. Highway Commissioner. Special cases to be assigned.
	* * *
F. H. Kirtley:	Dairy and Food Department. Inspector Workshops and Factories. Oil Inspector. Labor Commissioner. Mine Inspector. Special cases to be assigned.
	* * *
Henry W. Cherrington:	Chief Clerk. Justices of the Peace. Public Printer. State Board of Charities. Inspector of Stationary Engineers. State Board of Embalming Examiners. Bureau of Vital Statistics. Special cases to be assigned.
	* * *
Seth L. McMillan:	Willis Tax Collections. Excise Tax Collections. All other collections. Special cases to be assigned.

Following each assignment or re-assignment of the work of the department in the manner above indicated, a copy thereof is given to each lawyer mentioned and a letter is written to the head of each department and to each board or officer notifying them of the name of the assistant or special counsel who has been assigned as legal adviser from this department in the following form:

"DEAR SIR: — Feeling that it may systematize the work of the Department of the Attorney General and secure prompt and efficient

service in the various departments of state, the boards and officers of the same, certain work has been assigned to each of the assistants and special counsel in this office, and I accordingly have assigned Mr. ..... to act as the legal adviser to your department and the officers thereof. It will be your privilege to call on him for opinions respecting any legal matter affecting your department, and it will be his duty to have charge of and conduct any litigation in which the same may be interested. In other words, he is assigned to your department as its lawyer in all respects in which the state, through your department, may be interested, and I desire that you feel free to call upon him at any time for any legal services required.

Very truly yours,

U. G. DENMAN,

Attorney General."

There are many cases in litigation in the department which do not naturally fall within any particular department of state, and all such cases have been assigned to some one assistant or special counsel who is in principal charge of the case, assisted in cases of importance and difficulty by some other lawyer in the department, or some special counsel retained outside of the department. The policy of all litigation and the work of the department in general is directed and done under the supervision of the Attorney General.

The Willis Tax Clerk is a stenographer and does the stenographic work of the collection department.

The chief clerk keeps a docket record of all the cases handled by the department in any and all courts of record and a docket or report-sheet record of the cases in magistrates' courts. In keeping this docket record he is assisted by the messenger, who, in addition to such assistance, does the letter, brief and pleading press copying, forwards all mail and performs the general messenger work of the department.

Under the assignment, the chief clerk opens all mail, except that which is marked personal to any member of the department coming into the office, and each letter or piece of correspondence is by him placed upon the desk of the lawyer in the department acting as legal adviser in the matter to which the correspondence relates. It is the duty of such lawyer to then give prompt attention to such letter or piece of correspondence, laying the latter with the reply thereto upon the desk of the Attorney General for signature.

The books of account of the department are still kept by Mr. Laylin under a system devised by him, with the approval of the Bureau of Inspection and Supervision of Public Offices and showing dates and amounts of appropriations made available for expenses of the department; and the system also shows the date, amount and to whom paid of all moneys disbursed by the department and the fund or appropriation from which the disbursement is made.

With the exception of two or three dollars in money kept on hand

in the office at all times from our contingent fund for the purpose of paying occasional express package charges, or the purchase of some small article which must be had at once, and cannot be procured from the Secretary of State, this department handles no cash.

The records of collections in the collection department are kept by the Willis Tax Clerk under a system approved by the Bureau of Inspection and supervision of public offices. The moneys collected through the collection department in any wise are required to be paid by check, draft or money order made payable to the Treasurer of State. These are required to be sent to this department in order that a record of the same may be made in each case showing date, amount and from whom and for what purpose received. After such record is made the check, draft or money order is immediately turned to the Treasurer of State through the department of the Auditor of State and a receipt for each amount as evidenced by the check, draft or money order is taken for the same from the Treasurer of State. Reports of all collections are made to the respective department of state for which the particular collection is made in order that such department may make the proper records on their books of the date and amount of the collection and the source from and the purpose for which such collection is made.

The offices or official positions created and fixed by law in the department of the Attorney General are the

Attorney General,
First Assistant Attorney General,
Second Assistant Attorney General,
Two stenographers,
Chief Clerk, and
Messenger,

and the salary for each of these offices or positions is fixed by statute at an annual salary. Appropriations are, of course, made by the general assembly to pay these salaries and further appropriations are made by the general assembly to the Attorney General to defray the expenses of special counsel who give their whole time here in the department or other special counsel required to do work at other points in the state, and to pay the expense of other stenographic work, clerks or other employes necessary to do the work of the department.

The salary list of the persons constituting the office force giving their whole time in the department to the work thereof during the year 1909 was as follows:

Attorney General	$6,500 00
First Assistant Attorney General	4,000 00
Second Assistant Attorney General	2,500 00
One Special Counsel	3,600 00
One Special Counsel	2,800 00

One Special Counsel	1,800 00
One Special Counsel	1,500 00
Chief Clerk	1,500 00
Two Stenographers, by statute, each $1200.00	2,400 00
One Special Stenographer, from appropriation therefor	960 00
One Willis Tax Clerk, from appropriation therefor	900 00
Messenger and Mailing Clerk	600 00
One Janitor, from appropriation therefor	420 00
Total	$29,480 00

The salary list of such persons for the year 1910 is as follows:

Attorney General	$6,500 00
First Assistant Attorney General	4,000 00
Second Assistant Attorney General	2,500 00
First Special Counsel	3,600 00
Second Special Counsel	3,000 00
Third Special Counsel	2,000 00
Fourth Special Counsel	1,600 00
Chief Clerk	1,500 00
Two Stenographers, by statute, each $1200.00	2,400 00
One Special Stenographer, from appropriation therefor	960 00
One Willis Tax Clerk, from appropriation therefor	1,080 00
Messenger by statute	600 00
One Janitor, from appropriation therefor	490 00
Total	$30,230 00

The plan adopted under which each lawyer in the office is assigned to do all the legal work of certain state departments, officers and boards has fully justified what was contemplated for it in the matter of expense, and it has fully met our expectation in the matter of efficiency and dispatch with which the work has been done. The slight increase in compensation which was given to the three special counsel and the Willis Tax Clerk for the year 1910 I believe was fully justified and merited because of the character and amount of work which these men were doing. The increase in salary was not given because their work was more meritorious than that of other members of the department but simply because, in my opinion, the work which they were doing, and which they did in the faithful and efficient manner they respectively carried it on, should command the pay given them for 1910 or at any other time. In other words, I believe that the salary list, as above set out for the year 1910 affords a compensation fair and reasonable both to the officer or employe and to the state for the work required to be done in this department by persons giving their whole time in the respective positions above mentioned. It would be difficult indeed for me to say that any assistant, special counsel or other employe now in the department has done or is doing his or her particular work assigned in

his or her position more acceptably than another member of the department because each of them has performed his or her work with high efficiency and in a manner entirely satisfactory to me, and I do not now recall an instance in which I felt better service might have been given under all the circumstances.

(b) INVENTORY. Shortly after coming to this department an inventory was ordered of all the property then in the department, and the same was thereupon taken and placed on file in this office, and another inventory is now being taken for the purpose of turning the same to my successor.

(c) REMODELING OF THE OFFICE. At the session of the general assembly of this year provision was made by that body to the State Board of Charities for office room in an office building outside of the Capitol, and the two rooms adjoining the offices of the Attorney General, as they then existed, were turned to this department. These rooms were re-decorated and the department offices are now reasonably sufficient in space and are admirably adapted to the work of the department.

(d) OFFICE RECORDS AND FILES. The docket records and files of all pleadings, correspondence and other papers are still kept and handled in the same manner as described in my report for the year 1909, and the system has proven to be highly satisfactory, complete and convenient.

(e) LIBRARY. The library of the department has been added to at small expense under appropriation made at the last session of the General Assembly so that in its present state we have in this department a good working library, reasonably sufficient to meet the ordinary demands of the office. It is so selected as that it may be kept up to date at a very small annual expense.

(f) BLANK FORMS OF AFFIDAVITS FOR PROSECUTIONS, AND METHODS OF PROSECUTION IN MAGISTRATES' COURTS. On page 16 of my last annual report the following observation is made on this subject:

> "This department, from its experience in the prosecution of criminal cases in magistrate's courts, has found that much time and expense might be saved by the preparation here of blank forms of affidavits for the various prosecutions which are conducted from time to time in the departments of Workshops and Factories, Agriculture, Fish and Game, Dairy and Food, and through the Medical, Dental and Pharmacy boards of examination and registration. We, accordingly, have prepared such blank forms of affidavits for the various offenses defined under the laws governing these respective boards and departments. These affidavits are prepared in such a way as nearly as may be so that the inspector may, by using the proper affidavit, fill out the blanks thereof with but little opportunity for error in drawing the affidavit. The results have been gratifying from the fact that from among 564 prosecutions handled under the direction of the department this year up to December 1st, not more than ten or twelve have been

held defective, and these prosecutions have been almost universally successful, pleas of guilty having been entered in more than a majority of them."

Our experience during the past year in these prosecutions has demonstrated the efficiency of this plan as to the departments above mentioned. At the last session of the general assembly a Mining Code was adopted, regulating the department of the Inspector of Mines. Many offenses are defined in this code, and it is our belief that in the future this department may be called upon to conduct numerous prosecutions under this law. Blank forms of affidavits should be prepared for this department in the same manner so far as practicable as has been pursued with the other departments. In the matter of conducting these cases we have found, after some varied experiences therein, that the best plan to be followed is to require the inspector, deputy or other officer or employe of any of these departments on filing an affidavit, and thereby instituting a prosecution, to immediately send a written report to this department giving the title of the case, the magistrate before whom the same is instituted and the time when the same will be for trial. On the date of trial the inspector or deputy is required to be present before the magistrate for the purpose of ascertaining whether the defendant will enter a plea of "guilty" or "not guilty." If a plea of "guilty" is entered, and this is done in a very great majority of the cases, it is, of course, then unnecessary for this department to send a lawyer from this office or retain a special counsel to conduct the prosecution. If a plea of "not guilty" is entered the deputy then asks a continuance to a day certain for trial and immediately notifies this department so that we may be advised of the evidence, or direct a further collection of evidence, and otherwise make preparation for the trial on the day set. On that day a lawyer from this department, or a local special counsel is present to conduct the prosecution.

(g) GENERAL REVIEW OF CERTAIN LITIGATION, PROSECUTIONS AND INVESTIGATIONS.

First. *State of Ohio v. Union Central Life Insurance Co.* This case was originally brought by my predecessor in the Circuit Court of Hamilton County, Ohio, where the home office of the defendant company is located and is a suit in quo warranto to oust the defendant from increasing its capital stock in the amount of $400,000, and paying for the same out of certain funds in the treasury of the company, and which it from time to time had represented as being held for the benefit of its policy holders. This cause was thoroughly prepared for trial under the present administration and during the fore part of this year was tried but resulted in a finding and judgment for the company and against the state. The questions involved are considered by the department of

insurance and by this department to be of such vital importance as to, without question, call for the prosecution of the case by the state to the supreme court. The case is now in the supreme court and the state's brief has been filed. The case has been assigned for hearing on oral argument for March 17, 1911. The defendant company is claiming the right to distribute $400,000.00 or practically that amount among its stockholders if the decision of the supreme court shall be in its favor, so that the cause really involves practically $800,000.00 which the state, through the department of insurance and this department, is claiming should be held for the benefit of participating policyholders, and that this money should not be divided among the stockholders of the company. The cost and expense of this litigation, because of the necessity for retaining special counsel and taking the depositions and testimony of expert witnesses on actuarial questions involved in the case has been heavy, although we are of the opinion that this cost and expense has been held to the minimum necessary under the circumstances.

Second. *The State of Ohio v. The Baltimore & Ohio R. R. Co. et al.*

This case is a suit brought in quo warranto in the circuit court of Franklin county to oust the defendant railroad companies from possession of a strip of land, formerly canal lands, about three miles in length and running from one hundred to four hundred feet in width and extending from the south down into the business section of the city of Cleveland to the Superior street viaduct in that city. This land is of very great value, it being estimated to be worth from three to five million dollars, and upon two hearings in the circuit court of Franklin county, first, on the demurrer of the defendants to the information of the state, and second, upon the demurrer by the state to the answer of the defendants, the state has been successful, and these demurrers and hearings have gone to the merits of the cause, and the case is now being prepared by the defendants for the supreme court. Our judgment is that the state must in the end be successful in recovering this land.

Third. *The City of Greenville v. Demorest, et al.*

This case was brought by the city of Greenville in the court of common pleas of Darke county against the members of the State Board of Health, and against the board of health of the state, and goes to the constitutionality of an act of the General Assembly known as the Bense act and which, speaking generally, attempts to confer power upon the State Board of Health to order any municipality or other political subdivision of the state to provide a source of pure water or to construct a sanitary sewerage system, etc. An order was made by the State Board of Health and approved by the Governor and Attorney General according to the law, and thereupon the city of Greenville begun the action to test the constitutionality of the act. All the facts were stated in the

petition, and thereupon the state demurred to the petition. Later on, in the regular course of the proceeding, this department, through Mr. Eagleson, special counsel, prepared briefs and argued the cause, with the result that a decision has been rendered by the court sustaining the law and the contentions of the state thereon in every particular. This case is now being prepared by the city of Greenville for the circuit court.

Fourth. *Newark Liquor cases.*

During the fore-part of this year the Dairy and Food Department certified to the Auditor of State the Aiken liquor tax on fifty-two (52) different pieces of property in the city of Newark, Ohio, and the Auditor of State in turn ordered the same to be placed by the auditor of Licking county upon the tax duplicate against the respective properties where the liquor was sold in violation of the Rose county local option law, Licking county having theretofore voted "dry." Thereupon the respective owners of these properties instituted suits in the court of common pleas of Licking county to enjoin the collection of this tax, and the state being interested, this department, through Mr. Justice Wilson, with the prosecuting attorney of Licking county defended, and on the trial the court refused the injunctions. Thereupon error was prosecuted by the property owners to the circuit court where the state was again successful, and these cases are now in the supreme court of the state on prosecution of error by the property owners. The amount involved aggregates about $45,000.00. This department's brief has been filed in these cases.

Fifth. *State of Ohio v. Hocking Valley Railway Company.*

This case was instituted by the state through this department in 1903, and is a suit in quo warranto seeking to oust the defendant company from owning and controlling the capital stock of the Toledo & Ohio Central Railway Company and the Kanawha & Michigan Railway Company from owning certain large tracts of coal lands in the state of Ohio, and from guaranteeing the bonds of certain coal companies. The cause had been argued and submitted, and was resting with the court for decision when the present administration of this department began. Thereafter the circuit court of Franklin county, in which the cause was instituted, handed down a decision sustaining the state in its contentions, and the cause was thereafter re-argued by the present administration at the city of Dayton, Ohio, on two questions involved in the case, viz., the question whether the Kanawha & Michigan Railway Company is a competing line with the Hocking Valley Railway Company, and whether the defendant the Hocking Valley Railway Company was authorized under the law to guarantee the bonds of the coal companies. The decision was later on handed down by the same court pursuant to this re-hearing, and the former position taken by the court was adhered to, and the defendant company thereupon prosecuted error

to the supreme court of Ohio, where the cause is now pending with all briefs filed. The case was assigned at the last assignment day for argument on January 3, 1911, but on account of the serious illness of Mr. C. T. Lewis, counsel for the defendant, and who re-argued these questions on hearing in the circuit court, the case will be set for hearing the latter part of March or the first week of April, 1911.

Sixth. *Wightman v. Pennsylvania Company, et al.*

This cause was instituted in the circuit court for the Northern District of Ohio, Eastern Division, at Cleveland against the Pennsylvania Company and the trustees of the Cleveland State Hospital to recover possession of the land on which the hospital is located and of the lands or grounds in connection therewith and owned by the State of Ohio. Proper defense, as we believe, has been made in this case for the state through this department, with the result that the late Judge Tayler decided the cause in favor of the state and dismissed the action, and the plaintiffs below are now prosecuting error to the circuit court of appeals.

Seventh. *The State of Ohio v. Miami & Erie Canal Transportation Company.*

This suit was instituted by the state through this department in quo warranto against the defendant for the purpose of ousting the defendant from its occupancy of the berme bank of the Miami & Erie canal between the cities of Dayton and Cincinnati. This company constructed on this location what is commonly known as the "Electric Mule," an electric railway originally designed to propel boats upon the canal by electricity through electric motors operated upon a regular railway track constructed on the berme bank of the canal. Many hearings on motions and demurrers have been had in the circuit court of Franklin county, Ohio, where this cause was instituted, on the petition or information of the state, and much of this was done prior to the present administration of this department. This administration filed a supplemental petition or information in quo warranto, and thereupon the defendant answered, showing cause why it should not be ousted. To this answer we demurred and briefed the cause most thoroughly, but upon hearing thereof before the circuit court, the ruling of the court was handed down against the state, and we are now prosecuting the case on error to the supreme court of the state. The record in the case is now in process of printing.

In the course of this litigation we have come to the conclusion that the coming session of the general assembly should pass an act repealing the act under which the privilege to construct this equipment was granted, and the act should also contain an express declaration of forfeiture of the privilege which was granted by the state pursuant to the act. It seems clear to us that the defendant has forfeited all its rights under the contract, and that it should be ousted from this property.

Eighth. *State of Ohio v. McKinnon, et al (Two cases.)*
State of Ohio v. Cameron, et al (Two Cases).

These cases were brought in the early part of the present year for the recovery in each case upon the bond of the defendants McKinnon and Cameron, each of whom was a former state treasurer of the state. The suits are prosecuted against these principals and their sureties, and are for the recovery of interest alleged to have been collected by these principals and converted to their own use upon deposits of state funds in various banks throughout the state. The suits were brought in the court of common pleas of Franklin county and are now pending. Various motions and demurrers have been filed by the defendants, and arguments thereon have been had with the result that the court in each case has sustained the petition of the state upon one set of demurrers, and they have now been submitted to the court upon demurrers going to other questions as claimed by the defendants than the questions involved in the arguments of the first demurrers. The court has not as yet handed down its decision on the second demurrers.

Ninth. *Newark Lynching.*

At about 10 o'clock on the evening of the 8th day of July, 1910, at the city of Newark, Ohio, one Carl Etherington was lynched by a mob of Newark people and persons from other places. Etherington was engaged as a "dry" detective in raiding places where intoxicating liquors were being sold in the city of Newark contrary to the Rose county local option law. The raid on these places was begun about 10 o'clock A. M. of that day by about twenty of such detectives and was continued until about 12:30 P. M. when Etherington attempted to escape the mob which had then formed and was endeavoring to capture him for the purpose of doing him bodily injury. He had boarded a street car bound for the western limits of the city and a number of the members of the mob followed him to a point near a base-ball ground and a public park at the outskirts of the city. At this point he left the city street railway car and attempted to board an interurban car bound for the city of Columbus, but was by the mob prevented from boarding the interurban car. He was by some member of the mob pulled or knocked off the rear step of the interurban car and he then started to flee from the crowd that followed him, and after a short run to a point near the entrance to Regal park he was overtaken by a man by the name of Howard, a saloon-keeper, who began to beat him over the head and otherwise punish him while the other members of the crowd were approaching to assist Howard. Just as these other parties came near to Howard and Etherington, Etherington, after repeated warnings to Howard to cease beating him, shot Howard, and he later died at about 8 o'clock that evening. Thereupon a mob immediately formed

again and went to the county jail in the city of Newark, and after working for one and a half hours the mob battered down the doors of the jail and proceeded to the upper story thereof where Etherington was confined in his cell, broke open the cell, took him from the jail and most brutally beat him all the way to the corner of Second street and the south side of the court house square where they hanged him to a telephone or telegraph pole until he was dead.

This brutal affair took place just across the street from the county court house of Licking county. Etherington was about 23 years old and a fine specimen of physical manhood, and it is said that he was, in fact, a rather exemplary young man. I shall not take the time, and it perhaps would not be proper at this time, to minutely describe the manner in which the mob handled this young man in the afternoon at the park, nor from the time he was taken from his cell, dragged down the stairs of the jail, out into the street and pulled along two squares of the town to the place where he was hanged. It is sufficient to say here that perhaps there has never been a case in history where a human being was much more brutally treated by his fellow human beings than was this young man. The only treatment which comes to my mind, and which would have perhaps been more brutal, if that were possible, would have been a slow burning at the stake.

The conduct of the county and municipal authorities of Licking county and the city of Newark are matters of history and I shall not repeat them here. It must be said, however, that it seemed imperative at the time that the state, through the Governor and this department, act quickly and thoroughly punish the participants in this awful transaction if justice were to be done. The Governor and Attorney General made a hasty investigation of the affair through the two days following the lynching, Saturday and Sunday, and on Monday the Governor authorized me as Attorney General to proceed to an investigation of the affair and a prosecution of the persons guilty of the crimes perpetrated therein. This authority and direction were promptly exercised and carried out by this department through the Attorney General and the first assistant, Mr. W. H. Miller, with the result that a special grand jury was empaneled and sixty-five (65) indictments were thereupon returned against persons implicated in the lynching and the riots which led up thereto. Twenty-five (25) of these indictments are for first degree murder and the remainder are for riot and assault and battery. Some of the indictments for assault and battery are based upon facts which took place about the middle of the day preceding the lynching at night, and of these fourteen (14) convictions, or pleas of guilty for assault and battery have been had, and the parties are undergoing the punishment imposed by the court pursuant thereto. One Watha has been tried for murder in the first degree, the jury finding him guilty

of manslaughter, it appearing upon the trial that this defendant participated or took a part in the events leading up to the lynching as follows: He went with the mob to the corner of the jail yard where he mounted a large stone on the side of the street and made a short speech, urging the mob to break down the doors of the jail and take Etherington out and hang him and thus avenge the death of Howard. After he finished his speech, the testimony was to the effect that he left the crowd and went to his home and remained there the rest of the night, taking no part in the breaking down of the doors or the lynching of Etherington thereafter. Watha was promptly sentenced by the court to imprisonment in the Ohio Penitentiary at Columbus, Ohio, for twenty (20) years and he is now serving under that sentence.

The second case on an indictment for murder in the first degree has been set for January 17th, 1911. This case should be tried, and so should all the others, no matter what the cost orexpense may be to the state. This affair has been and is a disgrace to the State of Ohio and to Licking county that cannot be wiped out or atoned for short of the exertion by the state of its every resource to bring all of these guilty parties to a punishment commensurate with the awful crime they committed on this young man and against the peace and dignity of this commonwealth.

Tenth. *Columbus Street Car Riots.*

During the last summer a strike occurred among the employes of the Columbus Railway and Light Company and during the progress of the strike much rioting took place, property was destroyed and many persons were injured. Some of these persons died and others were subject to considerable suffering. The Governor directed the Attorney General to investigate these riots and to prosecute persons guilty of the same. This work was entered upon with the result that a considerable number of indictments have been returned against persons for rioting, assault and battery and other similar offenses. Some of these cases have been tried and convictions had as appears by the records of the court of common pleas of Franklin county, Ohio.

Eleventh. *Investigation of various departments of State by legislative committee and this department.*

Early in the last session of the general assembly, in fact, I believe in the first week thereof, a senate joint resolution by Mr. Beatty was adopted by the general assembly, providing for the appointment of a bi-partisan committee to consist of two members of the senate, who should be appointed by the president of the senate, and two members of the house to be appointed by the speaker of the house for the purpose of making an investigation of the affairs of various departments of the state government. This resolution gave the committee to be appointed

thereunder power to subpoena witnesses and require the production of books, papers and documents pertaining to such departments as might be investigated. The president of the senate appointed as such committee on behalf of the senate, Senators Richard Beatty, Democrat, and Sherman Deaton, Republican. Speaker Mooney appointed on behalf of the house of representatives, members William W. Riddle, Republican, and Jeremiah Winters, Democrat. The committee thereupon immediately organized and called upon the Attorney General to request the assistance of this department in making the investigations. This assistance was given from the beginning of their proceedings until the end as was also the assistance of the Auditor of State through the Bureau of Inspection and Supervision of Public Offices. The affairs and books of account of various departments were thereafter investigated during the session of the general assembly with the result that the committee made a report finding irregularities in the expenditure of money on the part of a number of officials in office prior to the present administration. The amounts of moneys which, in the opinion of the committee, were irregularly expended by these various officials were stated in the report of the committee, and thereupon a number of these officials returned such amounts to the state treasury. The former officials failing or refusing to return amounts so found against them are Mr. Hy Davis and Mr. W. K. Rogers, each of whom formerly occupied the office of State Fire Marshal, and Mark Slater, who formerly occupied the office of State Printer. Davis and Rogers refuse to return the money alleged to be due from them, claiming that the committee were wrong in their findings and that the money was properly expended. Slater is unable to make restitution, but is now serving a sentence under prosecution for his irregularities.

Some time in the year 1908 the Bureau of Supervision and Inspection of Public Offices made an examination of the administration of the Oil Inspection Department under the administration of Hon. W. L. Finley and returned findings against Mr. Finley to the effect that he had paid the expense of his official bond out of the funds of the state, and that he had irregularly expended other moneys, giving the manner of such irregular expenditures, amounts, etc. It had been the intention of this department to proceed through proper suits on the bonds for the collection of these moneys from Messrs. Davis, Rogers, Slater and Finley, but on account of the great amount of work in the department pressing for immediate action at all times we were unable, consistent with such other work, to institute these actions prior to the election of November of this year. Since such election we have concluded that since there is to be a change of administration, we should not begin these or other actions for prosecution by my successor, and thus attempt to bind him to a policy with which he might not agree.

The only cases which have been started by this department since the election are prosecutions in magistrates' courts, which we felt might be determined prior to my leaving the office, and we have brought one other case for the recovery of penalties against a foreign corporation which had been doing business within Ohio for a number of years without having qualified under the laws as provided in such cases. The facts in this case seem to be perfectly clear and the action was requested by the Secretary of State, and in such cases my opinion is there is no discretion in the Attorney General but to proceed under the statute for the collection of such penalties.

Twelfth. *Investigation of various departments of state by the Attorney General and Special Counsel Henry J. Booth.*

Incidental to, and as a part of the investigations conducted by the Attorney General and Special Counsel, Henry J. Booth, on request of the Governor into the affairs of former treasurers, out of which the suits reported in paragraph Eighth arose, the Attorney General and Mr. Booth made investigation of certain transactions in the purchase of supplies for the state offices in the Capitol, and with the result that a considerable number of indictments were returned against former employes in the departments of the state government, viz., Mr. George Wood and Mr. Harry King, and against various persons formerly connected with the Ruggles-Gale Company from which such supplies were purchased. The investigation before the grand jury on these matters was conducted by the Attorney General in connection with the prosecuting attorney of Franklin county. A demurrer to one of these indictments was interposed by Mr. Wood, and the court of common pleas of Franklin county sustained the demurrer, whereupon the prosecuting attorney of Franklin county prosecuted error to the supreme court, and the holding of the court of common pleas was affirmed. The work yet to be done on these matters is to ascertain to what extent this ruling will control the other indictments returned at the same time. Were this administration to remain in office it would be its policy to arrive at a conclusion on this question, and if necessary take such steps as might be required to reform these indictments, and in connection with the prosecuting attorney of Franklin county try the case.

Thirteenth. *Standard Oil Cases at Lima.*

Supplementing what was said in my last report on these cases, it may be said here that the titles to these cases are as follows: State of Ohio v. Buckeye Pipe Line Company, State of Ohio v. Solar Refining Company and State of Ohio v. Ohio Oil Company. Each of these is a suit in quo warranto instituted by my predecessor in office in the circuit court at Lima, Ohio, and each is for the purpose of ousting the de-

fendant company from membership in an alleged combination or trust in violation of the Valentine Anti-trust act of Ohio. On a hearing of these cases during my administration the court ordered that the Standard Oil Company of New Jersey be made a party defendant in each case, and that it be brought into court if possible. The Standard Oil Company of New Jersey we found had never qualified to do business in Ohio by filing the required statement under the law with the Secretary of State and therein designating an agent upon whom service of process might be made nor were we able to find any person in this state whom this company held out or who held himself out as the managing agent in Ohio of the Standard Oil Company of New Jersey. All of the capital stock, except five qualifying shares for directors, of each of the companies, The Buckeye Pipe Line Company, The Solar Refining Company and The Ohio Oil Company, was and is held by the Standard Oil Company of New Jersey; and after an extensive investigation of the law on the subject, and after amending the petition in each of the three cases making the Standard Oil Company of New Jersey a party defendant we concluded to endeavor to bring this last named company into each of these cases by treating the subsidiary company and each of its officers and directors as the managing agent in Ohio of the parent company, the Standard Oil Company of New Jersey. We thereupon caused summons to be issued upon each of the subsidiary companies as the managing agent in Ohio of the parent company, and we also caused summons to be issued for each of the officers and directors of such subsidiary companies as the managing agent in Ohio for the parent company. The Standard Oil Company of New Jersey immediately filed motions with affidavits in each case, moving the court to quash this service and claiming that there was no person in Ohio upon whom service may legally be made as the managing agent in Ohio of the Standard Oil Company of New Jersey. This department has fully briefed these questions and has endeavored to secure a hearing on these motions, but on account of the great amount of work before the circuit court where the cases were pending that court has been unable to assign the same for argument. The briefs are on file with the papers in this office and the motions may be heard at any time that an assignment thereof may be made. One of the judges of that court was formerly of counsel for one of the defendants, and this judge declines to sit in hearing on these motions, so that it will probably be necessary for the court to secure some other judge to sit in his stead.

Fourteenth. *Other litigation.*

There is a large number of other cases in litigation now pending, but which I deem it unnecessary to particularly mention in this report. The required pleadings in the same are all filed or will be filed within rule before the end of this administration, and the records thereof, and

of the cases specifically mentioned are or will be properly made up in this department in such manner as will show the exact status of the case, and from which my successor may ascertain the next step to be taken in them respectively.

(h) SOME LEGISLATION SECURED ON RECOMMENDATION BY THE ATTORNEY GENERAL DURING HIS ADMINISTRATION.

1. *Department of Banking.* In my last report I recommended the enactment by the general assembly of a law providing for the liquidation of insolvent state banks through the state department of banking. Such an act was passed by the last session of the general assembly and is proving to be a piece of salutary legislation.

2. *Department of Insurance.* In my last report I recommended that similar legislation be passed as to the liquidation of insolvent insurance companies. An act was passed attempting to accomplish this result. It was not brought to the attention of this department, however, before its enactment, and since then we find that it must be amended before it can be made effective, and I most urgently recommend that this law be so amended as to accomplish the results it was intended to accomplish.

3. *The Valentine Anti-trust Act.* In pursuance of recommendation from this department the general assembly at its last session passed an act amending the Valentine Anti-trust law of Ohio with reference to methods of procedure in the courts for the enforcement of that act. The act as originally drawn attempted to confer upon circuit courts jurisdiction to entertain suits for the recovery of moneys and penalties. This provision was, of course, against the constitution because that court has no power under the constitution to entertain original actions for the recovery of money. The amendatory legislation above mentioned corrects that error. This legislation also confers upon courts of common pleas equity jurisdiction to entertain suits to enjoin the continuance of violations of this law, and it provides that these actions may be prosecuted simultaneously with suits brought in the circuit court to oust the offending corporation from its charter rights or from exercising powers beyond its franchise right or in violation of the same. The amendment does not make the penalty for violation of the Valentine law more severe, but, as I believe, it does make the act as it now stands a piece of effective legislation by proper procedure under it.

4. *Section 6969 of the Revised Statutes, being now sections* 12910 *and* 12911 *of the General Code.* In my last report I recommended the revision and amendment of section 6969 of the Revised Statutes of the state which attempted to make it unlawful and a criminal offense for any person holding any office of trust or profit in this state, either by election or appointment, or any agent, servant or employe of such officer or of a board of such officers to become directly

or indirectly interested in any contract for the purchase of any property, supplies or fire insurance for the use of the county, township, city, village, hamlet, board of education or public institution with which he is connected. In drafting this section originally, the word "not" was omitted in one part of the section, and this omission rendered the statute practically of no effect. My recommendation was that this omission should be supplied, and that the statute be made to apply to state officers, agents and employes as well as to all officers for political subdivisions of the state. This amendment was adopted through the General Code and is now found in sections 12910 and 12911 thereof.

5. *Department of Agriculture.* The statutes creating and regulating the department of agriculture, and defining the duties and powers of the State Board of Agriculture, and the other officers and employes of the department have been far from satisfactory, and in my last report I recommended a complete re-codification of the laws pertaining to these subjects. The bill was prepared, introduced and considered by the general assembly, but for some reason or another it was not passed, although it was advocated by the Secretary and other officers of the department of agriculture. In my judgment this department will not be able to accomplish the good for which it is intended until these laws are amended and so revised as to clearly define the powers and duties generally of the board, and with respect to the manufacture, sale and inspection of commercial fertilizer. This department has collected from the various states their respective laws regulating similar departments therein, and from these statutes we believe that a law may be drafted that will place the agricultural department in Ohio in a better and surer position to do the work for which it was created.

6. *Codification and publication of the statutes by the state.* Another subject which received attention by way of recommendation from this department in the year 1909 was the advisability of a provision under which the state might publish and sell the codified statutes or General Code if the general assembly should adopt the report of the Codifying Commission which was in process of preparation at the time the last report of this department was made to the Governor in December of 1909. The recommendation was made in that report that the state on its own account edit, index and publish the codified laws as prepared by the Codifying Commission, and as that report might be adopted by the general assembly thereafter, and that the state then sell the same at such figure as would enable the state to defray the expense of the Codifying Commission, or such part thereof as the general assembly might see fit to cover by a price to be fixed for the work. A law was passed at the last session of the general assembly making the attorney general the codifier of the general laws as they might be passed from time to time by the general assembly, and making it the duty of the Printing Commission,

consisting of the Secretary of State, Auditor of State and the Attorney General to publish an edition of the General Code which was adopted February 15, 1910, as soon as possible after the adjournment of that session of the general assembly. Immediately after the adjournment of that session of the general assembly the Printing Commission prepared specifications for the furnishing of the material, printing, binding and delivery complete to the Secretary of State of 10,000 sets, more or less, as the Commission might determine, of the General Code, four volumes to the set. The Commission then advertised for bids, as provided by law, for this work and the contract thereon was afterwards let to the W. H. Anderson Company of Cincinnati, Ohio, at $3.85 per set of the General Code of four volumes each, as per said specifications. The work was completed by the contractor in the month of December according to the requirements of the contract and the books are now on sale by the Secretary of State at $4.50 per set of four volumes. The statute authorizes the Secretary of State to sell this set of books at not to exceed ten per cent over the cost under the contract price for material, printing, binding and delivery.

(i) THE CANALS AND CANAL LANDS.

The question "What shall be done with the canals?" has been the subject of long discussion in this state and it seems to have serious advocates on both sides. The construction of these water-ways was authorized in the year 1825 and they were thereafter constructed, and for many years operated under the supervision of the state. They were then leased by the state and thereafter for a number of years operated under private enterprise. During the term of this leasing they were operated for the benefit of the private ownership, little attention being given to their physical betterments or maintenance, and at the end of the term they were returned to the state greatly out of repair, and in fact in a state of dilapidation rendering them almost unfit for use without the expenditure of large sums of money for their betterment and repair. From this time on until the year 1902 the question as to what should be the policy of the state with respect to these canals was one of continual debate among the people and the members of the various general assemblies. During the regular session of the general assembly in 1902 an attempt was made to provide for the abandonment of these water-ways for canal purposes and to sell or lease the same, but this proposition failed of adoption. Two years later in the year 1904 an act was passed by the general assembly declaring that it should be the policy of the state to rebuild and maintain the canals, and an appropriation for that purpose was made that year, and appropriations have been made at each succeeding session of the general assembly since then for the same purpose, with the exception of the last session of that body. Within the time from the passage of this act in 1904

declaring it to be the policy of the state that these public works should be repaired and maintained as permanent waterways, and the year 1909, over one and a half million dollars have been appropriated and expended in the work of reconstructing and repairing the locks and other portions of these canals. During the year 1909 the discussion of the question as to their future disposition, and the future policy to be pursued relative to them again became acute, with the result that at the last session of the general assembly there was practically no appropriation made for further improvements, and now even with this great amount of money expended we are still face to face with the unsolved problem as to what shall be done with these waterways in the future. This question, of course, must be settled by the law making body of the state, and I shall not venture to make recommendations on that question because it does not come within the province of the department of the Attorney General. It is a legislative question and the will of that body must be carried out by the executive and administrative branch of the government whatever that will be. These questions were all before the people and the state government before I came to this department as Attorney General, and my hope has been that some definite policy would be adopted by the general assembly and methods devised consummating such policy whatever it might be, and I now venture to express the hope that the subject will be given continued and intelligent attention, and that some definite comprehensive plan may be adopted in the near future which will finally settle the question for the speedy reconstruction of these waterways or for their permanent abandonment as waterways, and if the latter be adopted that the interests of the state be protected by safe provision for the sale or leasing of these lands. As above stated, however, I make no recommendation because until this department shall be asked for advice upon that subject it clearly does not come within our province to give it voluntarily. The question, however, as to what shall be done with the canals, that is whether the reconstruction thereof shall be completed, and the policy of thereafter maintaining them established, is a question entirely aside from the ownership by the state of these properties, and that question is entirely aside from the question as to whether the state should know what property it owns in this connection, and what is the state of the title thereto in the commonwealth.

Whatever policy may hereafter be adopted, it is certainly essential that we know what lands the state owns for canal purposes, or in connection therewith. The state has been involved in the past and still is involved in a considerable amount of litigation over the title to these lands, and this department in conducting that litigation has at all times had great difficulty in establishing these titles because of a lack of systematic arrangement of records, papers and documents which bear upon such titles.

Investigation of Titles. Entertaining the views as expressed above as to the state's title to canal lands, I immediately after coming to this department as Attorney General began an investigation of the records in the Capitol building affecting such title and in connection with the board of public works, outlined a plan upon which such investigation should proceed. This work has been carried on with as great dispatch as possible consistent with the other work necessary to be done in this department, and a short statement of the methods pursued by the state authorities in acquiring lands for the construction of the canals, the methods followed in their construction and in keeping the records of titles to lands, contracts for construction, etc., may be interesting, and at the same time helpful in showing some of the difficulties which now confront us in ascertaining what lands the state still owns in this connection.

Lands Acquired. As heretofore stated the general assembly in 1825 provided for the construction of our canal system, making provision for the acquirement of lands, erecting a department of public works and, in short, giving authority for the doing of whatever might be necessary to complete the canals. Under the authority thus given, and through procedure described in the statutes passed at that time, and later on, lands were acquired by the state in various ways, viz.:

1. Lands were given to the state by the federal government through act of congress. Under this act the state was allowed to select these lands within certain boundaries in the State of Ohio as mentioned in the act.

2. Specific tracts of land were purchased by the state for canal purposes by deed with accurate descriptions of the lands so purchased.

3. Specific tracts of land were donated to the state with accurate descriptions thereof.

4. Over twenty-six thousand acres of swamp lands were acquired by the state through grants from the United States government.

5. Certain lands were acquired by occupation for canal purposes with or without appropriation proceedings under the act of 23 O. L., page 50.

Methods of Canal Construction — Contracts. The canals and reservoirs were constructed under contracts between the state and private individuals, each individual or association making a contract with the state for the construction of a certain section of canal work. These contracts were in writing with specifications attached, stipulating the width of the bed of the canal, width of the top water line, the berme bank and tow-path, and in many instances providing that the contractor should stump the land on either side of the canal, that is cut the timber down to the ground or near thereto on either side of the canal for a certain width, and in many instances cutting the timber to a width beyond these first cuttings on either side at a certain height above the

ground higher than the stumping at the immediate edge of the tow-path and berme bank. The statutes theretofore passed had authorized the state to take whatever land the state authorities might deem necessary for the construction of the canals or reservoirs at any point, and it has since been decided by our supreme court that whatever width of land or whatever tract of land was taken at the time of the construction of the canals or the reservoirs became the property of the state in fee simple. These statutes provide that the state authorities might simply enter upon the lands deemed necessary for canals or reservoirs and construct the same, and they also provided for a board of commissioners or appraisers to whom application might be made by the owner of the land which was taken for a valuation of such land. These commissioners would then set a valuation on the land, but in a great majority of cases it seems they found that the special advantages which the property owner would gain from the construction of the canal off-set the owner's damages, and their findings were, in such cases, made in that way so that the property owner received no compensation for the property taken. If an award was made to the owner the state paid the award as returned by these commissioners. The unfortunate phase of the matter is that these commissioners caused no definite surveys to be made, nor was there kept any particular record giving specific descriptions of the property taken in any case. About the only record made was a statement on the books of the board of public works that certain moneys had been paid on the award of the commissioners to a certain land owner for land for canal purposes at a certain point without further particular description. None of these appropriation proceedings were conducted in any of the courts so that there are no records in any of the courts in any of the counties by which we may be guided in ascertaining the width of these lands taken for canal purposes, nor are there any records in any of the courts which enable us to determine the exact boundary lines of lands taken for reservoir purposes except in later years, an instance of which is the reservoir acquired some few years ago at the city of Akron, Ohio. Records were kept in the board of public works, and the state auditor's office and other offices in the state Capitol of descriptions of lands selected under grants from the federal government and of specific tracts of lands purchased by the state for canal purposes by deed; also of specific tracts of land donated to the state by individuals with accurate descriptions thereof.

The contracts with specifications attached entered in to between the state and the several contractors were kept in the office of the board of public works, but many, many years since were removed to the basement of the Capitol, and after some considerable search for the same we located them there. A record of the minutes of each meeting of the board has been kept from the time of the organization thereof to the present time, and these are in a good state of preservation. From these

minute books it appears that it has been the custom of the board from the beginning to make a record in the form of a resolution, or otherwise, of any and all action taken on the part of the board with respect to any of the lands acquired by the state in any wise, whether for the acquiring of such lands or disposing of the same. The board has also rendered annual reports from the beginning and many maps and surveys, with the field note books of the surveyors or engineers have been made and kept on file. These contracts and specifications, annual reports, minute book records, maps, surveys and field notes, therefore, are the source to which we must look for establishing the boundary lines of the canals proper, that is the width of these lands on either side of the center line of the water-way. In many instances no berme bank was constructed, but the water was simply allowed to flow from the tow-path to apoint where it would strike a rise in the surface of the ground and here would be formed a basin or what is known as a "wide water." The necessary dredging would be done along the tow-path in order that sufficient depth might be gotten to accommodate the boats, and we take it that whatever land was thus flooded and constituting the basin or "wide water" would belong to the state, because such land was taken or occupied in the construction of the canal. From our investigation of the question it seems that in many cases it was cheaper to pay for several acres of land which might thus be flooded than to construct a berme bank.

It will be seen, therefore, that these contracts with specifications attached, and the maps, surveys and field notes made by the surveyors or engineers in connection therewith are important documents in determining the width of the land taken by the state at any point for the construction of the canals at such point.

As time passed the general assembly from session to session passed many acts affecting title to these canal lands. No compilation of these various acts has ever been made and the result is that in every instance in which the title to land is involved this department is compelled to go through each volume of the session laws for the purpose of ascertaining whether any special act has been passed affecting the title to any particular land including the one in question in the litigation. This situation makes it almost impossible to conduct these litigations with any degree of dispatch, and in view of all the facts as just above set out I, early in the year 1909, placed a special counsel in charge of the work of ascertaining a classification of the lands acquired, gathering all the records, contracts and specifications, minute books and maps and surveys of the surveyors and engineers, annual reports and any other data that might be gathered with a view to indexing and classifying the same in such manner as would enable us to finally complete an inventory of the lands the state now owns with the best record that may now be made. The canal lands being thus investigated and the work which has

been done with respect thereto along the line above indicated may be summarized under five general classes:

1. Lands selected for canal purposes by the state of Ohio under grants from the United States government. These lands comprise about a million and a quarter acres, every tract of which has been investigated during the past year. The state records indicate that all but 28,000 acres of these lands have been sold. In order to complete the investigation it will be necessary to visit the various counties in which these lands are situated, investigate the county records and call upon persons occupying such land to show their title.

2. Specific tracts of land purchased by the state for canal purposes by deed with accurate descriptions of the lands purchased. Five hundred and twenty (520) such deeds have been collected, and all records of sale of part or all of such lands purchased are being compared with the records of lands purchased for the purpose of ascertaining the quantity of such lands remaining unsold.

3. Specific tracts of land donated to the state with accurate descriptions of the lands donated. Seventy-five (75) deeds of conveyance of such lands have been collected and all records of sale of part or all of such lands donated are being compared with the records of lands purchased for the purposes of ascertaining the quantity of such lands remaining unsold.

Our records show six hundred and ninety (690) sales of lands purchased or donated to the state.

4. Over 26,000 acres of swamp land acquired by grants from the United States government have been investigated and the state records show that all but 2,800 acres of such lands have been disposed of.

5. Lands acquired by occupation for canal purposes with or without appropriation proceedings under the act of 23 O. L. 50. This class includes practically all of the lands now occupied by our 642 miles of canals and over 30,000 acres of reservoirs. In the construction of the canals the state obtained a title in fee to all lands which it occupied for canal purposes. The land was, however, of such little value at the time that the canals and reservoirs were originally constructed, that definite surveys were not made and even when lands were appropriated and damages awarded by appraisers under the existing law no description of the lands acquired by the state, and no statement as to the quantity of land conveyed, was filed in the records of the public works. Investigations are therefore being made of all records obtainable and a card index system has been installed by which every reference to and title contained in any public record, and every bit of information having a bearing upon the amount of land occupied by the state for canal purposes, can be accurately ascertained and properly classified. All the minutes of the early boards of canal commissioners and boards of public works, together with their annual reports, have been indexed and classified

up to the year 1860. A list of several hundred general laws relating to the public works has been compiled. This list is to be completed and such laws, together with the local acts, joint resolutions and items of appropriation bills relating to the public works are to be compiled and the whole carefully indexed, with special reference to the title of the state to canal lands. All maps, surveys, original note books of surveyors, All maps, surveys, original note books of surveyors, original plans and specifications, original contracts, records of expenditures, etc., have been gathered together with a view to reconstructing on paper, so far as possible, the canal system as originally constructed, and with a view to ascertaining, under all the facts collected, the amount of lands which was legally occupied for canal purposes. Such work is being conducted by two men employed by the board of public works under the direction of this department and the work has progressed far enough to indicate that the state owns large quantities of land of great value which have for years been occupied by private individuals.

At the beginning of my term I planned to bring suits for the recovery of various tracts of canal lands falling under this class. Investigation, however, showed that the interests of the state would be jeopardized if such suits should be filed before all the evidence procurable could be gathered together and classified in the manner above described. The above investigation will be completed within a very few months and the Attorney General's department will then be fully prepared to select important cases involving the different legal questions relating to the title of the state to these lands and prosecute the same, fortified by all the evidence that can be procured anywhere in support of the contentions of the state.

The plan of thus completing the records involves a classification of the construction contracts and specifications heretofore referred to under the respective counties in which the construction called for was performed, that is, the purpose has been to place all the contracts for the construction of the canal in Cuyahoga county, for instance, in one file; those of Summit county in another and so on. The records of all these lands so far as the offices in the state Capitol are concerned, it will be seen, may be completed within a reasonably short time, and when these contracts are classified according to counties, as above indicated, a man from this department may then make an investigation of the records in the recorder's office of the several counties through which the canals pass or in which our reservoirs are located with a view to ascertaining what lands those records show the state to have purchased, and what lands those records show the state to have disposed of. The above work when completed should produce a record as nearly accurate as it can at this day be produced of the canal lands which the state now owns.

Water Rights and Leases. A similar plan for making a record or inventory, so to speak, of all water rights or leases granted by the state

along any and all parts of the canal has been inaugurated by this department in connection with the board of public works, and considerable work has been done thereon. This record when complete should show the status of all such water rights or leases from the beginning to the present time with reference to records, annual reports, minutes of the board of public works and other records, including contracts of lease, acts of the general assembly, etc., pertaining to such water rights or leases respectively. Our notion is that the terms and conditions upon which many of these water rights or leases have been granted have been and are continually being violated by the lessees, and that if these records are made up the state will be able in a large number of cases to forfeit the lease or secure great advantage in the renewal of the same when we are able to properly present the facts to the lessees or to a proper court.

Purpose of the Above Investigation and Record Making of Lands, Water Rights and Water Leases. Our purpose in making the investigations above described and compiling the records as just stated is to ascertain what lands the state on the record appears to own, and what rights it may have given under water leases and contracts to private individuals, corporations or associations and to ascertain all the circumstances and conditions attending the same. When all the records are examined and it appears therefrom that the state owns a piece of land it will then only be necessary for us to ascertain whether some individual, company or association is occupying the same and take the necessary steps to recover it to the possession of the state if it is so occupied. And in the matter of water rights or leases when we know all the facts and circumstances under which the same was granted, and the conduct of the lessee in complying with the terms and conditions of the contract are ascertained the proper steps may then be taken to secure the rights of the state under such contracts. This purpose as to both of these matters—the lands of the state and the water rights or leases granted, should be carried out and consummated no matter whether it is hereafter determined to complete the reconstruction of the canals and then maintain them or to abandon them as waterways and dispose of the lands by lease or sale.

Canal Damage Claims. Under the statute relating to the canals it is provided in effect that if any land owner shall suffer any damage occasioned by an overflow of the canals through a break in the bank or otherwise, if the state in the management of its canals is at fault, a board of three commissioners shall be selected, one by the claimant, one by the board of public works, and these two shall select a third to assess the damage. During this year 1910 the following canal damage claims have been heard, this department defending in each case:

Commissioners George Bennett, W. B. Renick and Frank Ruth, at Circleville, Ohio.

	Amount claimed.	Amount awarded.
James I. Smith	$1,200 00	$400 00
Mary A. Olds, Eliza Olds, Elenor Gray and Effie Olds	1,000 00	100 00
Fred L. Luts, Exr., and Chas. Kline	737 00	50 00
Henry Huls, Edward Clendennen and Frank Clendennen	375 00	.....
Frank E. Goeler	415 00	300 00
Charles Morris	630 00	.....
George E. Goeler	155 00	.....
Theodore Carl	100 00	150 00
Theodore Carl	150 00	
	$4,762 00	$1,000 00

Commissioners Frank Ruth, Allen Thurman and E. B. McCarter, at Logan, Ohio.

	Amount claimed.	Amount awarded.
The Logan Clay Product Company	$16,301 83	.....
Hocking County	12,700 00	.....
L. C. Wright	12,450 50	.....
L. C. Wright	6,100 00	$500 00
Neman & McBroom	191 00	.....
Riley Glass	1,000 00	.....
	$38,743 33	$500 00

Commissioners John C. Teichert, James H. Moore and John Dewey, at Waverly, Ohio.

	Amount claimed.	Amount awarded.
John F. Prather and John Barch	$200 00	$200 00
John F. Prather and Frank Cutlip	600 00	600 00
John F. Prather and Harry Baker	252 00	252 00
John F. Prather and J. J. Steinhauer	180 00	180 00
John F. Prather and George Baker	550 00	550 00
M. D. Clark	2,860 00	2,400 00
Adah C. Jones	2,000 00	1,200 00
Adah C. Jones and Abraham Cutlip	2,420 00	2,085 00
Adah C. Jones and J. A. Fisher	1,500 00	1,405 00
Peter Bauer	300 00	200 00
	$10,862 00	$9,072 00

When an award is made by the commission so appointed the amount of the award then goes to the general assembly through the proper committee for an appropriation to pay the same. In some instances such awards have been paid in the past and in some instances the general assembly has refused to pay the same.

Prior to the present administration an award was made to certain property owners for damages alleged to have been caused by the overflow of the Lewistown reservoir and the amount awarded aggregated the sum of $19,000.00 We have been of the opinion that this award is unjust and have advised the general assembly from time to time to refuse to pay it, and we are of the same opinion as to the award indicated above on the claims at Waverly amounting to $9,072.00. The testimony and the report of the commission thereon in the Lewistown reservoir claims are all on file in this office and this testimony, as we believe, conclusively shows that the state was in no way at fault for the overflow there complained of. The occasion was one of an unprecedented flood and the damage to the property owners was all done prior to the time of the day when the reservoir became completely filled and began to overflow. The height of the waste-weir was where it had always been and was in our judgment as high as it was necessary for it to be under ordinary circumstances.

As to the Waverly claims we have lately found a statute passed by the general assembly giving the county commissioners of that county the right to use the tow-path on berme bank of the canal at the point where the break occurred, as a public highway; and our claim is that the act imposes upon the county commissioners the duty of keeping the bank at that point in repair, and that the state was in no wise at fault for the break or the consequent damage.

In this connection I wish to make the observation that commissioners to pass upon these claims should not be selected from the vicinity of the damage but should be selected from other parts of the state at points removed from the canal so that there may be no chance of the persons thus selected being influenced by sympathy or other motive except the facts in the case in passing upon the testimony as it is produced.

(j) THE TAX COMMISSION. At the last session of the general assembly a State Tax Commission was created under the act known as the Langdon bill. This commission has been appointed and creates an additional department of the state government to the organization of which the department of the Attorney General has given much attention. A large number of opinions, both oral and written, have been given to the commission and some litigation has already arisen on a construction of the act creating the commission. The revenue features of this bill were passed upon recommendations made to the general assembly at its last session by the Attorney General. These recommendations were made in an opinion sent to the Governor and to each of the committees on finance, judiciary and taxation in both the Senate and the House of the general assembly, and this opinion will be found in the body of the printed report of this department which will be hereafter submitted.

(k) SOME RECOMMENDATIONS FOR CONSIDERATION BY THE GOVERNOR AND THE GENERAL ASSEMBLY. Aside from the recommendations made above herein, in connection with specific matters discussed, I deem it advisable to call attention to a few other matters which have come to the notice of this department during the present administration, and with respect to which it seems to me a change of policy might well be adopted by the state government in the interest of more economical and careful administration of the state government.

1. *Appropriation of Receipts and Balances.* It has been the custom for a number of years for the general assembly to appropriate to a number of the departments of the state government the respective department's receipts and balances. This is done in the case of such departments as collect certain moneys in the nature of earnings or receipts from services performed by the officials or employes in the department. There is no way of ascertaining with accuracy the amount of such receipts and balances and the general assembly can at best only estimate the same. This practice, of course, prevents a careful scrutiny and supervision by the general assembly of the expenditures of such departments, because under such circumstances it is not possible for the general assembly or the department to know just what amount of money will be at the disposal of the department for the conduct of its affairs. The arguments which may be made against this practice, it seems to me, are numerous and I believe there is no good reason that can be advanced against the general assembly making a specific appropriation of a definite amount of money for each department of state, and for the various purposes for which the department is compelled to expend money.

2. *Laws permitting departments to pay expenses out of receipts and deposit the balance in the state treasury.* Certain departments under the state government, under the law creating them, are permitted to collect certain moneys, pay their expenses without limit except at the discretion of the head of the department, and deposit the balance from time to time in the state treasury. This practice, I believe, is equally objectionable, and indeed more objectionable than the practice of appropriating receipts and balances. Indeed, it seems to me all moneys collected by any state officer should be paid into the state treasury and that specific appropriations should be made by the general assembly to defray the expense of conducting the affairs of each department. The constitution provides a treasurer of state, and, in my opinion, this means that all of the money which the state collects in any wise is to be passed into his custody. The constitution does not provide that the state treasurer shall perform such duties as may be imposed upon him by law, but it simply provides that as a part of the executive branch of the state government there shall be a treasurer of state. A similar constitutional provision is made with reference to the Attorney General, and our

courts have held that the Attorney General is the law officer for the state and all its departments of government. Upon the same reasoning this department has for some time been of the opinion that the spirit of the constitution requires that all moneys collected by any state officer from any source whatever as the money of the state be paid into the state treasury, and that it may not thereafter be paid out except upon specific appropriation by the general assembly. The department of the Attorney General collects large amounts of money each year as do many other departments of state, and if the general assembly has power to authorize any department to pay a part of its expenses, or other disbursements out of the moneys thus collected, independently of appropriation by the general assembly, might not the general assembly permit such departments to thus defray all the cost and expense or make any other disbursement which such department may have occasion to pay or make, and thus, in a large measure, defeat the provision of the constitution that there shall be a treasurer of state, and that no money shall be drawn out of the state treasury except upon specific appropriation. The purpose of these provisions, of course, is to provide a safe custody for the state funds and to provide against extravagant expenditure thereof by requiring such expenditure to pass under the scrutiny of the proper committees of the general assembly and finally of the general assembly membership at large.

A number of state departments or sub-departments and boards collect money which, under the law regulating the same, are not acquired to be deposited immediately into the state treasury, but certain expenditures or other disbursements are made and the balances are turned into the state treasury monthly, quarterly, etc. Such, for example, are the Inspector of Oils, the automobile department under the Secretary of State and the board of managers of the Ohio penitentiary. There are also boards which, under the law, are not required to turn any of the moneys collected by them into the state treasury. The particular laws regulating the above mentioned departments or the boards referred to make specific provision as to when money shall be turned into the treasury by such department or board or provide that it need not be turned in at all. These statutes must of necessity prevent the state from receiving the interest which moneys collected through these departments and boards would produce if the same were turned at once into the state treasury so that they might be placed in either the active or inactive depositories. It would certainly be to the advantage of the state if the laws were amended so as to require all departments, boards and officers through or by which any money is collected for the state to at once deposit such moneys in the state treasury so that they might at once be placed in the depositories upon interest and this, of course, would then require that the general assembly make specific appropriation for all of such departments, boards and officers, thus bringing all expen-

ditures of these departments, boards and officers under the scrutiny and supervision of the legislative branch of the government and the chief executive of the state.

3. *Mining laws should have immunity clause.* The mining laws in their present state are, in a large number of cases, unenforceable. In numerous cases which arise under these laws and which should be prosecuted, the only possible witnesses to prove the particular violation of law are, for some act of theirs, also subject to a fine, and, under section 10 of Article 1 of the Constitution of Ohio, such witnesses cannot be compelled to testify, for the reason that their testimony would have a tendency to incriminate themselves. For this reason I believe it would be advisable for the general assembly of Ohio to authorize the Attorney General, where witness or witnesses are needed on behalf of the state in a prosecution brought under the mining laws and such witness or witnesses under section 10 of Article 1, cannot be compelled to testify, to grant immunity to such witness or witnesses and thereby remove one of the most objectionable features of the mining laws.

II.

LAW SUITS AND PROSECUTIONS HANDLED BY THE DEPARTMENT FROM DECEMBER 1, 1909, TO DECEMBER 15, 1910.

During the period from December 1, 1909, to December 15, 1910, the department has disposed of 204 law suits in the courts of common pleas, circuit courts, supreme court of the state and the federal courts, and there are now stil lpending 142 law suits running through all these courts, making a total number of 346 cases which the department has had to handle in courts of record during the period.

During the period from December 1, 1909, to December 15, 1910, the department has handled 718 criminal proceedings instituted in magistrates' courts under the respective departments and in the number set opposite the names of the departments as follows:

For violations of Child Labor Laws	92
For violations of Workshops and Factory Inspection Laws	5
For violations of Pure Food Laws	226
For violations of Medical Registration Laws	38
For violations of Pharmacy Laws	51
For violations of Dental Laws	8
For violations of Mining Laws	46
For violations of Fish and Game Laws	250
For violations of Vital Statistics Laws	2
Total	718

During the period from January 1 to December 1, 1909, the department handled a total number of 405 cases in courts of record. This, it will be seen, exceeded the number of cases handled from December 1, 1909, to December 15, 1910, by 59 cases, but the number of prosecutions in magistrates' courts for the latter period exceeded those of the former to the number of 154, the total number of cases handled in magistrates' courts from January 1, 1909, to December 1, 1909, being 564.

III.

COLLECTIONS AND DISBURSEMENTS.

(a) *Appropriations for the department for the year beginning February 15, 1910, and ending February 15, 1911, and disbursements from December 15, 1909, to December 15, 1910.*

The general assembly at its last session made appropriations for this department for the year beginning February 15, 1910, to February 15, 1911, as follows:

Salary Attorney General	$6,500 00
Salary First Assistant Attorney General	4,000 00
Salary Second Assistant Attorney General	2,500 00
Salary Chief Clerk	1,500 00
Salary Willis Tax Clerk	1,200 00
Salary Two Stenographers, $1200.00 each	2,400 00
Salary Messenger	600 00
Salary Janitor	600 00
Special Counsel	33,000 00
Special Counsel, canal matters	3,000 00
Contingent expenses	2,000 00
Furniture, carpets and books	1,000 00
Stenographic work	2,500 00
Costs in cases brought by state	2,000 00
Traveling expenses	1,000 00
	$63,800 00

In addition to the foregoing the following sums were appropriated to meet authorized deficiencies and liabilities and which had been created prior to the present administration:

Special Counsel	$5,450 00
Costs in cases	1,150 70
Remodeling offices	121 50

On account of the investigation of the department of the treasurer of state under former treasurers of state, the general assembly at the beginning of its last session appropriated the sum of $20,000.00 as a special appropriation to pay the cost and expense of such investigation, and

an investigation of other departments of state to be conducted by the Attorney General. See Volume 101, Ohio Laws, page 3.

It has been the custom in this department to ask an appropriation of money to defray the court costs in cases brought by the state, and such an appropriation was made by the General Assembly at its last session in the sum of $2,000.00 as appears above under this head, but on account of the Newark riots and some other litigation in which this department was involved it was found that this amount was not sufficient, and the emergency board made two different allowances within the time covered by this report in the sum of $1,000, each or a total of $2,000.00.

The disbursements by the department for the period beginning December 15, 1909, and ending December 15, 1910, are as follows:

Salary Attorney General	$6,495 00
Salary First Assistant Attorney General	4,000 00
Salary Second Assistant Attorney General	2,500 00
Salary Chief Clerk	1,500 00
Salary Messenger	600 00
Salary Two Stenographers at $1200 each	2,400 00
Salary Willis Tax Clerk	1,065 00
Special Counsel (Regular)	29,134 02
Special Counsel (Canal Matters)	187 50
Special Counsel (Liability appropriation)	5,450 00
Furniture, carpets and books	885 10
Stenographic work	1,878 88
Costs in cases brought by state	2,735 76
Contingent expenses	1,595 98
Traveling expenses	465 10
Salary Janitor	341 25
Expense investigation and prosecution Newark riot	1,000 00
Investigation State Treasury and Treasurers, Board Public Works, etc.	6,851 00
Remodeling office	121 50
Total	$69,206 09

Of the above amount, however, the sum of $5,450.00 was simply paid in this administration from the appropriation above mentioned for special counsel fees incurred under authorized deficiencies during the administration of my predecessor in this office, so that the disbursements for the year by this administration to pay the costs and expenses thereof, including extraordinary matters involved in the various investigations of state departments and Newark riots is $63,756.09.

This is a larger amount than was expended during the first year of this administration, but the work of the past year has greatly exceeded that of the former in volume, and the extraordinary matters with which we have had to deal have been matters of expensive prosecution.

(b) *Collections by the Department.*

1. *Willis and Excise Taxes.* This department is charged with the collection of delinquent Willis taxes from private corporations, and during the period from December 15, 1909, to December 15, 1910, we collected a total amount of $72,880.04.

This money was collected wholly from domestic corporations, the delinquent foreign corporations not having been certified to this department for collection prior to December 15, 1910.

During the period from December 15, 1909, to December 15, 1910, we collected a total of $199.13 under the excise or Cole tax law. Within the period, therefore, we collected of delinquent taxes the sum of $73,079.17.

2. *Other collections. Contract labor, Ohio*

Penitentiary	$212,655 25
Other miscellaneous collections	8,281 39
Total	$220,936 64

3. *Summary of all Collections.*

Willis taxes	$72,880 04
Excise or Cole tax	199 13
Contract labor Ohio Penitentiary	212,655 25
Miscellaneous collections	8,281 39
Total	$294,015 81

In the printed volume report which will hereafter be made for this year by the department of the Attorney General the details of these collections, giving dates, amounts, from whom collected, and for what purpose of the various items thereof will be given.

IV.

OFFICIAL OPINIONS.

Within the time from December 15, 1909, to December 15, 1910, the department has rendered 578 official opinions to the various state officers, departments and boards, county prosecuting attorneys and city solicitors in the state. There will be a considerable addition to this number up to the end of the year 1910, and all of these opinions will appear in the printed volume report of this department hereafter to be submitted, that is, all opinions rendered within the period from December 15, 1909, to January 1, 1910, will appear in that report. There will also appear in that report a complete list of all the cases handled by the department in courts of record throughout that same period, and a similar

list of those handled in magistrates' courts throughout such time will also be included therein. The manuscript for that printed volume will all be prepared and placed in the hands of the public printer for printing and binding according to law before the end of this administration, so that the only work remaining, and which it will be necessary for my successor to do with respect to the same, will be to read the proof as it comes from the printer and prepare an index to the report.

Respectfully, submitted,

U. G. DENMAN,
Attorney General.

II.

CASES PENDING OR DISPOSED OF DURING THE YEAR 1910.

Cases Pending in the Supreme Court from January 1st, 1910, to January 1st, 1911.

No. 11826.

State of Ohio v. The Covington & Cincinnati Bridge Company.

No. 12259.

State of Ohio, ex rel., Attorney General v. The Hocking Valley Railway Company.

No. 12400.

State of Ohio, ex rel., John A. Cline v. Harry L. Vail, et al.

No. 12476.

State of Ohio, ex rel., Fred R. Mathews v. J. J. Fitzgerald, et al.

No. 12478.

George Welsch v. C. L. V. Holtz, as Treasurer of Licking County, Ohio, and C. L. Riley, as Auditor of Licking County.

No. 12479.

Joseph Pinion v. same.

No. 12480.

William G. Miller v. same.

No. 12481.

John W. Wiess v. same.

No. 12482.

A. I. Fitzsimmons v. same.

No. 12483.

Charles A. Stoltz v. same.

No. 12484.

Robt. Folliard v. same.

No. 12485.

Frank Bader v. same.

No. 12486.

A. O. Kern v. same.

No. 12487.

Paul Turncz v. same.

No. 12488.

Eugene Seidenspinner v. same.

No. 12489.

Wilbert Priest v. same.

No. 12490.

Carkes Slane v. same.

No. 12531.

Howard Rathburn v. same.

No. 12532.

William C. Vogelmeier v. same.

No. 12533.

Henry Embery, et al., v. same.

No. 12534.

Adam Lippert v. same.

No. 12535.

William T. Carson v. same.

No. 12536.

Dennis George v. same.

No. 12537.

S. A. Holler v. same.

No. 12538.

William Bergin v. same.

No. 12539.

Jesse Frad v. same.

No. 12540.

Jerry Baker v. same.

No. 12541.

William Schlegel v. same.

No. 12542.

Lee Beatty v. same.

No. 12543.

Frank Graef v. same.

No. 12544.

Richard Dodd v. same.

No. 12545.

Barney Byrnes v. same.

No. 12546.

Al Z. Lott v. same.

No. 12547.

Thomas Dupler v. same.

No. 12548.

Catherine Johl v. same.

No. 12549.

Alonzo C. Foster v. same.

No. 12550.

Frank Steinman v. same.

No. 12578.

Samuel C. Burrell v. same.

No. 12579.

Joseph Fritz v. same

No. 12580.

Charles Henry v. same.

No. 12581.

Geo. Fessler v. same.

No. 12582.

Albert H. Seiler v. same.

No. 12583.

Henry Lowendick v. same.

No. 12604.

Charles Schaller, et al., v. same.

No. 12605.

Louis Bolton v. same.

No. 12606.

John W. Browne v. same.

No. 12700.

State of Ohio, ex rel., Attorney General v. The Union Central Life Insurance Company.

No. 12839.

State of Ohio, ex rel., Attorney General v. The Miami and Erie Canal Transportation Company.

No. 12846.

State of Ohio v. Joseph J. Boone.

No. 12847.

State of Ohio v. Richard Jackson.

Cases Disposed of in the Supreme Court from January 1st, 1910, to January 1st, 1911.

No. 11217.

Board of Commissioners of Portage County v. Harry Gates.

No. 11402.

Railroad Commission of Ohio v. Hocking Valley Railroad Company.

No. 11649.

Clara Reynolds v. Erwin C. Woodworth, Treasurer, etc.

No. 11767.

The Detroit, Toledo & Ironton Railway Company v. State of Ohio.

No. 11861.

State of Ohio, ex rel., Wm. H. Townsend v. Frank Snyder, Auditor of Darke County.

No. 11862.

State of Ohio, ex rel., B. A. Unverferth v. David F. Owens.

No. 12161.

Gail S. Hamilton, Mayor of Coshocton, v. State of Ohio, ex rel., John R. Maple.

No. 12187.

Railroad Commission of Ohio v. Ann Arbor Railroad Company, et al.

No. 12249.

State of Ohio, ex rel., Harness v. Roney.

No. 12401.

State of Ohio v. Leo Abt.

No. 12310.

State of Ohio v. J. W. Hughes.

No. 12411.

Mutual Life Insurance Company of New York v. State of Ohio.
H. Y. Scanlon v. State of Ohio.

Note: Motion to file petition in error refused.

No. 12463.

State of Ohio, ex rel., G. F. Akerman, etc., v. E. M. Fullington, Auditor of State

Cases Pending in Circuit Courts from January 1st, 1910, to January 1st, 1911.

Allen County.

No. 520.

State of Ohio, ex rel., Attorney General v. The Solar Refining Company.

No. 521.

State of Ohio, ex rel., Attorney General v. The Buckeye Pipe Line Company.

No. 522.

State of Ohio, ex rel., Attorney General v. The Ohio Oil Company.

Columbiana County.

No.

Jane McVeigh v. Mary Ann McVeigh, et al.

Darke County.

City of Greenville v. M. G. Demorest, et al.

Franklin County.

No. 2639.

State of Ohio, ex rel., Attorney General v. The Marion County Telephone Company and The Central Union Telephone Company.

No. 2735.

State of Ohio, ex rel., Attorney General v. The Cleveland Terminal and Valley Railroad Company and The Baltimore and Ohio Railroad Company.

No. 2745.

State of Ohio, ex rel., Attorney General v. The Cleveland and Pittsburg Railroad Company.

No. 2865.

State of Ohio, ex rel., Attorney General v. The National Cash Register Company.

No. 3011.

State of Ohio v. Margaret F. Fenn, et al.

State of Ohio, ex rel., The Grand Fraternity v. C. C. Lemert, Supt. of Insurance of Ohio.

No. 2814.

Theresa Herman v. State of Ohio.

Hamilton County.

No. 5268.

Crone Paper Box Company v. State of Ohio.

Hancock County.

No. 1173.

State of Ohio, ex rel., Attorney General v. The Buckeye Pipe Line Company.

Knox County.

No. 2203

Michael Strang v. State of Ohio.

Licking County.

No. 3756.

Albert Weathers v. William Link, Sheriff.

Mahoning County.

No. 1039.

State of Ohio v. Robert Crawford.

No. 1040.

State of Ohio v. Curt Johnson.

Cases Disposed of in Circuit Courts from January 1st, 1910, to January 1st, 1911.

Cuyahoga County.

No. 4185.

State of Ohio, ex rel., Attorney General v. The Central Committee Independent Order of Foresters.

Franklin County.

No. 2062.

State of Ohio, ex rel., Attorney General v. The McCaskey Cash Register Company.

No. 2174.

Ann Arbor Railroad Company, et al., v. Railroad Commission of Ohio.

No. 2087.

State of Ohio, ex rel., Attorney General v. The Hocking Valley Railroad Company.

No. 2363.

State of Ohio, ex rel., Attorney General v. The Miami and Erie Canal Transportation Company.

No. 2770.

State of Ohio, ex rel., Forest H. Figsby v. J. S. M. Goodloe and the Board of Public Accountancy.

No. 2810.

Edward Pfeifer v. State of Ohio.

No. 2843.

Frank J. Collison v. State of Ohio.

No. 2870.

State of Ohio v. The Mutual Life Insurance Company of New York.

Hamilton County.

No. 2873.

State of Ohio, ex rel., Attorney General v. The Peoples Industrial Fire Association of Cincinnati.

No. 4691.

State of Ohio, ex rel., Attorney General v. Union Central Life Insurance Company.

No. 5029.

State of Ohio v. The Depot Loan and Building Company.

No. 5132.

State of Ohio, ex rel., Eric R. Twachman v. The State Medical Board of Ohio, et al.

No. 5191.

C. C. Lemert, Supt. of Insurance, v. State of Ohio, ex rel., John J. Weitzel.

Hardin County.

No. 335.

J. J. Boone v. State of Ohio.

Jackson County.

No.

State of Ohio v. The Detroit, Toledo and Ironton Railroad Company.

Licking County.

No. 1057.

George Welsch v. C. L. Riley, Auditor, etc.

No. 1058.

William G. Miller v. same.

No. 1059.

Joseph Pinion v. same.

No. 1060.

Robert Folliard v. same.

No. 1061.

William T. Carson v. same.

No. 1062.

Robert Tucker v. same.

No. 1063.

Richard Dold v. same.

No. 1064.

Chas. A. Stoltz v. same.

No. 1065.

John W. Wells v. same.

No. 1066.

Wilbert Priest v. same.

No. 1067.

Jas. C. Jarrett v. same.

No. 1068.

Eugene Seidenspinner v. same.

No. 1069.

O. A. Kerns v. same.

No. 1070.

A. C. Foster v. same.

No. 1071.

Lizzie Steel v. same.

No. 1072.

Barney Byrnes v. same.

No. 1073.

Paul Turnes v. same.

No. 1074.

Lee Beatty v. same.

No. 1093.

John W. Browne v. same.

No. 1094.

Frank Fraef v. same.

No. 1095.

Frank Belcher v. same.

No. 1096.

W. G. Gregg v. same.

No. 1097.

Catherine Johl v. same.

No. 1098.

Thos. Dupler v. same.

No. 1099.

Adam Lippert v. same.

No. 1100.

Al. Z. Lott v. same.

No. 1101.

Robt. White v. same.

No. 1116.

Frank Steinman v. same.

No. 1145.

Louis Bolton v. same.

No. 1146.

Jesse Frad v. same.

No. 1075.

Chas. Schaller v. same.

No. 1076.

Howard Rathbun v. same.

No. 1077.

Frank Bader v. same.

No. 1078.

Saml. Burrill v. same.

No. 1079.

Jos. Fritz v. same.

No. 1080.

Chas. Henry v. same.

No. 1081.

Chas. Slane v. same.

No. 1082.

S. A. Holler v. same.

No. 1083.

Geo. Fessler v. same.

No. 1084.

Henry Emberry, et al., v. same.

No. 1085.

Wm. Bergen v. same.

No. 1086.

Dennis George v. same.

No. 1087.

Wm. Schlegel v. same.

No. 1088.

A. H. Seller v. same.

No. 1089.

Henry Loewendick v. same.

No. 1090.

W. C. Vogelmeier v. same.

No. 1091.

Jerry Baker v. same.

No. 1092.

A. I. Fitzsimmons v. same.

Sandusky County.

No. 1138.

State of Ohio v. Richard Jackson.

Seneca County.

No. 590.

State of Ohio by Attorney General, ex rel.. Charles C. German v. Charles Koss, et al.

Stark County.

No. 1046.

State of Ohio v. Leo Abt.

Warren County.

No. 317.

State of Ohio, ex rel., Attorney General v. Ed. Malloy.

Cases Pending in Common Pleas Courts from January 1st, 1910, to January 1st, 1911.

Adams County.

No. 7356.

C. C. Lemert, Trustee for Policy Holders of Interstate Life Assurance Company v. A. G. Turnipseed, et al.

Allen County.

No. 9064.

C. H. Miller v. State of Ohio.

Ashtabula County.

No. 2513.

State of Ohio v. C. E. Brinkman.

Butler County.

No. 23194.

State of Ohio v. Judson Harmon, Receiver of the C. H. & D. R. R. Co.

Cuyahoga County.

No. 106218.

State of Ohio v. Forest City Railroad Company.

No. 106219.

State of Ohio v. The Cleveland & Pittsburg R. R. Company.

No. 114244.

The State of Ohio v. Erie Railroad Company.

No. 114875.

State of Ohio v. Thomas J. Holmden, Assignee, et al.

No. 114876.

Same v. same.

Erie County.

No. 11105.

W. H. Weichel v. State of Ohio.

No. 11110.

Same v. same.

Fairfield County.

No. 12602.

Dwight Miller v. State of Ohio.

No. 12525.

Mel Berry v. State of Ohio.

Franklin County.

No. 54400.

State of Ohio v. Lindsey H. Bounds.

No. 54478.

State of Ohio v. Baltimore and Ohio Southwestern Company.

No. 54479.

State of Ohio v. Columbus Railway Company.

No. 54989.

Ann Arbor Railroad Company, et al., v. Railroad Commission of Ohio.

No. 55244.

The Lincoln National Life Insurance Company v. C. C. Lemert, Supt. of Insurance.

No. 55420.

C. C. Lemert, Supt. of Insurance, v. Interstate Life Insurance Company of Cincinnati, et al.

No. 56014.

Anton J. Adams v. George H. Matson, et al.

No. 57,010.

The Drake Coal Company v. State of Ohio.

No. 58072.

State of Ohio v. The M. Frances Cole.

No. 58076.

State of Ohio v. The Federal Union Surety Company.

No. 58105.

State of Ohio v. Flavius Flagle.

No. 58305.

State of Ohio v. Herbert McKinnon, et al.

No. 58306.

Same v. same.

No. 58323.

State of Ohio v. Isaac B. Cameron, et al.

No. 58324.

Same v. same.

No. 58464.

Baltimore & Ohio Railroad Company v. Railroad Commission of Ohio..

No. 58486.

A. T. Rohr v. State of Ohio.

No. 59183.

State of Ohio v. Cincinnati Distilling Company.

No. 59210.

State of Ohio v. The Buckeye Pipe Line Company.

No. 59535.

Board of Education of City of Columbus v. George S. Marshall, Mayor of City of Columbus.

No.

Ohio Traction Company v. Tax Commission of Ohio.

No. 60006.

Cincinnati, Georgetown and Portsmouth Railway Company v. Tax Commission of Ohio.

No. 60007.

The Felicity and Bethel Railroad Company v. Tax Commission of Ohio.

No. 60115.

Youngstown and Ohio River Railway Company v. Tax Commission of Ohio.

No. 138812.

State of Ohio v. The Baltimore and Ohio Southwestern Railway Company.

Hamilton County.

No. 139159.

State of Ohio v. The Little Miami Railroad Company.

No. 139160.

State of Ohio v. The Cincinnati Street Railway Company.

No. 140260.

State of Ohio v. The Wagner Refining Company.

No. 134803.

State of Ohio v. The International Text Book Company.

No. 131660.

Cincinnati Trust Company v. Miami and Erie Transportation Company.

No. 138627.

Christina Drach v. State of Ohio.

No. 138628.

Flora Moeller v. State of Ohio.

No. 137470.

Cincinnati Gunning Company v. Charles C. Cooper, Supt. of Miami and Erie Canal.

No. 138629.

Frank Dorger v. State of Ohio.

No. 138631.

John Reuss v. State of Ohio.

No. 138632.

Joseph Rotert v. State of Ohio.

No. 138810.

State of Ohio v. The Pittsburg, Cincinnati and St. Louis Railway Co.

No. 138811.

State of Ohio v. The Cleveland, Cincinnati, Chicago and St. Louis Railway Company.

No. 138812.

State of Ohio v. The Baltimore and Ohio Southwestern Railway Company.

No. 139000.

Harry Appel v. State of Ohio.

No. 143042.

State of Ohio v. Louis W. Foster.

No. 145815.

Receivership of Post Color Press Company.

No. 145840.

Henry Boehn v. C. C. Lemert, Supt. of Insurance of Ohio.

Henry County.

No. 5974.

State of Ohio v. The Detroit, Toledo and Ironton Ry. Company.

Lawrence County.

No. 9752.

State of Ohio v. The Detroit, Toledo and Ironton Ry. Company.

Licking County.

No. 15872.

Vernon Patterson v. State of Ohio.

Lorain County.

No. 10019.

State of Ohio v. Lake Terminal Railroad Company.

Lucas County.

No. 56732.

State of Ohio v. Ann Arbor Railroad Company.

No. 56731.

State of Ohio v. The Wheeling and Lake Erie Railroad Company.

No. 56729.

State of Ohio v. The Toledo, St. Louis and Western Railroad Company.

No. 56730.

State of Ohio v. The Toledo, Walhonding Valley and Ohio Railway Company.

No. 59677.

State of Ohio v. The Lake Shore and Michigan Southern Railway Company.

No. 61628.

Jacob M. Oswald, et al., v. George H. Watkins, B. W. Baldwin and William Kirtley, as Members of the Board of Public Works.

No. 62081.

The Toledo and Ohio Central Railway Company v. Railroad Commission of Ohio.

No. 63066.

Benjamin F. Reno v. George R. Love, et al.

Miami County.

No. 18012.

Missouri B. Hurst, et al., v. George H. Watkins, et al.

No. 18117.

Jacob A. Davy, et al., v. E. P. Mellis, et al.

Montgomery County.

No. 29582.

State of Ohio v. Dayton, Covington and Piqua Traction Company.
Claude Fread v. State of Ohio.
Herman Teigler v. State of Ohio.

Ottawa County.

No. 6064.

Harry G. Hammond, et al., v. Harry Crossley and John C. Speaks.

Stark County.

No. 20661.

John Minehart, et al., v. George D. Copeland, et al.

Wayne County.

No. 23665.

Winfred J. Yeisley v. Ammon V. Critchfield.

No. 23666.

Same v. same.

Wood County.

No.

Fred Wittmer v. State of Ohio.

Cases Disposed of in Common Pleas Courts from January 1st, 1910, to January 1st, 1911.

Ashtabula County.

No. 11844.

A. F. Harrington v. State of Ohio.

No. 11869.

Mike Stefanko v. State of Ohio.

Butler County.

No. 5863.

State of Ohio v. H. H. Nooe.

Clermont County.

No. 13024.

Cash Fisher v. State of Ohio.

Columbiana County.

No. 5790.

Jane McVeigh v. Mary Ann McVeigh, et al.

Cuyahoga County.

No. 89999.

Phillips Building Company v. Glenville Publishing Company, et al.

No. 100224.

State of Ohio v. The Erie Railroad Company.

No. 120503.

State of Ohio, ex rel., William Howell, a taxpayer, v. E. F. Erick, et al.

No. 112476.

State of Ohio, ex rel., Mathews v. J. H. Fitzgerald, et al.

Darke County.

No. 19220.

City of Greenville v. M. G. Demorest, et al.

No. 20302.

State of Ohio v. William Minser.

Defiance County.

No. 8313.

The C. M. Anderson Coal Company v. The Peoples Gas and Electric Company, et al.

Erie County.

No. 11076.

Ollie B. Held v. rank A. Kerber, et al.

Fairfield County.

John Mogalski ex parte habeas corpus proceeding.

Franklin County.

No. 51681.

W. H. English, Receiver, etc., v. The McLeish Coal Mining Company.

No. 52159.

State of Ohio v. Margaret F. Fenn, et al.

No. 53192.

State of Ohio v. William J. Robey, et al.

No. 53358.

State of Ohio v. Interstate Oil Company.

No. 58507.

L. Quillen v. State of Ohio.

No. 58508.

J. A. Seibert v. State of Ohio.

No. 55684.

W. S. McKinnon, Treasurer State, v. The Cleveland Trust Company.

No. 56260.

C. C. Greene, Treasurer of State, v. The Depositors Trust Company, et al.

No. 56263.

Lowell T. Mahon v. Harris H. Baxter, et al.

No. 56270.

Isaac T. Evans v. Harris H. Baxter, et al.

No. 56284.

Henry C. Pyle v. Harris H. Baxter, et al.

No. 56285.

Charles H. McLaughlin v. Harris H. Baxter, et al.

No. 56598.

State of Ohio, ex rel., Fenton L. Gilbert v. State Board of Accountancy.

No. 56666.

State of Ohio, ex rel., The Grand Fraternity v. C. C. Lemert, Supt. of Insurance of the State of Ohio.

No. 56782.

Albert C. Goode v. A. Ravogli, et al.

No. 56993.

Frank J. Collison v. State Board of Pharmacy.

No. 57257.

Edward T. Sager v. A. Ravogli, et al.

No. 57272.

Frank J. Collison v. A. Ravogli, et al.

No. 57639.

John Creasop v. State of Ohio.

No. 57640.

Same v. same.

No. 58533.

State of Ohio v. The Gibson Awling Company.

No. 58548.

Charles Davis ex parte habeas corpus proceedings.

No. 59072.

William J. Grim v. State Board of Accountancy.

No. 59208.

State of Ohio, ex rel., Attorney General v. The Columbus Casualty Company, et al.

No. 59275.

Baltimore and Ohio Railroad Company v. Railroad Commission of Ohio.

Greene County.

No. 12653.

State of Ohio, ex rel., W. C. Maddux Company v. Trustees Ohio Soldiers' and Sailors' Orphans' Home.

No. 12654.

State of Ohio, ex rel., Mereitt and Company v. Trustees Ohio Soldiers' and Sailors' Orphans' Home.

Hamilton County.

No. 116644.

State of Ohio v. Bellevue Brewing Company.

No. 139160.

State of Ohio v. Cincinnati Street Railway Company.

No. 130185.

Hary Burns v. State of Ohio.

No. 140258.

State of Ohio v. Sayers Life Agency Company.

No. 142970.

Crane Paper Box Company v. State of Ohio.

No. 143909.

William Bohnert v. State of Ohio.

No. 145392.

State, ex rel., John J. Weitzel, et al., v. C. C. Lemert, Supt. of Insurance.

Hardin County.

No. 2226.

State of Ohio v. J. J. Boone.

Knox County.

No. 8528.

Michael Strang v. State of Ohio.

Licking County.

No. 14996.

Al. Weathers v. State of Ohio.

No. 15021.

Art. Mechling v. State of Ohio.

No. 15402.

Charles Slane v. Clement L. Riley, Auditor of Licking County, Ohio, and C. L. V. Holtz, Treasurer of Licking County, Ohio.

No. 15403.

Charles Henry v. same.

No. 15404.

Geo. and Fred. Johnson v. same.

No. 15405.

Samuel Burril v. same.

No. 15406.

Joe Fritz v. same.

No. 15407.

Jos. S. Kuster v. same.

No. 15408.

Wm. R. Schlegel v. same.

No. 15409.

Adam Lippert v. same.

No. 15410.

Wm. C. Vogelmeier v. same.

No. 15411.

Jacob Shrader v. same.

No. 15412.

Thos. Dupler v. same.

No. 15413.

Dennis George v. same.

No. 15414.

John W. Browne v. same.

No. 15415.

Barney Byrnes v. same.

No. 15416.

Chas. and Edward Schaller v. same.

No. 15417.

Wm. T. Carson v. same.

No. 15418.

Wm. Bergen v. same.

No. 15419.

Howard Rathbun v. same.

No. 15420.

Richard Dold v. same.

No. 15421.

Catherine Johl v. same.

No. 15422.

Robert Tucker v. same.

No. 15423.

Lee Beatty v. same.

No. 15424.

Al. Z. Lott v. same.

No. 15425.

Henry Emberry v. same.

No. 15426.

Ulysses G. Gregg v. same.

No. 15427.

S. A. Holler v. same.

No. 15428.

Robert White v. same.

No. 15429.

Frank Steinman v. same.

No. 15430.

Jerry Baker v. same.

No. 15431.

Alonzo Z. Foster v. same.

No. 15432.

Frank Graef v. same.

No. 15433.

A. C. Fitzsimmons v. same.

No. 15434.

Chas. A. and Geo. L. Stolz v. same.

No. 15435.

Joseph Pinion v. same.

No. 15436.

Frank Belcher v. same.

No. 15437.

Lizzie Steele v. same.

No. 15438.

J. C. Jarrett v. same.

No. 15439.

Paul Furitz v. same.

No. 15440.

Wilbert Priest v. same.

No. 15441.

George Welsch v. same.

No. 15442.

John W. Wells v. same.

No. 15443.

Robert Falliard v. same.

No. 15444.

Frank J. Bader v. same.

No. 15445.

George Fessler v. same.

No. 15446.

Albert H. Seiler v. same.

No. 15447.

Henry Loewendick v. same.

No. 15448.

Wm. G. Miller v. same.

No. 15449.

A. O. Kern v. same.

No. 15450.

Eugene Seidenspinner & John Swick v. same.

No. 15457.

Jesse Frad v. same.

No. 15458.

Lewis Bolton v. same.

No. 15648.

Albert Weathers v. William Link, Sheriff.

Lucas County.

No. 57185.

Guy Miller v. Harry C. Crossley, et al.

No. 57186.

John W. Miller v. same.

No. 57187.

Frederick D. Miller, an infant, by John W. Miller, next friend, v. same.

No. 57205.

State of Ohio v. Harry Richards.

No. 60561.

State of Ohio v. Sam Wah.

No. 60562.

Same v. same.

No. 60563.

State of Ohio v. Charles Ling.

Mahoning County.

No. 27569.

Harry Naylor v. State of Ohio.

No. 27606.

Same v. same.

No. 27718.

Same v. same.

No. 28155.

Robert Crawford v. State of Ohio.

No. 28156.

Curt Dobson v. State of Ohio.

Miami County.

No. 17850.

O. S. Nicholas, et al., v. John Thompson, et al.

Montgomery County.

No. 24990.

Stephen W. Lang v. A. E. Shepard.

No. 30948.

State of Ohio, ex rel., Attorney General v. Dayton Gymnastic Club, et al.

Portage County.

No. 5814.

O. P. Spencer v. State of Ohio.

Ross County.

No. 8514.

State, ex rel., B. B. Seymour v. Scioto Valley Bank of Kingston.

Sandusky County.

No. 8617.

State of Ohio v. Richard Jackson.

Shelby County.

No. 7958.

Samuel Humble v. State of Ohio.

Stark County.

No. 19251.

William Echroate v. State of Ohio.

No. 19379.

Leo Apt v. State of Ohio.

No. 19818.

J. D. Collins v. State of Ohio.

Summit County.

No. 6010.

William Winkleman v. State of Ohio.

Wyandot County.

No. 8024.

F. F. Scheidegger, et al., v. W. H. Bristol, Treasurer, etc.

Cases Disposed of in United States Courts from January 1st, 1910, to January 1st, 1911.

Circuit Court, Southern District of Ohio, Eastern Division.

No. 1437.

The Pennsylvania Co. v. The Marietta, Columbus and Cleveland Railway Company, et al.

No. 1417.

The American Reduction Company v. The Board of Agriculture.

Cases Pending in United States Courts from January 1st, 1910, to January 1st, 1911.

Circuit Court, Northern District of Ohio, Eastern Division.

No. 7741.

Mary A. Wightman v. The Pennsylvania Company, et al.

Circuit Court, Southern District of Ohio, Western Division.

No. 5992.

Quackenbusch v. Elwood, et al.

No. 6239.

Bird v. The Peoples Gas and Electric Company.

Cases Pending in Probate Court on January 1st, 1911.

Lucas County.

No. 1146.

State of Ohio v. George Halben.

No. 1137.

State of Ohio v. Mrs. G. G. Gillette.

No. 1138.

State of Ohio v. G. G. Gillette and Mrs. G. G. Gillette.

No. 1124.

State of Ohio v. John Eynon.

No. 1125.

Same v. same.

No. 1101.

State of Ohio v. C. E. Brinkman.

No. 1102.

Same v. same.

No. 1100.

State of Ohio v. H. J. Brinkman.

No. 1103.

State of Ohio v. C. E. and H. J. Brinkman.

No. 1097.

State of Ohio v. Alexander Grytza.

Richland County.

Board of Managers of the Ohio State Reformatory v. Fred Spamer, et al.
Note: Condemnation proceedings.

Ottawa County.

In the matter of the condemnation of certain property for the state rifle range.

Criminal Proceedings Instituted before Probate Judges, Justices of the Peace, Police and Mayor's Courts, During the Year 1910, under the Direction of the Attorney General, as follows:

For Violations of Child Labor Laws	92
For Violations of Workshops and Factory Inspection Laws	5
For Violations of Pure Food Laws	226
For Violations of Medical Registration Laws	38
For Violations of Pharmacy Laws	51
For Violations of Dental Laws	8
For Violations of Mining Laws	46
For Violations of Fish and Game Laws	250
For Violations of Vital Statistic Laws	2
Total	718

Canal Damage Claims Heard During the Year 1910.

Commissioners George Bennett, W. B. Rennick and Frank Ruth, at Circleville, Ohio.

	Amount Claimed.	Amount Awarded.
James I. Smith	$1,200 00	$400 00
Mary A. Olds, Eliza Olds, Eleanor Gray and Effie Olds	1,000 00	100 00
Fred L. Luts, Exr., and Chas. Kline	737 00	50 00
Henry Hulse, Edward Clendennen and Frank Clendennen	375 00	.....
Frank E. Goeler	415 00	300 00
Charles Morris	630 00	.....
George E. Goeler	155 00	.....
Theodore Carl	100 00	150 00
Theodore Carl	150 00	
	$4,762 00	$1,000 00

Commissioners Frank Ruth, Allen Thurman and E. B. McCarter, at Logan, Ohio.

	Amount Claimed.	Amount Awarded.
The Logan Clay Product Company	$16,301 83	.....
Hocking County	12,700 00	.....
L. C. Wright	2,450 50	.....
L. C. Wright	6,100 00	$500 00
Neman & McBroom	191 00	.....
Riley Glass	1,000 00	.....
	$38,743 33	$500 00

Commissioners John C. Teichert, James H. Moore and John Dewey, at Waverly, Ohio.

	Amount Claimed.	Amount Awarded.
John F. Prather and John Barch	$200 00	$200 00
John F. Prather and Frank Cutlip	600 00	600 00
John F. Prather and Harry Baker	252 00	252 00
John F. Prather and J. J. Steinhauer	180 00	180 00
John F. Prather and George Baker	550 00	550 00
M. D. Clark	2,860 00	2,400 00
Adah C. Jones	2,000 00	1,200 00
Adah C. Jones and Abraham Cutlip	2,420 00	2,085 00
Adah C. Jones and J. A. Fisher	1,500 00	1,405 00
Peter Bauer	300 00	200 00
	$10,862 00	$9,072 00

NOTE. The Waverly claims are still pending for hearing before the General Assembly.

III.

DETAILED REPORT OF THE ATTORNEY GENERAL.

Money Collected and Paid into the State Treasury by the Attorney General from January 1st, 1910, to January 1st, 1911.

Date 1910.		From Whom Received.		
January	15	The E. B. Lannan Co.	$2,515 42	$2,515 42
January	17	The Columbus Bolt Works.	7,575 27	7,575 27
January	17	The P. Hayden Saddlery Hardware Co.	3,931 40	3,931 40
January	31	The Baldwin Forging & Tool Co.	2,805 90	2,805 90
February	15	The Columbus Bolt Works.	7,363 13	7,363 13
February	16	The E. B. Lanman Co.	2,458 43	2,458 43
February	21	The P. Hayden Saddlery Hardware Co.	3,880 60	3,880 60
March	2	The Baldwin Forging & Tool Co.	2,896 40	2,896 40
March	15	The E. B. Lanman Co.	2,581 48	2,581 48
March	16	The Columbus Bolt Works.	7,730 10	7,730 10
March	16	The P. Hayden Saddlery Hardware Co.	4,268 83	4,268 83
April	1	The Baldwin Forging & Tool Co.	2,988 45	2,988 45
April	15	The E. B. Lanman Co.	2,561 61	2,561 61
April	15	The Columbus Bolt Works.	7,860 26	7,860 26
April	16	The P. Hayden Saddlery Hardware Co.	4,205 88	4,205 88
May	2	The Baldwin Forging & Tool Co.	2,795 98	2,795 98
May	14	The Columbus Bolt Works.	7,256 85	7,256 85
May	16	The E. B. Lanman Co.	2,411 61	2,411 61
May	17	The P. Hayden Saddlery Hardware Co.	3,857 75	3,857 75
June	4	The Baldwin Forging & Tool Co.	3,093 20	3,093 20
June	16	The E. B. Lanman Co.	2,738 63	2,738 63
June	16	The P. Hayden Saddlery Hardware Co.	4,309 11	4,309 11
June	16	The Columbus Bolt Works.	8,273 81	8,273 81
July	5	The Baldwin Forging & Tool Co.	2,969 40	2,969 40
July	15	The Columbus Bolt Works.	7,938 53	7,938 53
July	15	The E. B. Lanman Co.	2,699 08	2,699 08
July	16	The P. Hayden Saddlery Hardware Co.	4,175 98	4,175 98
August	3	The Baldwin Forging & Tool Co.	2,883 45	2,883 45
August	16	The Columbus Bolt Works.	7,962 67	7,962 67
August	16	The E. B. Lanman Co.	2,624 78	2,624 78
August	16	The P. Hayden Saddlery Hardware Co.	4,091 15	4,091 15
September	3	The Baldwin Forging & Tool Co.	2,924 57	2,924 57
September	15	The Columbus Bolt Works.	7,846 75	7,846 75
September	15	The E. B. Lanman Co.	2,642 83	2,642 83
September	16	The P. Hayden Saddlery Hardware Co.	4,053 75	4,053 75
October	1	The Baldwin Forging & Tool Co.	2,797 85	2,797 85
October	17	The Columbus Bolt Works.	7,717 48	7,717 48
October	17	The P. Hayden Saddlery Hardware Co.	3,859 78	3,859 78
October	17	The E. B. Lanman Co.	2,494 35	2,494 35
November	15	The Columbus Bolt Works.	8,367 38	8,367 38
November	2	The Baldwin Forging & Tool Co.	2,751 31	2,751 31
November	15	The E. B. Lanman Co.	2,616 05	2,616 05
November	16	The P. Hayden Saddlery Hardware Co.	4,012 87	4,012 87
December	2	The Baldwin Forging & Tool Co.	2,664 38	2,664 38
December	15	The Columbus Bolt Works.	7,888 23	7,888 23

MONEY COLLECTED AND PAID INTO THE STATE TREASURY, ETC. — *Concluded.*

Date 1910.	From Whom Received.		
December 15	The E. B. Lanman Co.	2,521 15	2,521 15
December 16	The P. Hayden Saddlery Hardware Co.	3,077 78	3,077 78
	Total	$203,941 65	$203,941 65

RECAPITULATION.

The Columbus Bolt Works	$93,780 46
The Baldwin Forging & Tool Co	31,570 89
The P. Hayden Saddlery & Hardware Co	47,724 88
The E. B. Lanman Co.	30,865 42
Total	$203,941 65

Money Collected and Paid Various State Departments and Institutions by the Attorney General from January 1, 1910, to January 1, 1911.

Date 1910.				Amount paid over.
		1,333 Corporations delinquent under the Willis law	$61,249 14	
		To Secretary of State		$19,480 26
		To Treasurer of State		41,768 88
		Penalties paid by same	7,620 16	
		To Secretary of State		2,540 10
		To Treasurer of State		5,080 06
		2 Corporations delinquent under the Cole law	838 56	
		To Auditor of State		838 56
January	10	State vs. Smith Agricultural Chemical Co. (No. 11330) advanced costs in case returned	11 00	
		To State Treasury		11 00
January	13	A. D. Hill, Receiver of the American Insurance Co., 2nd 25% dividend of $319.19	79 80	
		To Superintendent of Insurance		79 80
March	28	Farmers and Merchants Banking Co., interest on State deposit of $50,000.00 in full to February 1st, 1910	1,256 74	
		To State Treasury		1,256 74
April	14	R. L. Spencer, Receiver of the New England Fire Ins. Co	6 60	
		To Superintendent of Insurance		6 60
April	14	United States Fidelity and Guaranty Co., in re Tona Focht	92 19	
		To Adjutant General		92 19
April	20	Smith Premier Typewriter Co., on account of overpayment returned	50	
		To Attorney General		50
June	23	Home Mutual Fire Ins. Co	110 64	
		To Supt. of Insurance		110 64
June	27	Ida Shoecraft (cocaine case)	85 60	
		To State Board of Pharmacy		85 60
June	27	August Strong (cocaine case)	97 60	
		To State Board of Pharmacy		97 60
July	9	Lloyd Wilkinson, et al., vs. The Firemans Insurance Co	2 76	
		To Supt. of Insurance		2 76
July	27	Ohio German Fire Ins. Co., 1st 30% dividend of $980.94	294 28	
		To Supt. of Insurance		294 28
August	2	Claim of the State against W. D. Guilbert and the Capitol Trust Co., for the use of moneys deposited by W. D. Guilbert, as Auditor of State, in the Capitol Trust Co., beginning May 8, 1905, to April 3, 1908	5,747 29	
		To State Treasury		5,747 29
September	19	The Inter-State Life Ins. Co., 2½% on $17,295.57 gross premiums received in Ohio during the year 1909	432 39	
		To Supt. of Insurance		432 39

MONEY COLLECTED AND PAID VARIOUS STATE DEPARTMENTS AND INSTITUTIONS, ETC. — *Concluded.*

Date 1910.		Amount Collected.	Amount paid over.
October	4 F. S. Webster Co., on account of overpayment returned	9 00	
	To State Treasury		9 00
October	18 State vs. Joseph Volz (No. 114013). Costs in case	55 00	
	To State Dairy and Food Dept.		55 00
December	19 Warren Thomas, on account of overpayment returned	47 00	
	To State Treasury		47 00
	Total	$78,036 25	$78,036 25

RECAPITULATION.

Money collected and paid into State Treasury	$203,941 65
Money collected and paid various State Departments and Institutions	78,036 25
Total amount collected	$281,977 90

DISBURSEMENTS OF THE ATTORNEY GENERAL.

Special Counsel	$30,043 32
Special Counsel (Liability)	5,450 00
Special Counsel (Canal Matters)	250 00
Books and Furniture	877 60
Costs in cases, etc	1,928 00
Contingent expenses	1,594 31
Traveling expenses	541 20
Remodeling office	121 50
Salary Willis Tax Clerk	1,072 50
Salary of janitor	363 75
Investigations, etc., Newark riot	1,000 00
Investigation of state departments	6,851 00
Salaries fixed by law	17,695 00
	$69,261 14

IV.

COMMUNICATIONS FROM THE DEPARTMENT OF THE ATTORNEY GENERAL TO THE GENERAL ASSEMBLY OF OHIO DURING THE YEAR 1910.

REPORT OF THE ATTORNEY GENERAL PURSUANT TO HOUSE RESOLUTION No. 6.

COLUMBUS, OHIO, April 11th, 1910.

To the House of Representatives of the 78th General Assembly of the State of Ohio:

Pursuant to the request contained in House Resolution No. 6 for information concerning the incorporation and business methods of The Hocking Valley Railway Company, the Attorney General submits herewith a report bearing upon the subject matter of the several inquiries contained in said resolution.

The relations between The Hocking Valley Railway Company and the various parallel and competing railroad companies and coal companies referred to in the accompanying report are such that in order to avoid much unnecessary repetition and to clearly bring out the proper connections between the several companies, I have deemed it advisable to make the report in the form in which it is presented, rather than undertake to answer in numerical order the various questions propounded in the resolution.

As a preface to the report, and in order that the House may readily see the magnitude and importance of the railway company's connection and dealings with various parallel and competing railroads, coal companies, etc., the following preliminary statement is made:

The Hocking Valley Railway Company was incorporated under the laws of Ohio on February 25th, 1899, pursuant to a plan for the reorganization of The Columbus, Hocking Valley & Toledo Railway Company issued by J. P. Morgan and Company. The capital stock of the company was fixed at $26,000,000, divided into $15,000,000 of preferred and $11,000,000 of common stock. There was an authorized bond issue of $20,000,000, secured by a first consolidated mortgage to the Central Trust Company of New York in which The Buckeye Coal and Railway Company joined with the railway company.

The railway company maintains and operates a railroad from Toledo, Ohio, to Pomeroy, Ohio, in and through the counties of Lucas, Wood, Seneca, Wyandot, Marion, Delaware, Franklin, Fairfield, Hocking, Athens, Perry, Vinton, Gallia and Meigs, being the same line of railroad formerly owned and operated by The Columbus, Hocking Valley & Toledo Railway Company.

For about three years prior to the incorporation of The Hocking Valley Railway Company, the Columbus, Hocking Valley & Toledo Railway Company had been in the hands of a receiver. The President of the company, Nicholas Monsarrat, was the receiver, and he also became president of The Hocking Valley Railway Company upon its organization.

The railroad and other property of The Columbus, Hocking Valley & Toledo Railway Company was sold in foreclosure proceedings in the federal court, at Cincinnati, Ohio, in February, 1899, to Ingalls and Gardiner who were representing those interested in the reorganization of the company. About March 1st,

1899, Ingalls and Gardiner conveyed the railroad and other property so acquired by them to The Hocking Valley Railway Company, receiving therefore $16,000,000 of the railway company's stock and $7,200,000 of its bonds.

In addition to the railroad, The Columbus, Hocking Valley & Toledo Railway Company was also the owner of all the capital stock ($200,000) and $1,375,000 of the bonds of The Ohio Land and Railway Company, and of all the capital stock of The Hocking Coal Company ($1,150,000). Said two coal companies owned about 29,975 acres of coal lands in the Hocking coal fields of Ohio.

The capital stock and property of these two coal companies was also sold at the foreclosure sale aforesaid to the same parties. The Buckeye Coal & Railway Company was incorporated under the laws of Ohio to take over the properties of said two coal companies, and after its incorporation and organization, all the capital stock of the company ($300,000) passed into the possession of the reorganization committee as a substitute for the stock of the two companies. Thereafter all the stock of The Buckeye Coal & Railway Company, except five shares reserved for the purpose of qualifying directors, was transferred by the reorganization committee to The Hocking Valley Railway Company. In addition to the acreage of coal land referred to, The Buckeye Coal & Railway Company, has under lease 9,600 acres which it acquired in 1902. Because of doubt as to whether or not the stock of The Ohio Land & Railway Company was fully paid The Central States Construction Company was incorporated as a medium for transferring the stock from the reorganization committee to The Hocking Valley Railway Company.

During the months of April and May of the year 1899, the capital stock of the Raybould Coal Company, amounting to $35,800 and $200,000 of the capital stock of The Boston Coal Dock & Wharf Company, all of which stock was purchased at a cost of $225,000, was acquired by the reorganization managers on behalf of The Hocking Valley Railway Company, and by them subsequently delivered to the railway company. The latter company owns docks on the Great Lakes.

The reorganization managers, during the year 1899, also purchased 19,439 shares of the capital stock of The Sunday Creek Coal Company for The Hocking Valley Railway Company, paying therefor $342,860.

In other words, in addition to the railroad The Hocking Valley Railway Company received from the reorganization managers stocks and bonds of coal companies, as follows:

Ohio Land & Railway Company bonds	$1,375,000
Ohio Land & Railway Company stock	199,099
Buckeye Coal & Railway Company stock	249,500
Sunday Creek Coal Company stock (costing $342,860)	1,943,900
Raybould Coal Company stock (costing $25,000)	35,800
Boston Coal Dock & Wharf Company stock	200,000
Total bonds and stocks delivered (par value)	$4,003,299

From 1900 to 1906, both inclusive, the railway company increased its holding in the stock of The Sunday Creek Coal Company to the extent of 12,924 shares, at a cost of $362,760.33. This coal company acquired and operated about 13,000 acres of coal land in the Hocking coal district. The Hocking Valley Railway Company also acquired control of the capital stock of Continental Coal Company, which capital stock is $3,500,000. This coal company owned 800 acres and held under lease 27,600 acres of coal land in the Hocking coal field, and operated twenty-one mines, the value of which is about $650,000. The Hocking Valley is also the owner of $273,000 of said coal company's bonds.

The Hocking Valley Railway Company also acquired control of The Kanawha & Hocking Coal & Coke Company of West Virginia, through stock and bond ownership. This coal company owns 21,300 acres of coal land in West Virginia valued at $1,050,000, and operates under lease 10,900 acres valued at over $390,000, and owns and operates 381 coke ovens, valued at over $207,000. The Hocking Valley also is the owner of $250,000 of said coal company's bonds.

The Sunday Creek Company was organized in New Jersey with a capital stock of $4,000,000 for the purpose of acquiring, and did acquire, the stock and property of the Sunday Creek Coal Company, The Buckeye Coal & Railway Company, The Ohio Land & Railway Company, The Continental Coal Company and The Kanawha & Hocking Coal & Coke Company. The capital stock of this company is owned by The Hocking Valley and The Toledo & Ohio Central Railway Companies, the former owning $3,485,000 and the latter $513,700.

The total acreage of coal lands owned and operated by The Sunday Creek Company is over 100,000 acres, on which there are forty-four mines and 381 coke ovens in operation. The total value of this company's property is about $4,500,000.

In the plan of reorganization issued by J. P. Morgan & Company, above referred to, and which was ratified by the stockholders of The Hocking Valley Railway Company, attention was called to the fact that the principal business of The Columbus, Hocking Valley and Toledo Railway Company is the transportation of bituminous coal from the Hocking coal field, which business, it is declared is strictly and intensely competitive, particularly between The T. & O. C., C. S. & H., and the old Hocking Valley Railway companies. It was further declared that the plan of reorganization should be sufficiently flexible as to admit of the acquisition of this business and place it in the control of The Hocking Valley Railway Company. To provide funds to consummate the suppression of this competition, and to secure to The Hocking Valley Railway a monopoly in the business of transporting coal from the Hocking coal field, it was provided in Article 1 of the company's regulations that $10,000,000 of its capital stock should be reserved for the purpose of acquiring interests in The Toledo and Ohio Central and the C., S. & H. Railway Companies, both of which were and are parallel and competing roads with The Hocking Valley Railway Company.

This part of the plan of reorganization, and the purpose of Article 1 of the regulations of The Hocking Valley Railway Company, have been fully accomplished, for, as will hereafter appear, The Hocking Valley Railway Company acquired a controlling interest in the parallel and competing railroads referred to, and all competition between them has been suppressed and destroyed.

The Hocking Valley Railway Company also acquired a majority of the capital stock of The Kanawha and Michigan Railway Company, which operates a parallel and competing railroad. This stock ownership consists of 45,100 shares of the par value of $4,510,000. This stock was acquired from The Toledo & Ohio Central Railway Company in exchange for all the stock and bonds of The Zanesville & Western Railway Company, to-wit, $2,500,000 of stock and $2,000,000 of bonds. After this exchange, The Hocking Valley placed its managerial officers and directors in similar positions in The Kanawha & Michigan, and since said exchange The Hocking Valley has controlled and managed the property and business of said company, and competition between them has been suppressed and destroyed.

It has been charged by the prosecuting attorney of Perry County, Ohio, in an action of quo warranto filed in the Circuit Court of that county against The Hocking Valley Railway Company, that said railway company has acquired and owns the capital stock of The Toledo & Ohio Central Railway Company, which operates a parallel and competing railroad, and that said stock is held for it by

the Middle States Construction Company, a holding company incorporated in New Jersey. Managerial officers and directors of The Hocking Valley have been placed in similar positions of authority in The T. & O. C. Railway Company, and competition between these companies has been suppressed and destroyed.

All the capital stock and bonds of The Zanesville and Western Railroad Company, which operates a railroad parallel and competing with the Hocking Valley Railway Company, is held by The Toledo and Ohio Central Railway Company, having been acquired by it from The Hocking Valley Railway Company as above set forth; and The Hocking Valley Railway Company, through its control and management of the property and business of The Toledo & Ohio Central Railway Company, is exercising control and management of the property and business of The Zanesville and Western. Competition between these railroads has been suppressed and destroyed.

The Hocking Valley Railway Company in addition to its stockholding and bondholding interests in the coal companies referred to, has also guaranteed the payment of $2,750,000 of the bonds of The Kanawha and Hocking Coal & Coke Company, and $2,750,000 of the bonds of The Continental Coal Company. These guaranties are shared by The Toledo and Ohio Central Railway Company.

Under an arrangement or agreement by which these railroad companies guaranteed the Continental Coal Company bonds, these two parallel and competing railroad companies have also entered into a traffic pool whereby all competitive freight coming to and from the property of the coal company is divided between them. To secure the performance of this agreement, $3,499,500 of the coal company's stock was transferred to J. P. Morgan and Company, as trustee, and certificates of beneficial ownership issued to the parties owning the stock.

Commencing with the year 1901, The Hocking Valley Railway Company has unlawfully discriminated against independent coal operators in the Hocking coal field in the furnishing of track and transportation facilities, and especially in favor of the coal companies in which it has stockholding and bond holding interests, as will more fully appear from the accompanying report.

It also appears that for several years the railway company has hauled the coal of its subsidiary coal companies without collecting the freight charges therefor, and the amount of these unpaid freight charges is in the neighborhood of $2,000,000. The independent coal operators at all times have been required to pay promptly for the transportation of their coal.

By an agreement dated July 29, 1903, a so-called "Trunk Line Syndicate" acquired control of a majority of the common stock of The Hocking Valley Railway Company and also control of the stock of The Toledo & Ohio Central Railway Company, which has resulted in a practical control of The Hocking Valley Railway Company by said syndicate. The railroad companies composing this syndicate are The Baltimore & Ohio, Lake Shore & Michigan Southern, Pittsburg, Cincinnati, Chicago & St. Louis, Chesapeake & Ohio, and The Erie Railroad Companies.

Various actions have been commenced by the State against The Hocking Valley Railway Company challenging the validity of its ownership of the stock of the various parallel and competing railroad companies and of the coal companies above referred to, and its guaranty of the bonds of the coal companies. Actions have also been commenced and complaints filed against it by independent coal operators to compel it to afford to them the same track and transportation facilities which it extends to its own coal companies, and also to compel it to cease its discrimination against certain points in the Hocking Valley coal field in its rates for hauling coal.

The internal management and business policies of The Hocking Valley are also being investigated in suits brought by minority stockholders to inspect the records and books of the company. The details and result of the various transactions above referred to are set out more at length in the accompanying report. As a result of these transactions The Hocking Valley Railway Company has acquired control and management of the parallel and competing railroads that enter into and extend through the Hocking Valley coal field, thereby securing a monopoly in the business of transportation of coal therefrom, and competition therein has been suppressed and destroyed. The Hocking Valley Railway Company has also acquired ownership in and control of many of the large coal mines and tracts of coal lands situated in the Hocking coal field, which tends to a monopoly in the business of mining and marketing coal from the Hocking Valley coal fields.

The illegality of the acts and transactions of the Hocking Valley Railway Company to which special attention has been called, admits of no doubt. The public policy of the state for years has been opposed to railroad companies acquiring the capital stock of parallel and competing railroads and of coal companies, especially a majority or controlling interest in such companies. Equally illegal is the investment of the railway company's funds in the purchase of coal lands, the pooling of competitive freight, and its guaranty of the payment of coal company bonds.

The plan of reorganization issued by J. P. Morgan & Company, pursuant to which the various transactions referred to were carried out, has the stamp of illegality on its face, in that one of its expressed purposes and objects is the suppression and destruction of competition between parallel and competing railroads and the building up of a monopoly in the business of mining and transporting coal from the Hocking coal field.

Article 1 of the Regulations of The Hocking Valley Railway Company is also clearly illegal, in that it expressly reserves $10,000,000 of the railway company's stock for the unlawful purpose of acquiring interests in two parallel and competing railroads, viz: The Toledo and Ohio Central and The Columbus, Sandusky and Hocking Railway Company, or the successor of either company.

The control of the Hocking Valley Railway Company by the "Trunk Line Syndicate," and the dictation of its policies, is also unwarranted and illegal.

The Hocking Valley Railway Company has no authority to acquire and hold the capital stock of any of the parallel and competing railroads or of any of the coal companies referred to, or to control or manage their property and business; neither has it authority to guarantee the payment of coal company bonds, or to discriminate against independent coal operators, or different points, in the furnishing of track and transportation facilities or in freight charges.

The right of stockholders in The Hocking Valley Railway Company to inspect its books and records at all reasonable times is secured to them by the Statutes and the decisions of the Supreme Court of the state, and its refusal to permit such inspection is unwarranted and illegal.

As is shown in the accompanying report, many of the illegal transactions of The Hocking Valley Railway Company heretofore referred to were challenged in a quo warranto proceeding commenced by the state of Ohio ex rel the Attorney General in the circuit court of Franklin County, Ohio, and declared by said court to be illegal and against the public policy of this state, as appears in the decisions of said court written by Judge Allread, and reported in 31st Circuit Decisions, 175, and in 8 Circuit Court, New Series, 145.

Owing to the great importance and public interests involved, and the far-reaching effect of the matters herein discussed, the Attorney General begs to sug-

gest that if funds are legally available therefor, and if the rules of procedure of your body will permit, that you should order printed this and the accompanying typewritten report, so that it may be available to each member of the general assembly.

The Attorney General will be pleased to consult with and advise the House of Representatives in regard to any legislation that the foregoing report may suggest.

Respectfully submitted,
U. G. DENMAN,
Attorney General.

REPORT OF ATTORNEY GENERAL CONCERNING THE HOCKING VALLEY RAILWAY COMPANY CALLED FOR BY HOUSE RESOLUTION NO. 6.

RELATION BETWEEN THE HOCKING VALLEY RAILWAY COMPANY AND PARALLEL AND COMPETING RAILROADS.

(a) The Hocking Valley Railway Company was incorporated under the laws of Ohio on the 25th day of February, 1899, pursuant to a plan issued by J. P. Morgan & Company for the reorganization of The Columbus, Hocking Valley and Toledo Railway Company.

The authorized capital stock of the railway company was $26,000,000, of which $15,000,000 was preferred and $11,000,000 was common stock, and there was an authorized bond issue of $20,000,000.

The company commenced business on March 1, 1899, having acquired from M. E. Ingalls and Geo. H. Gardiner, the purchasers at judicial sale, the railroad formerly owned and operated by The Columbus, Hocking Valley & Toledo Railway Company. Sixteen million dollars of The Hocking Valley Railway Company's stock and $7,200,000 of its bonds, were paid to the purchasers at the receiver's sale. Since March 1, 1899, The Hocking Valley Railway Company has maintained and operated, and it now maintains and operates, a line of railroad in and through the counties of Lucas, Wood, Seneca, Wyandot, Marion, Delaware, Franklin, Fairfield, Hocking, Athens, Perry, Vinton, Gallia and Meigs, extending from Toledo, Lucas County, Ohio, its northern terminus, to Pomeroy, Meigs County, Ohio, by way of Gallipolis, Gallia County, Ohio, on the Ohio River, its southern terminus, with a branch line of railroad from Logan, in Hocking County, Ohio, to Athens, in Athens County, Ohio. The company also reaches various points in the Hocking coal field by branch lines from Nelsonville and Athens, and also extends into the Jackson coal field. From Gallipolis to Pomeroy the line of railroad follows the Ohio River.

The principal business of The Hocking Valley Railway Company and of its said predecessor is and was the transportation of bituminous coal from the Hocking coal field in Athens, Perry and Hocking Counties, Ohio, and from the coal fields of West Virginia, to the markets of the north and northwest. This coal is sold in competition in the lake and northwestern trade with the coal from western Pennsylvania, eastern Ohio, and West Virginia, from which coal is transported by the Pennsylvania and New York Central lines, Baltimore & Ohio, Chesapeake & Ohio, Norfolk & Western and the Wheeling & Lake Erie. Prior to and at the time of the incorporation of The Hocking Valley Railway Company the business of transporting coal from the Hocking field was intensely competitive and was participated in by four lines of railroad which were owned

and operated by The Columbus, Hocking Valley & Toledo Railway Company, The Toledo & Ohio Central Railway Company and its connection The Kanawha and Michigan Railway Company, The Columbus, Sandusky & Hocking Railway Company, and the Baltimore and Ohio Railroad Company. The latter company entered the coal field by a branch line from Newark, Ohio, and was but a small factor.

In connection with the reorganization of The Columbus, Hocking Valley & Toledo Railway Company, a reorganization agreement was issued by J. P. Morgan & Co., reorganization managers, dated January 4, 1899, in which the competitive conditions above mentioned and the contemplated suppression of that competition were referred to as follows:

> "The principal business of The Columbus, Hocking Valley and Toledo Railway Company is the transportation of bituminous coal from mines on adjacent property. By reason of its low grades, the railway, in a general way, is well adapted to this business, though very considerable changes are necessary, both in the track and in the equipment (especially the motive power), in order to make the railway more fully adapted to economical operation.
>
> "All of this business is strictly and intensely competitive, and the field in Ohio is covered by the following lines of railway: Columbus, Hocking Valley and Toledo Railway Company; Toledo and Ohio Central Railroad Company; Wheeling and Lake Erie Railroad Company; Columbus, Sandusky and Hocking Railroad Company; Toledo and Walhounding Valley Railroad Company; Baltimore and Ohio Railroad Company; Cleveland, Lorain and Wheeling Railway Company.
>
> "It is not too much to say that the entire business, which now is divided among seven lines, could be transacted easily, and with much greater economy, by two or three lines. The existence of such unnecessary transportation facilities continually causes undue and bitter competition, as is shown by the fact that of the lines in question four are now in the hands of receivers. The heavy burdens upon the Columbus, Hocking Valley and Toledo in the past have emboldened its competition to attack it in various ways; and from time to time, in futile efforts to avoid unnecessary warfare which it could not afford, the Hocking Valley has been obliged to make unreasonable concessions to its rivals. If it is to protect itself in the future, the Hocking Valley must be reorganized on a basis of fixed charges, such as it may reasonably be expected to pay even in times of adversity and competition. These lower charges can be reached only by reducing the present indebtedness. As compensation for such reduction proper preferred stock to a moderate extent may properly be given.
>
> "In addition to the competition above indicated, the situation is further complicated by the fact that of late years the West Virginia coals have rapidly supplanted the Ohio coals in the markets reached by the latter. It is true that the West Virginia coals have to be hauled a longer distance, but this is more than neutralized by the fact that:
>
> "1. Their quality is far superior to that of the Ohio coals.
>
> "2. The cost of mining them is much less than the cost of mining the Ohio coals.
>
> "3. They are carried to some parts of the West in box cars going for grain, which box cars would otherwise go west empty.

"It is proper also to observe that of the seven existing lines in Ohio, three, including the Columbus, Hocking Valley and Toledo, operate in absolutely one field or district, and the other four lines in a field to the east thereof. Much economy of operation and better public service could be secured if the three lines in the Hocking district were united in some form, so that their combined traffic could, so far as possible, be centered on the Hocking Valley Railroad, which, by reason of its low grades, when put in proper condition, could move the traffic much more economically than either of the others, and consequently with a profit to itself as well as to the lines from which it would be diverted. Any plan of reorganization of the Hocking Valley, therefore, should be sufficiently flexible to admit of such acquisition."

To provide funds for the consummation of the aforesaid plan for the suppression of the competition just referred to, The Hocking Valley Railway Company appropriated ten million dollars ($10,000,000) of its capital stock, as evidenced by the regulations adopted February, 1899, by the stockholders of the company, which regulaions contain, inter alia, the following:

"Article 1. Reserved Stock. Of the authorized capital stock of this company, fifty thousand shares of preferred stock and fifty thousand shares of common stock, amounting in the aggregate to the par value of $10,000,000, shall be reserved from present issue; and from time to time hereafter, when and as deemed practicable and desirable by the board of directors, with the approval of Messrs. J. P. Morgan & Company, reorganization managers, under a certain plan and agreement for the reorganization of The Columbus, Hocking Valley & Toledo Railway Company, dated January 4, 1899, and to the extent and in the manner permitted by the laws of the State of Ohio, such shares shall be issued for the purpose of acquiring interests in The Toledo & Ohio Central Railway Company and in The Columbus, Sandusky & Hocking Railroad Company, or in some company or companies being the successor or successors in interest of one or the other of the said two companies; and except for the purposes of such acquisition, and with such approval of said reorganization managers (which, however, shall involve no liability on their part), such stock shall not be issued in whole or in part."

(b) The Toledo and Ohio Central Railway Company is incorporated under the laws of the State of Ohio.

Prior to the incorporation of The Hocking Valley Railway Company, The Toledo and Ohio Central Railway Company maintained and operated, and it now maintains and operates, a line of railroad extending in a southerly direction from Toledo, Lucas County, Ohio, to Corning, Perry County, Ohio, by way of Fostoria, Bucyrus and New Lexington. Said railway company also maintains and operates a line of railroad from Thurston to Columbus, and thence by way of Marysville, Kenton and Findlay to Toledo, Ohio. The principal business of The Toledo and Ohio Central Railway Company is and at all times has been the transportation of bituminous coal from the Hocking coal field in Ohio to the markets of the north and northwest.

For many years prior to and since the organization of The Hocking Valley Railway Company, the railroad of The Toledo and Ohio Central Railway Company

has been and is now operated in connection with the railroad of The Kanawha and Michigan Railway Company as its southern extension or connection, said two railroads forming a through and continuous line for the carriage of passengers and freight between Toledo and the Ohio River and into West Virginia.

In 1890 The Toledo and Ohio Central Railway Company acquired forty-five thousand one hundred (45,100) shares of the capital stock of The Kanawha and Michigan Railway Company, of the par value of $4,510,000, constituting a majority of the outstanding capital stock of said company, and said stock so acquired was held and owned and voted by The Toledo and Ohio Central Railway Company until June, 1903, when that company parted with its ownership of said stock to The Hocking Valley Railway Company in exchange for all the stock and all the bonds of The Zanesville and Western Railway Company, as hereinafter stated. During its ownership of the Kanawha and Michigan Railway Company stock, that is, from 1890 to 1903, The Toledo and Ohio Central Railway Company controlled and managed The Kanawha and Michigan Railway Company and its property and business, and placed its officers and directors in similar managerial positions with The Kanawha and Michigan Railway Company.

The Hocking Valley Railway Company and The Toledo and Ohio Central Railway Company maintain and operate competing railroads; and the line of railroad of The Toledo and Ohio Central Railway Company, for its entire length from Toledo, Ohio, to Corning, Ohio, is parallel to the line of railroad of The Hocking Valley Railway Company. The lines of railroad of The Toledo and Ohio Central Railway Company and The Kanawha and Michigan Railway Company form and constitute a natural competitor of The Hocking Valley Railway Company from the Ohio River to Lake Erie and the north and northwest in the transportation of bituminous coal and other freight and passengers.

At the trial of the State's ouster case against The Hocking Valley Railway Company, hereinafter referred to, counsel for the railway company stated that a syndicate of individuals or corporations hold a substantial majority of the common stock of The Hocking Valley Railway Company, the total issue of which common stock is $11,000,000.00, and the same parties or their connections or allied interests hold a controlling interest in the capital stock of The Toledo and Ohio Central Railway Company. It has subsequently been charged by the prosecuting attorney of Perry County, Ohio, in an action of quo warranto hereinafter referred to, that The Hocking Valley Railway Company has acquired control of the stock of The Toledo and Ohio Central Railway Company and that it is being held for it by the Middle States Construction Company, of New Jersey.

The president of The Hocking Valley Railway Company, Nicholas Monsarrat, has been president or vice-president of The Toledo and Ohio Central Railway Company since 1899, and both roads have had the same general superintendent since 1901. Both railroads have had several directors in common since 1899.

Prior to the year 1903, The Hocking Valley Railway Company secured and exercised and it has exercised control and management of the railroad, property and business of The Toledo and Ohio Central Railway Company, and has placed its own managerial officers and directors in similar offices and positions in the control and management of The Toledo and Ohio Central Railway Company, which said common officers and directors have performed the duties and authority of their respective offices and positions for both railway companies. After and at all times since The Hocking Valley Railway Company secured the control and management of the railroad, property and business of The Toledo and Ohio Central Railway Company and placed its own managerial officers and directors in charge thereof, competition between said companies was suppressed and destroyed.

There has been complete harmony between these two natural parallel and

competing roads, as appears particularly from their joint interest in coal companies and guaranty of coal company bonds, their policy in furnishing and denying track and transportation facilities, identity of officers and directors, etc. In addition to the interest of The Toledo and Ohio Central Railway Company in the Continental Coal Company and in the Kanawha & Hocking Coal & Coke Company by reason of its guaranty of several millions of dollars of these coal companies' bonds, said railway company has held all the stock of the Imperial Coal Company, amounting to $300,000, and of the National Coal Company, amounting to $160,000. This railway company also held stock in the Sunday Creek Coal Company and now owns $513,700 of the stock of the Sunday Creek Company.

(c) The Kanawha and Michigan Railway Company is incorporated under the laws of Ohio.

Prior to and at the time of the incorporation of The Hocking Valley Railway Company The Kanawha and Michigan Railway Company maintained and operated and it now maintains and operates a line of railroad from Corning, Perry County, its northern terminus, and thence extending in a southerly direction in and through the Counties of Meigs and Gallia, in the State of Ohio; and thence crossing the Ohio River, in and through the Counties of Mason, Putnam, Kanawha and Fayette, in the State of West Virginia, to Gauley Bridge, Fayette County, West Virginia, its southern terminus; making a distance of about 68 miles in Ohio and about 100 miles in West Virginia. From Hobson, in Meigs County, the Kanawha and Michigan Railway reaches Point Pleasant and Gallipolis over the tracks of The Hocking Valley Railway Company under a trackage contract. The principal business of The Kanawha and Michigan Railway Company is the transportation of coal from the Hocking coal field in Ohio and the Kanawha coal district of West Virginia to the lakes and northwest. This company has the choice of two outlets to the north, viz: The Hocking Valley and The Toledo and Ohio Central.

The line of railroad owned and operated by the Kanawha and Michigan Railway Company in the State of Ohio, extending from Corning, Perry County, to the Ohio River is parallel to and in close proximity with that portion of The Hocking Valley Railway Company's line of railroad extending from Logan, Ohio, to the Ohio River.

At Corning, Ohio, the railroad of The Kanawha and Michigan Railway Company connects with the railroad of the Toledo and Ohio Central Railway Company, and the railroads of both said railway companies form a continuous and through line from Gauley Bridge, West Virginia, to Toledo, Ohio.

By traffic and trackage arrangements passenger and freight trains, carrying passengers and freight, have been and now are run over both railroads and in both directions between Toledo and the Ohio River and into West Virginia without change of cars or crews, which arrangements have been in existence since 1890.

Prior to and at the time of the incorporation of The Hocking Valley Railway Company, The Kanawha and Michigan Railway Company was an active competitor of The Columbus, Hocking Valley and Toledo Railway Company, and prior to the acquisition by The Hocking Valley Railway Company of a majority of The Kanawha and Michigan Railway Company's capital stock, as hereinafter stated, The Kanawha and Michigan Railway Company was an actual competitor of said The Hocking Valley Railway Company.

The Hocking Valley Railway Company owns a majority of the capital stock of The Kanawha and Michigan Railway Company, to-wit, 45,100 shares of the par value of $4,510,000, having acquired it from The Toledo and Ohio Central Railway Company in exchange for all the capital stock and bonds of The Zanesville and Western Railway Company. After the acquisition of said stock the

president, general superintendent, some of the directors, and other managerial officers of The Hocking Valley Railway Company were placed in similar offices and positions in the management of The Kanawha and Michigan and The Toledo and Ohio Central Railway Companies, and since said time The Hocking Valley Railway Company has controlled and managed the railroad, property and business of The Kanawha and Michigan Railway Company.

Since the acquisition by The Hocking Valley Railway Company of the majority stock of The Kanawha and Michigan, and the placing of its own managerial officers and directors in similar offices in The Kanawha and Michigan Railway Company, all competition between these two companies has been suppressed and destroyed.

The continuous and through line of railroad from Gauley Bridge, West Virginia, to Toledo, Ohio, formed by the connection at Corning, Ohio, of the railroads of The Kanawha and Michigan Railway Company and The Toledo and Ohio Central Railway Company, is parallel to and a natural competitor with the entire line of railroad owned and operated by The Hocking Valley Railway Company.

Said combined and through line was, prior to and at the time of the incorporation of The Hocking Valley Railway Company, an actual competitor of The Columbus, Hocking Valley and Toledo Railway Company, the immediate predecessor of The Hocking Valley, and said competition also continued against The Hocking Valley Railway Company after its incorporation until it acquired the control and management of the railroad, property and business of The Toledo and Ohio Central Railway Company and of The Kanawha and Michigan Railway Company and installed its own managerial officers in similar offices and positions in the management of both said competing railway companies. After The Hocking Valley Railway Company had secured the control and management of The Toledo and Ohio Central Railway Company and of The Kanawha and Michigan Railway Company, and had placed its own managerial officers in charge and control of the railroads of both said companies, all competition between said combined and through lines and The Hocking Valley Railway Company was suppressed and destroyed.

The Kanawha and Michigan Railway Company, considered independently of The Toledo and Ohio Central Railway Company, is a natural competitor of The Hocking Valley Railway Company from the Ohio River to points north and northwest; and from the Ohio River north, for a distance of about 68 miles, the railroads of both The Kanawha and Michigan Railway Company and The Hocking Valley Railway Company traverse the same territory and coal field and are natural competitors for business in said territory and coal field and also for the business coming down the Ohio River for and from points on The Toledo and Ohio Central Railway. Competition in this territory between The Kanawha and Michigan Railway Company and The Hocking Valley Railway Company existed for several years and was continued until The Hocking Valley Railway Company acquired a majority of the capital stock of the Kanawha and Michigan and placed its own managerial officers in control of said railway company's property and business, when all competition between the two companies was suppressed and destroyed.

By reason of The Kanawha and Michigan connecting with The Toledo and Ohio Central at Corning, Ohio, and the arrangement between these two roads for the operation of through trains between Toledo and the Ohio River, The Kanawha and Michigan reaches points common to both The Hocking Valley and The Toledo and Ohio Central Railway Companies.

(d) The Zanesville and Western Railway Company is incorporated under the laws of Ohio.

The Zanesville and Western Railway Company is the successor in interest to a portion of the property formerly operated by The Columbus, Sandusky and Hocking Railroad Company, which was sold at receiver's sale to Paul D. Gravath. The portion acquired by the Zanesville and Western runs from Zanesville to Columbus, with various branches extending into the Hocking coal field.

The line of railroad of The Zanesville and Western Railway Company enters and traverses the Hocking coal field, and said company is engaged in the business of transporting bituminous coal and other freight and passengers from said coal field and the territory adjacent thereto.

Prior to the incorporation of The Hocking Valley Railway Company, The Columbus, Sandusky and Hocking Railway Company (the immediate predecessor of The Zanesville and Western Railway Company) was a competitor of The Columbus, Hocking Valley and Toledo, The Toledo and Ohio Central and The Kanawha and Michigan Railway Companies. As heretofore stated, this competition was referred to in the agreement for the reorganization of The Columbus, Hocking Valley and Toledo Railway Company, and plans were outlined therein for the suppression of that competition by bringing The Columbus, Sandusky and Hocking or its successor under the control of The Hocking Valley Railway Company.

The competition between The Columbus, Sandusky and Hocking and The Columbus, Hocking Valley and Toledo Railway Company and its successor, The Hocking Valley Railway Company, continued until The Zanesville and Western Railway Company acquired the railroad of The Columbus, Sandusky and Hocking Railway Company and the acquisition of all the capital stock and bonds of The Zanesville and Western Railway Company by The Hocking Valley Railway Company, when said competition was suppressed and destroyed.

In 1902, The Hocking Valley Railway Company, acting under authority of Article 1 of its code of regulations, already referred to, and pursuant to the agreement for and plan of reorganization therein mentioned, acquired all the capital stock, to-wit, $2,500,000 and all of the first mortgage bonds, to-wit, $2,000,000 of The Zanesville and Western Railway Company, paying therefor $1,000,000 of the defendant's reserved preferred capital stock and $578,400 of its reserved common capital stock.

At the time of the transaction, The Hocking Valley Railway Company placed its managerial officers in similar positions of authority in The Zanesville and Western Railway Company, and assumed the control and management of its railroads, property and business, and thereupon and thereafter all competition between these two railway companies was suppressed and destroyed.

On or about June 4, 1903, The Hocking Valley Railway Company exchanged all the capital stock and all of the first mortgage bonds of The Zanesville and Western Railway Company theretofore acquired by it as aforesaid, for a majority of the capital stock of The Kanawha and Michigan Railway Company then owned by The Toledo and Ohio Central Railway Company, to-wit, 45,100 shares of the par value of $4,510,000. Said capital stock and bonds of The Zanesville and Western Railway Company have been owned and held by The Toledo and Ohio Central Railway Company.

The Zanesville and Western Railway Company is a natural competitor of The Hocking Valley Railway Company and of The Toledo and Ohio Central Railway Company; and the actual competition which formerly existed between The Columbus, Sandusky and Hocking Railway Company and The Hocking Valley Railway Company was suppressed and destroyed by The Hocking Valley Railway Company after it acquired all the stock and bonds of The Zanesville

and Western Railway Company and placed its managerial officers in similar positions of authority in The Zanesville and Western Railway Company; and for several years The Hocking Valley Railway Company has managed and controlled the railroad, property and business of The Zanesville and Western Railway Company through its control and management of the railroad, property and business of The Toledo and Ohio Central Railway Company.

RELATION BETWEEN THE HOCKING VALLEY RAILWAY COMPANY AND THE "TRUNK LINE SYNDICATE."

On this subject the following matter is taken from the report of the Interstate Commerce Commission, a copy of which report is submitted herewith:

The Pittsburg coal district, the West Virginia coal districts, and the Ohio coal districts, including the Hocking coal fields, enter into competition with each other in the lake trade and the trade of the northwest, and particularly as to coal transported by vessel to the upper lake ports. The railroad lines transporting or which are in a position to transport this coal are those of the Pennsylvania, The Baltimore & Ohio, and the New York Central systems, and the Hocking Valley, the Toledo & Ohio Central, the Zanesville & Western, the Kanawha & Michigan, the Wheeling & Lake Erie, the Chesapeake & Ohio, and the Norfolk & Western roads.

By agreement dated July 29, 1903, the Baltimore & Ohio, the Lake Shore & Michigan Southern (New York Central), the Pittsburg, Cincinnati, Chicago & St. Louis (Pennsylvania), the Chesapeake & Ohio, and the Erie jointly acquired a substantial majority of the common stock of the Hocking Valley Railway, and a controlling interest in The Toledo and Ohio Central Railway Company, resulting in a practical control of the Hocking Valley Railway by the so-called "Trunk Line Syndicate." The Norfolk & Western and the Wheeling & Lake Erie were not interested in this purchase, but with the exception of these two railroads, with the identity of officers and interrelations between the Hocking Valley, the Toledo & Ohio Central, the Zanesville & Western, and the Kanawha & Michigan — with the trunk-line control of the Hocking Valley — an identity of interest was created which in effect results in practical control of the transportation of coal from the districts named by three interests; that is, Pennsylvania, the Baltimore & Ohio, the New York Central, the Hocking Valley, the Chesapeake & Ohio, and the Erie as one interest; the Wheeling & Lake Erie as the second; and the Norfolk & Western as the third.

From 1903 to 1907 the Trunk Line Syndicate maintained a so-called "advisory committee," composed of the presidents and other officials of the roads interested in the Hocking Valley Railway, which held numerous meetings; and this advisory committee considered and passed upon many questions of policy to be pursued by the Hocking Valley Railway, including such matters as track connections, operation of coal properties, and reorganization of coal companies, and in general it exercised a supervision over the affairs of the Hocking Valley Railway.

In numerous letters between officials of the Hocking Valley Railway and its allied coal companies and with the officials of the roads in the Trunk Line Syndicate various details of the management of the Hocking Valley Railway and the operation of its coal properties were considered, together with the submission and consideration of numerous tentative plans for the organization of the Sunday Creek Company and the merging into that company of the various coal companies, resulting in the adoption of the plan which was finally consummated.

The profit and loss sheets of the various coal companies allied with the Hocking Valley Railway were submitted to the members of the Trunk Line Syn-

dicate, and the books of the coal companies were from time to time audited by a committee of auditors representing the syndicate

The officials of the syndicate roads appear to have exercised a supervision over the affairs of the Hocking Valley, the Kanawha & Michigan and the Zanesville & Western railways, and have also conferred with the officials of the Toledo & Ohio Central in matters of general policy, and particularly in the policy of the Hocking Valley and the Kanawha & Michigan in refusing to make track connections at mines, and in the operation and consolidation of the coal companies allied with the Hocking Valley. It would seem that the representatives of the Trunk Line Syndicate deemed these matters to be of the utmost importance to their interests in the Hocking Valley Railway, because of the consideration accorded to them, and the action of the advisory committee seems to have determined the course to be pursued by the Hocking Valley Railway officials.

Relation Between the Hocking Valley Railway Company and Middle States Construction Company.

It has been charged that The Hocking Valley Railway Company has acquired the capital stock and the control and management of the property and business of The Toledo and Ohio Central Railway Company through the means and agency of Middle States Construction Company, a corporation which The Hocking Valley and its officers and agents caused to be organized for that purpose under the laws of New Jersey.

This unlawful transaction has been challenged by the State on the relation of the prosecuting attorney of Perry County in a quo warranto proceeding now pending in the Circuit Court of said county, which is hereinafter referred to at length. In the State's petition in that case, the following facts and charges concerning this transaction are set forth and made, viz:

"First. Said relator alleges that the lines of railroad owned and operated by said The Toledo & Ohio Central Railway Company are parallel and competing with the lines of railroad owned and operated by the defendant, The Hocking Valley Railway Company. To gain control of the lines of railroad and other property owned by said The Toledo & Ohio Central Railway Company and to destroy competition between said company and said defendant, said defendant and other corporations, firms and persons acting in conspiracy with said defendant but whose names are at this time unknown to the relator, conspired to issue and did cause to be issued a large amount of the preferred and common capital stock of said defendant amounting in the aggregate to several millions of dollars. Said capital stock was issued by said defendant and its co-conspirators for the purpose of using the same, and the same was used by the defendant in the manner and through the agency hereinafter stated, to purchase shares of the capital stock of said Toledo & Ohio Central Railway Company. As a part of said conspiracy and in furtherance of the same, and for the purpose of concealing the fact of defendant's acquisition and ownership of stock in said The Toledo & Ohio Central Railway Company, said defendant and its co-conspirators caused to be incorporated under the laws of the State of New Jersey a corporation known as The Middle States Construction Company, which company has acted as the agent of said defendant and as co-conspirator with said defendant and others in holding the shares of the capital stock of said The Toledo & Ohio Central Railway Company so acquired and paid for by the defendant. Said defendant and said The Middle States Construction Company and other corporations, firms and persons acting in conspiracy with them, from time to time have made purchases of the capital stock of said The Toledo & Ohio Central Railway Company until all the capital stock of said The Toledo & Ohio Central Railway Company has been ac-

quired, and the same is now owned, by said The Hocking Valley Railway Company, and is held by said The Middle States Construction Company for the use and benefit of said defendant by whom the purchase price of all said capital stock was paid. And said defendant and its agents and co-conspirators have controlled and are controlling the property and business of said The Toledo & Ohio Central Railway Company, and they have controlled and are controlling the elections of directors and the appointments of officers and agents of said The Toledo & Ohio Central Railway Company, which directors, officers and agents have mismanaged the property of said The Toledo & Ohio Central Railway Company by permitting said defendant and its agents and co-conspirators to vote at the stockholders' meetings of said The Toledo & Ohio Central Railway Company, and by permitting said defendant and its agents and co-conspirators to elect and appoint directors, officers and agents of said defendant to serve said The Toledo & Ohio Central Railway Company in similar capacities, and by permitting the property and business of said The Toledo & Ohio Central Railway Company to be operated, conducted and used in such manner as to destroy all competition with said defendant."

RELATION BETWEEN THE HOCKING VALLEY RAILWAY COMPANY AND COAL COMPANIES.

(a) The Hocking Coal and Railroad Company was incorporated under the laws of Ohio on or about September 17, 1881, for the purpose of mining coal and iron ore, with the incidental power of building a railroad from its mines to any other railroad. On September 19, 1881, the capital stock of this company was $1,500,000. This company acquired and held about 10,000 acres of coal land in the Hocking coal field of Ohio. The company never built or operated a railroad. All the capital stock of this company was owned by The Columbus, Hocking Valley and Toledo Railway Company, the predecessors of The Hocking Valley Railway Company, and this stock was subsequently acquired by The Hocking Valley Railway Company, as hereinafter referred to.

The Ohio Land and Railway Company was incorporated under the laws of Ohio on or about September 18th, 1893, for mining purposes, with the incidental power of building a railroad from its mines to any other railroad. The authorized capital stock of this company was $200,000. This company acquired and held about 10,975 acres of coal land in the Hocking coal field of Ohio. The company never built or operated a railroad. All the capital stock of this company was owned by The Columbus, Hocking Valley and Toledo Railway Company, the predecessor of The Hocking Valley Railway Company, and this stock was subsequently acquired by said railway company in the manner hereinafter referred to.

This coal company had outstanding at the time of the reorganization of The Hocking Valley Railway Company $1,375,000 of bonds guaranteed by The Columbus, Hocking Valley and Toledo Railway Company, which said bonds were conveyed to the Hocking Valley.

The officers of this coal company have been and are officers of The Hocking Valley Railway Company. Because of some doubt as to whether the stock of the Ohio Land & Railway Company, was fully paid, the Central States Construction Company was incorporated as a medium for carrying out part of the plan of reorganization of The Columbus, Hocking Valley and Toledo Railway Company, and for transferring the stock of the Ohio Land and Railway Company to The Hocking Valley Railway Company.

The Columbus, Hocking Valley and Toledo Railway Company passed into the hands of Nicholas Monsarrat, as receiver, in February, 1897. Nicholas Monsarrat was also appointed receiver of The Hocking Coal and Railroad Company at or about the time he was appointed receiver of The Columbus, Hocking Val-

ley and Toledo Railway Company; he was also president of The Columbus, Hocking Valley and Toledo Railway Company and also of The Hocking Valley Railway Company. The railroad and other property of The Columbus, Hocking Valley and Toledo Railway Company was subsequently sold at judicial sale under foreclosure proceedings commenced in the United States Circuit Court at Cincinnati, Ohio, to M. E. Ingalls and Geo. H. Gardiner. Immediately after the incorporation and organization of The Hocking Valley Railway Company, said railway company acquired from the purchasers at said judicial sale said railroad and property under a plan of reorganization issued on January 4th, 1899, by J. P. Morgan & Company, who were the reorganization managers and afterwards the fiscal and financial agents of the defendant company. The property of The Columbus, Hocking Valley and Toledo Railway Company which was sold to the purchasers at judicial sale as aforesaid included, in addition to the railroad, all the capital stock of The Ohio Land and Railway Company and $1,500,000 of the capital stock of The Hocking Coal and Railroad Company.

(b) The Buckeye Coal and Railway Company was incorporated under the laws of Ohio on or about February 15th, 1899, for the purpose of mining coal and other minerals, and with the incidental power of constructing a railroad from its mines to any other railroad or outlet. The authorized capital stock of this company was $250,000.

This company never constructed or operated a railroad. As has already been stated, prior to and at the time of the incorporation of The Hocking Valley Railway Company, all the stock of The Hocking Coal and Railway Company and of the Ohio Land and Railway Company was owned by the Columbus, Hocking Valley and Toledo Railway Company. This stock was sold at receiver's sale along with the railroad of The C., H. V. & T. Ry. Company. The Buckeye Coal and Railway Company was organized, under the plan of reorganization, for the purpose of acquiring and holding the stock of said two coal companies for The Hocking Valley Railway Company and upon its incorporation and organization it acquired all the properties formerly owned by The Ohio Land and Railway Company and The Hocking Coal and Railroad Company; and thereafter all the stock of The Buckeye Coal and Railway Company was acquired by the defendant company.

Officers of The Hocking Valley Railway Company have also been officers of The Buckeye Coal & Railway Company.

(c) The Sunday Creek Coal Company was incorporated under the laws of Ohio for the purpose of mining and selling coal, and with the incidental power of constructing a railroad from its mines to any other railroad or outlet. This company acquired and held about 13,000 acres of coal land in the Hocking coal field in Ohio. The company never constructed or operated a railroad.

During the progress of the reorganization of The Columbus, Hocking Valley and Toledo Railway Company, and before it was finally concluded, J. P. Morgan and Company, the reorganization managers, purchased a majority of the capital stock of The Sunday Creek Coal Company, to-wit, 7,643 shares of preferred and 11,796 of common, paying therefor $342,860. This purchase was ratified by the board of directors of The Hocking Valley Railway Company on May 4th, 1899, and the stock was then acquired by it from Morgan and Company.

After the completion of the reorganization, and after the action in quo warranto on the relation of the Attorney General, hereinafter referred to, was commenced, The Hocking Valley Railway Company increased its holding in The Sunday Creek Coal Company by purchasing additional shares of stock, so that on December 5th, 1905, said railway company was the owner of 13,939 shares of said coal company's preferred stock and 19,370 shares of said coal company's common stock.

The Toledo and Ohio Central Railway Company acquired a minority interest in the capital stock of The Sunday Creek Coal Company in 1905, and subsequently said railway company and The Hocking Valley conveyed all their stock to The Sunday Creek Company, of New Jersey, in exchange for all the stock of the latter company, The Hocking Valley receiving 32,375 shares and The Toledo and Ohio Central 5,137 shares.

Prior to the organization of The Hocking Valley Railway Company, coal produced from the property of The Sunday Creek Coal Company was transported to its market over the railroad of The Toledo and Ohio Central Railway Company.

(d) The Continental Coal Company was incorporated under the laws of West Virginia on or about January 27th, 1902, for the purpose of mining and dealing in coal and other minerals. The authorized capital stock of said company was $3,500,000. On or about February 1st, 1902, this company complied with the foreign corporation laws of this state, and in its certificates required to be filed under said laws it waived its charter right to purchase and hold the stock of other corporations. This company never constructed or operated a railroad. The company acquired and owned 800 acres, and held under lease 27,600 acres, of coal land in the Hocking coal field in Ohio, in which it operated twenty-two mines. The value of its property in Ohio is about $653,787.62. To pay for these coal lands and interests, the coal company issued its first mortgage bonds, which were guaranteed by The Hocking Valley and The Toledo and Ohio Central Railway Companies, as hereinafter stated.

On June 18, 1902, C. I. Poston and George H. Smith leased to the Buckeye Coal & Railway Company 9,600 acres of coal lands, with a provision that the minimum amount to be mined therefrom, beginning with 100,000 tons, should increase until the sixth year, when the same should aggregate 960,000 tons. It appears that on November 9, 1903, this lease and supplemental agreement were assigned to the Continental Coal Company, which company in turn assumed and agreed to perform the provisions of said lease and to pay all rentals and moneys to be paid by the lessee thereunder.

The Hocking Valley Railway Company acquired the capital stock of the Continental Coal Company, and at all times has managed and controlled its property and business.

Thirty-four thousand nine hundred and ninety-five (34,995) shares of the Continental Coal Company's stock of the par value of $3,499,500 which is all said company's stock except the five shares necessary to qualify directors, was deposited with J. P. Morgan & Company, as trustees, to secure the performance of certain contracts dated February 7th, 1902, hereafter referred to, under which The Hocking Valley and The Toledo and Ohio Central Railway Companies guaranteed the payment of several millions of dollars of the bonds of The Continental Coal Company as hereinafter referred to.

Coal produced from the mines of The Continental Coal Company is transported to market over the K. & M., The T. & O. C. and The Hocking Valley Railway Companies.

(e) The Sunday Creek Company, was incorporated under the laws of New Jersey on June 30, 1905, with a capital stock of $4,000,000, to engage in the business of mining. On or about July 28, 1905, this company complied with the foreign corporation laws of Ohio, and its business in Ohio is limited by its certificates of compliance to mining and dealing in coal and other minerals.

Upon its organization, said company acquired all the stock and property of The Sunday Creek Coal Company, The Buckeye Coal and Railway Company, Continental Coal Company, and certain coal properties theretofore held and owned by The Kanawha & Hocking Coal & Coke Company and The Ohio Land and

Railway Company. The coal properties owned by The Kanawha and Hocking Coal and Coke Company, and acquired by The Sunday Creek Company, consisted of 21,300 acres of coal land in West Virginia valued at over $1,000,000, and said company also operated under leases 10,900 acres of coal land in West Virginia valued at $390,119.91 and 381 coke ovens valued at $207,803.87.

The total acreage of coal land in Ohio and West Virginia so acquired and operated by The Sunday Creek Company amounts to over 100,000 acres, on which there are forty-four mines in operation, and the total value of all said property, including coke ovens, is over $4,000,000.

The product of the mines of The Sunday Creek Company, The Sunday Creek Coal Company and the Continental Coal Company has been transported to the market over The Hocking Valley Railway Company, The Toledo and Ohio Central Railway Company, The Kanawha and Michigan Railway Company, and The Zanesville and Western Railway Company.

The Sunday Creek Company, by resolution adopted June 30, 1905, acquired substantially all of the stock of the Sunday Creek Coal Company and in exchange issued its own stock to the Hocking Valley and Toledo & Ohio Central Railways share for share. The Sunday Creek Company acquired all of the properties of the Continental Coal Company and all of the properties of the Kanawha & Hocking Coal & Coke Company by leases dated July 1, 1905. It also acquired all of the properties of the Buckeye Coal & Railway Company and the Ohio Land & Railway Company by similar leases.

As a part of the scheme for the acquisition by the Sunday Creek Company of the properties of the several coal companies, the Sunday Creek Company acquired the stock of the Kanawha & Hocking Coal and Coke Company and the stock of the Continental Coal Company, which had been deposited with J. P. Morgan & Company to indemnify the Hocking Valley and Toledo & Ohio Central Railways on the bonds of the Kanawha & Hocking Coal and Coke Company and the Continental Coal Company, and agreed to pay therefor, in Sunday Creek Company's first collateral trust bonds, 60 per cent. of the par value of such stocks. Thereupon $3,885,000 of said collateral trust bonds were issued by said comapny in payment for said stocks in the Kanawha & Hocking Coal & Coke Company and the Continental Coal Company.

About April 23, 1906, all of the property of the Sunday Creek Coal Company was conveyed to the Sunday Creek Company, and the Sunday Creek Coal Company stock was retired.

The several coal properties owned and operated by the Sunday Creek Company re resent acreage as follows:

	Acres.
COAL LANDS IN OHIO:	
Buckeye C. & R. Company, owned 21,900 acres; leased 2,500 acres	24,400
Continental Coal Company, owned 800 acres; leased 27,600 acres	28,400
Sunday Creek Company	16,300
COAL LANDS IN WEST VIRGINIA:	
Kanawha & Hocking Coal & Coke Co., owned 21,300 acres; leased 10,900 acres	32,200
Total	101,300

Of the $4,000,000 capital stock of The Sunday Creek Company, $3,485,100 is owned by The Hocking Valley Railway Company, and $513,700 by The Toledo

and Ohio Central Railway Company. On April 30, 1908, the railway companies transferred this stock in trust to the Central Trust Company and John H. Doyle, as trustees, to await the outcome of litigation pending in the Supreme Court of the United States involving the constitutionality of an Act of Congress requiring railroad companies to divorce themselves from the coal business. The contracts under which this stock was transferred in trust provided that if said Act of Congress be declared unconstitutional, then said stock shall be returned to the railway companies, and if said Act be held constitutional then said stock shall be held by the trustees for the benefit of the railway companies.

(f) On May 8, 1899, the reorganization managers purchased, on behalf of the Hocking Valley Railway, 358 shares of the stock of The Raybould Coal Company at a cost of $25,000, and the property of this company was afterwards merged into one of the coal companies controlled by the Hocking Valley Railway.

(g) From April 10, to April 24, 1899, the reorganization managers acquired on behalf of the Hocking Valley Railway 2,000 shares of the capital stock of the Boston Coal Dock and Wharf Company, which owns docks on the upper lakes, at a cost of $200,000. This stock is owned and held by the Hocking Valley Railway.

HOCKING VALLEY RAILWAY COMPANY INVESTMENTS IN COAL PROPERTIES AND ADVANCEMENTS TO COAL COMPANIES.

It appears from the report of the Interstate Commerce Commission submitted herewith that after the reorganization of the Hocking Valley Railway it received the following securities from the reorganization managers:

Ohio Land & Railway Company bonds	$1,375,000 00
Ohio Land & Railway Company stock	199,099 00
Buckeye Coal & Railway Company stock	249,500 00
Sunday Creek Coal Company stock (costing $342,860)	1,943,900 00
Raybould Coal Company stock (costing $25,000)	35,800 00
Boston Coal Dock & Wharf Company stock	200,000 00
Total bonds and stocks delivered (par value)	$4,003,299 00

Said report also discloses that the Hocking Valley Railway expended, from 1899 to 1906 inclusive, in the purchase of Sunday Creek Coal Company stock, $362,760.33.

It also appears from said report that the following amounts were paid by The Hocking Valley Railway Company for coal company stocks, and that the following amounts are owing to it from subsidiary coal companies:

Paid for Sunday Creek Coal Company stock	$730,620 33
Advanced by Hocking Valley to its subsidiary coal companies and outstanding December 31, 1908	840,000 00
Bills receivable account freight, outstanding December 31, 1908, held by Hocking Valley against subsidiary coal companies	1,250,000 00
Freight unpaid December 31, 1908, owing to Hocking Valley by subsidiary coal companies	29,784 71
Total cash invested, and advancements, and amounts owing	$2,850,405 04

Bonds Owned by Hocking Valley Railway.

Kanawha & Hocking Coal & Coke Company (par).....	$250,000 00
Continental Coal Company (par).....	273,000 00

In said report the total of expenditures and bonds and stocks in coal companies owned are recapitulated as follows:

Ohio Land & Railway Company bonds.....	$1,375,000 00
Kanawha & Hocking Coal & Coke Company bonds....	254,219 02
Continental Coal Company bonds.....	275,595 00
Paid by reorganization managers for Sunday Creek Coal Company and Raybould Coal Company stock.	367,860 00
Paid for Sunday Creek Coal Company stock by Hocking Valley	362,760 33
Advancements	840,000 00
Bills receivable account freight.....	1,250,000 00
Unpaid freight	29,784 71
Total actual investments in and advancements to coal companies, and amount of coal companies' bonds held	$4,755,219 06

To this should be added Sunday Creek Company stock held as follows: Hocking Valley, $3,237,500; Toledo & Ohio Central, $513,700.

BOND GUARANTIES OF THE HOCKING VALLEY RAILWAY COMPANY.

(a) On or about July 1, 1901, a syndicate was formed, with Messrs. J. P. Morgan & Company as syndicate manager for the purpose of underwriting the bonds of the Kanawha & Hocking Coal & Coke Company, and that company was organized for the purpose of acquiring a large number of coal properties in the Kanawha district on the Kanawha & Michigan Railway. The bonds so issued aggregate $2,750,000 in amount, most of the proceeds of which were used in paying for the properties and the expense of organization, the balance being paid to the company. Thereupon $3,250,000 of stock was issued as a bonus to the syndicate.

Officers and directors of the Hocking Valley and Toledo and Ohio Central railways, or the firms of which such individuals were partners, participated in this transaction and were entitled to receive or did receive approximately $1,800,000 of this bonus stock.

To secure these bonds and pay for the properties so acquired the Kanawha & Hocking Coal & Coke Company issued its first mortgage securing bonds to the aggregate amount of $3,500,000, upon which the Hocking Valley and the Toledo & Ohio Central railways became guarantors, and of which $2,750,000 were issued as aforesaid.

In connection with such guarantee, of July 11, 1901, the Kanawha & Hocking Coal & Coke Company, the Kanawha & Michigan, The Toledo & Ohio Central, and the Hocking Valley Railways entered into an illegal agreement by the terms of which it was recited among other things that in order to furnish the coal company with funds necessary to pay in part for said properties and to furnish it with needed working capital and to enable it to improve and develop its mines and to increase the capacity thereof and to acquire additional equipment and other properties the Toledo & Ohio Central Railway agreed to guarantee and

purchase said bonds, and the Hocking Valley Railway agreed to purchase the same from the Toledo & Ohio Central. Attached to this agreement and made part thereof is the agreement between the Kanawha & Hocking Coal & Coke Company, the Kanawha & Michigan Railway, and the Toledo & Ohio Central Railway whereby the coal company agreed to deliver the coal from its mines for transportation to the Kanawha & Michigan and Toledo & Ohio Central railways. And the Kanawha & Michigan Railway agreed to purchase all of its fuel from the coal company at a price which should, at all times equal at least 20 cents per ton above the cost of production. It is stated that the inducement to the railway companies for the making of these agreements and of such guaranties was the transportation of the coal mined by the coal company.

It is further provided that $3,499,500 of the capital stock of the coal company should be held by Messrs. J. P. Morgan & Co. as trustees to secure the performance of the agreements of the coal company thereunder, and until such time as the coal company shall have fully paid and satisfied the principal and interest of such bonds. The certificates of stock were issued to the amount of $3,250,000 and beneficial certificates were issued to the parties in interest; that is, the syndicate subscribers.

The Kanawha & Michigan Railway is the only railroad transporting coal from the various mines thus acquired by the Kanawha & Hocking Coal & Coke Company.

The Kanawha & Hocking Coal & Coke Company acquired by purchase and lease 32,200 acres of land in the Kanawha district.

It appears that the syndicate managers received from the proceeds of the $2,750,000 bonds, etc., about $2,765,000 which was disbursed approximately as follows:

Cost of properties purchased	$2,526,000 00
Kanawha & Hocking Coal & Coke Company working capital	182,500 00
Counsel fees (organization)	45,000 00
Miscellaneous (organization)	11,500 00
Total disbursed	$2,765,000 00

The Hocking Valley and Toledo & Ohio Central railway guaranteed altogether about $3,250,000 of these bonds, of which the Hocking Valley Railway holds $250,000.

The amount of outstanding bonds March 27, 1909, guaranteed by the Toledo & Ohio Central and Hocking Valley railways, less bonds in the sinking fund, is $3,091,000.

(b) About February 1, 1902, a syndicate was formed, with J. P. Morgan and Company, as syndicate managers, for the purpose of underwriting the bonds of The Continental Coal Company, which coal company was formed for the purpose of acquiring a large number of coal properties in the Hocking coal field on the lines of The Hocking Valley, T. & O. C. and K. & M. Railway Companies. The authorized bond issue was $3,500,000, of which $2,750,000 was issued at the time, and provision made for the subsequent issue of the balance, $750,000. A bonus of $3,250,000 of the capital stock of the coal company was also issued to the syndicate. The officers and directors of The Hocking Valley Railway Company and of The Toledo and Ohio Central Railway Company, or the firms of which they were partners, participated in this transaction and were entitled to receive approximately $1,000,000 of this bonus stock. To secure this bond issue the coal company issued its first mortgage.

On February 7th, 1902, the Continental Coal Company entered into an illegal contract with The Toledo & Ohio Central Railway Company, wherein and whereby the coal company agreed that all coal produced from its mines, and all other products from its property, and any and all freights coming to the same, should be delivered for transportation to The Toledo & Ohio Central Railway Company. It was also provided in said contract that The Toledo & Ohio Central Railway Company should have the right to enter into an agreement with any railway connecting directly or indirectly with the mines and property of the coal company, by the terms of which the freight traffic so to be received by the Toledo & Ohio Central Railway Company from the products of the Continental Coal Company's mines and property should be divided with such connecting railway company, under such terms and conditions as may be satisfactory to and agreed upon by the said The Toledo & Ohio Central Railway Company. Said contract further provided that upon such agreement being made, its terms and conditions should apply to such connecting railway company to the extent to which that company might, by its agreement with The Toledo & Ohio Central, become interested therein.

The Toledo & Ohio Central Railway Company, on its part, agreed to furnish the coal company with working capital to enable it to improve and develop its mines, and to increase the capacity thereof, and to acquire additional equipment and other property, and as an inducement to the coal company to enter into the contract with it, the railway company agreed to purchase of the coal company $2,750,000 of said coal company's first mortgage bonds at par and accrued interest.

On the same day of the making of the foregoing agreement, to-wit, February 7th, 1902, The Toledo & Ohio Central Railway Company signed an illegal contract with The Hocking Valley Railway Company, which connects with the mines and property of the coal company, and in this contract The Toledo & Ohio Central Railway Company, among other things, bound itself to induce the coal company to deliver to The Hocking Valley Railway Company one-half of the entire traffic of coal and other freights coming from and to the property of the coal company upon the terms and conditions mentioned in the aforesaid contract with the Continental Coal Company.

In consideration of this equal division of Continental Coal Company traffic, The Hocking Valley Railway Company agreed to assume with The Toledo & Ohio Central Railway Company all of the obligations entered into by the latter railway company with the coal company; and it further agreed to purchase from The Toledo & Ohio Central Railway Company, at par and accrued interest, the $2,750,000 of bonds of the coal company above referred to, paying therefor in cash upon the delivery to it of said bonds duly executed and certified and bearing thereon the duly executed guaranty of the payment of the principal and interest thereof by The Toledo & Ohio Central Railway Company.

Said contract further provided that as between The Toledo & Ohio Central Railway Company and The Hocking Valley Railway Company the guaranty of the payment of the principal and interest of said bonds shall be enforcible against each company only as to one-half of the amount to become due upon said bonds for principal and interest, and that if The Hocking Valley Railway Company should sell or dispose of said bonds, or any of them, before doing so it shall place upon said bonds its own guaranty to the same purport and effect as that of The Toledo & Ohio Central Railway Company, and that it will protect said last named railway company from and indemnify it against all liabilities as to one-half of all sums due and to become due upon said bonds.

Said contract further provided that The Hocking Valley Railway Company would purchase from The Toledo & Ohio Central Railway Company, at par and accrued interest, additional bonds of the Continental Coal Company, of the face

or par value of $750,000, and pay therefor in cash on the delivery of said bonds by said The Toledo & Ohio Central Railway Company, bearing thereon the duly executed guaranty of the payment of principal and interest thereon by The Toledo & Ohio Central Railway Company.

The contract between The Toledo & Ohio Central Railway Company and the Continental Coal Company provided that 34,995 shares of the capital stock of the coal company of the par value of $3,499,500, (being all of its capital stock with the exception of five shares reserved solely for the purpose of qualifying directors), should be transferred and certificates therefor be issued to J. P. Morgan & Company, of New York, as trustee, to secure the complete performance of the covenants and agreements of the Continental Coal Company, and until such time as the coal company should have fully paid and satisfied both the principal and interest of said bonds, and should have fully performed said contract. J. P. Morgan & Company and successors in trust, were to have the legal and record ownership of such stock and the exclusive voting power of all of said shares at stockholders' meetings of the Continental Coal Company, and said stockholding and voting trust was to continue until the $2,750,000 of guaranteed bonds and interest were paid. Certificates of stock of the coal company were issued to the trustee, and beneficial certificates issued to the syndicate subscribers.

Pursuant to arrangement, the Toledo & Ohio Central Railway Company under date of February 5th, 1902, indorsed on each of said bonds its guaranty of payment.

The Toledo & Ohio Central Railway Company did not purchase or otherwise acquire any of said bonds from the Continental Coal Company, and was never the owner thereof.

Thereafter, under date of February 18th, 1902, all of said bonds bearing the guaranty of The Toledo & Ohio Central Railway Company were also guaranteed by The Hocking Valley Railway Company.

The Hocking Valley Railway Company never purchased or otherwise acquired any title or interest in any of said bonds from either The Toledo & Ohio Central Railway Company, the Continental Coal Company or any other person, and was never the owner thereof.

After The Hocking Valley Railway Company had placed its guaranty of payment upon said bonds, they were delivered to a syndicate organized by J. P. Morgan & Company for the purchase of said bonds.

Said bonds bearing thereon the aforesaid indorsements of guaranty of the two railway companies, were thereafter sold by J. P. Morgan & Company, and the proceeds thereof were paid direct to the Continental Coal Company, and no part of said proceeds was delivered or paid to The Hocking Valley Railway Company or to The Toledo & Ohio Central Railway Company. It appears that The Hocking Valley Railway Company holds about $273,000 of these bonds.

The syndicate managers received $2,756,000 from the sale of said bonds, which was disbursed approximately as follows:

Paid for properties purchased	$2,708,000 00
Counsel fees (organization)	40,000 00
Miscellaneous (organization)	8,000 00
Total disbursed	$2,756,000 00

On March 27, 1909, $2,413,000 of these guaranteed bonds were outstanding.

The guaranty of said bonds by said railway companies was without any consideration and was for the mere accommodation of said coal company.

In connection with these bond guaranties attention is directed to the con-

tents of a circular issued by a firm of bond brokers in New York offering for sale the collateral trust bonds of the Sunday Creek Company (including a copy of a letter of the president of the Sunday Creek Company with reference to the value of the properties of the Sunday Creek Company), as follows:

> "In accordance with the letter of the president of the company hereto attached the equity of the Kanawha & Hocking Coal Company and the Continental Coal Company (all of whose stock is pledged under this mortgage) is worth $15,000,000 over and above all the bonded debt, while the total value of all the assets directly owned by the Sunday Creek Company and its controlled companies is in excess of $36,000,000.
>
> The capital stock of this company therefore represents a very large cash equity. All of the stock is supposed to be owned by, or in the interest of, the Hocking Valley Railroad, which in turn is controlled by the Pennsylvania and New York Central systems, the Erie and the Chesapeake & Ohio Railroad Companies through ownership of majority of its capital stock.
>
> Of the $5,262,000 underlying bonds all but $318,000 are guaranteed principal and interest, by the Hocking Valley and Toledo & Ohio Central railroad companies.
>
> Through the affiliations and connections of these various railroads the Sunday Creek Company is always sure of a steady and satisfactory market for its large output."

Discriminations by the Hocking Valley Railway Company in Furnishing Track Connections.

Prior to the year 1901, The Hocking Valley Railway Company and its predecessor, The Columbus, Hocking Valley and Toledo Railway Company, has established and observed the policy and practice of making track connections with their main and branch tracks for, and furnishing transportation facilities to, mining and industrial plants adjacent to said tracks, and whose output of coal and other freight was transported to market in car load lots over the railroad of railway companies. By means of these track connections these mining and industrial plants were enabled to and did load their coal and freight into railroad cars at their respective mines and plants and then deliver said loaded cars over said connections and onto the main and branch tracks of the railway companies for transportation to final destination. Said railway companies also furnished and delivered over said track connections to miners of coal and other shippers the necessary cars for loading and transporting said coal and other freight. All shipments of coal from miners in the Hocking coal field have been and are made in car load lots. The Hocking Valley Railway Company and its predecessor, prior to the time of the requests and demands for track connections and transportation facilities hereinafter referred to, had never required or demanded that applicants for such connections or facilities should first incorporate a railroad company with whom the connection would be made and to whom the transportation facilities would be furnished, and has never required or demanded that applicants for track connections and transportation facilities should purchase or furnish their own railroad cars in which to transport their coal and freight.

(a) In 1901 and 1902 The Johnson Coal Mining Company acquired a tract of coal land about 2,000 acres in area, adjacent to The Hocking Valley Railway Company's branch from Logan, Ohio, to Athens, Ohio. In the fall of 1902,

said mining company requested that track connections and transportation facilities be furnished for its output of coal from said tract by the Hocking Valley Railway Company. On the 9th day of October, 1902, the directors of The Hocking Valley Railway Company adopted a resolution, of which the following is a copy:

> "Questions of Additional Equipment and New Sidings of Connecting Tracks Considered by Board of Directors, at Meeting Held in New York, October 9, 1902.
>
> "The question of additional equipment for the company was then considered, and the members of the executive committee, with whom the president had consulted, expressed the opinion that owing to the present high prices of equipment, and the difficulty of obtaining early deliveries of the same, it was inexpedient to, at present, purchase any new or additional equipment, and that as the operators and shippers already established on the line of the road, to whom this company had already committed itself on the subject of equipment, and who had entered into contracts relying thereon, employed the present equipment of the company to the fullest extent, that it was impossible for the company, at present to make any commitments in regard to equipment or to build any new sidings or connecting tracks to the properties or plants of new parties desiring to locate on the line of the road; the demand of already established operators, manufacturers and shippers being in excess of the company's present facilities."
>
> "On motion, duly seconded, these recommendations were unanimously approved."

There were no physical obstacles or dangers to interfere with or prevent the track connections referred to, and the construction of the connection involved nothing more than the usual and ordinary expenditure for such connections. The request was for a suitable, proper and safe connection. Frequent requests and demands were made by the coal mining company for the track connection and the president of the railway company informed the president of the mining company that if said mining company opened mines on the Hocking Valley Road "they (the railway company) would not consider it a friendly act." Suit was instituted in the Common Pleas Court of Franklin County, Ohio, by The Johnson Coal Mining Company against The Hocking Valley Railway Company on the 15th day of September, 1903, in which suit it was sought to compel the railway company to furnish the desired transportation facilities.

Prior to the month of June, 1904, conferences were held by representatives of the railway company and the coal mining company, and as the result of these conferences the railway company agreed to make the track connection on condition that the mining company would first incorporate and organize a railroad company and would purchase one hundred coal cars. Such conditions had never before been imposed upon or required of any other mining company, operator, or industrial plant for which The Hocking Valley Railway Company had made connections. Pursuant to this arrangement the officers of the coal mining company caused The Athens & Northern Railway Company to be incorporated under the laws of Ohio, and with which company The Hocking Valley Railway Company made a contract for track connections and for the handling of the coal cars purchased by it. In addition, The Hocking Valley Railway Company agreed to furnish such other and further transportation facilities as The Johnson Coal Mining Company might require for the shipment of the output from its mines. The Coal Mining Company also purchased one hundred railroad cars at

a cost of $56,000. The Athens and Northern Railway Company was not organized with the intention of acquiring and operating a railroad, but pursuant to the aforesaid contracts with The Hocking Valley Railway Company, said The Athens & Northern Railway Company was incorporated and organized for the sole purpose of securing the track connection and carrying out the requirements and conditions imposed by The Hocking Valley Railway Company. Said The Athens & Northern Railway Company has conducted no business of any kind except to make the contract with The Hocking Valley Railway Company; it owns no locomotives or other equipment; and the track from its mines to the tracks of the defendant railway company was built and is owned by the said coal company. The sole purpose of the aforesaid demands and requirements by The Hocking Valley Railway Company and the compliance with said demands and requirements was to enable the mining company to obtain track connections with and shipping facilities from The Hocking Valley Railway Company; and upon the part of The Hocking Valley Railway Company the purpose of the aforesaid demands and requirements was to discourage and interfere with other independent coal shippers who had made or might make requests for track connections and transportation facilities.

(b) On January 12, 1903, the New York Coal Company requested track connections and transportation facilities for its mine No. 31, located on the Snow Fork Branch of the Monday Creek Branch of The Hocking Valley Railway Company. Written application was made for the track connection, to which the president of the railway company responded that he had referred the application to the railway company's vice president and general counsel. During and throughout an interval of twenty-two months the track connection was refused and the New York Coal Company was without transportation facilities for the output of its mines. There were no physical obstacles or difficulties to interfere with or prevent the track connection. Before the connection was made The Hocking Valley Railway Company required the coal company to organize The Trimble & Hocking Valley Railway Company, and the coal company was also requested to buy coal cars but refused to do so. The only business The Trimble & Hocking Valley Railway Company ever transacted was to execute and deliver a contract with The Hocking Valley Railway for the track connection. The Trimble & Hocking Valley Railway Company bought no coal cars and acquired no railway tracks or other property. The track from its mine to the tracks of the defendant company was built and is owned by said coal company.

Prior to the aforesaid requests for track connections by the two coal companies above mentioned The Hocking Valley Railway Company had acquired and then held controlling interests in the capital stock of The Buckeye Coal & Railway Company, The Sunday Creek Coal Company and the Continental Coal Company, heretofore referred to, which coal companies owned and operated mines adjacent to the main and branch lines and extensions of the said railway company; and said railway company and its predecessor had therefore made numerous track connections by means of which it had furnished and was then furnishing transportation facilities for the accommodation of other mining companies and of other industrial and manufacturing plants, and especially for the benefit and accommodation of the coal companies owned and controlled by said railway company and for the transportation of the output of such mines and plants. And at the time the aforesaid demands and requests were made and at all times prior and subsequent to said demands and requests said railway company had furnished and has continued to furnish cars to mining companies on and adjacent to its main tracks and branches, and by the use of such connections, said railway had transported to the markets coal mined by numerous miners and producers of coal,

including coal mined by the companies whose capital stock was held and owned by The Hocking Valley Railway Company as aforesaid.

On May 10, 1909, the Interstate Commerce Commission made a report to Congress of its investigation of the business policies of The Hocking Valley Railway Company, and in that report it devoted considerable space on the subject of said railway company's discrimination against independent coal operators in the furnishing of track and transportation facilities.

A printed copy of said report is submitted herewith.

MONOPOLY IN COAL MINING AND TRANSPORTATION BUSINESS SECURED BY THE HOCKING VALLEY RAILWAY COMPANY.

From the day it was organized The Hocking Valley Railway Company has by successive steps strengthened its dominion over the railroads in the Hocking Valley and has increased its holdings of the stock of different coal companies and its control over the business of mining and shipping bituminous coal in that field, and thereby secured a monopoly in the coal mining and transportation business in the Hocking Valley coal field, and suppressed and destroyed all competition which formerly existed, and would now exist but for the unlawful acts of the railway company. These successive steps may be briefly summarized as follows:

The railway company was incorporated in February, 1899, and after setting aside Ten Million Dollars ($10,000,000) of its capital for the acquisition of the competing railroads, one of its first acts was to take over all the capital stock of The Buckeye Coal & Railway Company and thereby acquire control of twenty-one thousand nine hundred acres of coal land. Since the original purchase, the Buckeye Company has added to its holdings two thousand five hundred and one acres of leased land and five coal mines are operated. The total value of these lands and mines is approximately about $1,300,000. The only consideration which passed between the railway company and the owners of the stock of this coal company was the agreement on the part of the railway company to furnish track connections and transportation facilities for the coal thereafter to be mined from The Buckeye Coal & Railway Company's lands. The railway company has never dispossessed itself of this stock, but, as the only stockholder, it has since the state's ouster suit was commenced, merged the company' property with other coal lands and mining properties now operated by the Sunday Creek Company, which it controls and through which it controls 100,000 acres of coal land and mines. The right of the railway company to hold this particular property was litigated and decided against the railway company by the Common Pleas Court of Franklin County in 1887 (19 Weekly Law Bulletin; p. 27), and notwithstanding the State's protest as expressed by the filing of its ouster suit in 1903, the railroad company went to trial three years later with the stock in its possession and insisting upon its rights to hold the stocks of coal companies and thereby to own coal lands and operate coal mines.

A few weeks after the railway company was organized, that is, in March and April, 1899, it acquired more than nineteen thousand shares of the capital stock of The Sunday Creek Coal Company, which gave the railway company the control of the coal company's property and business; thereafter additional shares were acquired until all the capital of The Sunday Creek Coal Company was held by the railway company; and much of this stock was acquired after and in defiance of the State's protest, for the action in quo warranto by the Attorney General was filed on the eighteenth day of December, 1903, after which, according to the railway company's records, more than four thousand shares of the coal company's stock — par value $400,000 — was acquired on various dates from

January 23, 1900, to December 5, 1905. In this connection it will be interesting to read an extract from the railway company's answer in the State's ouster suit, in which the railway company declares "that The Sunday Creek Coal Company is the owner of coal lands and mines in said Hocking Valley coal fields and is engaged in mining and shipping coal therefrom and that said defendant holds and owns a majority of the outstanding capital stock of said company, which it acquired by virtue of and through the reorganization aforesaid, the same having been held for account of said The Columbus, Hocking Valley & Toledo Railway Company and passed by the foreclosure and reorganization aforesaid to this defendant." The record in the ouster case discloses, among other things, that the former railway company, The Columbus, Hocking Valley & Toledo, passed into the hands of N. Monsarrat, receiver, in 1897; that said company owned no stock of The Sunday Creek Coal Company; that The Hocking Valley Railway Company, which was incorporated in February, 1899, commenced business March 1, 1899; that the owners of The Sunday Creek Coal Company sold the control of that company to J. P. Morgan & Company in March and April, 1899; that J. P. Morgan & Company's account of the transaction shows that the stock was "acquired on the request of N. Monsarrat, president of The Hocking Valley Railway Company;" that the purchase was approved by the directors of the railroad company in May, 1899, to whom the president of the railroad company then reported that "he had purchased for and on behalf of the company, a majority of the capital stock of The Sunday Creek Coal Company, * * * having paid therefor the sum of $342,860." By the purchase of the Sunday Creek stock in March and April, 1899, the railway company thereby added between twelve and thirteen thousand acres to the coal area already controlled by it, and thenceforth it conducted the business of mining and shipping coal over parallel and competing roads, the T. & O. C. and K. & M.

As has already been stated, The Continental Coal Company was incorporated January 24, 1902, and within a very few days after that date, the railway company indorsed The Continental Coal Company's bonds to the amount of $2,750,000, $3,499,500 of the capital stock of the coal company was transferred to J. P. Morgan & Company to secure the performance of the contract under which the guaranty was made, and beneficial certificates were issued to the parties in interest, that is, the syndicate subscribers. By a void contract of guaranty, which is incapable of ratification, the railway company attempted to pledge its property and income for the payment of the coal company's indebtedness. These bonds were issued for the purpose of paying for the coal company's property, providing equipment, working capital, etc., and the railway company, through the agency and medium of this coal company, thereby acquired the control of twenty-eight thousand four hundred acres of additional coal lands in the Hocking Valley, with twenty-two operating mines. Adroitly worded instruments which were offered in evidence in the ouster case show on their face that the railway companies were indorsing the coal company's bonds for the one purpose of guaranteeing their payment; and these instruments, when read in the light of the testimony of the officers of The Hocking Valley and Toledo and Ohio Central Railway Companies, given at the trial of the State's ouster suit, show conclusively that the railway companies never owned these bonds and of course never sold them.

In addition to the aforesaid guaranty by The Hocking Valley Railway Company of the bonds of the Continental Coal Company, the railway company has guaranteed, under a somewhat similar arrangement, $2,750,000 of bonds issued by The Kanawha and Hocking Coal & Coke Company, which coal company has acquired by purchase or lease over 32,000 acres of coal land in the Kanawha coal field of West Virginia. The guaranty was also shared by The Toledo and

Ohio Central Railway Company. $3,499,500 of the capital stock of the coal company was transferred to J. P. Morgan & Company to secure the performance of the contract under which the guaranty was made, and beneficial certificates issued to the parties in interest, that is the syndicate subscribers.

The next step was the merger of all the coal lands and mining operations held and controlled by The Hocking Valley Railway Company into the Sunday Creek Company, which was incorporated in New Jersey on the twenty-ninth of June, 1905, a year and a half after the Attorney General had filed his ouster suit against The Hocking Valley Railway Company. In this merger of the several coal companies The Hocking Valley Railway Company acquired more than thirty-two thousand shares of the forty thousand shares of the Sunday Creek Company; and to this new coal company, so owned and controlled, all the coal lands and mining operations of The Buckeye Coal & Railway Company, The Sunday Creek Coal Company, The Continental Coal Company and The Kanawha & Hocking Coal & Coke Company were transferred either by sale or by lease. The purpose and object of all this can be seen by perusal of Exhibits 23, 24, 25 and 26 in the State's ouster case, which show that through its control of the Sunday Creek Company, the defendant railway company is shipping 84 per cent. of the coal on The Toledo & Ohio Central Railway, 58.9 per cent. on the Kanawha & Michigan, 55 per cent. on the Zanesville & Western, 34.7 per cent. in the Deaverton District, and 39.5 per cent. on the Hocking Valley.

Prior to the fall of 1902, The Hocking Valley Railway Company had acquired the Buckeye stock and the Sunday Creek Coal Company stock and has indorsed the bonds of The Continental Coal Company and of The Kanawha and Hocking Coal & Coke Company, and had thereby acquired control of several thousand acres of coal lands, with numerous coal mines. In the fall of 1902, Mr. Johnson advised Mr. Monsarrat, president of the Hocking Valley, that his company, The Johnson Coal Mining Company, was about to equip a mining plant from which coal would be shipped over The Hocking Valley Railway; the track connections were refused, and from July, 1903, when the formal demand was made, until June, 1904, a period of eleven months, the mining company was deprived of transportation facilities. The New York Coal Company was likewise deprived of transportation facilities from January, 1903, to November, 1904, a period of twenty-two months; on September 15, 1903, the Johnson Coal Company commenced its suit in the Court of Common Pleas of Franklin County to compel the railway company to cease its discrimination against it and in favor of the coal companies controlled by the railway company; on December 18, 1903, the Attorney General commenced an action in quo warranto, charging as one of the grounds of complaint, discrimination against independent coal operators who desired track facilities; and the railway company has never ceased its discrimination, for on its records is the resolution of October 9, 1902, reciting that the company had already committed itself on the subject of equipment "to operators and shippers already established on the line of the road." No evidence has been offered by the railway company or discovered showing or tending to show that it was lawfully obliged "to operators and shippers already established on the line of the road," to the exclusion of other shippers. When this resolution was passed in October, 1902, the railway company controlled several thousand acres of coal land on which a large number of operations was conducted; and being thus extensively engaged in the coal business, the railway company wanted no competition; and, as shown by the uncontradicted testimony in the State's ouster case, it was advisable to discourage, and, if possible, to prevent such competition. At the interview between Mr. Johnson and Mr. Monsarrat, the latter stated that the railway company would not look upon the installation of the pro-

posed coal mining plant by Mr. Johnson as a friendly act; both Mr. Monsarrat and Mr. Hoyt, officers of the railway company, stated that a large number of applications — fifty or sixty — for track connections had been received; and after the litigation had been inaugurated between The Johnson Coal Mining Company and the railway company, in order to obtain track connections to which they were entitled, the two coal companies were compelled to go through the mock form of organizing fictitious railway companies with whom The Hocking Valley Railway Company made pretended contracts, whereby non-existent railway companies granted to The Hocking Valley Railway Company exclusive trackage and traffic rights over non-existent tracks — all, as the railway company's representatives declared, for the purpose of preventing competition and to place burdens upon other operators who had sought transportation facilities for their coal. And in addition to this the Johnson Coal Company was required to buy one hundred railroad coal cars, which cost about sixty thousand dollars.

From the date of its incorporation The Hocking Valley Railway Company has directed its efforts to the control of the property and business of competing coal carrying roads, namely, The Toledo & Ohio Central, The Kanawha and Michigan, The Columbus, Sandusky and Hocking and The Zanesville and Western, just as it had exercised control of the mining and shipping of coal on its own line and on the lines of competing roads.

In January, 1899, a few weeks before The Hocking Valley Railway Company was incorporated, the reorganization plan was issued by J. P. Morgan & Company, "Reorganization Managers." It is recited in this plan that the former company, The Columbus, Hocking Valley & Toledo Railway Company "control about 20,975 acres of coal lands"; prior to that time the railway company's business had been "strictly and intensely competitive"; West Virginia coals were supplanting Ohio coals in the markets; of the seven railroad companies then competing in the business of transporting Ohio coal, four lines operated in fields east of the Hocking Valley, and three, including The Columbus, Hocking Valley & Toledo Railway Company, operated in the Hocking Valley coal field. By a process of elimination the three roads referred to are easily identified as The Columbus, Hocking Valley & Toledo Railway Company, The Toledo & Ohio Central Railway Company and The Columbus, Sandusky & Hocking Railway Company; so that we are left in no uncertainty concerning the meaning of the prophetic statement of J. P. Morgan & Company, the reorganization managers, that "Much economy of operation and better public service could be secured if the three lines in the Hocking district were united in some form, so that their combined traffic could, so far as possible, be centered on the Hocking Valley Railroad, which, by reason of its low grades, when put in proper condition, could move the traffic much more economically than either of the others, and consequently with a profit to itself as well as to the lines from which it would be diverted. Any plan of reorganization of the Hocking Valley, therefore, should be sufficiently flexible to admit of such acquisition." The next step was taken in February, 1899, when the stockholders of The Hocking Valley Railway Company adopted Article 1 of its Regulations setting aside $10,000,000 of its capital stock for the purpose of acquiring interests in The Toledo & Ohio Central and The Columbus, Sandusky & Hocking (now The Zanesville and Western) Railway Companies, all of which are parallel and competing lines.

The Zanesville & Western Railway Company (successor to the Columbus, Sandusky & Hocking) was acquired by The Hocking Valley Railway Company in February, 1902, the consideration therefor being the issue by the Hocking Valley of $1,000,000 of its preferred stock, and $578,400 of its common stock pursuant to the plan of J. P. Morgan and Company and under the illegal provisions of Article 1 of the Hocking Valley's regulations above referred to.

The next move was to acquire The Kanawha & Michigan Railway Company, which was accomplished June 4, 1903, and directors of the Hocking Valley were given official positions and placed in actual control of the property and business of the three railways — The Toledo & Ohio Central Railway Company, The Zanesville & Western Railway Company and The Kanawha & Michigan Railway Company. Next comes the so-called "Trunk Line Syndicate," to which attention has already been called, and its control of the Hocking Valley Railway Company.

The next step was the appearance of the Middle States Construction Company, which it has been charged The Hocking Valley Railway Company and its officers caused to be incorporated in New Jersey, for the purpose of being used by it as the medium for securing the capital stock and control of The Toledo & Ohio Central Railway Company.

Thus we find The Hocking Valley Railway Company has been organized and its business has been conducted on a basis "sufficiently flexible" to admit of its complete dominion over the business of transportation in the Hocking Valley coal fields previously shared by parallel and competing roads and likewise over the property and business of the coal companies of the Hocking Valley and Kanawha coal fields.

As a result, competition between the several railroads traversing the Hocking coal field of Ohio, which are so located as to be natural competitors, has been destroyed, and The Hocking Valley Railway Company has built up and is continuing a monopoly in the coal mining and transportation business. It seems impossible to imagine a course of conduct which is more in contempt of the laws of the State.

Discrimination in Freight Rates.

The Hocking Valley Railway Company's freight rate on commercial coal from Nelsonville, the assembling point in the Hocking Valley, to Columbus, Ohio, is 65 cents for 62 miles, while the rate is $1.00 per ton to all points between Columbus and Toledo, varying from 70 to 186 miles from shipping point. The railway company has a graded scale of rates between Nelsonville and Columbus, thereby recognizing distance as an element, while in fixing the rates north of Columbus, and between that city and Toledo, the varying distances are disregarded.

Coal shippers complain that the entire scheme of rates on this line is both unreasonable and unjust, especially when compared with rates upon other railroads serving competitive coal fields, particularly Indiana and Illinois roads. By reference to the tariffs of these other lines it is shown that coal is hauled on the Illinois Central for 126 miles at 50 cents per ton; 135 miles, 55 cents; 158 miles, 60 cents; 251 miles, 75 cents; 304 miles, 90 cents; 314 miles, 98 cents. On the C. & E. I. and the E. & T. H. railroads coal is hauled 180 miles, for 70 cents per ton; 205 miles, 75 cents; 316 miles, 98 cents. On the T. St. L. & W. railroad coal is hauled 159 miles, for 65 cents; 207 miles, 80 cents.

The Hocking Railway Company's rate on lake coal, that is, coal carried to the lower lake ports for transportation by water to the upper lake ports, is 90 cents from Hocking Valley points, an average distance of 200 miles, while the rate from the Kanawha District in West Virginia is $1,02, an average distance of 340 miles, for 200 miles of which this same coal is carried over the Hocking Valley at the rate of 53.4 cents per ton.

As previously stated the rate on commercial coal to all points on the Hocking Valley railroad north of Columbus, on coal originating on that company's line, is $1.00 per ton for distances ranging from 70 to 186 miles, while the rate on coal from the Kanawha field of West Virginia to these same points is $1.25 for distances ranging from 210 miles to 340 miles, showing a discrimination in rate

per ton per mile of fully 50% in favor of West Virginia coal as against the Ohio mines upon its own line.

The rate on railway fuel, that is, coal shipped to other railroads for locomotive fuel, is usually 25% less than the rate to general users of coal at the same points. There does not seem to be any good reason why another carrier should have its fuel transported at less rates than other users of coal, — citizens of this State. If the rate to other railroads is compensatory then the rate to other users of coal, being 25 or more per cent higher, is more than compensatory and is an unjust discrimination against individuals. If the special railroad fuel rate is less than compensatory, than other users of coal are being required to pay the cost of transporting this fuel for other railroad companies.

The Hocking Valley Railway Company has further discriminated against independent coal producers upon its line by permitting the Sunday Creek Company, a coal operating company controlled by the railway company, to accumulate unpaid freight bills on coal, covering a period of several years past, and amounting now to something over $2,000,000. It is the practice of this railway company to require other shippers of coal to settle all bills for freight within sixty days.

Actions in the Courts Against the Hocking Valley Railway Company.

(a) *State v. The Hocking Valley Railway Company.*

During the year 1903 the attention of the Attorney-General was called to the fact that The Hocking Valley Railway Company was disregarding and violating the laws of the State of Ohio, was misusing its corporate authority, privileges and franchises, was assuming and usurping privileges and franchises not granted to it, was assuming and usurping and exercising rights, privileges and franchises specially inhibited by law, and was refusing to perform its duties as a public common carrier.

Upon careful investigation of the facts and circumstances of the case, the Attorney-General was fully convinced of the truth of the information given him, and that the railway company had committed and was continuing to commit grave offenses and pursuing a policy violative of the laws and public policy of the State, and the facts which subsequently developed at the trial of the action hereinafter referred to fully justified the prosecution of said action. The abuses and usurpation of corporate power on the part of the railway company, so ingeniously conceived and so boldly defended were such as to make their continuance intolerable.

Acting upon the information given and the result of his investigations, the Attorney-General, on December 18, 1903, commenced an action of quo warranto against The Hocking Valley Railway Company, in the Circuit Court of Franklin County, Ohio, (No. 2087), to oust it from its corporate rights, privileges and franchises and to liquidate its affairs as provided by statute.

The unlawful acts, usurpations and abuses of corporate authority charged in the petition were, in substance, as follows:

First. That The Hocking Valley Railway Company holds and owns more than a majority of the outstanding capital stock of The Buckeye Coal & Railway Company, a corporation incorporated and organized under the laws of the State of Ohio, for the purpose, among other things, of mining coal, iron, copper, lead and other minerals and the ores thereof; that said The Buckeye Coal & Railway Company is the owner of coal lands and mines in the Hocking Valley coal field in the State of Ohio, and is engaged in mining and shipping coal therefrom: that the defendant controls and manages the property and business of said The Buckeye Coal & Railway Company: and that the defendant and said The Buckeye Coal & Railway Company are not kindred corporations.

Second. That The Hocking Valley Railway Company holds and owns more than a majority of the outstanding capital stock of The Sunday Creek Coal Company, a corporation incorporated under the laws of the State of Ohio for the purpose, among other things, of carrying on the business of mining, shipping and selling mineral coal, and manufacturing coke and bricks; that said The Sunday Creek Coal Company owns coal lands and mines in the Hocking Valley coal field and is engaged in mining and shipping coal therefrom; that the defendant controls and manages the property and business of said coal company; and that The Hocking Valley Railway Company and The Sunday Creek Coal Company are not kindred corporations.

Third. That The Hocking Valley Railway Company holds and owns shares of the outstanding capital stock of The Toledo & Ohio Central Railway Company, a corporation incorporated under the laws of the State of Ohio; that said last named company owns, manages and operates a steam railroad in the State of Ohio in and through the counties named in the petition, and is a common carrier of passengers and freight; that said last named company's principal traffic is the transportation of bituminous coal in car-load shipments from the Hocking Valley coal field in Ohio; that the defendant's railroad forms a parallel and competing line with the railroad owned and operated by The Toledo & Ohio Central Railway Company; that the defendant holds and owns more than a majority of the outstanding capital stock of The Toledo & Ohio Central Railway Company, and manages and controls the property and business of said company.

Fourth. That The Hocking Valley Railway Company has acquired, holds and owns more than a majority of the outstanding capital stock of The Kanawha & Michigan Railway Company, a corporation incorporated under the laws of the State of Ohio; that The Kanawha & Michigan Railway Company owns, manages and operates a steam railroad in the State of Ohio in and through the counties named in the petition, and is a common carrier of freight and passengers; that the principal traffic of said The Kanawha & Michigan Railway Company is the transportation of bituminous coal in car-load shipments from the Hocking Valley coal field in Ohio; that the railroad of The Kanawha & Michigan Railway Company forms a parallel and competing line with the railroad owned and operated by the defendant company; and that the defendant company controls and manages the property and business of said The Kanawha & Michigan Railway Company.

Fifth. That The Hocking Valley Railway Company has acquired, holds and owns shares of the outstanding capital stock of the Zanesville & Western Railway Company, a corporation incorporated under the laws of the State of Ohio, which said company owns, manages and operates a steam railroad in the State of Ohio in and through the counties named in the petition, and is a common carrier of freight and passengers; that said last named company's principal traffic is the transportation of bituminous coal in carload shipments from the Hocking Valley coal field in Ohio; that the defendant company holds and owns more than a majority of the outstanding capital stock of said The Zanesville & Western Railway Company; that the defendant company controls and manages the property and business of The Zanesville & Western Railway Company; and that the railroad of The Zanesville & Western Railway Company forms a parallel and competing line with the railroad owned and operated by the defendant.

Sixth. That for the purpose of acquiring and controlling coal properties owned and operated by independent coal operators in the Hocking Valley coal field in Ohio, The Hocking Valley Railway Company and its managing officers, directors and agents entered into contracts with said independent coal operators for the purchase of their respective properties; and in furtherance of the plan to acquire and control said properties The Hocking Valley Railway Company

and its managing officers, directors and agents caused The Continental Coal Company to be incorporated under the laws of the State of West Virginia for the purpose of mining, selling and dealing in coal, etc.; that in the name of said coal company a large area of coal land and numerous coal mines in said Hocking Valley coal field were acquired and are now held, from which mines large quantities of coal are shipped over the several lines of railroad owned and operated by The Hocking Valley Railway Company, The Toledo & Ohio Central Railway Company, The Kanawha & Michigan Railway Company and The Zanesville & Western Railway Company; that to provide for the payment of the purchase price of said coal properties it was agreed by The Hocking Valley Railway Company, and its officers and directors, that bonds would be issued bearing the siguature of The Continental Coal Company, and that payment thereof would be guaranteed by said defendant and The Toledo & Ohio Central Railway Company; that said bonds were issued and payment thereof guaranteed by The Hocking Valley Railway Company and The Toledo & Ohio Central Railway Company, and the proceeds of the sale thereof were applied in whole or in part to the payment of the purchase price of said coal properties; that the capital stock of The Continental Coal Company was held and owned by The Hocking Valley Railway Company, or, if said capital stock is not in the immediate possession and control of said defendant company, it has been issued in whole or in part to the defendant's officers, directors and agents, to hold the same in trust for the defendant; and that The Hocking Valley Railway Company and said Continental Coal Company are not kindred corporations.

Seventh. That The Hocking Valley Railway Company has discriminated against The Johnson Coal Mining Company and The New York Coal Company by refusing to afford track connections and transportation facilities to said companies; that the defendant affords and extends facilities to favored mine owners by giving them tracks and sidings for the transportation of coal produced at their mines and for the delivery of empty cars to said mines; that the defendant refused to afford and extend such facilities to The Johnson Coal Mining Company and The New York Coal Company, although such facilities were repeatedly requested and demanded; that the mines of said Johnson Coal Mining Company and the New York Coal Company were so located that track connections and facilities could be given in the same manner as they have been and were given to other shippers; and that the object of such refusal by The Hocking Valley Railway Company was to discourage, stifle and prevent competition with the persons, firms and corporations to whom said defendant was furnishing such transportation facilities, in the effort to create and maintain a monopoly of the coal producing and carrying business in and from the territory known as the Hocking Valley coal field in Ohio.

Eighth. The acts of The Hocking Valley Railway Company which are charged and challenged in the eighth branch of the petition were substantially the same as those charged in the seventh branch, except that in the eighth branch it is averred by the state that track connections and transportation facilities are refused to The Johnson Coal Mining Company and The New York Coal Company for the purpose of discouraging and preventing additional competition with The Buckeye Coal & Railway Company, The Sunday Creek Coal Company and The Continental Coal Company.

Ninth. That The Hocking Valley Railway Company, The Toledo & Ohio Central Railway Company, The Kanawha & Michigan Railway Company and The Zanesville & Western Railway Company, and The Buckeye Coal & Railway Company, The Sunday Creek Coal Company and The Continental Coal Company have agreed among themselves that transportation facilities will not be afforded to

other firms, persons, and corporations who may desire to engage in the business of coal mining in and from the Hocking Valley coal field in Ohio.

Tenth. That all and each of the wrongful acts by and on the part of The Hocking Valley Railway Company complained of have been committed continuously and with full knowledge on its part of the laws so violated, and with intent on its part to violate and evade and continue the violation and evasions of said laws and to mislead and deceive the State of Ohio and its citizens as to the real character and extent of the unlawful business which the defendant is conducting.

After considerable delay, resulting from the filing of various motions by the defendant, the case was tried to the court during the fall of the year 1906.

After the evidence was all in, the court took the case under advisement and, on April 22, 1909, rendered a decision in favor of the State wherein it concluded that the railway company should be ousted from its ownership of stock in The Buckeye Coal & Railway Company, The Sunday Creek Coal Company, The Sunday Creek Company, and The Continental Coal Company; that it be ousted from its right to continue the guaranty of the bonds of the Continental Coal Company; and that it be ousted from its right to hold the stock of The Kanawha & Michigan Railway Company, and from its control and management of The Toledo & Ohio Central Railway Company, The Kanawha and Michigan Railway Company, The Zanesville and Western Railway Company, and the coal companies.

After this decision was rendered, the railway company requested and was granted a rehearing or reargument of the case, and, on July 21st, 1909, the Circuit Court handed down its decision on the rehearing, in which it adhered to its former decision.

A motion for a new trial was filed by the railway company and overruled by the court, and on February 4, 1910, the railway company filed a petition in error in the Supreme Court of Ohio to review the judgment of the Circuit Court, being cause No. 12,259 on the docket of said court. The case is now pending in that court, and will be submitted to the court in May, 1910, for a final decision.

A copy of the printed record filed in the Supreme Court in which is contained the pleadings and the findings of fact, conclusions of law, and judgment of the Circuit Court, together with a part of the evidence upon which the Circuit Court based its decisions, is submitted herewith. The two decisions of the Circuit Court rendered on April 22, 1909, and July 21, 1909, respectively, are also submitted herewith for your examination.

(b) State of Ohio ex rel Tom O. Crosson, Prosecuting Attorney of Perry County, Ohio, v. The Hocking Valley Railway Company.

On October 4th, 1909, the State of Ohio on the relation of Tom O. Crosson, Prosecuting Attorney of Perry County, Ohio, commenced a proceeding in quo warranto against The Hocking Valley Railway Company to forfeit the corporate rights, privileges and franchises of said railway company and to oust it from the further exercise of any and all other rights, powers and franchises which it may have or claim to have, and to liquidate its affairs.

The petition in this case charged that The Hocking Valley Railway Company has conspired with The Toledo & Ohio Central Railway Company, The Kanawha & Michigan Railway Company, The Zanesville & Western Railway Company, The Sunday Creek Coal Company, The Kanawha & Hocking Coal & Coke Company and The Sunday Creek Company, and other corporations, firms and persons to the relator unknown, and has entered into a combination with said

named corporations and with the other corporations, firms and persons unknown, and with each of them, for the purpose of stifling competition and establishing a monopoly in the business of transporting freight and passengers and in the business of mining, owning, producing and selling coal and its products, and that said defendant, The Hocking Valley Railway Company, has disregarded and violated the laws of Ohio, and is misusing its corporate authority, franchises and privileges and is assuming franchises and privileges not granted to it and is assuming franchises and rights and privileges especially inhibited by law, and is refusing to perform its duties as a public carrier in the following particulars, to-wit:

"*First.* Said relator alleges that the lines of railroad owned and operated by said The Toledo & Ohio Central Railway Company are parallel and competing with the lines of railroad owned and operated by the defendant, The Hocking Valley Railway Company. To gain control of the lines of railroad and other property owned by said The Toledo & Ohio Central Railway Company and to destroy competition between said company and said defendant, said defendant and other corporations, firms and persons acting in conspiracy with said defendant but whose names are at this time unknown to the relator, conspired to issue and did cause to be issued a large amount of the preferred and common capital stock of said defendant amounting in the aggregate to several millions of dollars. Said capital stock was issued by said defendant and its co-conspirators for the purpose of using the same, and the same was used by the defendant in the manner and through the agency hereinafter stated, to purchase shares of the capital stock of said The Toledo & Ohio Central Railway Company. As a part of said conspiracy and in furtherance of the same, and for the purpose of concealing the fact of defendants' acquisition and ownership of stock in said The Toledo & Ohio Central Railway Company, said defendant and its co-conspirators caused to be incorporated under the laws of the State of New Jersey a corporation known as The Middle States Construction Company, which company has acted as the agent of said defendant and as co-conspirator with said defendant and others in holding the shares of the capital stock of said The Toledo & Ohio Central Railway Company so acquired and paid for by the defendant. Said defendant and said The Middle States Construction Company and other corporations, firms and persons acting in conspiracy with them, from time to time have made purchases of the capital stock of said The Toledo & Ohio Central Railway Company until all the capital stock of said The Toledo & Ohio Central Railway Company has been acquired, and the same is now owned, by said The Hocking Valley Railway Company, and is held by said The Middle States Construction Company for the use and benefit of said defendant by whom the purchase price of all said capital stock was paid. And said defendant and its agents and co-conspirators have controlled and are controlling the property and business of said The Toledo & Ohio Central Railway Company, and they have controlled and are controlling the elections of directors and the appointments of officers and agents of said The Toledo & Ohio Central Railway Company, which directors, officers and agents have mismanaged the property of said The Toledo & Ohio Central Railway Company by permitting said defendant and its agents and co-conspirators to vote at the stockholders' meetings of said The Toledo & Ohio Central Railway Company, and by permitting said defendant and its agents and co-conspirators to elect and appoint directors, officers and agents of said defendant to serve said The Toledo & Ohio Central Railway Company in similar capacities, and by permitting the property and business of said The Toledo & Ohio Central Railway Company to be operated, conducted and used in such manner as to destroy all competition with said defendant.

"*Second.* Said The Kanawha & Michgan Railway Company owns and operates a railroad which is parallel and competing with the railroad owned and operated by said defendant. To destroy competition in the transportation of freight and passengers between said The Kanawha & Michigan Railway Company and said defendant, said defendant has used and voted shares of stock owned by it in said The Kanawha && Michigan Railway Company and has procured proxies from other stockholders of said The Kanawha & Michigan Railway Company and has thereby been enabled to control and has controlled and is controlling the property and business of said The Kanawha & Michigan Railway Company. And said defendant has controlled and is controlling the elections of directors and the appointments of officers and agents of said The Kanawha & Michigan Railway Company, which directors, officers and agents have mismanaged the property and business of said The Kanawha & Michigan Railway Company by permitting said defendant and its agents to vote at the stockholders' meetings of said The Kanawha & Michigan Railway Company, and by permitting said defendant and its agents to elect and appoint directors, officers and agents of said defendant to act for said The Kanawha & Michigan Railway Company in similar capacities and by permitting the property and business of said The Kanawha & Michigan Railway Company to be operated, conducted and used in such manner as to destroy all competition with said defendant.

"*Third.* Said The Zanesville & Western Railway Company owns and operates a railroad which is parallel and competing with the railroad owned and operated by said defendant and with the railroad owned and operated by said The Toledo & Ohio Central Railway Company. After said defendant had acquired the control of said The Toledo & Ohio Central Railway Company and of the railroad and other property owned by said The Toledo & Ohio Central Railway Company in the manner aforesaid and had destroyed all competition between said defendant and said The Toledo & Ohio Central Railway Company, said defendant thereafter delivered to and placed in the control and custody of said The Toledo & Ohio Central Railway Company all the outstanding stock and all the bonds of said The Zanesville & Western Railway Company. Through the ownership of all the stock of said The Zanesville & Western Railway Company, said defendant and said The Toledo & Ohio Central Railway Company and each of them have been able to control and operate and they have controlled and operated said The Zanesville & Western Railway Company in such manner as to prevent and destroy all competition by and among said The Zanesville & Western Railway Company and said defendant and said The Toledo & Ohio Central Railway Company. And for the purpose of controlling said The Zanesville & Western Railway Company and of preventing competition by said Company, said defendant has caused its own directors, officers and agents to be elected and appointed to corresponding positions with said The Zanesville & Western Railway Company; and the directors, officers and agents of said The Zanesville & Western Railway Company have mismanaged the property and business of said company by permitting said defendant and its agents and said The Toledo & Ohio Central Railway Company and its agents to vote at the stockholders' meetings of said The Zanesville & Western Railway Company and by permitting the election of directors, officers and agents of said defendant and of said The Toledo & Ohio Central Railway Company to manage the business of said The Zanesville & Western Railway Company and by permitting the property and business of said The Zanesville & Western Railway Company to be operated, conducted and used in such manner as to destroy all competition with said defendant and with said The Toledo & Ohio Central Railway Company.

"*Fourth.* On the 18th day of December, 1903, the Attorney-General in Ohio commenced an action in quo warranto in the Circuit Court of Franklin

County, Ohio, against said defendant, The Hocking Valley Railway Company, in which action among other charges against said defendant it was charged that said defendant had acquired and then held and owned more than a majority of the outstanding capital stock of The Sunday Creek Coal Company and that said defendant controlled and managed said coal company and its property and business contrary to and in violation of the laws of the State of Ohio. The relator alleges that after said action had been commenced by the Attorney-General, that is, in the months of January, March, June and December of the year 1905, in defense of the State of Ohio and in wilful disregard of the laws of the State, said defendant purchased, acquired and held a large additional number of shares of the capital stock of said coal company aggregating, as the relator is informed, more than 4,000 shares of said stock in addition to the stock owned by said defendant at the time said action was commenced against it by the Attorney-General. And the relator alleges the fact to be that said defendant continued to purchase the capital stock of said coal company until it had acquired all the capital stock of said coal company, and that said defendant manager managed and controlled said coal company and the business and property of said coal company and engaged in the business of mining and selling coal in competition with independent coal operators, all of which was done for the purpose of controlling and destroying competition in the business of transporting coal from the Hocking coal field and in the business of mining and shipping coal from said coal field.

"*Fifth.* Prior to the first day of July, 1909, said defendant, acting in conspiracy with said The Toledo & Ohio Central Railway Company and with other corporations, firms and persons, with the unlawful intent and purpose of establishing a monopoly in the business of mining and shipping coal and of destroying competition and establishing a monopoly in the carrying of coal in car-load lots and for the purpose of discriminating against independent miners and shippers of coal over the railroad of said defendant and the railroad of said The Toledo & Ohio Central Railway Company, caused the Kanawha & Hocking Coal & Coke Company to be incorporated under the laws of the State of West Virginia. And in order to pay for the property then acquired and thereafter to be acquired by and in the name of said Kanawha & Hocking Coal & Coke Company and to equip said coal mines and to furnish working capital for said Coal & Coke Company, said defendant and its co-conspirators agreed to guarantee and indorse bonds issued or to be issued by said Coal & Coke Company to the amount of $3,500,000.00. For the purpose aforesaid and pursuant to said unlawful agreement, said defendant did indorse and did guarantee said bonds and did procure the indorsement and guaranty thereon of said The Toledo & Ohio Central Railway Company in pursuance of the terms and intents of said combination and conspiracy, and thereby said defendant became and is liable upon said indorsement and guaranty and the assets of said defendant corporation became and are bound and pledged for the payment of said bonds. Said bonds are still outstanding and unpaid and under the said guaranty and indorsement said defendant has bound itself to pay the principal and interest of said bonds at maturity in case the same are not paid by said Coal & Coke Company. Said indorsement and guaranty were made without any consideration whatever moving to said defendant and the same were made for the purpose and with the intent to control the business of mining and shipping coal and to control the prices of coal and to stifle and eliminate competition in the mining, shipping and transportation of coal, and to establish a monopoly in the business of mining and shipping coal throughout the entire area traversed by the line of said defendant company and the lines of the other railway companies hereinbefore mentioned and which were

in combination and in conspiracy with said defendant; and in pursuance of said policy and intent said defendant and its co-conspirators herein named, to-wit, said the Toledo & Ohio Central Railway Company and other corporations, firms and persons to the relator unknown, have attempted and are now attempting to destroy competition and to establish a monopoly in the business of mining and transporting coal in the territory traversed by the lines of said defendant and the other railroads hereinbefore named.

"*Sixth.* After the filing of the petition in quo warranto hereinbefore mentioned by the Attorney General of the State of Ohio against the said defendant, that is, after the 18th day of December, 1903, said defendant, acting in conspiracy with said The Toledo & Ohio Central Railway Company, said The Sunday Creek Coal Company, said the Kanawha & Hocking Coal & Coke Company and other corporations, firms and persons to the relator unknown, caused The Sunday Creek Company to be incorporated and organized under the laws of the State of New Jersey, with capital stock of $1,000,000.00. Said company was organized for the purpose of destroying all competition in the mining and transportation of coal on and in the neighborhood of the lines of railroad owned and operated by said defendant and by said The Toledo & Ohio Central Railway Company, The Kanawha & Michigan Railway Company and The Zanesville & Western Railway Company. Said defendant and its co-conspirators caused said The Sunday Creek Company to acquire about 117,000 acres of coal and coal under lease, with a large number of coal mines and the equipment and appurtenances thereunto belonging. About $3,500,000.00 of the capital stock of said The Sunday Creek Company has been acquired, owned and held by said defendant and about $500,000.00 by said The Toledo & Ohio Central Railway Company, and the same has been and is held in the name of said railway companies or by corporations, firms, and persons with whom said defendant and said The Toledo & Ohio Central Railway Company have been acting in conspiracy for the purposes and with the intents hereinbefore mentioned. And by means of the ownership of the capital stock of said The Sunday Creek Company, said defendant and The Toledo & Ohio Central Railway Company have controlled said company and its property and business and have attempted and are attempting to destroy competition in the business of mining and transporting coal over the railroad of said defendant and over the other railroads hereinbefore mentioned.

"By reason of the ownership by said defendant and by said The Toledo & Ohio Central Railway Company of said stock in said The Sunday Creek Company, said railway companies have in fact become and are exercising the powers of owners of coal lands and of miners and shippers of coal, in contravention of the powers granted to the defendant by the State of Ohio, against the laws of the State of Ohio and to the great and irreparable injury of the people of the State of Ohio, and especially the owners of coal lands and the miners and shippers of coal along the lines of the defendant and of The Toledo & Ohio Central Railway Company, all of which has been done in defiance of the rights of the people of the State of Ohio and against the laws of the State made in that behalf. The relator is informed and believes, and from such information and belief he avers that said defendant, The Hocking Valley Railway Company, has allowed and permitted said The Sunday Creek Company to become indebted to said defendant in large amounts for freight charges which remain unpaid and unsecured, and that such freight charges are so allowed to remain unpaid in order that said The Sunday Creek Company may pay the interest accruing from time to time on the aforesaid bonds indorsed and guaranteed by said defendant; that the earnings of said The Sunday Creek Company have not been and are not sufficient to pay the running expenses of said company and the in-

terest on said bonds, and that the allowing by said defendant of said bills for freight to remain unpaid is the means adopted by the defendant, said The Hocking Valley Railway Company, to pay the interest on said bonds so indorsed and guaranteed by it, and said defendant has thereby discriminated in favor of said The Sunday Creek Company and against all other miners and shippers of coal who have been required by the defendant to pay the full and lawful freight charges on all coal shipped by them over defendants' railroad. The relator is further informed and alleges that said bills for freight due to said defendant from said The Sunday Creek Company have been accumulating for nearly five years last past, and said bills or parts thereof will soon be outlawed under the Statutes of Ohio; that said defendant is taking and intends taking no steps toward the collection thereof.

"Each and all of the foregoing acts have been done and committed willfully and continuously and with intent by said defendant to violate and evade the laws of the State of Ohio, and to create a trust and monopoly and to maintain a monopoly and to prevent competition in the transportation of freight and passengers and in the mining and shipping of coal. And by reason of the aforesaid acts of said defendant and its open and flagrant defiance of the laws of the State of Ohio, said defendant has ceased to perform its functions and duties as a corporation."

(c) Johnson Coal Mining Co. v. The Hocking Valley Company.

This was an action commenced in the Court of Common Pleas of Franklin County, Ohio, in 1903, by the coal company to compel the railway company to furnish track connections and transportation facilities to the coal company, and to enjoin the railway company from discriminating against the coal company in that regard.

The facts and circumstances of this case have already been referred to in this report in connection with the relation between the Hocking Valley Railway Company and various coal companies and parallel and competing railroads in the Hocking coal field.

The case never came to trial because, after compliance by the coal company with the burdensome and illegal terms and conditions imposed upon it by the railway company, and desired track connections and facilities were furnished. While the case was pending in the Common Pleas Court, the railway company filed a demurrer to the petition of the coal company, which was overruled by the court. The decision of the court, rendered by Judge E. B. Dillon, was handed down on January 16, 1904, and is reported in Vol. 14, Ohio Decisions, page 209, to which reference is hereby made.

(d) Quinn Coal Co. v. The Hocking Valley Railway Company.

On December 14, 1904, The Quinn Coal Company, a partnership formed for the purpose of mining and dealing in coal, commenced an action against The Hocking Valley Railway Company to compel the railway company to extend its switch track to the mines and tipple of plaintiff and allow the coal company a track connection at its mines in Vinton County, Ohio, and to enjoin the railway company from discriminating against it in the furnishing of such facilities.

The petition in this case alleged that the plaintiff was the owner of a tract of valuable coal land in Vinton County, Ohio, which was located along and adjacent to the railroad of the defendant company, and was being developed and improved in such a manner as to permit the loading of coal into railroad cars; that plaintiff had orders for coal which could only be shipped over the railroad

of defendant company. It was also alleged that the switch extension and track connection could be made without any injury to or interference with the tracks or other property of the defendant company.

Without such connection the plaintiff alleged that it would be compelled to load its output into wagons, haul the same to the tracks of defendant, and then reload the same into the cars of defendant, which would hinder and delay it in making its shipments and prevent it from competing with other operators, to whom the railway had afforded the desired facilities.

Plaintiff further alleged that there are many mines along the defendant's right of way, and that thousands of tons of coal are shipped therefrom, and that the defendant company has placed sidings and tracks at these various mines for the use of the coal operators in shipping their coal, and furnishing cars on these sidings and tracks for that purpose, and by reason of the refusal of the defendant company to accord it equal facilities it was unable to compete with said operators; that defendant was unlawfully discriminating against plaintiff and in favor of the other operators.

Plaintiff then alleged that it had requested the defendant to extend it equal facilities for shipping its output along with the other favored operators, but that the defendant company refused to do so.

On January 16, 1905, the railway company filed a demurrer to the petition, which was submitted without argument. On January 19, 1904, a formal entry prepared by the parties purporting to sustain the demurrer and dismissing the action, was filed with the clerk of court.

The case was then formally appealed to the Circuit Court of Franklin County, and that court, on authority of the decision of the Common Pleas Court of Franklin County rendered in the case of Johnson Coal Mining Co. v. The Hocking Valley Railway Company (hereinbefore referred to), reversed the formal order of the lower court in sustaining the demurrer, and held that the petition stated a cause of action.

On July 3, 1907, an entry was made on the appearance docket of the Court of Common Pleas dismissing the action without record.

(e) Ralph E. Westfall v. The Hocking Valley Railway Company.

On the first day of November, 1909, Ralph E. Westfall, a stockholder in The Hocking Valley Railway Company, commenced an action in the Common Pleas Court of Franklin County, Ohio, (No. 57889), against the railway company to enjoin it from refusing to allow him to inspect the books and records of the company.

The petition in this case is short and, omitting formal parts, reads as follows:

"The plaintiff for his cause of action says that the defendant is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio; that plaintiff is now and at the times hereafter set forth, was, a stockholder in said corporation and is the owner and holder of one hundred shares of the preferred capital stock of the defendant corporation, of the par value of One Hundred Dollars each.

That plaintiff on the 20th day of August, on the 24th day of September, and on the 18th day of October, 1909, requested defendant to allow him to inspect the books and records of said corporation at reasonable times. Defendant has refused plaintiff's request and refuses to allow the plaintiff to inspect its books and records at any time.

Wherefore plaintiff prays that the defendant may be enjoined from refusing

to allow him to inspect its books and records, and prays the court for such other and further relief as he may be entitled to at law or in equity."

The right of a stockholder of an Ohio corporation to inspect the books and records of the corporation at all reasonable times is secured to him in the most clear and concise language by Sec. 3254 Bates' Revised Statutes of Ohio, as follows:

> "The books and records of such corporation shall at all reasonable times be open to the inspection of every stockholder."

And in the case of *Cincinnati Volksblatt Co. v. Hoffmeister,* 62 Ohio St. 189, (1900), the Supreme Court deciding a case brought by a stockholder to compel the corporation to allow him to inspect its books and records, declared the law of Ohio to be as follows:

> "Injunction is the proper form of remedy to enforce the right of a stockholder in a private corporation, given by section 3254, Revised Statutes, to inspect the books and records of the corporation.
>
> The right to inspect does not depend upon the motive or purpose of the stockholder in demanding such inspection, and a petition which shows that the plaintiff is a stockholder; that he has requested the defendant to allow him to inspect the books and records of the corporation, and fix a reasonable time for the same, which request has been refused, states a cause of action.
>
> An incident to such right is the right to have such inspection by a proper agent, and to take copies from such books and records."

After the issues were made up in the Common Pleas Court in the Westfall case, the court referred the case to a Master Commissioner to take the testimony of witness, and in the course of the hearing the Master issued a subpœna duces tecum to W. N. Cott, secretary of the Hocking Valley Railway Company, to appear before him and bring with him the books and records of the railway company. After its service upon him, Mr. Cott left the state and went to New York City, remaining away for a period of over four weeks.

Upon his return to Columbus, he was cited for contempt of court for his refusal to appear before the Master and produce the books and records of the railway company. Immediately upon his arrest, a habeas corpus proceeding to secure his release was commenced in the courts of Franklin County, which is now pending.

It has come to the attention of the Attorney General that the books and records of the railway company, which Mr. Cott refused to produce, have been and now are kept in New York City, instead of in the office of the company at Columbus, Ohio, where they should be kept, and that the custodian of these books and records in New York City refuses to send them to Ohio or to permit any officer of the railway company to do so.

(f) Fred H. Schoedinger v. The Hocking Valley Railway Company.

On February 8th, 1910, Fred H. Schoedinger, a stockholder in The Hocking Valley Railway Company, commenced an action in the Court of Common Pleas of Franklin County, Ohio, against the railway company to enjoin it from refusing to permit him to inspect the books and records of said company.

The petition in this case, omitting the formal parts, is as follows:

"The plaintiff is and at the times hereinafter mentioned was the owner and holder of thirty (30) shares of the preferred capital stock of said The Hocking Valley Railway Company of the face value of One Hundred Dollars ($100) each.

On or about the 13th day of November, 1909, the plaintiff demanded of the defendant that it permit him to inspect its books and records and to fix a reasonable time for said inspection, and defendant has refused and still refuses to permit or allow the plaintiff to inspect its said books or records.

Plaintiff has no adequate remedy at law.

Wherefore, plaintiff prays that said defendant, The Hocking Valley Railway Company, be enjoined from refusing to permit him to inspect its said books and records and for all other relief to which he may in law or in equity be entitled."

This action is now pending in said Court of Common Pleas, and the defendant railway company still refuses to permit the inspection of its books and records by the plaintiff.

(g) New York Coal Company v. The Hocking Valley Railway Company.

In the year, 1909, the New York Coal Company commenced an action in the Circuit Court of the United States for the Southern District of Ohio to recover $250,000 damages from the Hocking Valley Railway company, on account of the refusal of the railway company to furnish it track and transportation facilities in 1903 and 1904. The facts and circumstances upon which this action is based are referred to at length in a former part of this report.

(h) New York Coal Company v. The Hocking Valley Railway Company.

In January, 1910, New York Coal Company filed a complaint with the Railroad Commission of Ohio alleging that The Hocking Valley Railway Company was charging unreasonable rates in coal shipments from the Hocking coal field, and that it was discriminating in favor of its subsidiary companies in the collection of freight charges.

(i) Investigation by Interstate Commerce Commission.

During the early part of the year 1909, the Interstate Commerce Commission, pursuant to Resolution of Congress of March 7, 1906, calling upon the Commission to investigate into the subject of railroad discriminations and monopolies in coal and oil, held a session at Columbus, Ohio, for the purpose of investigating The Hocking Valley Railway Company.

A printed copy of the report of this investigation is submitted herewith.

61ST CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 39.

RAILROAD DISCRIMINATIONS AND MONOPOLIES IN COAL AND OIL.

LETTER FROM THE CHAIRMAN OF THE INTERSTATE COMMERCE COMMISSION, TRANSMITTING, IN RESPONSE TO THE JOINT RESOLUTION APPROVED MARCH 7, 1906, REPORT OF AN INVESTIGATION AS TO RAILROADS OPERATING IN THE STATE OF OHIO, AND INCIDENTALLY IN THE STATE OF WEST VIRGINIA AS TO ONE RAILROAD AFFILIATED WITH THE OHIO RAILROADS.

MAY 10, 1909.—Referred to the Committee on Interstate Commerce and ordered to be printed.

INTERSTATE COMMERCE COMMISSION,
Washington, May 10, 1909.

To the Senate and House of Representatives:

In pursuance of the joint resolution of Congress, approved March 7, 1906, the Commission has submitted its reports of the investigations heretofore conducted by it and now submits the following report of an investigation as to railroads operating in the State of Ohio, and incidentally in the State of West Virginia as to one railroad affiliated with the Ohio railroads.

MARTIN A. KNAPP, *Chairman.*

REPORT OF THE INVESTIGATION BY THE INTERSTATE COMMERCE COMMISSION INTO THE SUBJECT OF RAILROAD DISCRIMINATIONS AND MONOPOLIES IN COAL AND OIL.

THE HOCKING VALLEY RAILWAY COMPANY.

This company was incorporated under the laws of Ohio February 25, 1899, and on the 1st day of March, 1899, received possession of the properties of the Columbus, Hocking Valley & Toledo Railway Company, which company had for two or three years been in the hands of a receiver.

The president of the Columbus, Hocking Valley & Toledo Railway Company was appointed receiver for that company, and upon its reorganization as the Hocking Valley Railway Company became the president of the latter company.

Messrs. J. P. Morgan & Co. were the reorganization managers, and in the plan and agreement of reorganization, dated January 4, 1899, they say:

> The principal business of the Columbus, Hocking Valley & Toledo Railway Company is the transportation of bituminous coal from mines on adjacent property. By reason of its low grades the railway in a general way is well adapted to this business, though very considerable changes are necessary both in the track and in the equipment (espe-

cially the motive power) in order to make the railway more fully adapted to economical operation.

All of this business is strictly and intensely competitive, and the field in Ohio is covered by the following lines of railway: Columbus, Hocking Valley & Toledo Railway Company; Toledo & Ohio Central Railroad Company; Wheeling & Lake Erie Railroad Company; Columbus, Sandusky & Hocking Railroad Company; Toledo & Walhonding Valley Railroad Company; Baltimore & Ohio Railroad Company; Cleveland, Lorain & Wheeling Railway Company.

It is not too much to say that the entire business which now is divided among seven lines could be transacted easily, and with much greater economy, by two or three lines. * * *

It is proper also to observe that of the seven existing lines in Ohio, three, including the Columbus, Hocking Valley & Toledo, operate in absolutely one field or district and the other four lines in a field to the east thereof. Much economy of operation and better public service could be secured if the three lines in the Hocking district were united in some form so that their combined traffic could, so far as possible, be centered on the Hocking Valley Railroad, which by reason of its low grades, when put in proper condition, could move the traffic much more economically than either of the others and consequently with a profit to itself as well as to the lines from which it would be diverted. Any plan of reorganization of the Hocking Valley, therefore, should be sufficiently flexible to admit of such acquisition.

The authorized capital stock of the reorganized company was $26,000,000 of which $15,000,000 was preferred and $11,000,000 common stock, and there was an authorized bond issue of $20,000,000. Of the stock $16,000,000 and of the bonds $7,200,000 was paid to the purchasers at the receiver's sale, which was made subject to certain prior incumbrances and liens.

By article 1 of the regulations of stockholders of the reorganized company 50,000 shares of preferred stock and 50,000 shares of common stock, amounting in the aggregate to the par value of $10,000,000, were reserved, to be issued as deemed advisable by the board of directors, with the approval of the reorganization managers, for the purpose of acquiring interests in the Toledo & Ohio Central Railway Company and the Columbus, Sandusky & Hocking Railroad Company, or other company or companies successor in interest to either of said latter companies, all as provided in said plan of reorganization.

At the time of the reorganization of the Hocking Valley Railway there were four railroads transporting coal from the Hocking district in Ohio, to wit, the Hocking Valley Railway; the Toledo & Ohio Central Railway; the Columbus, Sandusky & Hocking Railroad; and the Baltimore & Ohio Railroad. The latter company entered this district by a branch from Newark and was but a small factor. The Columbus, Sandusky & Hocking operated from Zanesville to Columbus, with branches into the coal district, and with a line from Columbus to Sandusky. This also was a comparatively small factor in the transportation from the district.

The Hocking Valley operates from Middleport and Gallipolis on the Ohio River through the Hocking coal district to Columbus, and thence to Toledo, with one branch to Nelsonville and Athens and another to the Jackson County coal field, and with several branches into the Hocking coal field.

The Toledo & Ohio Central operates a line from Corning in Perry County through New Lexington, Bucyrus and Fostoria to Toledo, with a branch from

Thurston to Columbus, and thence through Marysville, Kenton, and Findlay to Toledo. This company owned the controlling interest in the Kanawha & Michigan Railway Company, incorporated under the laws of Ohio, the line of which passes through the Kanawha coal district in West Virginia from Gauley Bridge in said State through Charleston, crossing the Ohio River at Point Pleasant, where it connects with the line of the Hocking Valley, and thence runs north to Corning in Perry County, where it connects with the lines of the Toledo and Ohio Central.

The larger portion of the coal transported by the Kanawha & Michigan is delivered by it to the Hocking Valley and the Toledo & Ohio Central.

A considerable part of the coal transported from the Kanawha and Hocking fields is sold in competition — in the lake and northwestern trade — with the coal from western Pennsylvania, eastern Ohio, and West Virginia fields, from which coal is transported by the Pennsylvania lines, the New York Central lines, the Baltimore & Ohio, the Chesapeake & Ohio, the Norfolk & Western, and the Wheeling & Lake Erie.

THE TOLEDO & OHIO CENTRAL RAILWAY COMPANY.

This company is incorporated under the laws of Ohio, with lines of railroad as indicated above, and as stated, operates two lines from the Hocking coal district to Toledo.

The president of the Hocking Valley Railway has been vice-president or president of the Toledo & Ohio Central since 1899, and both roads have had the same general superintendent since 1901. The two roads have had several directors in common since 1899.

It does not appear that the Hocking Valley Railway has acquired any stock in the Toledo & Ohio Central Railway (which as a parallel and competing line it would not have the power to do under the statutes of Ohio), but as appears from their action in the purchase of coal interests, guaranteeing of coal company bonds, policy in making mine track connections, and identity of officers and directors there has been complete harmony between the two roads.

THE KANAWHA & MICHIGAN RAILWAY COMPANY.

This railway company is incorporated under the laws of West Virginia and taps the Kanawha coal field, transporting coal therefrom largely through its arrangements with the Hocking Valley and the Toledo & Ohio Central railways.

The president of the Hocking Valley Railway has been president of the Kanawha & Michigan Railway since 1899; the general superintendent of the Hocking Valley and the Toledo & Ohio Central railways has been general superintendent of the Kanawha & Michigan Railway since 1901; and the three roads have had several directors in common.

THE ZANESVILLE & WESTERN RAILWAY COMPANY.

The Zanesville & Western Railway Company is the successor in interest to a portion of the property formerly operated by the Columbus, Sandusky & Hocking Railroad Company, and after the sale of the property of the latter company by its receiver that portion of the property running from Zanesville to Columbus, with branches into the Hocking coal district, was organized under the name of the Zanesville & Western Railway Company. On or about October 17, 1902, the Hocking Valley Railway became the owner of $2,500,000 of the capital stock and $2,000,000 of the bonds of the Zanesville & Western Railway Company, for which it issued $1,000,000 of its preferred stock and $578,400 of its common stock, from the stock reserved as provided in article 1 of the regulations of stockholders.

On or about June 4, 1903, the Toledo & Ohio Central Railway, being then the owner of 45,100 shares of the capital stock of the Kanawha & Michigan Railway and thereby controlling that company, exchanged its Kanawha & Michigan Railway stock for all of the stock and bonds of the Zanesville & Western Railway, owned by the Hocking Valley Railway, thereby giving the control of the Kanawha & Michigan Railway to the Hocking Valley Railway and the ownership of the Zanesville & Western Railway to the Toledo & Ohio Central Railway.

THE BUCKEYE COAL & RAILWAY COMPANY.

Prior to the reorganization of the Hocking Valley Railway the Columbus, Hocking Valley & Toledo Railway Company owned all of the stock of the Hocking Coal & Railroad Company; and the purchasers at the receiver's sale after the reorganization and as part thereof transferred to the Hocking Valley Railway 2,495 shares being all except 5 shares of the issued capital — of the stock of the Buckeye Coal & Railway Company, which was organized to take over and hold the coal properties formerly held by the Hocking Coal & Railroad Company.

This company did not operate as a coal company, but its properties were leased to other operating companies until about July 1, 1905, when all of its properties were leased to the Sunday Creek Company.

The officers of this company have been and are officers of the Hocking Valley Railway.

THE OHIO LAND & RAILWAY COMPANY.

Prior to the reorganization of the Hocking Valley Railway the Columbus, Hocking Valley & Toledo Railway Company owned all of the stock of the Ohio Land & Railway Company; and the purchasers at the receiver's sale after the reorganization transferred to the Hocking Valley Railway 1,999 shares of the total of 2,000 shares of the stock of the Ohio Land & Railway Company.

This company did not operate as a coal company, but its properties were leased to other operating companies until about July 1, 1905, when all of its properties were leased to the Sunday Creek Company.

The officers of this company have been and are officers of the Hocking Valley Railway.

This company had outstanding at the time of the reorganization of the Hocking Valley Railway $1,375,000 in bonds guaranteed by the Columbus, Hocking Valley & Toledo Railway, which were all conveyed to and are owned by the Hocking Valley Railway.

CENTRAL STATES CONSTRUCTION COMPANY.

Because of doubt as to whether the stock of the Ohio Land & Railway Company was fully paid, this company was incorporated as a medium for carrying out the reorganization plans and for transferring the stock of the Ohio Land & Railway Company to the Hocking Valley Railway.

THE SUNDAY CREEK COAL COMPANY.

Prior to the organization of the Hocking Valley Railway the Sunday Creek Coal Company was a large shipper of coal from the Hocking district over the Toledo & Ohio Central and did not have any mines on the lines of the Hocking Valley.

The reorganization managers of the Hocking Valley Railway from March 24, 1899, to April 1, 1899, purchased for the account of the Hocking Valley Railway 7,643 shares of the preferred stock, and 11,796 shares of the common stock

of the Sunday Creek Coal Company, at a cost of $342,860, and during the years 1900 to 1906, both inclusive, the Hocking Valley Railway purchased 12,924 shares of this stock, at a cost of $362,760.33.

From 1899 on the officers of this company were made up from the officers of the Hocking Valley Railway.

On or about July 1, 1905, the Hocking Valley and the Toledo & Ohio Central railways having acquired substantially all of the outstanding stock of this company (the Hocking Valley owning 32,375 shares and the Toledo & Ohio Central owning 5,137 shares), the two railroads conveyed all of this stock to the Sunday Creek Company, receiving in exchange therefor all of the stock of the Sunday Creek Company. The Hocking Valley received 32,375 shares and the Toledo & Ohio Central 5,137 shares.

THE RAYBOULD COAL COMPANY.

On May 8, 1899, the reorganization managers on behalf of the Hocking Valley Railway purchased 358 shares of the stock of this company at a cost of $25,000, and the property of this company was afterwards merged into one of the coal companies controlled by the Hocking Valley Railway.

BOSTON COAL DOCK & WHARF CO.

From April 10 to April 24, 1899, the reorganization managers acquired on behalf of the Hocking Valley Railway 2,000 shares of the capital stock of this company, which owns docks on the upper lakes, at a cost of $200,000. This stock is owned and held by the Hocking Valley Railway.

KANAWHA & HOCKING COAL & COKE COMPANY.

On or about July 1, 1901, a syndicate was formed, with Messrs. J. P. Morgan & Co. as syndicate managers, for the purpose of underwriting the bonds of the Kanawha & Hocking Coal & Coke Company, and that company was organized for the purpose of acquiring a large number of coal properties in the Kanawha district on the Kanawha & Michigan Railway. The bonds so issued aggregated $2,750,000 in amount, most of the proceeds of which were used in paying for the properties and the expense of organization, the balance being paid to the company. Thereupon $3,250,000 of stock was issued as a bonus to the syndicate.

Officers and directors of the Hocking Valley and Toledo & Ohio Central railways, or the firms of which such individuals were partners, participated in this transaction and were entitled to receive or did receive approximately $1,800,000 of this bonus stock.

To secure these bonds and pay for the properties so acquired the Kanawha & Hocking Coal & Coke Company issued its first mortgage securing bonds to the aggregate amount of $3,500,000, upon which the Hocking Valley and the Toledo & Ohio Central railways became guarantors, and of which $2,750,000 were issued as aforesaid.

In connection with such guarantee, on July 11, 1901, the Kanawha & Hocking Coal & Coke Company, the Kanawha & Michigan, the Toledo & Ohio Central, and the Hocking Valley railways entered into an agreement by the terms of which it was recited among other things that in order to furnish the coal company with funds necessary to pay in part for said properties and to furnish it with needed working capital and to enable it to improve and develop its mines and to increase the capacity thereof and to acquire additional equipment and other prop-

erties the Toledo & Ohio Central Railway agreed to guarantee and purchase said bonds, and the Hocking Valley Railway agreed to purchase the same from the Toledo & Ohio Central. Attached to this agreement and made part thereof is the agreement between the Kanawha & Hocking Coal & Coke Company, the Kanawha & Michigan Railway, and the Toledo & Ohio Central Railway whereby the coal company agreed to deliver the coal from its mines for transportation to the Kanawha & Michigan and Toledo & Ohio Central railways. And the Kanawha & Michigan Railway agreed to purchase all of its fuel coal from the coal company at a price which should at all times equal at least 20 cents per ton above the cost of production. It is stated that the inducement to the railway companies for the making of these agreements and of such guaranties was the transportation of the coal mined by the coal company.

It is further provided that $3,499,500 of the capital stock of the coal company should be held by Messrs. J. P. Morgan & Co. as trustees to secure the performance of the agreements of the coal company thereunder, and until such time as the coal company shall have fully paid and satisfied the principal and interest of such bonds. The certificates of stock were issued to the amount of $3,250,000 and beneficial certificates were issued to the parties in interest; that is, the syndicate subscribers.

It appears that the Kanawha & Michigan Railway is the only railroad transporting coal from the various mines thus acquired by the Kanawha & Hocking Coal & Coke Company.

The Kanawha & Hocking Coal & Coke Company acquired by purchase and lease 32,200 acres of land in the Kanawha district.

It appears that the syndicate managers received from the proceeds of the $2,750,000 bonds, etc., about $2,765,000, which was disbursed approximately as follows:

Cost of properties purchased	$2,526,000
Kanawha & Hocking Coal & Coke Company, working capital	182,500
Counsel fees (organization)	45,000
Miscellaneous (organization)	11,500
Total disbursed	$2,765,000

It appears that the Hocking Valley and Toledo & Ohio Central railways guaranteed altogether about $3,250,000 of these bonds, of which the Hocking Valley Railway holds $250,000.

It further appears that the amount of outstanding bonds March 27, 1909, guaranteed by the Toledo & Ohio Central and Hocking Valley railways, less bonds in the sinking fund, is $3,091,000

CONTINENTAL COAL COMPANY.

On or about February 1, 1902, a syndicate was formed, with Messrs. J. P. Morgan & Co. as syndicate managers, for the purpose of underwriting the bonds of the Continental Coal Company, and that company was organized for the purpose of acquiring a large number of coal properties in the Hocking district on the lines of the Hocking Valley and Toledo & Ohio Central railways. The bonds so issued aggregated $2,750,000 in amount, the proceeds of which were used in paying for the properties and the expense of organization. Thereupon $3,250,000 of stock was issued as a bonus to the syndicate.

Officers and directors of the Hocking Valley and Toledo & Ohio Central railways, or the firms of which such individuals were partners, participated in

this transaction and were entitled to receive or did receive approximately $1,000,000 of this bonus stock.

To secure these bonds and pay for the properties so acquired the Continental Coal Company issued its first mortgage securing bonds to the aggregate amount of $3,500,000, upon which the Hocking Valley and Toledo & Ohio Central railways became guarantors, and of which $2,750,000 were issued as aforesaid.

In connection with such guarantee on February 7, 1902, the Continental Coal Company, the Toledo & Ohio Central Railway, and the Hocking Valley Railway entered into an agreement by the terms of which it was recited among other things that in order to furnish the coal company with funds necessary to pay in part for said properties, and to furnish it with needed working capital, and to enable it to improve and develop its mines and to increase the capacity thereof, and to acquire additional equipment and other properties, the Toledo & Ohio Central Railway agreed to guarantee and purchase said bonds, and the Hocking Valley Railway agreed to purchase the same from the Toledo & Ohio Central. Attached to this agreement and made part thereof is the agreement between the Continental Coal Company and the Toledo & Ohio Central Railway whereby the coal company agreed to deliver the coal from its mines for transportation to the Toledo & Ohio Central and Hocking Valley railways. It is stated that the inducement to the railway companies for the making of these agreements and of such guarantees was the transportation of the coal mined by the coal company.

It is further provided that $3,499,500 of the capital stock of the coal company should be held by Messrs. J. P. Morgan & Co., as trustees to secure the performance of the agreements of the coal company thereunder, and until such time as the coal company shall have fully paid and satisfied the principal and interest of such bonds.

Certificates of stock were issued to the amount of $3,250,000 and held by the trustees, and beneficial certificates were issued to the parties in interest, that is, the syndicate subscribers.

It appears that the Toledo & Ohio Central and the Hocking Valley are the only railroads transporting coal from the mines thus acquired by the Continental Coal Company.

The Continental Coal Company acquired by purchase and lease 28,400 acres of land in the Hocking district.

It appears that the syndicate managers received from the proceeds of the $2,750,000 bonds about $2,756,000, which was disbursed approximately as follows:

Paid for properties purchased	$2,708,000
Counsel fees (organization)	40,000
Miscellaneous (organization)	8,000
Total disbursed	$2,756,000

It appears that the Hocking Valley and Toledo & Ohio Central railways guaranteed altogether about $3,000,000 of these bonds, of which the Hocking Valley Railway holds $273,000.

It further appears that the amount of outstanding bonds March 27, 1909, guaranteed by the Toledo & Ohio Central and Hocking Valley railways, less bonds in the sinking fund, is $2,413,000.

It appears that by lease made June 18, 1902, C. L. Poston and George H. Smith leased to the Buckeye Coal & Railway Company 9,600 acres of coal lands, with a provision that the minimum amount to be mined therefrom, beginning with 100,000 tons, should increase until the sixth year, when the same should aggregate 960,000 tons. It appears that on November 9, 1903, this lease and sup-

plemental agreement were assigned to the Continental Coal Company, which company in turn assumed and agreed to perform the provisions of said lease and to pay all rentals and moneys to be paid by the lessee thereunder.

THE SUNDAY CREEK COMPANY.

This company was incorporated under the laws of New Jersey on June 30, 1905, and of the $4,000,000 of stock of this company $3,485,100 was owned by the Hocking Valley Railway and $513,700 by the Toledo & Ohio Central Railway — except as such ownership may be affected by the conveyance made by such railways, respectively, to the Central Trust Company, trustee, and John H. Doyle, trustee, both dated April 30, 1908, whereby it is provided that if the commodities clause of the Hepburn Act shall be declared unconstitutional then said stock shall be returned to said railway companies, respectively, and if said commodities clause shall be declared constitutional then said stocks shall be held for the proportionate benefit of the persons holding stock of record in said railway companies, respectively, and may be distributed in kind or may be sold and the proceeds thereof so distributed to said stockholders.

The Sunday Creek Company was organized for the purpose of acquiring by purchase or lease the stocks or properties of the Sunday Creek Coal Company, the Buckeye Coal & Railway Company, the Ohio Land & Railway Company, the Kanawha & Hocking Coal & Coke Company, and the Continental Coal Company, and was formed after considerable negotiation and consideration of several plans for such merger.

The Sunday Creek Company, by resolution adopted June 30, 1905, acquired substantially all of the stock of the Sunday Creek Coal Company and in exchange issued its stock to the Hocking Valley and Toledo & Ohio Central railways share for share. The Sunday Creek Company acquired all of the properties of the Continental Coal Company and all of the properties of the Kanawha & Hocking Coal & Coke Company by leases dated July 1, 1905. It also acquired all of the properties of the Buckeye Coal & Railway Company and the Ohio Land & Railway Company by similar leases.

As a part of this scheme for the acquisition by the Sunday Creek Company of the properties of the several coal companies, the Sunday Creek Company acquired the $3,250,000 of stock in the Kanawha & Hocking Coal & Coke Company and $3,250,000 of stock of the Continental Coal Company, which had been deposited to indemnify the Hocking Valley and Toledo & Ohio Central Railways on the bonds of the Kanawha & Hocking Coal & Coke Company and the Continental Coal Company, and agreed to pay therefor in the Sunday Creek Company's first collateral trust bonds, 60 per cent of the par value of such stocks. Thereupon $3,885,000 of said collateral trust bonds were issued by said company in payment for said stocks in the Kanawha & Hocking Coal & Coke Company and the Continental Coal Company, and were received by the members of said syndicate or their successors in interest in exchange for the beneficial certificates which, as hereinbefore stated, were issued by J. P. Morgan & Co. as trustees.

It further appears that about April 23, 1906, all of the property of the Sunday Creek Coal Company was conveyed to the Sunday Creek Company, and the Sunday Creek Coal Company stock was retired.

The several coal properties owned and operated by the Sunday Creek Company represent acreage as follows:

	Acres.
Coal lands owned in Ohio	16,300
Buckeye C. & R. Company, owned, 21,900 acres; leased, 2,500 acres	24,400

Continental Coal Company, owned, 800 acres; leased, 27,600 acres	28,400
Sunday Creek Company	16,300
West Virginia:	
Kanawha & Hocking Coal & Coke Company, owned, 21,300 acres; leased, 10,900 acres	32,200
Total	117,600

It will be seen that for the bonus stock received by the members of the Kanawha & Hocking Coal & Coke Company and the Continental Coal Company syndicates they received $3,885,000 of 5 per cent collateral trust bonds of the Sunday Creek Company. This was in exchange for the stock which went to them as a bonus and which had been by them deposited with trustees to secure the lease and mortgage obligations of the two coal companies and to indemnify and protect the Hocking Valley and Toledo & Ohio Central railways on their guaranties of the bonds of the two coal companies. Or in other words, that the members of the syndicates, or the subsequent parties in interest, received $3,885,000 in bonds issued by a company whose entire capital stock was owned by the Hocking Valley and Toledo & Ohio Central railways, and to which was conveyed the property of the Sunday Creek Coal Company.

In this connection attention is directed to a circular issued by a firm of bond brokers in New York offering for sale the collateral trust bonds of the Sunday Creek Company (including a copy of a letter of the president of the Sunday Creek Company with reference to the value of the properties of the Sunday Creek Company), as follows:

Strength of Security.

In accordance with the letter of the president of the company hereto attached, the equity alone of the Kanawha & Hocking Coal Company and the Continental Coal Company (all of whose stock is pledged under this mortgage) is worth $15,000,000 over and above all the bonded debt, while the total value of all the assets directly owned by the Sunday Creek Company and its controlled companies is in excess of $36,000,000.

The capital stock of this company therefore represents a very large cash equity. All of the stock is supposed to be owned by, or in the interest of, the Hocking Valley Railroad, which in turn is controlled by the Pennsylvania and New York Central systems, the Erie, and the Chesapeake & Ohio Railroad companies through ownership of majority of its capital stock.

Of the $5,626,000 underlying bonds all but $318,000 are guaranteed, principal and interest, by the Hocking Valley and Toledo & Ohio Central railroad companies.

Permanency of Market Output.

Through the affiliations and connections of these various railroads the Sunday Creek Company is always sure of a steady and satisfactory market for its large output.

The attached letter of the president, to which we call your attention, gives a detailed statement of the assets of the company and their value.

HOCKING VALLEY RAILWAY COMPANY INVESTMENTS IN COAL PROPERTIES AND ADVANCEMENTS TO COAL COMPANIES.

It appears that after the reorganization of the Hocking Valley Railway it received the following securities from the reorganization managers:

Ohio Land & Railway Company bonds	$1,375,000
Ohio Land & Railway Company stock	199,099
Buckeye Coal & Railway Company stock	249,500
Sunday Creek Coal Company stock (costing $342,860)	1,943,900
Raybould Coal Company stock (costing $25,000)	35,800
Boston Coal Dock & Wharf Company stock	200,000
Total bonds and stocks delivered (par value)	$4,003,299

It appears that the Hocking Valley Railway expended, from 1899 to 1906 inclusive, in the purchase of Sunday Creek Coal Company stock, $362,760.33.

Amounts paid by Hocking Valley Railway for coal company stocks and amounts owing to it from subsidiary coal companies:

Paid for Sunday Creek Coal Company stock	$730,620 33
Advanced by Hocking Valley to its subsidiary coal companies and outstanding December 31, 1908	840,000 00
Bills receivable account freight, outstanding December 31, 1908, held by Hocking Valley against subsidiary coal companies	1,250,000 00
Freight unpaid December 31, 1908, owing to Hocking Valley by subsidiary coal companies	29,784 71
Total cash invested, and advancements, and amounts owing	$2,850,405 04
Bonds owned by Hocking Valley Railway:	
Kanawha & Hocking Coal & Coke Company (par)	$250,000 00
Continental Coal Company (par)	273,000 00
	$523,000 00

Coal company bonds owned and coal company stocks purchased by the Hocking Valley. The total of expenditures and bonds and stocks in coal companies owned may be recapitulated as follows:

Ohio Land & Railway Company bonds	$1,375,000 00
Kanawha & Hocking Coal & Coke Company bonds	254,219 02
Continental Coal Company bonds	275,595 00
Paid by reorganization managers for Sunday Creek Coal Company and Raybould Coal Company stock	367,860 00
Paid for Sunday Creek Coal Company stock by Hocking Valley	362,760 33
Advancements	840,000 00
Bills receivable account freight	1,250,000 00
Unpaid freight	29,784 71
Total actual investments in and advancement to coal companies, and amount of coal companies' bonds held	$4,755,219 06

(This includes cost of Sunday Creek Coal Company and Raybould Coal Company stocks, but does not include Sunday Creek Company stock held as follows: Hocking Valley, $3,237,500; Toledo & Ohio Central, $513,700.)

PROFITS AND LOSSES OF COAL COMPANIES.

The Buckeye Coal & Railway Company and the Ohio Land & Railway Company were not operating companies. The properties were leased, and prior to the organization of the Sunday Creek Company considerable amounts were received each year which appeared as profits.

Prior to the organization of the Sunday Creek Coal Company in June, 1905, the Kanawha & Hocking Coal & Coke Company, the Continental Coal Company, and the Sunday Creek Coal Company during some years showed profits resulting from operations, while in other years there were losses.

Since its organization and until the current fiscal year not ended, the operations of the Sunday Creek Company show losses.

TOLEDO & OHIO CENTRAL RAILWAY COMPANY INTEREST IN COAL COMPANIES.

The Toledo & Ohio Central Railway owns all of the stock of the Imperial Coal Company, amounting to $300,000, and of the National Coal Company, amounting to $160,000. Neither of these companies have been operating companies, but have leased their lands.

The Toledo & Ohio Central Railway held stock in the Sunday Creek Coal Company and now holds (conveyed in trust as heretofore stated) $513,700 of the stock of the Sunday Creek Company.

The Toledo & Ohio Central Railway is joint guarantor with the Hocking Valley Railway on $3,091,000 of the bonds of the Kanawha & Hocking Coal & Coke Company and $2,413,000 of the bonds of the Continental Coal Company.

THE WHEELING & LAKE ERIE RAILROAD COMPANY.

The Wheeling & Lake Erie Railroad Company operates a line of railroad in Eastern Ohio, running from Wheeling to Cleveland, on Lake Erie, and passing through several coal districts. In 1904 the Wheeling & Lake Erie Railroad Company entered into an agreement with certain coal companies whereby those coal companies purchased 1,500 coal cars under an agreement that the railroad should thereafter pay for and acquire these cars, and that in the meanwhile the same should be restricted in use to the mines owned by the coal companies.

On a complaint of the railroad commission of Ohio against the Wheeling & Lake Erie Railroad Company this Commission found that these so-called private cars, as well as foreign railway fuel cars, should be charged against the percentages of the mines receiving them (12 I. C. C. Rep., 398), and in compliance therewith such cars are now counted against the mines at which they are loaded. As a justification for the arrangement made by the Wheeling & Lake Erie Railroad with these coal companies, the railroad company claimed that it had neither the capital nor the credit with which to purchase cars sufficient to take care of its coal traffic.

Under an agreement dated July 1, 1901, the Wheeling & Lake Erie Railroad Company obligated itself to pay certain prior lien obligations of the Pittsburg, Wheeling & Lake Erie Coal Company and became the owner of $1,250,000 of stock of the coal company.

By certain supplemental agreements the Wheeling & Lake Erie Railroad

made further agreements in its relations with the coal company, and in pursuance thereof the Wheeling & Lake Erie Railroad has advanced on account of the Pittsburg, Wheeling & Lake Erie Coal Company, from July 1, 1901, to July 1, 1908, $104,590.

While this amount is not relatively large, yet to the extent of such advancements the Wheeling & Lake Erie Railroad reduced its ability to provide equipment for the transportation of coal from the mines on its lines.

The Pittsburg, Wheeling & Lake Erie Coal Company has not been operated by the Wheeling & Lake Erie Railroad Company, but its properties have been leased to and are operated by other companies. The Wheeling & Lake Erie Railroad is said not to own any other interest in coal properties.

Copies of all siding contracts between the Wheeling & Lake Erie Railroad and coal-mining companies served by it are submitted. These contracts vary greatly as to terms, yet it does not appear that any complaint has grown out of the terms upon which connections have been made and sidings put in, nor that discrimination exists therein.

THE "TRUNK LINE SYNDICATE."

The Pittsburg coal district, the West Virginia coal districts, and the Ohio coal districts enter largely into competition with each other in the territory to the northwest, and particularly as to coal transported by vessel to the upper Lake ports. The lines transporting this coal are those of the Pennsylvania, the Baltimore & Ohio, and the New York Central systems, as well as the Hocking Valley, the Toledo & Ohio Central, the Zanesville & Western, the Kanawha & Michigan, the Wheeling & Lake Erie, the Chesapeake & Ohio, and the Norfolk & Western roads.

The Baltimore & Ohio, the Lake Shore & Michigan Southern (New York Central), the Pittsburg, Cincinnati, Chicago & St. Louis (Pennsylvania), the Chesapeake & Ohio, and the Erie, by an agreement dated July 29, 1903, jointly purchased a large amount of the common stock of the Hocking Valley Railway, resulting in a practical control of the Hocking Valley Railway by the so-called "Trunk Line Syndicate." The Norfolk & Western and the Wheeling & Lake Erie were not interested in this purchase, but with the exception of these two railroads, with the identity of officers and interrelations between the Hocking Valley, the Toledo & Ohio Central, the Zanesville & Western, and the Kanawha & Michigan — with the trunk-line control of the Hocking Valley — an identity of interest was created which in effect results in practical control of the transportation of coal from the districts named by three interests; that is, the Pennsylvania, the Baltimore & Ohio, the New York Central, the Hocking Valley, the Chesapeake & Ohio, and the Erie as one interest; the Wheeling & Lake Erie as the second; and the Norfolk & Western as the third.

From 1903 to 1907 the Trunk Line Syndicate maintained a so-called "advisory committee," composed of the presidents and other officials of the roads interested in the Hocking Valley Railway, which held numerous meetings, and it appears in the record that this advisory committee considered and passed upon many questions of policy to be pursued by the Hocking Valley Railway, including such matters as track connections, operation of coal properties, and reorganization of coal companies, and that in general it exercised a supervision over the affairs of the Hocking Valley Railway.

In this record and in numerous letters between officials of the Hocking Valley Railway and its allied coal companies and with the officials of the roads in the Trunk Line Syndicate various details of the management of the Hocking Valley Railway and the operation of its coal properties were considered, to-

gether with the submission and consideration of numerous tentative plans for the organization of the Sunday Creek Company and the merging into that company of the various coal companies, resulting in the adoption of the plan which was finally consummated.

The profit and loss sheets of the various coal companies allied with the Hocking Valley Railway were submitted to the members of the Tunk Line Syndicate, and the books of the coal Companies were from time to time audited by a committee of auditors representing the syndicate.

The officials of the syndicate roads appear to have exercised a supervision over the affairs of the Hocking Valley, the Kanawha & Michigan, and the Zanesville & Western railways, and to some extent to have conferred with the officials of the Toledo & Ohio Central in matters of general policy, and particularly in the policy of the Hocking Valley and the Kanawha & Michigan in refusing to make track connections at mines, and in the operation and consolidation of the coal companies allied with the Hocking Valley. It would seem that the representatives of the Trunk Line Syndicate deemed these matters to be of the utmost importance to their interests in the Hocking Valley Railway, because of the consideration accorded to them, and the action of the advisory committee seems to have determined the course to be pursued by the Hocking Valley Railway officials.

LEGALITY OF OWNERSHIP OF COAL INTERESTS AND GUARANTEE OF BONDS BY THE RAILWAY COMPANIES.

The Hocking Valley Railway Company received from its predecessor company, the Columbus, Hocking Valley & Toledo Railway Company, stocks in coal companies, and after the reorganization the Hocking Valley Railway purchased additional interests in coal companies. Since the reorganization it has expended large amounts in such purchases and in advancements to coal companies. In addition, the Hocking Valley and Toledo & Ohio Central Railways have guaranteed more than six millions of the bonds of two coal companies, from which transactions the officers and directors of these companies have received large profits.

The right of the Columbus, Hocking Valley & Toledo Railway Company to hold its interests in coal companies was questioned in the action C. H. V. & T. Ry. Co. *v.* Burke et al. pending in the common pleas court of Franklin County, Ohio (19 W. L. B., 27), wherein on an application to dissolve a temporary injunction among other things it was held:

> A railway company organized under the laws of this State has no power to purchase the entire capital stock of a mining corporation, and its contract for such purchase is void.

The issues involved in that case were by the parties submitted to arbitrators, resulting in a decision in favor of the validity of the ownership by the railway company of stock in coal companies. This conclusion was arrived at because of the peculiar facts of the case, it appearing that all of the stockholders of the railway company had assented to the purchase of the coal stocks, and thereby estopped the railway company to question the validity of the transaction.

It would seem that the statutes of Ohio do not expressly or impliedly authorize a railway company to own coal properties or interests therein, nor to guarantee the bonds of coal companies.

The policy of the Ohio law is stated in Railway Co. *v.* Iron Company (46 O. S., 44) wherein it is said:

)

An incorporated company can not, unless authorized by statute, subscribe to the capital stock of another. A subscription so made is ultra vires and void.

In Bank *v.* Bank (36 O. S., 350), at page 354, Boynton, J., said:

> There would seem to be little doubt, either upon principle or authority, and independently of express statutory prohibition of the same, that one corporation can not become the owner of any portion of the capital stock of another, unless authority to become such is clearly conferred by statute.

The general policy of the State of Ohio, in its statutory law, by the decisions of its courts, and by the established procedure of the secretary of state in the filing of articles of incorporation, does not permit corporations to be formed for more than one purpose, unless express authority is given by statute therefor. (See State ex rel. *v.* Secretary of State, 55 O. S., 61, and Gas Light Co. *v.* Findlay, 1 O. C. D., 463.)

The above decisions were made prior to the enactment in 1902 of section 3256 of the Revised Statutes of Ohio, whereby Ohio corporations may purchase and hold shares of stock in "other kindred but not competing private corporations."

Railroads are organized under sections 3270 to 3436 of Title II, chapter 2, of the Revised Statutes of Ohio, relating exclusively to railroad companies, their organization and regulation.

Many other classes of corporations, such as ship canal companies, savings banks, building and loan associations, trust companies, gas companies, and street railway companies, are organized under specific sections of the statutes.

In chapter 1 of Title II, relating to the "powers of certain corporations," is found section 3863, authorizing a mining corporation to purchase stocks in any railroad or other transportation company "in order to procure proper facilities for transportation" from the mines of the company, and section 3866, where a mining company may "construct a railroad * * * as may be deemed necessary to carry out the objects of the incorporation from any mine, quarry, or manufactory to any other railroad or canal, slack water navigation, or other navigable water or place within or upon the borders of this State."

The supreme court of Ohio has held that under section 3866 a coal company can not exercise the power of eminent domain. (Coal Co. *v.* Wigdon, 19 O. S., 560.)

It is claimed on behalf of the railway companies that in view of the provision of section 3256 and of the right of a coal company under sections 3863 and 3866 to own stocks in railroad companies and to build railroads from mines that a railroad company is given the power to own stocks in coal companies.

When it is considered that railroad companies are organized under specific sections, and that section 3256 is found in the chapter relating solely to private corporations, and in view of the strict limitations on corporate purposes found in the Ohio laws and decisions, it is doubtful if by the enactment of section 3256 the powers of railroad companies to hold stocks in coal companies was enlarged.

In Humboldt Mining Co. *v.* Milling Co. (62 Fed., 356, 1894) the court held:

> A corporation organized under the laws of Ohio for the purpose of making ironwork for mining plants has not power to guarantee the performance of another's contract for the erection of a mining plant, and the accompanying warranties, on the ground that the guaranty will secure a sale of the ironwork used in the plant.

In the opinion, Taft, *J.*, said:

> Section 3266, Revised Statutes of Ohio, provides that "no corporation shall employ its stocks, means, assets, or other property, directly or indirectly, for any other purpose whatever than to accomplish the legitimate objects of its creation." There is no court in the country which has been stricter in enforcing the principle that corporations are prohibited from exercising any powers which are not expressly conferred upon them in their charters, or which are not fairly incidental to the express objects of their creation, than the supreme court of Ohio. * * * The general rule in this country and in England is that one corporation is impliedly prohibited from guaranteeing the contracts or debts of another. * * * The objection to the guaranty is that it risks the funds of the company in a different enterprise and business under the control of another and different person or corporation, contrary to what its stockholders, its creditors, and the State have the right from its charter to expect.

The doctrine of the United States Supreme Court on the power of a railroad corporation to guarantee the bonds of another corporation is stated in Railway Co. *v.* Trust Co. (174 U. S., 553, 567, 1899) as follows:

> A railroad corporation, unless authorized by its act of incorporation or by other statutes to do so, has no power to guarantee the bonds of another corporation; and such a guaranty, or any contract to give one, if not authorized by statute, is beyond the scope of the powers of corporations, and strictly ultra vires, unlawful and void, and incapable of being made good by ratification or estoppel.

In Railroad Co. *v.* Railroad Co. (118 U. S., 290, 1886) the power of a railroad company to guarantee the performance of a contract made by another company was denied in the absence of statutory authority, the cort citing Coleman *v.* Railway Co. (10 Beavan, 1) and Plank Road Co. *v.* Road Co. (7 Wis., 59).

In Railroad Co. *v.* Hotel Co. (2 L. R. A., N. S., 887; 62 Atl., 351, 1905) the court held that:

> A railroad company has, in the absence of charter authority, no power to guarantee the interest and dividends on stocks and bonds necessary for the construction of a summer hotel, although the operation of the hotel may increase its business, and the fact that the contract is in the form purporting to give the hotel company a commission on traffic contributed by it is immaterial.

If it is claimed that the railway company and its stockholders were benefited by the purchase of interests in coal properties and by the guaranteeing of the bonds of coal companies, through the assurance that the coal mined by these companies will be shipped over its lines, the answer should be sufficient that the coal could not be shipped except over the railroads serving these mines at the time of the transaction, but the courts have not recognized that this right is to be conceded because the results may be beneficial to the corporation.

It is held in Railway Company *v.* Iron Company (46 O. S., 44) that an ultra vires contract of a corporation would not be validated because the company conceived it would be benefited thereby. The ultra vires act complained of in this

case was a subscription to the capital stock of a railroad company by an iron company.

In Trust Co. *v.* Boynton (71 Fed., 797, 1896) it was held that:

> No authority in a corporation to lend credit to another is to be implied from the fact that it may be beneficial to the corporation to do so.

In Central Trust Co. *v.* Columbus, Hocking Valley & Toledo Ry. Co. (87 Fed., 815), in passing upon contested questions arising out of the receivership and reorganization of this property, while sustaining the mortgages given and the transaction before the court because of acquiescence and estoppel, speaking with reference to the right of one corporation to guarantee the contracts of another, Lurton, *J.*, said:

> That an unauthorized use of corporate property was of benefit and advantage to the business of such a corporation is no justification, and will not validate a transaction if it be not within the general scope of its granted powers.*a*

RESULTANT CONDITIONS.

The Hocking Valley Railway Company. — After the organization of the Kanawha & Hocking Coal & Coke Company and the Continental Coal Company it appears to have been the policy of the Hocking Valley and the Kanawha & Michigan railways to discourage all further development of coal mines tributary to their lines by refusal to make track connections and by imposing burdens upon the operators when the connections were conceded.

Until the organization of the Kanawha & Hocking and the Continental Coal companies there does not appear to have been any difficulty in obtaining mine track connections with Hocking Valley Railway. It does appear that several such connections were made in 1900. No action on this subject appears to have been taken by the directors of the Hocking Valley Railway until a resolution was passed October 9, 1902, wherein it was determined that it was inexpedient at that time to purchase any new or additional equipment; and that as the operators and shippers already established, and to whom the railway had committed itself by entering into contracts, employed the entire equipment of the company to the fullest extent, it was impossible for the company at that time to make any new commitments in regard to equipment, or to build any new sidings or tracks to properties or plants of new parties desiring to locate on the line of the road, the demands of already established operators, manufacturers, and shippers being in excess of the company's then facilities.

a Since the hearing in this investigation the Circuit Court of Franklin County, Ohio, in an action brought by the State on the relation of the Attorney-General against the Hocking Valley Ry., has held that the acts of the Hocking Valley Railway Company in its guaranty of coal company bonds and ownership of coal company stocks are *ultra vires;* that it has no power to own stock in the Kanawha & Michigan Railway, and that it should not exercise any control or management over the Toledo & Ohio Central, Zanesville & Western and the Kanawha & Michigan Railways. Under this opinion, announced April 24, 1909, it was ordered that the Hocking Valley Railway be ousted from its ownership of coal companies, stocks and the right to continue the guaranty of coal company bonds and from the right to own the Kanawha & Michigan Railway's stock and from exercising any control or management over the Toledo & Ohio Central, the Zanesville & Western and Kanawha & Michigan Railways.

It must have been about the date of this action of the directors of the Hocking Valley Railway Company that the Johnson Coal Mining Company purchased a coal property located upon the lines of the Hocking Valley Railway and dependent upon it for transportation facilities, and proceeded with development of same. It was unable to secure any track connections with the railway until after bringing action therefor in the courts. Some time after the railway's demurrer had been overruled negotiations were had between the coal company and the railway for an adjustment of the controversy, and the railway requested the coal company to organize a railway company, so that the connection would be made with the tracks of a railway company and not with those of a coal mining company. The railway company also demanded that the coal mining company purchase and put in use 100 coal cars.

These negotiations resulted in the organization by the coal company of the Athens & Northern Railway Company and in a contract between the Athens & Northern Railway and the Hocking Valley Railway. The coal company purchased 100 coal cars, which were afterwards sold to the railway.

Similar efforts on part of the New York Coal Company resulted in the organization of the Trimble & Hocking Valley Railway Company and the formation of a contract between that company and the Hocking Valley Railway Company. This coal company was not required to furnish any cars.

The evidence shows that in the period from 1902 to 1905 a large number of requests were made upon the Hocking Valley Railway Company by coal companies for track connections, which were not considered favorably by the railway company and in most of which the efforts of the coal companies failed.

The so-called railroads so organized by the coal companies are not in fact railroads. In State *v.* Railroad Co. (40 O. S., 504), a similar corporation was ousted from its franchise upon the ground, as stated in the opinion, that:

> It condemned right of way and constructed a track about 2½ miles in length, 3 feet 2 inches wide, with heavy grades and sharp curves, to coal mines owned and operated by the principal corporators and stockholders of the railway company, and suitable only for the transfer of the coal from these mines to Hazelton, where there are other railroads. No passenger cars were put upon the road, no depots or freight houses were constructed, and nothing done to secure or accommodate public traffic or travel. Judging from the things done by the corporation, its sole object was to furnish a means of transferring the products of the private mines, owned and operated by the principal incorporators and stockholders, to a place where they could be carried to market.

The West Virginia courts appear to determine the status of so-called branch or lateral railroads upon the facts in each particular case, and in Railroad Company *v.* Iron Works (31 W. Va., 710), the power to condemn was denied, saying:

> Where a railroad corporation sought to condemn land over which to build a switch, branch road, or lateral work to reach a private manufactory, a steel mill, for the purpose of transporting freight to and from said steel mill, over petitioner's road, held: The use to which the land was to be subjected was a private, and not a public, use.

On June 18, 1902, C. L. Poston and George H. Smith entered into a lease with the Buckeye Coal & Railway Company for some 9,600 acres of land, from

which the lessee was required to remove after the sixth year a minimum amount of 960,000 tons. This lease was assigned to the Continental Coal Company on November 9, 1903, and by virtue of the lease by that company to the Sunday Creek Company the mines on this property are operated by the Sunday Creek Company.

The assistant to the president of the Hocking Valley Railway could not name any other mines than the Johnson Coal Mining Company, New York Coal Company, and Sugar Creek mines at which connections had been made between 1900 and 1907, although it is stated that during this period there were 18 requests for connections, and the president of the railway is reported to have said that the number of requests considerably exceeded this.

In view of the resolution of the directors of the Hocking Valley Railway, adopted October 9, 1902, it is proper to consider the large investments in and advancements to coal companies by that company and the use of its credit for the Kanawha & Hocking Coal & Coke Company and the Continental Coal Company, which must necessarily have affected its ability to buy additional equipment for the operators who were already located upon its line of railroad, as well as those who might wish to open new mines.

These advancements, etc., aggregating $4,755,219.06, have been already stated in detail, but the amount is referred to in order to show the extent to which the railway detracted from its ability to furnish equipment and facilities to its operators.

The following statement, compiled from the annual reports of the Hocking Valley Railway from 1900 to 1908, shows the new equipment bought, as well as the equipment owned during each of these years, and the quantity of coal hauled originating on its line.

Hocking Valley Railway Company—annual reports.

June 30—	New equipment bought.			Equipment owned.			
	Coal cars.	Freight engines.	Switching engines.	Coal cars.	Freight engines.	Switching engines.	Tons coal hauled originating Hocking Valley.
1900	3,550	15	.....	9,343	65	21	3,400,000
1901	.....	8	.....	9,300	64	19	3,480,000
1902	2,000	10	5	11,290	73	21	3,960,000
1903	.....	10	5	11,230	84	31	4,135,000
1904	.....	15	10	11,165	89	31	3,640,000
1905	80	.....	.....	11,206	88	27	3,856,000
1906	.....	.....	3	11,135	86	32	4,015,000
1907	1,500	.....	3	11,373	87	35	3,986,000
1908	1,000	10	5	12,457	97	40	3,465,000

It appears that this company did not substantially increase its equipment from 1902 to 1908, although if the amounts represented by investments, advancements, and guaranties in connection with coal companies had been expended in the purchase of additional equipment it would have been able to furnish greater

facilities to its coal operators and could have taken care of them, as well as of all new mines that might have been opened.

While other coal districts in Ohio, Pennsylvania, and West Virginia have greatly increased their output since 1900, it appears that there has been no increase in the amount of coal hauled by the Hocking Valley, originating on its lines. While the Hocking district is not a new one, and consequently its tonnage would not increase as would that of a new district, yet the presumption seems reasonable that by the elimination of individual operators and their strife for business, and the impairment of its financial ability to furnish additional facilities the Hocking Valley Railway has prevented increase in the quantity of coal originating on its lines.

The results of the operation of the Sunday Creek Company show large losses, which must necessarily be the loss of the Hocking Valley and the Toledo & Ohio Central railways, which own all of the stock of the Sunday Creek Company. It would be but natural for those railways to throw all their influence to the securing of coal contracts to the Sunday Creek Company, even at prices which would not show a profit in the production of the coal.

KANAWHA & MICHIGAN RAILWAY COMPANY TRACK CONNECTIONS AND FURNISHING OF CARS.

The evidence of the former superintendent of the Kanawha & Michigan Railway to the effect that the policy of that road prior to the organization of the Kanawha & Hocking Coal & Coke Company in 1901 had been to make track connections at all mines where they were desired is undisputed. After 1901 it appears to have been the policy of the road to discourage the making of such connections and to impose burdens upon the parties who sought them, indicating in general that the road did not desire further development of coal properties on its line. It is testified that the former vice-president and general manager of this road stated to the representative of the Kelley's Creek Colliery Company in response to a request for a connection that they would not do anything except when they were required to do it at the end of litigation. The president of the Kanawha & Michigan Railway told the same witness that the policy of the road had been to allow no other connections and no other operations on the line unless under the conditions that were exacted from the Kelley's Creek Company (purchase cars).

The record shows that in the period between 1901 and 1906 the Kanawha & Michigan Railway pursued the general policy of declining to make track connections for any coal-mining company unless the coal company would incorporate its mine tracks as a railway company, and the general policy of the Kanawha & Michigan Railway appears also to have been to require each coal company to which it thus granted track connections to furnish for use in the transportation of its coal certain numbers of railway coal cars, the Kanawha & Michigan Railway agreeing to furnish the mine one car per day for each 20 cars purchased and put in service by the mining company.

The railway transportation companies paid nothing for the use of the coal companies' cars except the usual per diem rental (at the present time 25 cents per day) while they were on the tracks of the railway companies. They were kept in the service of the mine company to which they belonged and earned nothing while they were on the mine tracks of that company.

In some instances the Kanawha & Michigan Railway later purchased these cars from the mine companies, but in other instances they have declined to do so, and therefore many such cars are still in use on its railway and owned

by the mining companies. The railway company, of course, charges its full tariff rates upon coal transported in such cars.

It appears to be the general rule for the coal companies so incorporating their mine tracks into railroad companies to perform their own switching service from the connection with the railway company. The practice in this regard, however, is not uniform. In some instances the railway company does the switching, in some instances the mine sidings belong to the railway company, and in some instances the railway company furnishes all cars and the mine company does all the switching.

The effort of the Kelley's Creek Colliery Company to secure track connection resulted in the organization of the Kelley's Creek & Northwestern Railroad and in court proceedings to force connection, which finally resulted in a compromise under which the railway company purchased, with money furnished by the coal company, 300 coal cars which were placed in the service of this coal company and in addition to which the railway company agreed to furnish five of its cars per day for each 100 cars so purchased for the coal company. The 300 cars so purchased became the property of the Kelley's Creek Company, and its efforts to induce the Kanawha & Michigan Railway Company to take them off its hands have failed.

The Burning Springs Coal Company and the Alpha Coal Mining Company are among those that were obliged to incorporate their mine tracks as railways and purchase cars in order to secure mine-track connections. The Hughes Creek Coal Company and the Quincy Coal Company were among those that were obliged to purchase cars in order to secure track connections.

The Plymouth coal mine has about 2,500 acres of coal lands located near the Kanawha & Michigan Railway tracks, but so situated that ships coal by both rail and river. It for a time did not ship by rail and the track connection was taken up. Some time thereafter the coal company requested that it be replaced and the railway company insisted that the coal company should, as a condition, pay the expense of putting in the connection and purchase some coal cars. The coal company was unwilling to do that; and so the matter rested until 1906, when the railway waived its conditions and made the connection.

Exhibits are presented showing the conditions under which the Kanawha & Michigan Railway has made and maintained track connections at mines.

By the provisions of section 2370 of the Revised Statutes of West Virginia owners of coal mines are authorized to construct so-called "lateral railroads" to connect their coal mines with a connecting railroad, and to accomplish this are vested with power to condemn property, and by the provisions of section 2374 these lateral railroads are made common carriers to a limited extent.

It seems to us that after the organization of the Kanawha & Hocking Coal & Coke Company and the Continental Coal Company, the Hocking Valley and Kanawha & Michigan railways by various devices sought to discourage the further development of coal mines in the territory where these two coal companies operated. The interest of the railroad officials in these two coal companies and the guaranty by the railways of the coal company bonds furnished an incentive to discourage further development of coal mines, and so far as possible to retain to these coal companies a monopoly of the coal transported by these railroads.

No private cars are owned by operators on the Hocking Valley or Toledo & Ohio Central roads, and no private cars other than those hereinbefore mentioned are owned by operators on the Kanawha & Michigan except the private cars of the Boomer Coal & Coke Company.

The only private cars on the Wheeling & Lake Erie road are the 1,500

cars hereinbefore referred to, which are to be hereafter acquired by the Wheeling & Lake Erie Railroad under car-trust certificates.

No complaints are found as to the rules of car distribution or of mine rating in force on either the Hocking Valley, the Toledo & Ohio Central, the Zanesville & Western, the Kanawha & Michigan, or the Wheeling & Lake Erie roads.

It does not appear that stock in coal companies served by these roads is owned by any subordinate officials of the railways, or by persons who have charge of the distribution of cars.

REPORT OF THE ATTORNEY GENERAL PURSUANT TO SENATE JOINT RESOLUTION NO. 10, DIRECTING THE ATTORNEY GENERAL TO MAKE INQUIRY INTO ALLEGED VIOLATIONS OF THE LAW BY CERTAIN RAILROAD COMPANES.

101 Ohio Laws 448.

COLUMBUS, OHIO, April 25th, 1910.

To the General Assembly of the State of Ohio:

On April 8, 1910, there was certified to this department a copy of Senate Joint Resolution No. 10 adopted by the General Assembly, which resolution with the several preliminary recitals therein contained, provides as follows:

> "WHEREAS, The Congress of the United States by joint resolution approved March 7, 1906, directed the Interstate Commerce Commission to make investigation into the subject of railroad discriminations and monopolies in coal and oil; and
>
> "WHEREAS, The said Interstate Commerce Commission, acting in pursuance of said resolution of Congress, at a meeting begun in the City of Columbus, Ohio, March 19, 1909, made inquiry and investigation into said subjects set out in said resolution as related to conditions within the State of Ohio; and
>
> "WHEREAS, Said Commission in its report to Congress of its said Ohio investigation, of date May 10, 1909, among other things disclosed that certain railroads, to-wit: The Toledo and Ohio Central Railway, the Zanesville and Western Railway, and the Kanawha and Michigan Railway are controlled through stock ownership or otherwise of the Hocking Valley Railway Company, a parallel and competing line of said railways, all of which said railway companies hold their privileges and derive their authority from the people of Ohio; and further, that said the Hocking Valley Railway Company is controlled by the community of interests known as "Trunk Line Syndicate," thus forming an absolute monopoly in the carrying trade in the Hocking district and adjacent territory; and
>
> "WHEREAS, It appears that such combination of interests or monopoly aforesaid is in violation of the statutes of the State of Ohio prohibiting combinations in restraint of trade, and forbidding railroads to hold stock in parallel and competing lines; and
>
> "WHEREAS, There has been such persistent and bitter complaint upon the part of shippers of this State, particularly coal operators,

that the control and combination of these several railroad lines by a common interest has worked injuriously to the interests of the said coal operators, their fifty thousand employees and the dependent members of their families, and likewise has affected detrimentally the consuming public, as well as resulting in discriminations against the material welfare of the people of Ohio; *therefore*

"*Be it Resolved,* by the General Assembly of the State of Ohio; That the Attorney-General of the State of Ohio be, and he hereby is directed to make full investigation into the alleged monopoly aforesaid in violation of the laws of the State of Ohio; and, if, upon such investigation it shall appear to the satisfaction of the Attorney General that the said laws have been violated, he shall take such immediate and proper action as the statutes of this State warrant that the laws of Ohio be properly observed and such monopoly dissolved to the end that the injuries to the people of Ohio aforesaid resulting from the violation of the laws shall cease and that the discriminations alleged to be practiced shall be discontinued; and further that the Attorney General be and he is hereby instructed to inquire into any other unlawful combinations of railroad or railroad officers within this state whose practices are in restraint of trade, particularly that he investigate the nature, composition, purposes and practices of an organization known as the Ohio Coal Traffic Association, and that the said Attorney General make report to the General Assembly at as early a date as possible at the present session the result of his investigations hereby directed to be made into these several alleged unlawful combinations.

GRANVILLE W. MOONEY,
Speaker of the House of Representatives.
FRANCIS W. TREADWAY,
President of the Senate.

Adopted February 24, 1910."

Pursuant to the direction by your body as set forth above, the Attorney General submits herewith a report bearing upon the subject matter of that resolution.

I.

RELATIONS BETWEEN THE RAILWAY COMPANIES AND THE COAL COMPANIES.

As to the relations between and among the Hocking Valley Railway, the Toledo and Ohio Central Railway, the Zanesville and Western Railway and the Kanawha and Michigan Railway Companies and the various coal companies operated in Ohio and West Virginia, and as to the relations of all of these to the "Trunk Line Syndicate", this department on April 11, 1910, pursuant to House Resolution No. 6 submitted to the House of Representatives of this present General Assembly a full report, a printed copy of which is herewith attached and made a part of this report. This printed report of the Attorney General, pursuant to said House Resolution No. 6, covers and, as the Attorney General believes, complies with your direction in Senate Joint Resolution No. 10, as quoted above, asking him to make an investigation into the alleged monopoly covered by the recitals in such resolution.

This department is still of the opinion that this printed report pursuant to House Resolution No. 6, and attached hereto, correctly states the facts with respect to the matters therein mentioned and referred to, and that the opinion

therein expressed as to the invalidity under the law of the relations and transactions between said railway companies and coal companies is correct.

Senate Joint Resolution No. 10 directs the Attorney General to make a full investigation of the relations and transactions between these railways and coal companies and that,

> "If upon such investigation it shall appear to the satisfaction of the Attorney General that the said laws have been violated, he shall take such immediate and proper action as the statutes of this state warrant that the laws of Ohio be properly observed and such monopoly dissolved", etc.

The right of the Hocking Valley Railway Company to own or control the stock of other competing lines, viz., the Kanawha and Michigan, the Toledo and Ohio Central and the Zanesville and Western Railway Companies, and to own and control the capital stock of various coal companies operating in the Hocking Valley district, and to guarantee the bonds of such coal companies, is involved in the case of Ohio ex rel Attorney General v. The Hocking Valley Railway Company, and has been decided in favor of the State. This case is reported in 31 Circuit Court Decisions, page 175 and in 8 Circuit Court Reports, new series, page 145, the court holding that the attempt of the Hocking Valley Railway Company to own and control the capital stock of these competing railway companies, to own and control the capital stock of the coal companies and to guarantee the bonds of such coal companies, is wholly illegal and without warrant of law. The prayer of the petition was and is that the Hocking Valley Railway Company be ousted from its charter rights; that its charter be forfeited and that it be excluded from all rights thereunder. The court in its discretion, however, refused to forfeit the charter of the company but did enter judgment ousting and forever prohibiting it from exercising any of the illegal acts hereinbefore referred to. This case is now in the Supreme Court of Ohio on the questions as to whether the Kanawha and Michigan Railway Company is a competing line with the Hocking Valley and as to the right of the Hocking Valley Railway Company to guarantee the bonds of the coal companies. We expect to argue this case in our Supreme Court in the month of June this year. The decision by the Supreme Court in this case with the decision of the circuit court will determine the validity or invalidity of the questions involved in the controversy over the action of the Hocking Valley Railway Company with respect to the Toledo & Ohio Central, the Kanawha & Michigan and the Zanesville & Western Railway Companies, and the various coal companies heretofore referred to, and controlled by the Hocking Valley Railway Company in the Hocking Valley field, and in West Virginia, and they will also determine the questions of discrimination on the part of the Hocking Valley Railway Company and the others so controlled in giving or refusing switch or track connections to independent coal companies along the lines of these roads.

As to the relations between these railway companies already mentioned, viz., the Hocking Valley, the Kanawha & Michigan, the Toledo & Ohio Central and the Zanesville & Western and the "Trunk Line Syndicate," so called, I have to report that, since the decision of the Hocking Valley case by the circuit court, the Chesapeake and Ohio Railroad Company is reported to have purchased, or is about to purchase the Hocking Valley Railway Company with a portion of the stock of the Kanawha & Michigan; and that the New York Central Railway Company has purchased, or is about to purchase the Toledo & Ohio Central Railway Company with a portion of the capital stock of the Kanawha & Michigan. A complaint has lately been filed in this department by certain minority stock-

holders of the Hocking Valley Railway Company; and another complaint has been filed here by certain minority stockholders of the Kanawha & Michigan Railway Company, each of which complaints is to the effect that the "Trunk Line Syndicate", so called, is made up of the Baltimore & Ohio, The Lake Shore & Michigan Southern, The Pittsburg, Cincinnati, Chicago & St. Louis, the Chesapeake & Ohio and the Erie Railway Companies, and that the intention of the Chesapeake & Ohio, and the Lake Shore & Michigan Southern, the New York Central Lines, in purchasing as above stated the Hocking Valley and a part of the Kanawha & Michigan, by the Chesapeake & Ohio; and purchasing of the Toledo & Ohio Central, the Zanesville & Western and a part of the Kanawha & Michigan by New York Central Lines, is to control in another form and in a different way, the railroads running into the Hocking Valley field, viz., the Hocking Valley, Todelo & Ohio Central, Zanesville & Western and the Kanawha & Michigan. Notice has been served from this department upon all of these companies to appear here and show whether or not this complaint is true, and what reason, if any, exists why proceedings should not be started by this department to prevent such combination. That hearing will be had at the earliest possible time, and the Attorney General will then be able to advise what proceedings may or should be taken in compliance with the direction in your resolution above quoted.

II.

The Ohio Coal Traffic Association.

A — Purposes, composition and practices of the association.

Your Senate Joint Resolution Number 10 instructs the Attorney General,

> "To inquire into any other unlawful combinations of railroads or railroad officers within this State whose practices are in restraint of trade, particularly that he investigate the nature, composition, purposes and practices of an organization known as The Ohio Coal Traffic Association, and that the Attorney General make report to the General Assembly at as early a date as possible at the present session", etc.

Some time in the fore part of the year 1909 a complaint was filed before the Railroad Commission of Ohio against the Wheeling & Lake Erie Railroad Company and its receiver, complaining that the rate charged by this company for transportation of coal from the Ohio coal field, known as Pittsburg Number 8, and comprising Belmont and adjoining counties, to ports on the Great Lakes, was unreasonable. This complaint came on for hearing before the Railroad Commission on July 6th, 1909, and on that hearing many witnesses were examined, among whom was Mr. A. D. Smith, of Columbus, Ohio, Secretary of the Ohio Coal Traffic Association. From his testimony, a transcript of which, and of the testimony of the other witnesses, was preserved by the Railroad Commission, it appears in his own language that The Ohio Coal Traffic Association is

> "A voluntary association that calls itself, for business purposes, the Ohio Coal Traffic Association",

and on being asked as to who the members of the association are, he answered that these members at that time, July 6th, 1909, were the Baltimore and Ohio, the Cleveland, Lorain & Wheeling, the Cincinnati, Hamilton and Dayton, the Detroit, Toledo & Ironton, the Hocking Valley, the Kanawha & Michigan, the Lake Erie, Alliance and Wheeling, the Marietta, Columbus & Cleveland, the Toledo & Ohio Central, the Toledo, Walhonding Valley & Ohio, the Wheeling & Lake Erie,

the Wabash, Pittsburg Terminal, and the Zanesville & Western Railroad Companies. Being asked if the Pennsylvania company and Pittsburg, Cincinnati, Chicago & St. Louis Railway company were represented in the Association, Mr. Smith replied that,

> "That portion of the road called The Toledo & Walhonding Valley Railway is a part of the association, but not the other divisions,"

and he stated that the Toledo and Walhonding Valley Railway Company is operated by the Pennsylvania Company.

The office of this association is in Columbus, Ohio, and this office is under charge of Mr. A. D. Smith who, as above stated, is the secretary of the association. The testimony of Mr. Smith shows that the association has been in existence for a number of years, and this department, aside from this testimony, has examined copies of the minutes of the regular and special meetings of the association during the years from 1902 to 1909, both inclusive — eight years.

These records further show that through this time various conferences have been held at Pittsburg, New York and Chicago, between West Virginia, Western Pennsylvania, Kentucky and Ohio bituminous coal carrying railroads. The railroads participating in these conferences have usually, and, in fact, in nearly every case, in several conferences during each of said years, been the following:

Pittsburg District:

Pennsylvania R. R.
Pennsylvania Co.
P. C. C. & St. L. Ry.
B. & O. R. R.
L. S. & M. S. Ry.
P. & L. E. R. R.
N. Y. C. & St. L. R. R.
Erie R. R.
Bessemer & Lake Erie R. R.
Wabash-Pittsburg Terminal Ry.
Buffalo, Rochester & Pittsburgh.

West Virginia District:

C. & O. Ry.
N. & W. Ry.
K. & M. Ry.
Coal & Coke Ry.

O. C. T. A. District:

H. V. Ry.
T. & O. C. Ry.
B. & O. R. R.
W. & L. E. R. R.
Z. & W. Ry.
T. W. V. & O. Ry.
L. E. A. & W. Ry.
M. C. & C. Ry.
C. A. & C. R. R.
C. & M. V. R. R.

Jackson County District:

B. & O. S. W. R. R.
C. H. & D. Ry.
D. T. & I. R. R.
H. V. Ry.

L. N. R. R. District:

L. & N. R. R.

Ohio River District:

B. & O. S. W. R. R.
C. C. C. & St. L. Ry.
P. C. C. & St. L. Ry.
C. H. & D. Ry.

The above list for these conferences includes, as may be seen, the roads which Mr. Smith said are members of the Ohio Coal Traffic Association. The purposes of these conferences, and of the Ohio Coal Traffic Association, as disclosed by the minutes of the meetings, seem to have been through these years to fix the rates to be charged by all the roads for the transportation of coal from the Pennsylvania, West Virginia, Kentucky and Ohio coal fields to ports on the Great Lakes, including Chicago, and to intermediate points between the fields and those ports, and to various other points not strictly intermediate, both within the State of Ohio and in other states westward. Their transactions may probably be best illustrated by the following copy from the record of a Pittsburg conference held on Tuesday, January 28, 1908, at the Hotel Schenley, in the city of Pittsburg:

"Mr. Ferris in the chair.

A committee of fourteen was appointed to formulate and present to the full committee a recommendation for its consideration.

Their report was as below:

Recommended. 'That a Committee of the Coal Traffic Officials take up with the lines beyond Chicago and Illinois junctions the question of establishing through rates to points beyond Chicago on a fair competitive basis with Illinois coal, with such arrangements for divisions and through billing as can be made'.

The following committee was appointed to carry out the above recommendation:

HUDSON FITCH,
H. M. MATTHEWS,
WM. HODGDON,
H. J. BOOTH,
G. H. INGALLS,
JAS. WEBSTER,
H. B. DUNHAM.

That we recommend: That effective April 1st, 1908, and continuing to March 31, 1909, the rates of last year be reaffirmed as follows:

To Chicago and Chicago points,
From Ohio District, $1 65

From Pittsburg District, Fairmount District, Kanawha District, Thacker District, L. & N. District, Middlesboro and West	$1 90
From Pocahontas District, New River District, Cumberland District, Altoona District, L. & N. District, East of Middlesboro	$2 05

Railway Fuel Rates:

Recommended individually by the roads represented.

That the Railroad Fuel rates be from the Ohio district.

To Toledo	72½	cents per ton
To Columbus	60	cents per ton
To Cleveland (from No. 8 District)	65	cents per ton
To Cleveland (from Middle District)	57½	cents per ton

Other Junction delivery points in proportion.

Lake rates:

Recommended individually that the rates from the Pittsburg District to lake ports, Huron, O., to Erie, Pa., inclusive, be as follows:

Lake cargo coal, proportionate rate for reshipment	88 cents f. o. b. cars on dock,
Lake Fuel	98 cents f. o. b. cars on dock
Commercial Coal	100 cents f. o. b. cars

The rate from the West Virginia District on Lake Cargo and Lake Fuel Coal to be 8¾ cents higher than the Pittsburg District rates respectively, and the rate from the Cumberland, New River and Pocahontas group on Lake Cargo and Lake Fuel Coal to be not less than 15 cents above the West Virginia rates.

That the rates from the Hocking No. 8 and other Ohio Districts taking same rates to the lake ports, Lorain to Toledo, inclusive, be as follows:

Lake cargo coal, proportional rate for shipment	90 cents f. o. b. vessel
Lake Fuel	95 cents f. o. b. cars on dock
Commercial Coal	100 cents f. o. b. cars

Report accepted and sub-committee discharged, then taken up in full committee and individually recommended by the roads represented.

Mr. Randolph announced for the B. & O. R. R. that they may decide from mines on the Sunday Creek to meet the rates from similar mines on the C. & M. V. Road on notice to be given to the Chairman of this meeting.

Mr. Dunham of the H. V. Ry. and Z. & W. Ry., made a similar announcement to that of Mr. Randolph, substituting the Z. & W. Ry. thin vein mines for the Sunday Creek Railroad.

Mr. Fitch for the T. & O. C. Ry., made a similar announcement substituting the Ohio Central Lines for the Sunday Creek Railroad.

For the Louisville & Nashville Railroad Company, Mr. Compton made the following announcement:

The Louisville & Nashville Railroad Company, to points north of the Ohio River, outside Cincinnati switching limits, Jeffersonville and New Albany, Ind., will, on coal, maintain, effective April 1st, 1908, from the following mines:

Appalachia, Va.
Big Stone Gag, Va.
Blackwood, Va.
Dorchester Junction, Va.
Norton, Va.

the basis of rates in effect from Cumberland, Pocahontas and New River Districts, and from all of its other mines, the basis of rates in effect from the Kanawha, Fairmont, Thacker Districts.

Further, that if the resulting conditions from this adjustment of rates proves unsatisfactory to the Louisville & Nashville Railroad, it reserves the privilege of calling a later meeting for a reconsideration of the matter.

This announcement is made with the understanding that the lines north of the River will accept the same proportions on coal delivered to them by the Louisville & Nashville Railroad as they accept on coal delivered them by other lines.

On motion, the following committee was appointed to deal with any question that might arise as to rate of Railway Fuel coal during the coal year: Messrs. McCabe, Ferris, Davant, Randolph and Booth.

Adjourned.

A. D. SMITH,
C. E. E. CHILDERS,
Secretaries."

I am informed that the words "Railway Fuel Rates" mean rates for transportation of coal to be charged by railroads carrying the same from the coal fields to other railroads for use by such other railroads in operating their lines; "Lake Cargo" coal means coal to be shipped to some lake port and there reshipped by boat across the lakes to destination; "Lake Fuel" means coal to be used by the boats on the lakes; "Commercial Coal" means coal shipped to the public generally, such as manufacturers and other persons purchasing the same for general and private consumption.

From the record as quoted above it will be seen that these roads agreed that the rates to be charged for transporting coal on any road from the Ohio Districts, such as Belmont County, Hocking Valley, Jackson and Ohio River District, to Toledo, for use as fuel by other railroads, should be 72½ cents per ton; to Columbus, 60 cents; to Cleveland (from No. 8 District, Belmont County) 65 cents ;to Cleveland (for Middle District, Coshocton, Tuscarawas, etc., counties) 57½ cents per ton; other junction delivery points to be in proportion to these rates, while on coal shipped for regular cargo, lake fuel and commercial purposes, the rates were fixed by the companies at from 88 cents to one dollar per ton, from the Ohio Districts to those same lake ports. In other words, through this agreement these roads fix the minimum rates charged by any of them for transporting coal from the districts named in the record set forth above to other

railroad companies to be used by such other companies as fuel for their locomotives and otherwise, at figures from 22½ cents per ton to 42½ cents per ton lower than the rates charged for transporting coal from the same districts to the same place for general and private consumption by manufacturers and other private citizens, and they charged for hauling this coal to themselves or other railroads for fuel from 15½ cents per ton to 40½ cents per ton less than they charged for the same service in transporting coal to the same place for lake cargo and lake fuel purposes.

It will be noticed that the charge for transporting commercial coal for the public generally is $1.00 per ton f. o. b. cars, while the charge for transporting lake cargo and lake fuel coal is from 2 cents to 12 cents below that figure f. o. b. the vessel or f. o. b. cars on the dock. The discrimination as a result of this agreement is apparent.

The record above quoted on pages 11 and 13 inclusive, as heretofore stated, is a copy of the record of the minutes of the conference held at the Hotel Schenley in the city of Pittsburg on Tuesday, January 28, 1908, among West Virginia, Western Pennsylvania, Kentucky and Ohio bituminous coal carrying roads, and the names of these roads are given above on pages 9 and 10. All the members of the Ohio Coal Traffic Association, as named by Mr. Smith and quoted on pages 7 and 8 herein, were in this conference. On the next two days, January 29th and 30th, 1908, those roads, members of the Ohio Coal Traffic Association, held their regular monthly meeting at the Coal Traffic Association rooms at Columbus, Ohio. At this meeting by the Ohio Coal Traffic Association, as appears by the record of the minutes of the meeting, action was taken on new tariffs, the record showing the following entry:

EXECUTIVE COMMITTEE.

"There being no business for this committee, the meeting was called to order and adjourned.

STANDING COMMITTEE.

Proofs of the new Tariff were carefully checked and immediate printing ordered. Mr. Dunham was appointed a committee of one to decide any question that might arise during the printing. Also to formulate a cancellation circular for cancelling any Tariffs that were carried by the new Tariff.

As the Penna. Co.'s Lines are not an originating party in the new tariff the secretary was instructed to arrange the expense account so as to relieve them of any proportion of the expense of printing the Tariff and supplements beginning with January 1st, 1908.

The secretary was authorized to take up in his account for January, 1908, a payment of eight hundred dollars on account of work done by Nitschke Bros. on the new Tariff.

Adjourned. A. D. SMITH, Secretary."

The next regular meeting of those Ohio Coal Traffic Association roads was held at the association rooms, Columbus, Ohio, on February 19, 1908, and the minutes of that meeting are as follows:

"The Wabash Pittsburg Terminal Railway Company were admitted as members of the Association covering their lines in Ohio only; effective from this date.

Adjourned.

STANDING COMMITTEE.

First subject: Reconsignment of Coal at Detroit. Laid over to next meeting for further examination of past record. If record warranted, roads interested individually proceed with the check, reporting at next meeting in either case.

Second subject: Rates to Chicago, Lake Shore and Eastern Railway points.

Laid over to next meeting.

Third subject: "Intermediate Clause" in Tariff. Referred to Mr. Fitch to take up with the Interstate Commerce Commission and report as early as possible.

Fourth subject: Number of Tariffs for connections: Mr. Dunham presented form of circular letter to connections concerning the matter and asking them to put in their requisitions as early as possible.

Approved and the secretary instructed to print and issue to all the lines named in the Tariff.

Fifth subject: Rates to Crawfordsville, Ind.

Referred to the following committee: Messrs. Griggs, Matthews, Perkins, Booth and Hotchkiss.

Sixth subject: Supplements to the present Tariffs 14 and 60. It was the view of the members that no such supplements should be issued that would in any way interfere with or delay the new Tariff.

Seventh subject: A sub-committee from the Western Trunk Line Committee was present by invitation to confer with the members of the Ohio Coal Traffic Association concerning the methods used in compiling statistics, tariffs, etc., with a view of establishing a similar bureau to cover the coal districts of Illinois and Indiana. The matter was gone over in all its details and the meeting adjourned.

A. D. SMITH, *Secretary.*"

This record of the minutes of the conference held at Pittsburg and of the two meetings held in Columbus, with records of the minutes of other meetings thereafter in that year, with other information gained by this department, establish, in my opinion, as matters of fact, that the companies involved agreed to, put into effect, and carried out the rates and charges for the particular matters heretofore set forth. This record is only a fair sample of the minutes of many other meetings held through each of the years 1902 to 1909, both inclusive, as conferences of the West Virginia, Western Pennsylvania, Kentucky and Ohio bituminous coal carrying roads, which roads are named above herein, and of the Ohio Coal Traffic Association roads alone. That is to say, these bituminous coal carrying roads held a number of meetings throughout these years in which action was taken similar to that above set forth and the Ohio Coal Traffic Association held regular monthly meetings and a number of special meetings in Ohio. The regular meetings being held at Columbus, Ohio, and the special meetings generally at Cleveland, Ohio. Some regular monthly meetings were also held at Cleveland and Toledo, Ohio. The Ohio Coal Traffic Association roads through these years have participated in conferences at various other points, such as meeting at Detroit with what are known as the Detroit lines of railroad; at Columbus at a meeting of bituminous coal carrying roads west bound, and a meeting at Chicago with roads interested in transportation of bituminous coal via rail and lake, and Lake Michigan car ferry lines.

I have not been able to find any record or document showing that this association has any set of written rules, regulations or bylaws setting forth

the purposes and objects of the association and defining the conditions upon which any railroad may become a member thereof, but from the recorded minutes of the numerous various meetings held as heretofore stated, I am clearly of the opinion that the objects sought and attained by these roads in maintaining this association were and are to agree upon and maintain, applicable to all roads in the association, rates for transporting bituminous coal from the Pennsylvania, West Virginia, Kentucky and Ohio coal fields to ports on the Great Lakes to intermediate points and to other points beyond and westward from Ohio, and that these agreements and arrangements were made by these roads, members of the Ohio Coal Traffic Association, with other roads members of other associations in the territory to the north and northwest and west of Ohio. It does not appear from these minutes that any formal written agreements were made and signed by the companies, but it does appear in numerous instances all through these years that rates or modifications of rates were proposed by a representative of some road, member of the association, and that after a discussion of the matter a resolution would be adopted fixing the rate or modification, or the roads would recommend or agree to the same individually.

It further appears that if any road, member of the association, desired to modify its rates to any point it was the practice that such road make request of or proposition to the association to be allowed to make such change. An illustration of this is found in the minutes of a meeting of the association held at Cleveland, July 17, 1906, the record made thereof in the minutes reading as follows:

> "Second subject: Rate from Hocking district $1.40 and Jackson county $1.30 to Hartford City via L. E. & W. R. R. This was overlooked in lining up, at the Cleveland meeting, June 11th. It should be $1.30 and $1.20, same as Hartford City via P. C. C. & St. L. R. R. Secretary to issue notice and supplement to cover."
>
> "Fifth subject: Request of B. & O. R. R. to apply Saginaw rates to Midland, Michigan; it was the view of the members that it was not advisable to make any reductions in Michigan rates until the question of all Michigan rates could be taken up and considered."

Another resolution from the minutes of a meeting held August 21, 1906, is as follows:

> "Seventh subject: Application of C. H. & D. to put in rate of $1.50 from the Jackson county district to Amboy and Peru, Indiana, including Santa Fe as intermediate, via C. C. L. R. R. same as by other routes. Approved by the roads individually."

B. RESULT OR EFFECT OF THE PRACTICES OF THE ASSOCIATION.

To summarize the purposes of and results attained by this association I beg to report that, in my opinion, the minutes of the various meetings of the Ohio Coal Traffic Association and of the other associations and railroads with which the Ohio association met in conference shows that these roads, through agreements and arrangements voluntarily entered into from time to time through a number of years, up to and including the year 1909, have fixed and maintained the rates to be charged, and charged by the various roads mentioned above as members of the Ohio Coal Traffic Association for the transportation of coal by them, or any of them, from the Western Penn-

sylvania, West Virginia, Kentucky and Ohio districts of bituminous coal to ports on the Great Lakes and intermediate points beyond, north and northwest and west of Ohio, and I am further of the opinion that the facts are that these roads have fixed these various rates at certain intervals in the first instance, and that if at any time any company desired to change or modify these rates, it was necessary for that company to make application to this association for the privilege, and that this request was granted or refused as should be determined upon in the particular case by the members of the association acting jointly in the matter.

In my opinion the facts are that the Western Pennsylvania, West Virginia, Kentucky and Ohio bituminous coal carrying roads, a list of which is set out in the beginning of this sub-division and of which the roads, members of the Ohio Coal Traffic Association, are a part, met at stated intervals, usually the fore-part of the calendar year and fixed the rates in a manner similar to that shown by the record illustration given above herein from the Pittsburg meeting on January 28, 1908. That thereafter the roads, members of the Ohio Coal Traffic Association, met at some point in Ohio and ratified these rates, and thereafter carried them out, except as they might from time to time be changed in individual instances at the request of some particular road through agreement of the other roads, members of the Ohio association.

The various coal districts of Ohio are the Belmont and adjoining counties, known as Pittsburg No. 8; the middle district being Coshocton, Guernsey, Tuscarawas, etc., counties; the Hocking Valley district, being Hocking, Perry, Morgan and Athens counties; the Jackson County district and the Ohio River district, the latter being principally Lawrence county. Into or through each of these districts run two or more of these Ohio Coal Traffic Association roads. For instance, from the Belmont field are the Wheeling and Lake Erie and the Baltimore and Ohio Railroads; in Coshocton, Tuscarawas and Guernsey (middle district) are the Wheeling & Lake Erie, Baltimore & Ohio and Toledo, Walhonding Valley & Ohio Railroads; in the Hocking Valley field are the Baltimore & Ohio, the Toledo & Ohio Central and Kanawha & Michigan and the Hocking Valley Railroads; in the Jackson County district are the Baltimore & Ohio, the Hocking Valley, the Cincinnati, Hamilton & Dayton and the Detroit, Toledo & Ironton Railroads, and through the Ohio River District are the Cincinnati, Hamilton & Dayton, Detroit, Toledo & Ironton and the Baltimore & Ohio. Each of these roads has an out-let, from their respective fields to all lake ports over their own lines or connecting lines, and each of the roads running from any particular field is in direct competition with others from that field, and in indirect competition with each of the roads running from each and every other of the coal fields above mentioned.

These records above referred to clearly show that there has been through the period of time covered by this report no real competition between these roads for the transportation of coal from the fields named, but on the contrary the competition which would otherwise necessarily exist and prevail to the benefit of the public, were it not for the existence of those facts, was completely and entirely suppressed.

This association still maintains its office with Mr. A. D. Smith as its secretary in the city of Columbus, and while I have not examined the records or minutes of its meetings held during this year, 1910, I am informed that it is still in existence under the same conditions as heretofore related of the period from 1902 to 1909 both inclusive.

I have heretofore stated in effect that the minute records of these meetings did not disclose the execution of formal written agreements further than that in such meetings resolutions were adopted, fixing these rates; the minutes stating,

in many instances, to the effect that the following resolution was adopted by the roads individually recommending the same, or that a certain rate was individually recommended by the roads represented. Such proceedings not only clearly establish a meeting of minds on one common object, viz.: the fixing of uniform rates on all the roads interested, to the end that competition might be suppressed, but they clearly indicate a thorough consciousness of the inexcusable wrong which such action was perpetrating upon the public. These records, written in the way they are, must clearly indicate to any one who reads them that these companies, through their representatives, were aware that what they were doing was wholly illegal and against the public policy of the state. When men make agreements or arrangements with respect to business matters which are sanctioned by the law and the public policy of the state, matters of such importance as those involved in these transactions, they are made in the usual forms of lawful written agreements which will stand the inspection and receive the approbation of a reasonable public. If what is sought to be done is outside the sanction of and against the law it is often sought to evade the penalties under the law of such action by resorting to subterfuges, or what is sometimes known as "gentlemen's agreements". So in this case these records show by the form in which they are written that these interested parties were fully conscious of the violations they were committing of the law and the wrongs those same actions were perpetrating against the public in view of the law as it exists in Ohio and under the federal statutes.

These records disclose discriminations in the rates for transportation of coal not only between persons and interests of the general public standing in the same relative relations or situations with respect to these roads, but they disclose the fact that these roads transport coal to other railroads at rates twenty-five per cent or more lower than the rates charged to the general public, the people who give them the right to incorporate, organize and exist and upon whom they must depend for patronage and support.

Difference in rates charged under dissimilar conditions and circumstances may be justified, but it is difficult to see how there is any justification for a charge on the part of any road of 65 cents per ton from Belmont county No. 8 district to Cleveland for the transportation of coal for the use of some other railroad company, while a charge of $1.00 per ton is made for the transportation of coal from the same point, or any other Ohio district point to the city of Cleveland for the use of some manufacturer or a wholesale dealer who must supply the public generally with fuel for domestic purposes. The spirit and command of the law is that common carriers and other persons, firms and corporations doing a quasi-public business or service shall treat all members of the public alike under the same or similar circumstances. It is further difficult to see why these roads should charge this rate of 60 cents for the haulage of coal to other railroads at the city of Cleveland and other lake ports to be used by such roads as fuel, and at the same time charge 98 cents per ton for the haulage of coal to the boats running on the lakes to be used as fuel by those boats. Whether, however, these differences are reasonable or unreasonable or whether there would be any justification for them at all if made by any railroad acting individually and without relation to any other railroad, there is absolutely no justification under the public policy of Ohio and the federal statutes for the combination agreements or arrangements between these associated roads, as disclosed by these records in fixing these discriminatory rates or any other rates to be charged by all roads, and thus completely deprive the public of competition between and among the roads. Those who form these arrangements and agreements would without hesitation denounce as immoral, unlawful and unjust a combination between and among grocerymen or other vendors of provisions neces-

sary to the sustenance of the family and the home, and they would at once give their assent to the condemnation and punishment of such practices.

Bituminous coal is used as fuel by a very large number of the families in the cities on the lake and elsewhere in the state, and it is largely used by manufacturers and other business enterprises in the conduct of their respective lines of business. All of these are entitled to the benefit of competition in the transportation of this commodity which forms so large a part of the cost and expense of securing comfort to the family or the administration of these lines of business.

C. LEGAL STATUS OF THIS ASSOCIATION.

It has already been stated that the practices of these roads, members of the Ohio Coal Traffic Association, as disclosed by their records are illegal and wholly without warrant of law. That statement is made not only upon the authority of the statutes of the State and of the United States from the plain reading thereof, but it is made upon authority of the decisions by courts of Ohio and the Supreme Court of the United States.

It is true that such combinations and arrangements as these under consideration and others have long been practiced in the country, but this fact cannot be urged to their justification even in the absence of express statutory declarations against them. They are not necessary to legitimate trade and business conditions.

It is conceded by everybody that fair competition is the life of trade and business, and it has been aptly said that,

> "Combination is the opposite of competition. When the one (competition) is free the other does not exist."

The combination here under discussion, the subject of this report, is one of three forms of transportation combinations which have existed in the past, viz: (1) Agreements to maintain rates, (2) Pools, and (3) Consolidations. Each and all of them are contrary to the statutes and the decisions of the courts. Railroad pools are of two kinds, traffic pools and money pools. The former is defined as "an agreement whereby each member is guaranteed to receive and can receive only a stated percentage of the competitive traffic." A money pool in railroad transportation is defined as "an agreement whereby each member is guaranteed to receive and can receive only a stated percentage of the receipts from competitive traffic."

This form of agreement or combination was expressly prohibited by the act to regulate commerce passed by the Federal Congress in 1887 following statutes enacted for the same purpose in the several states. This act put an end to the practice of pooling but the other two forms of combinations are still attempted, viz: agreements to maintain rates and consolidation of competing lines. Arguments are often advanced by persons interested, attempting to justify these agreements to maintain rates and consolidations of competing lines on the claim that one or the other is necessary to prevent bankruptcy or to reduce the cost of operation, but the public, feeling that they are not responsible for the construction of unnecessary lines of railroads have not only refused to accept these arguments and contentions but have gone further through their representatives in the general assembly of the several states and in the Congress of the United States, and have expressly prohibited each and all of these combinations, have made them criminal offenses and prescribed penalties to prevent them. So long as these statutes are on the books they should be obeyed by persons, firms and corporations alike, not only because of their existence

but for the very much greater reason that history and the reasoning of our courts through all the years teach and show that they are just and righteous.

The practices of the Ohio Coal Traffic Association themselves, as well as in connection with other roads mentioned in this report, and as disclosed by the record, show a direct violation of the prohibitory terms and the penalty clause of the Valentine Anti-Trust Act of Ohio insofar as intra-state business is concerned at least, and the long continuance of these practices as disclosed by these records indicates an utter contempt for this law. This statute provides that a violation of any of its provisions is a conspiracy against trade, and that a person engaged in the same or taking part therein or as principal manager, director, agent, servant or employer, or in any other capacity, knowingly carrying out any of the stipulations, purposes, prices or rates or furnishing any information to assist in carrying out such purposes or orders thereunder, or any provisions thereof, shall be fined not less than $50.00 nor more than $5,000.00 or imprisoned not less than six months nor more than one year, or both, and that each day's violation of this provision shall constitute a separate offense.

Another part of the statute defines a trust to be a combination of capital and skill or acts by two or more persons, firms, partnerships, corporations or associations of persons for the purpose, among others, to make, enter into, execute or carry out contracts, obligations or agreements of any kind or description by which they bind, or have bound themselves or agree in any manner to keep the price of any article or commodity or any article of trade, use, merchandise, commerce or consumption or the transportation thereof at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of an article, commodity or transportation between them or themselves and others so as directly or indirectly to preclude a free and unrestricted competition among themselves; purchasers or consumers in the sale or transportation of such article or commodity; or by which they agree to pool, combine or directly or indirectly unite any interests which they have connected with the sale or transportation of such article or commodity that its price might in any manner be affected, and such trust is declared by this law to be unlawful and against public policy and void.

That the practices under consideration, as shown by the records discussed are within these definitions of the statute, and that they are prohibited by it there can be no question. They are equally in violation, so far as interstate commerce is concerned, of the Sherman act entitled "An act to protect trade and commerce against unlawful restraints and monoplies," passed by the Federal Congress July 2nd, 1890.

The first section of that act provides that:

> "Every contract, combination in the form of a trust or otherwise, or conspiracy in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000 or by imprisonment not exceeding one year, or by both such punishments, in the discretion of the court."

This federal statute was construed in the case of United States v. Trans-Missouri Freight Association, 166 U. S. Reports, 290.

What was known as the Western Traffic Association was formed in 1891 as a federation of several traffic associations in different parts of the country, one of these subsidiary organizations being the Trans-Missouri Freight Asso-

ciation, which had been formed in 1889 "for the purpose of mutual protection by establishing and maintaining reasonable rates, rules and regulations on all freight traffic, both through and local." In 1892 a suit was instituted by the United States against this association charging that it was a combination in violation of the Sherman Law, which provides as above quoted. The decisions of the lower courts were in favor of the association, but the case was appealed to the Supreme Court of the United States where the two questions were presented: 1, Whether the Sherman Law applied to railroads: 2, Whether the Trans-Missouri Freight Association violated its provisions. The Supreme Court of the United States answered both questions in the affirmative and held broadly that agreements between competing railroads to maintain rules — whether *reasonable* or *unreasonable* — are against public policy and contrary to the federal statute.

In 1896 what was known as the Joint Traffic Association was formed in which were represented nine leading trunk lines in the country, and one of their rules was that a failure to comply with the recommendations of the board of this association was punishable by a fine of $5,000 to be paid to the association. A suit was immediately started by the government against this association charging, 1, that it was in violation of the Sherman act, and, 2, that it contravened the anti-pooling provisions of the interstate commerce act. The case went to the Supreme Court of the United States where an attempt was made to distinguish it from the Trans-Missouri case, upon the ground that in the latter case power was conferred upon the association to actually make rates, while the Joint Traffic Association merely adopted rates already in force. The Supreme Court, however, held that the Joint Traffic Association violated the Sherman law.

It is said by Judge Noyes in his book on "American Railroad Rates", that,

> "The decisions in the Trans-Missouri and Joint Traffic Association cases show that under the Sherman law the right of railroads to co-operate is confined within very narrow limits. They have no right to enter into agreements to maintain rates in any form."
>
> Noyes American Railroad Rates, 149-151.
> U. S. v. Joint Traffic Ass'n, 171 U. S. Rep. 505.

I beg to report to the General Assembly that while this department has not completed its investigation of the practices and transactions of the Ohio Coal Traffic Association, and that while we expect to, and will continue the investigation until we know the details of the purposes of the association and of its workings and practices, yet the information given by the secretary of that association, in the case before the Ohio Railroad Commission, with the information given by the records or minutes of the great number of meetings and conferences heretofore referred to, bring us firmly to the opinion that the transactions of this association have been, and are wholly in violation of the state and federal laws, and on this matter it is only left for me to add that if this association is not immediately dissolved and the practices heretofore indulged in, wholly abandoned, it will be the duty of the department of the Attorney General to institute and prosecute whatever, and all proceedings that may be warranted under the law and necessary to dissolve it, and that action will be taken at the earliest moment consistent with the other work in this department.

D. SOME DEFECTS IN THE OHIO LAW.

In a report transmitted to the Governor by the Attorney General in the last week of December, 1909, it was stated in effect that considerable attention

had been given to the efficiency of the remedies afforded by the Valentine Anti-Trust law and other statutes to break up and prevent these combinations, and that because of the great amount of other work with which this department has had to deal at all times during the past year, we were not able to submit satisfactory plans or suggestions, and in that report it was further stated as follows:

> "One thing is certain, and that is, that if combinations and monopolies are bad and should be prohibited, then our laws should be framed so as to prohibit them. In some lines of enterprises the laws as they have stood for many years have only involved the state in much litigation and great expense, with but very little, if any, accomplishment. This is wrong and should not be tolerated unless the public policy against combinations and monopolies is to be changed. There are certain lines and departments of business in which everybody knows, who gives attention and thought thereto, that single management or control under strict and close regulation through reasonable statutory enactment is good and of benefit for and to the public, but as to the great majority of business enterprises and the things in which they deal, it is conceded by all members of the public, and held by the courts, upon authority and reason of long establishment, that combinations and monopolies therein should not be allowed or tolerated, because of the hardships and impositions sure to result to the public welfare if they be allowed or tolerated."

Re-affirming this statement just quoted from that report, and believing that the Valentine Anti-trust law should be revised as it now stands in the General Code, not only to correct and make clearer some provisions thereof, but to provide remedies making more certain of accomplishment the relief sought with greater dispatch than now seems possible, I have prepared a bill amending certain sections of that law and submit a copy thereof herewith for the consideration of the General Assembly.

Under this statute as it now stands, proceedings in quo warranto are authorized in certain instances, and there seems to have been an attempt to authorize proceedings to restrain and enjoin violations of the provisions of the act, but whether this latter remedy is secured by it, and in what courts we would proceed if the literal terms of the act are followed, are doubtful. It is provided in the act, in addition to the criminal penalty, that any person, firm or corporation violating any of the provisions of the act shall forfeit the sum of fifty dollars for each day the offense continues, but there is no provision as to whether this money is to be forfeited to the state or to a county, and the section providing for this penalty provides that if the Attorney General begins an action for this forfeiture money he may begin it in the circuit court of Franklin county. This provision, of course, is of no effect, being unconstitutional, because of the fact that under the constitution the circuit court has original jurisdiction only in quo warranto, mandamus, habeas corpus and procedendo, and to recover this forfeiture requires an action for money, and such action must be instituted in the court of common pleas. The bill as drawn corrects these errors, and without doubt invests the several courts of common pleas in the state with jurisdiction to restrain and enjoin violations of the act. The remedies under this law are cumulative to each other, and this bill would secure to the state the right to institute proceedings both in injunction and quo warranto in the proper courts, and under the bill the privilege is given to begin these actions in the proper court in any county

where any defendant resides or does business and all persons, firms and corporations, parties to the conspiracy or combination, may be made parties defendant in any court in which any proceeding may be brought under the provisions of this law as so amended, if the General Assembly shall pass the bill herewith submitted.

The law as it now stands absolutely prohibits a foreign corporation from doing business in this state if such corporation is found guilty of violating any of the provisions of the act. Conforming to that the bill herewith submitted provides that if in a suit in quo warranto begun by the Attorney General it shall be finally found and adjudged by the court that the defendants have been guilty of violations of the Valentine law, the charter of such corporation shall be forfeited, and the court shall declare such forfeiture and appoint a trustee or trustees to wind up the affairs thereof, the same as in other proceedings in quo warranto. The effect of this provision, and of the other provisions of the bill authorizing suits to restrain and enjoin violations, will be to give the state the right to proceed by injunction for some trivial violation not long or flagrantly continued and in which it might not be wise, under the circumstances, to forfeit the charter. But if such offenses are serious in their nature and greatly against the public welfare, and have been indulged in to such an extent as indicates a contempt of the law, the state, through the Attorney General, would have a right under this bill to institute a proceeding in quo warranto, and if on the hearing the court should find that the company had transgressed the law as claimed in violation of the Valentine act, it would be the duty of the court to declare the forfeiture.

As to the limitation of time in which these suits or criminal prosecutions may be instituted, the bill provides that there shall be no such limitations as to any violation of this act.

House Resolution No. 6, in answer to which the attached printed report was made, requested this department to make recommendations upon the situations discussed in that report and in this one, and while Senate Joint Resolution No. 10 does not specifically request our recommendations upon the situation investigated under such Joint Resolution, I take it for granted that the General Assembly in directing this department to make report thereon meant that we should report not only as to the facts and circumstances which should appear to us to be in existence, but that we should make to you such recommendations as to this department might seem proper in view of the whole situation.

We believe that to make the Valentine Law effective and to put it into such shape as that its provisions may be carried out with dispatch, it is necessary that the amendments as embodied in the bill hereto attached should be adopted. We have accordingly placed in the hands of a member of the Senate and a member of the House copies of this bill with request that the same be introduced, and we would respectfully recommend that it be passed.

I submit herewith a copy of the report of the Interstate Commerce Commission covering the Hocking Valley situation, and would suggest that this report, with the Interstate Commerce Commission report, be printed in one document.

Respectfully submitted,

U. G. DENMAN,
Attorney General.

OPINION RENDERED BY THE ATTORNEY GENERAL TO THE GOVERNOR, AND EACH OF THE COMMITTEES ON FINANCE, JUDICIARY AND TAXATION IN SENATE AND HOUSE, MARCH 5, 1910.

GENTLEMEN:

This communication is sent to you because of a situation with which this department has been confronted since the latter part of December, 1908, a situation which in the end may seriously affect the revenues of the state and of its political sub-division.

The matter involves the validity, under the State and Federal Constitutions of section 2780-17 to section 2780-23 both inclusive of the Revised Statutes of Ohio, being sections 5485 to 5521 both inclusive of the General Code, and commonly known as the "Cole excise tax law." This law creates a state board of appraisers and assessors, composed of the Secretary of State, Auditor of State, Treasurer of State and the Attorney General, and constitutes the Auditor of State president ex-officio of that board, and under this law each of the public service corporations mentioned therein, viz., electric light, gas, natural gas, pipe line, water works, express, telegraph, telephone, messenger or signal, union depot, heating, cooling and water transportation companies doing business within Ohio, is required to pay to the state for use in the general revenue fund annually one per cent. of its *gross receipts* from business done within Ohio for the year, and each railroad, street, suburban or interurban railroad company whose line is wholly or partially within this state is required to pay to the state for use in the general revenue fund annually one per cent. of its *gross earnings* from its operation within Ohio for the year.

Each of these public service companies is defined in the act and among these definitions it is provided that,

> "Any person or persons, joint stock association or corporation engaged in the business of transporting natural gas or oil through pipes or tubing, wholly or partially, within this state, is a pipe line company."

Each pipe line company as thus defined and doing business within Ohio must, within the month of May annually, file with the Auditor of State a report containing, among other things, a statement of the,

> "entire gross receipts of the company including all sums earned or charged whether actually received or not, for business done within the state for the year next preceding the first day of May, including the company's proportion of gross receipts for business done by it within this state in connection with other companies."

Thereafter in the month of November the Auditor of State must collect from such pipe line company a sum in the nature of an excise tax to be computed by taking one per cent. of the gross receipts of such company for business done within the state for the year then next preceding the first day of May, and this tax is in addition to the property tax on the tangible property of such companies. If such company fails to pay this excise tax during the month of November the Auditor of State is required to add to the tax due a penalty of fifty per cent. thereon and collect said tax and penalty with interest at the rate of six per cent. per annum, and on his request it is the duty of the Attorney General to prosecute proceedings for the collection of such tax, penalty and interest.

The Buckeye Pipe Line Company is a corporation incorporated and organized under the laws of Ohio with a capital stock of $10,000,000, with its principal office, as designated in its articles of incorporation, at the city of Lima, Ohio, and it operates a pipe line for the transportation of oil and is subject to the provisions of the Cole law. The lines of transportation pipes of this company lie wholly within Ohio but they are connected at the state lines with the pipe lines of other similar companies in Indiana, Pennsylvania and other states, whose lines are in turn connected with the lines beyond of other companies, so that the business of the Buckeye Pipe Line Company consists in the transportation of oil between points wholly within Ohio and through its connections with the lines of other companies it transports oil from points without Ohio to points within Ohio, and from points within Ohio to places beyond this state.

In the month of May, 1908, this company made its report to the Auditor of State giving its gross receipts for business done in Ohio during the year preceding that month as $9,099,969.00. This report was afterwards passed upon by the board of appraisers and assessors and found to be correct, and under the law the company should have paid to the state in the month of November, 1908, an excise tax of $90,999.69 for the year covered by the report. In the month of October, 1908, however, the Supreme Court of the United States decided the case of Galveston, Harrisburg and San Antonio Ry. Co. v. State of Texas, 210 U. S., 217, in which case it was held that,

> "The state cannot impose the tax levied by the Texas act of April 17, 1905, upon railway companies, whose lines lie wholly within the state, equal to one per centum of their gross receipts, where a part, and, in some cases, much the larger part, of these gross receipts, is derived from the carriage of passengers and freight coming from, or destined to points without the state."

After this decision the Buckeye Pipe Line Company sent to the Auditor of State an amended report setting forth that of the more than nine million dollars of gross receipts returned by it, as stated above, $7,099,969.00 was receipts from interstate business, and that the receipts of the company from business done wholly within Ohio amounted to $2,000,000, and it asked for a hearing upon this report, claiming that it should not be required to pay an excise tax of more than one per cent. of the gross receipts realized from business done wholly within the state of Ohio. The Auditor disagreed with the company on this contention but it failed to pay the tax within the month of November, 1908, and toward the latter part December of that year a hearing was had before the board of appraisers and assessors, and I met with the board on this hearing, this being my first work as a member of the board of appraisers and assessors after coming to this office. At this hearing the taxing agent from New York of the company, the Buckeye Pipe Line Company being a Standard Oil property, appeared with counsel and on the hearing contended that the Cole Law, under the Texas decision above cited, is contrary to the Constitution of the United States insofar as it imposes a tax measured by any gross receipts received from interstate business. That is, he claimed that the Cole Law in effect imposes a tax upon such gross receipts from interstate business, and that this being so our law is the same as the Texas statute and therefore like that statute is void under the Texas decision. The tax agent and his counsel conceded the validity of the Cole Law insofar as it lays an excise tax against the company measured by taking one per cent. of the gross receipts of such company's business done intra-state, that is, the gross receipts from business which originated in Ohio and ended in Ohio, but claimed that in prescribing

a tax measured by taking one per cent. of the gross receipts from the transportation of oil within Ohio, if that oil had been transported from some point without Ohio to some point within the state, or from some point within Ohio to a point without, the Cole Law is an attempt to regulate interstate commerce, and therefore contrary to the Constitution of the United States which confers upon Congress the power of regulating commerce between the states.

My contention was that the Buckeye Pipe Line Company being an Ohio corporation may be required to pay a tax to the state for the privilege or right to be a corporation in this state, and that the General Assembly may use such method or means as may to it seem best in determining the annual value of that right or privilege and measure that value by whatever method it sees fit to use so long as it imposes a tax which is reasonable and not confiscatory. The result of the hearing was that after two or three days' controversy over the matter the company gave the board its ultimatum to the effect that it would pay the state one per cent. on $2,000,000 of gross receipts from the intra-state business of the company for the year covered by the report and said that if we would not accept that amount, viz: $20,000, they would make no payment whatever.

The collection from other public service corporations subject to the Cole Law had been made for that year within the month of November thereof, but it seemed to the members of the board, and to this department that there were strong grounds for legal argument on both sides of the question, and that this being true the doubt as to what conclusion would be reached by the courts was apparent. This department was asked by the board as to what system might be enacted to take the place of the Cole Law should the courts decide it to be unconstitutional as contended for by the company. I at that time was unable to advise the board with satisfaction either to them or to myself from a legal standpoint as to what might be done under the constitution aside from increasing the state levy upon all real and personal property within the state. After investigation of the question, however, I was satisfied that if the Cole Law is valid the company would not be able to escape payment of the $70,000 of tax and penalty thereon which it then refused to pay. The rights of the state could not be prejudiced by accepting the $20,000 on account or in any other manner in which the company might see fit to pay the same because the board has absolutely no right to remit any tax which the company was legally bound under the Cole Law to pay. We therefore concluded to receive from the company the $20,000, being one per cent. of the gross receipts received from intra-state business, knowing that this department might proceed against the company for the collection of the unpaid balance of the tax as contended for by the state, at such time as might seem most consistent with the best interests of the state's revenues. We were confronted on the one hand with the firm conviction that if a suit should be started at that time then the other public service corporations paying under the Cole Law would withhold payment during the month of November, 1909, on their interstate business until the result of such suit should be known, and this, of course would require litigation through all the courts of this state and the Supreme Court of the United States. On the other hand this department was face to face with the perfectly apparent great difficulty in speedily reaching a conclusion as to what law or system might be established within the state and federal constitutions to take the place of the present excise tax law if the court should hold it to be unconstitutional. The general assembly was then in extraordinary session and seemingly not in a temper to do much aside from the particular matters for which the session had been called, everybody knowing that a regular session must be held beginning the first Monday of January, 1910. Had I been able during that session to

reach a conclusion as to these constitutional limitations I should have laid the whole matter before the Governor and the general assembly at that time. I was not able, however, to reach such conclusion although much time and thought was given to the subject.

Being met with the circumstances just stated and feeling convinced that if any public notice should be given as to the action of this company in refusing to comply with the law the other public service corporations subject to the Cole Law would likewise refuse until a settlement of the question could be had in the courts, and that by reason thereof the state would be deprived, temporarily at least, of probably one and a quarter millions of dollars of revenue if not more at the November collection of 1909, there seemed to be nothing else to do but to allow that collection to quietly pass, and for me to then lay the whole situation before the general assembly and begin a proper action against the company for whatever amount should be then due under the terms of the law.

I am frank to say that some diplomacy and care were used to keep within the confines of this department the knowledge of the fact that this company had refused to pay this tax until the limitations of the constitution might be explored through decisions already rendered in great number by the Supreme Court of the United States and through the decision of two cases pending there during the last year, one of which was decided in January of this year and the other of which was decided a little over a week ago. We had hope in each of these cases, and they will be referred to later on. The November, 1909, collection passed and through it there came into the treasury under the Cole Law two and a third millions of dollars, and if there are any who would criticize the government because of its refusal to sooner advise as to this controversy, then my answer is that without any question the Cole Law is valid as to all that large class of public service corporations that do only an intra-state business, and for that reason such companies may not be heard to complain. If any among the companies that do an interstate business would complain then the answer is that their claim since the enactment of the law has been that they have only agreed to the law because they felt they should pay this tax to the support of the state rather than because they felt it a valid law. The facts are that such companies, through their agents, have repeatedly asserted before the general assembly and elsewhere generally that the law is not constitutional.

The Buckeye Pipe Line Company in making its report in the month of May, 1909, reported the gross receipts on only that portion of its business done wholly within the state and made no report as to the gross receipts from its interstate business. In the month of November, 1909, it paid the tax of one per cent. on the gross receipts so given in that report, while all other public service corporations made report of their gross receipts from both interstate and intra-state business, and in the month of November, 1909, each of them paid the tax of one per cent. on both such receipts. A statement of the account as it now stands against the Buckeye Pipe Line Company for arrearages, penalty and interest is as follows:

Arrearage for 1908	$70,999 69
Fifty per cent. penalty	35,499 84
Interest from Dec. 1, 1908, to March, 1910	7,987 46
Total Arrearage for 1908	$114,486 99
Arrearage for 1909	$65,044 04
Fifty per cent. penalty	32,522 02
Interest from Dec. 1, 1909, to March 1, 1910	1,463 49
Total Arrearage for 1909	$99,029 55

According to the above statement certified to this department by the Auditor of State the total arrearages, including fifty per cent. penalties and interest respectively for the years 1908 and 1909, amount to $213,516.54. Some time after the filing of this report by the Buckeye Pipe Line Company in the month of May last year, the Auditor of State, president of the board of appraisers and assessors caused an inspection to be made of the books of the company and found that its report of the gross receipts from its intra-state business was correct and that its gross receipts from interstate business in Ohio, none of which were reported, amounted to $6,504,404. Its tax measured by taking one per cent. of this amount from interstate business, and which it should have paid in the month of November, 1909, is $65,044.04. After the close of the month of November, 1909, this department made repeated attempts to procure from the company the payment of these arrearages, they admitting the amount of gross receipts from both kinds of business as reported by themselves and ascertained through inspection of their books, as stated above, and while they made payment of a tax measured by taking one per cent. of the gross receipts for each of the years from intra-state business they absolutely refuse to pay any tax measured by taking the statutory one per cent. of the gross receipts received from interstate business in either of the years 1908 or 1909.

The company relies upon the Texas case cited above as justifying this action on their part, claiming that under that decision the Cole law is contrary to the constitution of the United States in that it attempts to lay a tax of one per cent. *upon* the gross receipts of public service corporations received from interstate business.

As heretofore stated, our contention is that the Cole Law does not impose a tax upon the gross receipts themselves, but that it lays a tax upon the right or privilege of the Buckeye Pipe Line Company to continue to be a corporation within the State of Ohio, that is upon its franchise to be a corporation within the state, and to do its intra-state business here, and that its gross receipts are used as a means of measuring the value of that continuous franchise. It is now the duty of this department under the statute at once to bring a suit for the recovery of this tax, and this suit will, of course, go to the validity of this excise law under the federal constitution.

These taxes are paid each year in the month of November and the amount paid last November was greater than any previous year, being about two and one-third millions of dollars. If the court sustains the law in the suit to be brought this payment will continue, but if the decision is adverse, the general revenue fund will lose about one and a quarter millions or more, or whatever amount would otherwise be realized by use of the receipts from the interstate business in measuring the tax.

While this department is of the opinion that the Cole Law, and the rights of the state under it may and should be distinguished from the Texas statute and the case above cited construing the same, and that the Cole Law should be sustained, yet it would not be stating the real situation for us to claim that there is no doubt as to the correctness of our contention. The many fine distinctions drawn by the Supreme Court of the United States through the great number of decisions from that court passing upon the question as to what is a regulation of interstate commerce as applied to laws enacted in the several states, brings us face to face with the fact that we might take a bad risk should we assume to assure the general assembly that the Supreme Court of the United States will sustain the Cole Law. We can only say that there seemed to be but one course for this department to pursue at this time, and that is while the general assembly is convened in regular session to lay the whole situation before them for legislative action while this department proceeds to collect the tax arrearages from

this company, if that be possible, and to give to the general assembly such help as it may desire from us in framing a system that will stand the test of the courts and best subserve the interests of the state should we by any chance finally fail in sustaining the Cole excise tax law. There could be on plausible excuse in honest and fair dealing for the government to continue indefinitely in allowing one public service corporation to pay this tax measured by the receipts of its business done wholly within Ohio and at the same time receive from other public service corporations doing business within the state a tax at the same rate measured by the entire gross receipts of such other companies and received from both their intra and interstate business. Then again laying aside all consideration of fair dealing between these companies and the state it would be wholly impracticable, entirely dangerous and outside of good business principles in conducting the business of the government to so deal with such a situation. If this law is valid it is time that we know it and thereby avoid the continued attempt of those who pay taxes under it to trade upon its alleged invalidity for advantages in other lines, and if the Cole Law is not valid but contravenes the Constitution of the United States it is time that we know it so that we may erect in its stead a system under which the actual necessary expenses of the government may be collected by authority of valid laws, and without agreeing with or asking those who are to pay the tax as to such payment. One of the sovereign powers of the state is the right to levy taxes in support of the government for the protection of the citizens and property of the state, and while this sovereign power does exist in the state it is nevertheless equally the duty of those who administer the business of the government to refrain from taking one dollar more from the taxpayers than is absolutely necessary to an efficient government economically administered. It is equally the right of, and it is equally beneficial to both the taxpayers and the government however to know that what the taxpayer is to contribute, and the government to receive, is contributed and received under valid laws standing without any question as to the right of the government to ask the contribution or the duty of the taxpayer to make such contribution.

In view of the situation as outlined above, and in view of the provisions of our state constitution requiring that the general assembly shall pass general laws, taxing by uniform rule all moneys, credits, investments in bonds, joint stock companies or otherwise and all real and personal property at its true value in money, there would seem to be but one course open to the government at this time, and that course is, at this time while the general assembly is in regular session prepared and able for the task to place upon the statute books a system of laws, some of which will produce just such revenues as are necessary to the efficient and economical conduct of the state government and its institutions including the common schools and the universities, and some of which laws shall be strong administrative measures in properly collecting such revenues.

Throughout the year 1909 much attention was given and research made as to the state of the law under the Ohio and federal constitutions with a view to settling, in the opinion of this department, as to what are the limitations of the powers of the general assembly in creating such a system both for the production of revenues and administration of the collection thereof; and in view of the situation in which we are placed with reference to the Cole excise tax law and the large dependence which the state government has heretofore placed in that law as a source of revenue, I deem it my duty at this time to present to you the conclusions reached as a result of that investigation.

Our State Revenue Producing Laws.

First: The situation as to the Cole excise tax law has already been stated, but it may be added that the fore-runner of this law as it now stands, seems to

have been an act for the assessment and taxation of express and telegraph companies, passed May 1, 1862, 59 O. L. 91. This law required any person or persons, joint stock associations or corporation, conveying to, from or through this state, or any part thereof, money, packages, gold, silver, plate, or other article, by express, and any person or persons, joint stock association or corporation, engaged in transmitting to, from and through or in this state, telegraphic messages, to pay annually to the state a certain percentage of its gross receipts for the year next preceding the return for assessment, at a rate equal to that on property, as a charge for the privilege of exercising its franchise and powers within the state. This act was passed on by the Supreme Court in Telegraph Co. v. Mayer, 28 O. S. 521, and it was urged against the act that it was a regulation or restriction of commerce between the states, and hence in conflict with the Constitution of the United States. Our court, however, sustained the law on the ground, it seems, that the tax was not on the gross receipts as property, but that such gross receipts were simply used as a means whereby the value of the franchise to do business in the state should be measured. The gross receipts involved in this case were obtained from both state and interstate business.

The above mentioned case of Telegraph Company v. Mayer was approved and followed in the case of Express Company v. The State, 55 O. S. 69, the first paragraph of the syllabus of this latter case reading as follows:

> "The tax authorized by the act of May 14, 1894, 91 O. L. 237, is an excise tax imposed for the privilege of carrying on the express business in this state, and said act is a valid law. Telegraph Company v. Mayer, 28 O. S. 521, approved and followed."

This act thus construed provided in part as follows:

> "It shall be the duty of the auditor of state in the month of November annually, to charge and collect from each express company doing business in this state, a sum, in the nature of an excise tax to be computed by taking two per cent. of the amount fixed by the board of appraisers and assessors, as the gross receipts of such company for business done within the state of Ohio for the year next preceding the first day of May, etc. * * *"
>
> "Providing nothing contained in this act shall exempt or release express companies from the assessment and taxation of their tangible property in the manner authorized and provided by law."

The same objections were urged against this law that were urged against the law construed in 28 O. S. 521. In 1896 these original acts were amended and made to embrace practically all public service corporations then doing business in the state of Ohio and the charge was placed at a sum in the nature of an excise tax to be computed by taking one-half of one per cent. of the gross receipts or earnings as specified in the act of each of the public service corporations named therein. This act of 1896 was known as the "Goodale law" and it was amended in the year 1902 by extension to other public service corporations which since the last amendment had come into existence and the rate was raised to one per cent. This act of 1902 was and still is known as the "Cole Law." In the year 1904 the Cole Law was amended and made to cover certain additional public service corporations which had lately come into existence and were doing business in Ohio. No later amendments have been enacted.

While the Cole Law, or rather its predecessors, differing from it only in the fact that they did not embrace public service corporations doing business in the

state, have been sustained by our supreme court in the cases cited above, yet neither the Cole Law nor those of which it is an amendment, have ever been tested in the federal courts. As heretofore state, however, that question is now before us and must be met, on the contention that the law violates the federal constitution, unless the Buckeye Pipe Line Company shall see fit to recede from its position.

Such excise tax as that imposed by the Cole Law may be required to be paid by all public service corporations measured by taxing a certain percentage of their gross receipts realized from business originating and ending within the state, that is, from intra-state business, — and this is the law in both the state and federal courts, including the Supreme Court of the United States; hence we may rely with confidence upon the continued receipt of revenues from such source. If the Cole Law is invalid in the respect contended for by the Buckeye Pipe Line Company, there is also the question as to whether such invalidity would render it invalid in its present form as to business done wholly within Ohio, although in our judgment the law would be upheld by the Supreme Court of the United States in so far as it requires a tax measured by taking one per cent of the gross receipts from intra-state business regardless of the question raised as to the same tax with reference to interstate business. All questions would be avoided, of course, if the law were amended making it expressly apply to business done wholly within the state of Ohio.

The Willis Law.

Second: The Willis Law was passed by the general assembly on April 11, 1902, and provides that each private corporation organized under the laws of Ohio for profit shall annually pay to the Secretary of State a fee of one-tenth of one per cent. upon the authorized or issued and outstanding capital stock of said corporation, and to be not less than ten dollars in any case, and this law requires that each private foreign corporation for profit doing business in this state, and owning or using a part or all of its capital or plant in this state, and subject to sections 148 to 148c of the Revised Statutes, shall pay to the State of Ohio, for the privilege of exercising its franchise in Ohio, annually one-tenth of one per cent. upon the *proportion* of the *authorized* capital stock of the corporation represented by property owned and used and business transacted in Ohio and to be not less than ten dollars in any case. These corporations are not public service corporations and therefore not engaged in transportation of any kind, but are companies engaged in the various commercial and industrial enterprises of the state. This law during the last year produced in revenue the sum of about $1,200,000, and it has been sustained by the Supreme Court of Ohio in the case of the Southern Gum Co. v. Laylin, 66 O. S. 578. The revenues from this law have steadily increased from the time of its enactment until the close of the last fiscal year, during which last year it reached its highest figure.

Insurance Premium Tax.

Third: Under section 2745 of the late Revised Statutes, each foreign insurance company doing business within the state is required to pay to the state for the privilege of doing business in Ohio, a tax of two and one-half per cent. upon the gross amount of premiums realized by the company from each risk on persons or property in this state. This money is paid into the general revenue fund and amounts to about $1,000,000 per year. In addition to this these companies pay a further percentage of one-half of one per cent. upon such premiums which go to the support of the State Fire Marshal's office. These laws, or similar ones, have been sustained by the courts, and this department has no doubt as to their validity.

Fourth: Our excise taxes therefore for the use of the general revenue fund are made up from the tax of one per cent. measured by the gross receipts of public service corporations under the Cole Law amounting to two and a third million dollars per year, the Willis law tax amounting to $1,200,000 per year, and the insurance premium tax amounting to $1,000,000 per year, making a total of about $4,500,000.

In the above statement I make no mention of the Aiken Liquor Tax, money received from contract labor at the Penitentiary, nor any of the other sources of revenue, such as initial incorporation fees received in the office of the Secretary of State, etc. The exact amount of these moneys received from these other sources for the use of the general revenue fund of the state may be had at the office of the Auditor of State and the exact amount of the Cole, Willis and Insurance premium taxes may also be obtained from that department.

Fifth: Possible Remedies Continuing Excise Tax.

In suggesting possible remedies under which excise revenues may be continued through constitutional laws I would not be understood as recommending the collection of a greater amount of revenue into the state general revenue fund than is being now collected, or rather that was being collected before the recent falling off of revenues under the Aiken Liquor Tax. Our general fund for the fiscal year ending November 15, 1909, lost about $700,000.00 by reason of the operation of the local option law, and it has been the general opinion that if some plan could be devised whereby that deficiency could be made good the state would annually collect general revenues amply sufficient to pay the expenses of the state government and the various institutions including for the latter both maintenance and necessary new construction. If this could be done the present surplus in the state treasury could be maintained. Whether, however, these revenues shall be increased, if that is possible, is a matter of public policy for the general assembly, but I cannot refrain from saying that I see no reason why there should be any increase in the amount of revenue collected over the amount which was annually coming into the treasury before the losses under the local option laws. Practically all governmental experience shows that as rapidly as new methods for collecting increased revenues have been devised, new plans have been laid for the expenditure of such additional revenues, and many of such plans for such expenditures have not been meritorious. This statement is not made with particular reference to our state government but is made as the truth with reference to all governments under various administrations. The crisis we are now in with reference to our state revenues may have a salutary effect and it may not be unfortunate but rather fortunate for all of us as citizens and officials that we are now compelled to take an invoice and thereby determine whether we are needlessly and unwisely spending money.

If the Cole Law is not valid, then, in my judgment, under the law, it will be some time before we will be able to make up the loss therefrom and the loss under the operation of the local option law. This loss will total about $2,000,000 annually and this, of course, will render necessary the practicing of economy, and of course it will compel the cutting off of expenditures aside from those which are absolutely necessary, unless we see fit to expend the surplus now in the treasury for matters which for the time being might be abandoned. Our common schools and universities must certainly be maintained, and this is true of our various other state institutions and various departments of state through which the government is administered. It should not be difficult for the general assembly to decide what things for which large appropriations have been made in the past might be discontinued temporarily or the appropriations therefor be

at least greatly reduced. When we shall have passed this temporary embarrassment, if we are able to pass it, it may be found perfectly agreeable and wise in policy to continue the economy.

Now as to what may be done within the constitution in readjusting our excise tax laws if the general assembly shall see fit to do so, let us consider some of the decisions, and all this is said because of the fact that I take it for granted that until our difficulty, as outlined above with respect to the Cole excise tax law, shall have been settled, the general assembly will find it absolutely wise and necessary to curtail expenditures rather than live up our surplus.

I am not able to assure the general assembly of the validity of the Cole Law for the following reasons: It has been and is supposed by many that this law is sustained by the case of the State of Maine v. Grand Trunk Ry. Co., 142 U. S. 217, 45 Law Ed. 994. This, however, does not seem to me to be correct. The statutes of Maine on which that case was based created a system of property taxation. This is apparent from a reading of those statutes, and it was so stated by the court in reviewing that case in the opinion rendered in the Texas case heretofore cited. The State of Texas in its case relied upon the Maine case to support the Texas law, but the supreme court in deciding the Texas case said that the Maine case did not apply for the reason that the Maine statute involved and created a system of property taxation and not a franchise tax. The Supreme Court of the United States in every instance in which the question has come before it, so far as I have been able to find, has held that a state may lay a property tax upon the property of a person or corporation engaged in interstate commerce if such property is located within the state, and that such property tax is not a regulation of interstate commerce nor a violation of the federal constitution.

Express Co. v. Ohio State Auditor, 165 U. S. 194, 41, Law Ed. 683; same case—Re-hearing 166 U. S. 185,218; 41 L. Ed. 965,976.

Our Cole Law while it differs from the Texas statute as I believe in an essential particular, yet it is more nearly like the Texas statute than the statutes of Maine involved in the Maine case. The railroad company in the Texas case relied upon the case of Philadelphia Southern Mail Steamship Co. v. Pennsylvania, 122 U. S. 326, 30 Law E. 1200. The Steamship company case involved the validity under the federal constitution of a Pennsylvania statute which imposed a tax *upon* the gross receipts of public service corporations doing business within that commonwealth, and the gross receipts of the Steamship Company came from business both intra and interstate. The Texas statute did the same and the court in the Texas case held that it was ruled by the Steamship Company case. In each of these cases, the Steamship Company case and the other from Texas, the statute involved by the language thereof laid the tax *upon* the gross receipts direct. Our Cole Law, as heretofore stated, differs from these in that it provides that the company shall pay an excise tax and uses the gross receipts as a measure of value of the franchise. The distinction is not broad, it is true, but our Supreme Court of the United States is noted for the fine distinction which they draw in their decisions, and this may be the safety of our situation. Our statute differs in other respects from the Texas and Pennsylvania laws but the difference is not so marked as that this department can assure the general assembly that it may rely upon it for continued revenues to the same amount as has been collected in the past.

Through investigation of the whole subject within the last year I at one time approached the opinion that the Willis Law might be extended to public service corporations at a higher rate than the rate prescribed for private cor-

porations and that a franchise tax of one per cent. might be laid on the capital stock of these companies, that is, say one per cent. upon the subscribed or issued and outstanding capital stock of such companies organized under the laws of Ohio, and the same rate of one per cent. upon that proportion of the capital stock of such companies (organized under the laws of other states) represented by their capital stock or property actually employed in Ohio and their business done wholly within the state. While considering this proposition, however, we learned of the case of the Western Union Telegraph Company v. The State of Kansas, then pending in the federal supreme court and which seemed to involve the proposition. In this case the State of Kansas by statute sought to require the telegraph company to pay annually to the state a franchise tax of one-tenth of one per cent. upon the authorized capital stock of the company without regard to what proportion of that stock might be represented by capital actually employed within the State of Kansas. The case was decided January 17, 1910, but we were unable to procure the opinion until about the middle of February, and a reading of this opinion lays about the same doubt on the proposed extension of the Willis Law mentioned above as exists with reference to the present Cole Law. Two weeks since, the case of Southern Ry. Co. v. Greene was decided by the federal supreme court and involved a statute of the state of Alabama, which sought to require each foreign corporation doing business within the state of Alabama to pay a franchise tax to the state in the sum of one-tenth of one per cent. upon that portion of the capital stock of such foreign corporation represented by the actual amount of capital employed by the company in the state. When I saw the newspaper report of this case, which stated that the supreme court had sustained the law, I felt that the proposed extension of the Willis Law would be good, but on procuring a copy of the opinion a few days since I find that the supreme court reversed the supreme court of Alabama and held the law invalid on the ground that the state of Alabama had sought to require this tax from foreign corporations but did not require it from corporations organized under the laws of Alabama, and doing the same kind of business, under the same circumstances, except as to the jurisdiction under which they were organized. The Supreme Court of the United States held this to be a violation of the Fourteenth Amendment, which guarantees to all citizens within any state the equal protection of the laws of that state, but the court did not touch upon the other question.

The doubt herein before mentioned as to the power of the general assembly to extend the provisions of the Willis Law to corporations doing both intra and interstate business arises from the fact that in placing a tax upon that proportion of the authorized capital stock of the company represented by property located and used wholly within the state would be making use of property, as a measure of the tax, which is used in the transaction of both intra and interstate business. Take for instance a railway company, the property of which lies wholly within Ohio, but which is engaged in both state and interstate business because of or through its connections with other lines of railway. This company uses its right of way, tracks, depots and all other equipment located wholly within Ohio in transacting both intra and interstate business, and while the Willis tax and the Cole tax are taxes upon franchises or privileges to do business in the state of Ohio and may in a proper way be required for the privilege or franchise of doing business or carrying on commerce wholly internal to the state of Ohio, I do not feel warranted in giving an opinion assuring the general assembly that a law, requiring the property of the company located wholly within Ohio, *but used in both intra and interstate business,* to be taken as a means of measuring the value of that franchise or privilege, would be within the constitution. Such measure, that is such property, is used in the conduct of both kinds of business and the question would be as to whether the court would consider the tax a regulation

of interstate commerce in so far as it should be measured by such property. This question was involved in the Alabama case herein above referred to, but the court declared the law invalid on the ground that it applied only to foreign corporations, companies incorporated and organized under the laws of Alabama to do the same kind of business not being subject to its terms. The court said that thsi was a denial to such foreign corporations of the equal protection of the laws of that state, and such being the case it, of course, was not necessary to pass upon the other question.

The case of the Western Union Telegraph Company v. The State of Kansas does not go to the question because the statute involved in that case required each telegraph company wherever organized to pay a tax of one-tenth of one per cent. upon its authorized capital stock no matter where the property representing that capital stock should be located. In the opinion of the court in this case it is stated several times that it is not a case in which it was sought to collect a tax measured by that proportion of the authorized capital stock represented by property located wholly within the state of Kansas, but nowhere in the opinion did the court say that such a law would be valid. Simply the bare statement is made that the statute does not present such a case.

So far, therefore, as the validity of the Cole law in its present form is concerned, my conclusion is that there is nothing to do in our case except to await the out-come of our proposed suit which will test that question. In the meantime, however, I am clearly of the opinion that the general assembly may readjust these franchise or excise tax laws, that is the Cole and Willis law, and that they may adopt any one of the following plans:

(a) They may require each of the public service corporations subject to the Cole law to pay an excise tax to the state, measured by taking some rate higher than one per cent. of the gross receipts or earnings of such companies realized from intra-state business and excluding interstate business and business done for the federal government.

(b) Or they may reasonably classify these public service corporations and require one class to pay such franchise tax at one rate and another class at a different rate, the tax to be measured in each case, of course, through the gross receipts received from intrastate business and excluding the receipts from interstate business and business done for the federal government. This classification would be according to kinds or nature of the business.

(c) Or they may classify these public service corporations, as above stated, and may require each member of a class to pay a certain rate on such gross receipts or earnings from intrastate business, excluding interstate and federal government business up to a certain aggregate of such intrastate gross receipts or earnings, and require that a certain other rate be paid upon intrastate gross receipts or earnings of such company in excess of the receipts affected by the first rate.

(d) Or they may require each of the public service corporations named in the Cole law, placing them all in one class, to pay a franchise tax measured by taking a certain percentage of their intrastate gross receipts up to a certain aggregate of such intrastate gross receipts, excluding interstate and federal government business receipts, and requiring such tax from each of such companies at a different rate on the excess of such intrastate gross receipts over the first aggregate subject to the first rate.

In my opinion there is no question as to the right of the state under either the Ohio or Federal Constitution to require such companies to pay such tax measured by their intrastate business, excluding therefrom their interstate business and business done for the federal government. The law on this point, as declared by

the Supreme Court of Ohio and the Supreme Court of the United States seems clear as will be seen by an examination of the following decisions:

Southern Gum Co. v. Laylin, 66 O. S. 570.
Western Union Telegraph Co. v. Texas 105 U. S. 460; 26 Law Ed., 106-7.
Postal Telegraph & Cable Co. v. Council City of Charleston, 153 U. S. 697; 38 Law Ed., 874.
Covington Bridge Co. v. Kentucky, 154 U. S. 204; 38 Law Ed., 962.

Classification.

The right to classify for purposes of taxation is sustained, and clearly established, in both our state supreme court and the Federal Supreme Court by the following cases:

Heck v. State, 44 O. S. 536.
Driggs v. State, 52 O. S. 51.
State ex rel v. Guilbert, Auditor, 70 O. S. 229.
State ex rel v. Ferris, 53 O. S. 314.
Northern Pac. R. R. Co. v. Barnes 3 North Dakota, 319.
Railroad Co. v. Iowa 94 U. S. 155.
Express Co. v. Seibert 142 U. S. 339; 35 Law Ed. 1035.
Bell Gap R. R. Co. v. Penn. 134 U. S. 232; 33 Law Ed. 892.
Home Ins Co. v. New York 134 U. S. 594; 33 Law Ed. 1025.
Kidd v. Alabama 188 U. S. 730; 47 Law Ed. 669.

Administrative Laws and the Property Tax

We must procure our revenue through the excise or franchise tax, that is a tax on various sorts of privileges, or through the property tax, one or both, under our constitution. At the present time the state levies 1.34 mills on each dollar of valuation of all the real and personal property of the state as listed and assessed for taxation. Of the funds raised from this levy one mill on each dollar is paid back to the several counties for the support of the common schools, and thirty-four hundredths of a mill on each dollar is used in the support of the universities. The expense of state government and its institutions, aside from its universities, is paid entirely from the money realized through the excise or privilege tax heretofore discussed and from funds derived from sundry other sources, but none of this state expense is borne through the property tax. If these excise or privilege taxes fail in whole or in part because of the invalidity of the laws requiring them, or any of them we must then reform these laws within the constitution and if any loss is sustained through the reformation we must then resort to the property tax to make good such losses in whole or in part and if not as to the whole loss then other laws might be passed placing taxes on other occupations, business, professions, the right to inherit, etc., or something may be drawn in the way of taxation from each and all of these. The property tax must, of course, be retained, at least for local purposes, and aside from the question of devising ways and means to avoid a failure of revenues to support the state government, the question now upper-most in the minds of our citizens with respect to the property tax is the question as to how our property tax laws shall be administered, and if ye are to take any revenues for state expenses from the property tax this question is equally important with reference to the administration of the property tax laws under which such revenues for state purposes may be taken. It is unnecessary here to go into detail on the never ending

contention among the people as to the administration of our property tax laws for the simple reason that we are now face to face with a situation under which we must go back to the constitution, or more accurately speaking, go to the constitution, for this is a trip that, so far as I am informed, has never been made in Ohio with respect to the administration of our property tax laws.

Unless the Buckeye Pipe Line Company recedes from its position this department, under the law, and for the other reasons heretofore stated, is bound to and will bring a suit for the collection of the arrearages of this company under the Cole law. It will take sometime to complete this litigation because the case will undoubtedly go to the Supreme Court of the United States no matter which side should win in the lower courts. In the mean time, unless the other public service corporations doing interstate business should see fit to continue their payments as in the past, or unless the Cole law, or Willis law, or both, be readjusted and rates raised, we must necessarily be short of revenues as heretofore stated, approximately in the sum of $2,000,000. No increase of revenues can be obtained through the property tax on an increased duplicate until the close of the present year, and in revising our excise laws, taxing privileges, if such revision shall be determined upon under one or more of the plans outlined above, the general assembly will be bound to keep in mind what was said by our supreme court as to the constitutional limitations in the case of Southern Gum Co. v. Laylin, 66 O. S. 578, as follows:

> "By reason of these limitations a tax on privileges and franchises cannot exceed the reasonable value of the privilege or franchise *originally conferred* or its *continued annual* value hereafter. The determination of such values rests largely in the general assembly, but finally in the courts".

In other words while there is a large discretion in the general assembly in fixing these values and this tax, yet it may not go to the extent of confiscation. How much of this shortage of a million and a quarter dollars, or the two million dollars if you consider the shortage of $700,000 under the operation of the local option law may be made up by an increase in the rates of excise tax on intrastate business, I am not able to say, because at this time I am not advised as to the relative amounts of intrastate business and interstate business done by the several public service corporations aside from the Buckeye Pipe Line Company. Many of these corporations do not keep a separate account of these two classes of business, and any administrative tax law which shall be passed should give the power to the tax commission to require this information to be given. Under all the circumstances, therefore, I cannot see but that for some little time at least we cannot be certain as to what revenues the state government may count upon for administration thereof even with a readjustment of the excise laws. If in the end we are not able to make up the loss of two million dollars by increase of the rates in some one or more of the ways already outlined, then the state must look to the counties or to all the real and personal property within the state for help. The great evil which has long existed under our property tax laws is the manner in which, by common consent and without any particular blame being ascribed to any one person or class of persons, these tax laws have been administered in all the taxing districts of the state from the school district through the township, municipality, county and state. No plainer rule was ever written than the command in the second section of Article Twelve of our constitution which provides that,

> "Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its true value in money",

excepting the particular matters thereafter definitely named in this section to be exempt from all taxation. The laws called for by this language just quoted have been passed. and the general assembly now has the opportunity to establish a system of administrative laws which will carry out this command of the Constitution. If it is carried out every citizen in Ohio will be treated equally under the law and in fact.

If the Cole law is invalid then I repeat, we may be called upon to resort to help from the counties or a direct levy upon all real and personal property of the state to procure money to administer the state government and our various institutions. This burden can only be equitably distributed by requiring every citizen to do his part as the constitution commands. The difficulty in the past in securing the performance by each of us as citizens of such part is the lack of centralized authority directing administration of our taxing laws and preventing extravagance in the expenditure of money collected. It is fortunate that at this time there seems to be practical unanimity for the creation of such a central authority in a state tax commission. If this commission is created they should not only be given the power, but it should be made their duty to see that the constitution is complied with and they, of course, must be given the instruments and guides with and by which they can exercise that power and perform the duty. It is well understood that property is more valuable under some circumstances of use or condition than under others, and our supreme court has laid down some rules for ascertaining such values in the case of Ohio v. Halliday, 61 O. S. 352, as follows:

> "Where the manufacture of an article of tangible personal property is protected by a patent, and such article when manufactured is not put on the market for sale but its ownership retained by the manufacturer in himself, and the article leased or rented by him to another for a valuable consideration, payable to him, it should be taxed as his property at 'its true value in money', although that value is enhanced by reason of the patent. Its true value in money for taxation is the value that attaches to it in his hands.
>
> "In ascertaining the true value in money of such property in the hands of its owner, every fact or circumstance, brought to the attention of the person or officer who is charged with the duty of fixing that value, and which in its nature bears on the question, should be considered by him. One of these circumstances is the earnings or rental of such article".

In another case, State v. Jones, 51 O. S. 492, that court has sustained the Nichols Law, so called, which prescribes a method for determining the value of certain public service corporations, viz., express, telephone and telegraph companies, and that law has been sustained by the Supreme Court of the United States in the case of Adams Express Co. v. Ohio State Auditor, 165 U. S. 194; 41 Law Ed. 682. In this case the federal supreme court sustains the method prescribed by the Nichols law for ascertaining the true value of the property of these three classes of companies as going concerns and says:

> "There is no federal restriction which will prevent property from being assessed at the value which it has *as used and by reason of its use*".

The court holds that this may be done with an express company, and with a telephone company or a telegraph company, although the property and methods of operation of the express company are widely different from those of the other two companies, and the court further holds that,

> "Where the method of appraisement prescribed by law is pursued, and there are no specific charges of fraud, the valuations will not be held excessive upon evidence tending only to show that they were so."

In the opinion of the Supreme Court of the United States on a re-hearing of the case of Adams Express Co. v. Ohio State Auditor, reported in 166 U. S. 185, 41 Law Ed., 965 the court, on page 220 of the official volume, and page 977 of the Lawyer's edition, in demonstrating the reasonableness of the rule quoted above that property may be assessed at the value which it has as used, and by reason of its use, uses the following language:

> "Now, it is a cardinal rule which should never be broken that whatever property is worth for the purposes of income and sale, it is also worth for purposes of taxation".

These rules just quoted from the supreme court of Ohio, and the federal supreme court, are rules which may be applied to all classes of property, real or personal, which the constitution of Ohio requires to be taxed, and if these rules are applied to any class of such property they should be applied to all classes.

If the tax commission, therefore, is to be charged with the duty of enforcing the constitution and the laws enacted pursuant thereto for taxation of the property mentioned in section 2 of Article 12, as quoted above, then that commission should be given the power to get the necessary information to enable it to intelligently perform that duty.

The Nichols law is definite and certain in its grant of powers to gather information, and it is constitutional, and if it is good for one public service corporation it is good for all that may be brought within its provisions. In my opinion all of such companies named in the Cole excise tax law may be brought within the principles of the Nichols law, power being given to the commission to require information suitable to the respective companies. If this is done then all of these companies are treated equally and the same under the law, and all the property of each of them may be brought upon the tax duplicate at its true value in money. In the case of State v. Halliday, cited above, a similar statute and similar rules conferring upon the commission the power to obtain information suited to ascertain the true value in money of the property of other corporations commonly known as private corporations, may be enacted, and thus enable the commission to see that the property of these corporations is brought upon the duplicate at its true value in money as part or parts of going concerns.

It may be questioned whether in arriving at the value of property of a going concern or business the taxing authority would have the power to take into consideration some particular property owned by the company, but which is not really a part of nor used in the conduct of the business of the company whose property is being valued or assessed, especially if the property so not a part of such business is located outside of the state of Ohio. For instance, suppose that a public service corporation, or any other corporation, should, for some reason or another, acquire a piece of real estate far removed from its line or plant, and which in fact is not at all necessary nor used in any way in connection with, nor as a part of, its business as a public service corporation or as a manufacturing

or other concern, if a private corporation, it may well be questioned whether in arriving at the true value of the property of any such corporation as a going concern it would be legal to take into consideration this outside property. If it is a railway company, the property of which is being valued, and such railway company should own a piece of real estate far removed from its line or terminus but on which there is a valuable sand or gravel pit from which sand or gravel is taken from time to time for use in maintaining the property, such piece of land would be a part of the going concern; but if the railway company should be compelled to take a farm in some other state in payment of a debt due the company, and which would not in any wise be used by the company in carrying on its regular business, I am inclined to the opinion that the law would not permit this farm to be taken into consideration in valuing the property necessary to and used in the regular business of the company as a going concern. This question, however, is really one for determination in the administration of such laws, and the correct answer to it will, of course, be observed by the proper authorities in making up values.

The same relative powers and requirements may and should be given to, and made part of the duties of the commission with respect to all other tangible personal and real property which, under the constitution, should be brought on the duplicate so that it may be assessed at its true value as determined by the uses, conditions and all the circumstances under which such property exists.

A great, if not the greatest difficulty in bringing property upon the duplicate is to secure that property which is in hiding. It should be made the duty of this commission, and they should be given the power without any question, to bring this property from its hiding and place it upon the duplicate at its true value in money. The local taxing authorities should be subject to the supervision of this commission with full power in the commission to compel the performance of the duty under the law, and the commission should be subject to the general supervision and direction of the chief executive of the state.

No person, firm, association or corporation can honestly complain when the same treatment on these matters is given alike to all persons, firms, associations and corporations.

It, therefore, is within the power of the general assembly to extend the Nichols law to each and all public service corporations, extend a similar suitable statute to other corporations and property giving the proper taxing authorities the right to procure information such as will enable them to determine the true value thereof according to the use to which it is put, and all the conditions under which it exists, and through other provisions of law give the proper authorities the power and place upon them the duty of bringing all personal property out of hiding and place it upon the duplicate at its true value in money.

The object of such laws as those just described is not to get more money to spend and perhaps to allow a condition of extravagance, but it is simply to compel each and every citizen in this state to contribute his honest share toward the expense of the state and her institutions which protect him and as a compensation for this contribution, and to prevent extravagance and waste in the expenditures of the citizen's money thus contributed, the rate should be limited so that it will be impossible for governmental agents and officers to use money in the administration of their offices simply because of the fact that it may be gotten.

If the Cole excise tax law shall prove to be unconstitutional then so much greater is the reason why the general assembly and the governments, state and local, should adopt and comply with the above rules in bringing property on to the tax duplicate at its true value in money. If the law is constitutional, then we have only complied with our Ohio State Constitution, have treated each citizen as every other citizen is treated on this matter and have secured a fair and

equal distribution of the tax burden. If the law is not constitutional then we have provided a means through which money may be procured for an efficient and economical administration of the local and state governments and the support of their respective institutions. In extending these rules to all property they must, under the decisions of the supreme court of the United States be extended to all property alike, and under those decisions all property must be put on at its true value or at a uniform proportion of the true value in money. This has been decided in a number of cases by the supreme court of the United States, and while our supreme court holds that a person whose property has been placed upon the duplicate at its true value in money cannot complain of such action and have such valuation for taxation reduced because the property of other persons has been placed upon the duplicate at a value less than its true value in money, the supreme court of the United States says that all property must be treated alike in this respect. If any attempt should be made to do otherwise a person, firm or corporation, who, by reason of his residence or otherwise would be able to bring a suit against the taxing officer in a federal court, would be able to have his valuation reduced to such proportion of the property's true value as is used with respect to other property.

PLANS WHICH MAY BE USED BY THE STATE TO PROCURE MONEY THROUGH THE PROPERTY TAX.

Prior to 1903 the state had been making a direct levy upon all the real and personal property in the state as listed and assessed for taxation at the rate of 2.89 mills on the dollar of such valuation. Through the Cole excise tax law and the Willis law and the Insurance Premium tax law passed in 1902, this state levy was reduced in the year 1903 to 1.34 mills on the dollar, being a decrease of 1.55 mills, and the state levy, as heretofore stated, stands at 1.34 mills on the dollar, and all the money realized therefrom goes to support our common schools and the universities.

(a) As to revenue measures under the property tax for the support of the state government if it shall be necessary to resort to the property tax, we, of course, may increase the state levy, but I fear this would require a continuation of the state board of equalization, and in my opinion would be a step backward in the matter of taxation reform. Certainly, if a system were devised which would surely place all property on at its true value, an equalization board would not be absolutely essential, or perhaps the state tax commission might do this work of equalizing.

(b) Another plan open to the general assembly, and which would be valid under the law would be for the state to determine how much money it would be necessary to realize for the expense of the state government and state institutions from the property tax, and then require each county to pay annually to the state its proportion of that amount based upon the population of the county and make it the duty of the county to levy a tax upon all the real and personal property within the county to pay such proportion.

(c) Or the state law might require each county to pay to the state for the use of the general revenue fund a certain proportion of the money realized from the tax assessed and collected on the valuation of public service corporation property within the county. This would only be taking revenues from this source in lieu of the excise tax should the Cole law be held unconstitutional, assuming that the Nichols law be extended to these public service corporations.

(d) Or the state law might require each county to pay to the state a certain percentage of the revenues realized by the county by taxation, making the per-

centage the same, of course, from each county and at whatever rate that would be necessary to supply the amount of money which the state would need to call for.

CONCLUSION.

What has heretofore been said has been said upon the methods and manner of administering the tax laws and as to plans for producing revenue, and I come now to two matters which I purposely leave for the close of this opinion because I believe they are of great importance in carrying out any plan which may be adopted.

First: It is contended by some that if the rate of taxation is limited to a low figure, say one per cent., and I believe it should be so limited, this limitation alone and of itself will move each and all persons to list for taxation all of their property and that by reason thereof all the property which is now continually hidden and thereby escaping taxation, will be brought upon the duplicate. This may be true of a large class of our citizens, but it will not be true of all of them. There is never any need of any fear of a penalty upon the part of any person who desires to obey the law. He who seeks to evade the law and not to obey it, if it is a good law, should not be considered. The history of the listing of property for taxation is all to one effect, viz., that there have always been individuals, firms and corporations who will not list their property if it may be avoided. If there is no penalty there is no way of enforcing the law as to these individuals. The only way to remedy this evil is to affix a penalty in such terms and under such conditions as that the property owner will not dare to take the chance of refusing to place his property upon the duplicate. If it is a money penalty, the penalty should be a percentage of the amount of property refused to be listed rather than a percentage of the amount of the tax. This is the plan followed in West Virginia, and it has increased the duplicate several hundred per cent. within the last two or three years. The property owners' compensation for this, of course, must be a limitation of the rate so that his money cannot be squandered or his property confiscated in extravagant administration of the government.

Second: As to the collection of the excise and franchise taxes under the Cole law, Willis law and Insurance Premium law, I am firmly of the opinion that there should be a radical change in the method of collection and placing these moneys into the state treasury. Under the plan now in vogue under the law, the Secretary of State collects the Willis tax in his own name and goes to the State Auditor with the checks, drafts, etc., to get a pay-in order and then proceeds to the state treasury to pay in the money. The State Auditor collects the Cole law tax and goes through the same system. The State Insurance Commissioner collects the insurance premium tax and proceeds in like manner. This is all wrong. All taxation money should be paid direct into the state treasury through the Treasurer of State through money itself, or checks, drafts or money orders made payable to his order. Certain inspections must now be made by the Secretary of State to ascertain whether private corporations, foreign and domestic, have made proper returns of the amounts of their subscribed or issued and outstanding and authorized capital stock. The State Auditor and board of appraisers and assessors must make certain inspections for the purpose of ascertaining whether the public service corporations are making their correct returns to the board of their gross receipts or gross earnings, and the State Insurance Superintendent must make certain inspections to see that foreign insurance companies are making correct returns of the gross amount of premiums collected by them from risks upon persons or property in Ohio. My understanding is that it is contemplated, and properly so, that these inspections shall be made by

the state tax commission. Now when these inspections have been completed in any class of these excise or franchise taxes a duplicate should be made by the Auditor of State showing the amount of tax charged by the commission against the person, firm or corporation under obligation to pay the same. One volume or record or duplicate showing this information and the amount of taxes charged should be given to the Treasurer of State and another one just like it should be kept by the Auditor of State. It should then be the duty of the person, firm or corporation to pay and the Treasurer to collect within a specified month or months the amount of the taxes so charged. During the period fixed for said collection the Treasurer of State should each day report to the Auditor of State the collections for the preceding day so that the Auditor of State may credit upon his books and duplicate, as bookkeeper for the state, the amount of money thus collected, showing the sources from which it came. At the end of the period thus fixed for the collection the Treasurer of State and Auditor of State should make a final settlement and all taxes then delinquent and remaining unpaid, together with penalties and interest as may be fixed by law should be charged and itemized against each delinquent respectively and properly certified to the department of the Attorney General for collection forthwith.

If the rate is limited to say one per cent. then there would seem to be no reasonable cause for complaint in placing all property upon the tax duplicate at its true value in money, and the tax commission should be given the power, and have the duty imposed upon them not only to see that this is done with respect to real estate and all tangible personal property, but it should be their duty and they should have the power to make inspections for the purpose of bringing out of hiding the great amount of personal property which continually escapes taxation entirely. Real estate and tangible personal property cannot be hidden and the owners of these two classes of property must continue to bear the burden of taxation unless through the faithful administration of taxing officials and help which the owners of real estate and other tangible property can give them, such hidden property is brought upon the duplicate. The complaint of the owners of this hidden property such as moneys, credits, investments in bonds, stocks, etc., is that after the payment of a high rate of taxation nothing is left as a profit on such property, and that is true, but if the rate of taxation is reduced to a maximum of say one per cent. then this objection would be obviated. The only hope the owners of real estate and tangible personal property can have for lessening the amount of taxes they pay is to give their aid and encouragement to a plan which will bring this other class of property out of hiding.

I advocated the above matters discussed in this opinion in so far as they relate to listing property for taxation and the limitation of the rate thereon, in an address before the State Bar Association in July of last year and I have heretofore laid before the members of the general assembly a copy of that address from which further details may be had.

Respectfully submitted,

U. G. DENMAN,
Attorney General.

NOTE.

With the above opinion there was also submitted an article by the Attorney General discussing the extent of the police power of the state to prevent concerns from discriminating in selling prices of a commodity in different parts of the same state, which article appears on the next page.