

United States Vs. Reading Co.

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Respondent : Reading Co.

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United States v. Reading Company

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APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SYLLABUS

Regardless of the use made of it, a power resulting not from normal expansion and legitimate business enterprise, but from deliberate calculated purchase for control which enables a holding company to dominate two great competing interstate railroad carriers and two great competing coal companies, engaged extensively in mining and selling anthracite coal that must be transported to interstate markets over those railroads, is a menace to and an undue restraint upon interstate commerce within the meaning of the Anti-Trust Act. P. [253 U. S. 57](#) .

By a scheme of reorganization executed after the enactment of the

Page 253 U. S. 27

Sherman Anti-Trust Act, all the property of the Philadelphia & Reading Coal & Iron Company, a large producer of anthracite coal controlling about two-fifths of the supply in the largest of the three fields in Pennsylvania where substantially all of the anthracite of the country is found, and all the property of the Philadelphia & Reading Railroad Company, owner of all the capital stock of the Coal Company and of an extensive railroad system over which that company's large output found its way to interstate markets, was delivered into the complete control of the Reading Company. That company became the owner of all the stock of the Coal Company, with additional control over it through fiscal provisions of the reorganization; of all the stock of a new railroad company, the Philadelphia & Reading Railway Company, to which the main railroad was transferred; of all the equipment for operating the railroad, and of ships, terminals, short lines, and other property which formed part of the railroad system. Besides entering into two

schemes with other carriers and coal companies for suppressing competition, which were declared violations of the Anti-Trust Act in *United States v. Reading Co.*, [226 U. S. 324](#) (see *infra*, p. [253 U. S. 49](#)), the Reading Company purchased a controlling interest in the capital stock of the Central Railroad Company of New Jersey, a large carrier of anthracite in competition with the Philadelphia & Reading Railway Company, and owner of over eleven-twelfths of the capital stock of the defendant Lehigh & Wilkes-Barre Coal Company, which in turn owned or had leased a very large acreage in another of the Pennsylvania anthracite fields and was a competitor of the Philadelphia & Reading Coal & Iron Company, and thereby, and through common officers and directors, the Reading Company acquired and exercised active dominating control over the last two mentioned companies, its power thus including two of the principal competing producers, and two of the principal competing initial carriers, of anthracite in interstate commerce. There was evidence also of its combining with other carriers to fix excessive flat rates to tidewater, and of special privileges extended by it to the Philadelphia & Reading Coal & Iron Company in the way of financial assistance and forbearance, and of similar dealing between the Central Railroad and Wilkes-Barre Companies.

Held that the combination, both before and after the induction of the Central Railroad Company of New Jersey, violated the Sherman Anti-Trust Act, and that the relations between the Reading Company, the Philadelphia & Reading Railway Company, the Philadelphia & Reading Coal & Iron Company, and the Central Railroad

Page 253 U. S. 28

Company of New Jersey must be so dissolved as to give to each of them a position in all respects independent and free from stock or other control of any of the others. Pp. [253 U. S. 43](#) -59.

The combination between the Philadelphia & Reading Railway Company and the Philadelphia & Reading Coal & Iron Company through the Reading Company must also be dissolved, because the transportation thereunder by the Railway of the

coal produced by the Coal Company violates the commodities clause of the Act of June 29, 1906. P. [253 U. S. 60](#) .

While the ownership by a railroad company of shares of the capital stock of a mining company does not necessarily create an identity of corporate interest between the two such as to render it unlawful under the commodities clause for the railroad company to transport in interstate commerce the products of such mining company, yet where such ownership of stock is resorted to not for the purpose of participating in the affairs of the corporation in which it is held in a manner normal and usual with stockholders, but for the purpose of making it a mere agent or instrumentality or department of another company, the courts will look through the forms to the realities of the relation between the companies as if the corporate agency did not exist, and will deal with them as the justice of the case may require. P. [253 U. S. 62](#) .

Applying this rule, *held* that the relation between the Central Railroad Company of New Jersey and the Lehigh & Wilkes-Barre Coal Company, with the former owning over eleven-twelfths of the capital stock of the latter and using the latter as the coal mining department of its organization, violates the commodities clause, and for that reason must be dissolved. *Id.*

In 1871, the Lehigh Coal & Navigation Company, owner of extensive coal-producing properties and of the Lehigh & Susquehanna Railroad, leased the railroad for a rental of one-third of its gross earnings to the Central Railroad Company of New Jersey, the line leased and the line of the lessee not being in competition, but the one forming a natural extension of the other into the coal fields. *Held* that a covenant in the lease, assumed to require the lessor to ship to market over the leased line three-fourths of all the coal which it should produce in the future, was not designed to suppress interstate commerce, did not have that effect, and does not violate the Anti-Trust Act. P. [253 U. S. 54](#) .

Covenants in leases of coal lands by the Philadelphia & Reading Coal & Iron Company and Lehigh & Wilkes-Barre Coal Company obliging the lessees to ship all coal mined by rail routes

designated or to be designated, are *held* unlawful as part of the scheme to control the mining and transportation of coal herein condemned, and their enforcement is enjoined. P. [253 U. S. 55](#) .

As to other charges against the Lehigh Coal & Navigation Company, and as respects the Wilmington & Northern Railroad Company, the Lehigh & Hudson River Railway Company, the Lehigh & New England Railroad Company, and the surviving individual defendants, the bill is dismissed without prejudice. *Id.*

226 F. 229 affirmed in part, reversed in part.

The case is stated in the opinion. Motions to modify the decree were made and denied at this term. *Post*, 478.

MR. JUSTICE CLARKE delivered the opinion of the Court.

These are appeals from a decree entered in a suit instituted by the government to dissolve the intercorporate relations existing between the corporation defendants for the alleged reason that, through such relations, they

constitute a combination in restraint of interstate commerce in anthracite coal and an attempt to monopolize or a monopolization of such trade and commerce in violation of the first and second sections of the Anti-Trust Act of Congress, of July 2, 1890, c. 647, 26 Stat. 209, and also for the alleged reason that the defendants, Philadelphia & Reading Railway Company and Central Railroad Company of New Jersey, are violating the commodities clause of the Act of Congress of June 29, 1906, c. 3591, 34 Stat. 585, by transporting over their lines of railroad, in interstate commerce, coal mined or purchased by coal companies with which they are associated by stock ownership.

It will contribute to brevity and clearness to designate the defendant corporations as follows: Reading Company as Holding Company; Philadelphia & Reading Railway Company as Reading Railway Company; Philadelphia & Reading Coal & Iron Company as Reading Coal Company; Central Railroad Company of New Jersey as Central Railroad Company; Lehigh & Wilkes-Barre Coal Company as Wilkes-Barre Company; Lehigh Coal & Navigation Company as Navigation Company.

Practically all of the anthracite coal in this country is found in Northeastern Pennsylvania, in three limited and substantially parallel deposits, located in valleys which are separated by mountainous country. For trade purposes, these coal areas are designated: the most northerly as the Wyoming field, estimated to contain about 176 square miles of coal; the next southerly as the Middle or Lehigh field, estimated to contain about 45 square miles, and the most southerly as the Schuylkill field, estimated to contain about 263 square miles of coal.

The annual production of the mines in these three fields in 1896 was about 43,640,000 tons, and in 1913 it slightly exceeded 71,000,000 tons. The chief marketing centers for this great tonnage of coal are New York, distant by rail from the fields about 140 miles, and Philadelphia, distant

Page 253 U. S. 42

about 90 miles. From these cities it is widely distributed by rail and water throughout New York and New England, and to some extent through the South.

Such a large tonnage was naturally attractive to railroad carriers, with the result that the Wyoming field has six outlets by rail to New York harbor, *viz.*: The Central Railroad of New Jersey and five others, known as initial anthracite carriers. The Lehigh field has three such rail outlets, but the largest, the Schuylkill field, has only two direct rail connections with Philadelphia and New York, *viz.*: the Reading and the Pennsylvania Railroads. Outlets by canal to Philadelphia and tidewater, at one time important, may here be neglected.

This description of the subject matter and of its relation to the interstate transportation system of the country will suffice for the purposes of this opinion. It may be found in much greater detail in the cases cited in the margin. *

The essential claims of the government in the case have become narrowed to these, *viz.*:

First. That the ownership by the Holding Company of controlling interests in the shares of the capital stocks of the Reading Railway Company, of the Reading Coal Company, and of the Central Railroad Company constitutes a combination in restraint of interstate trade and commerce and an attempt to monopolize and a monopolization of a part of the same in violation of the Anti-Trust Act of July 2, 1890.

Second. That the Holding Company, in itself, constitutes a like violation of the act.

Third. That certain covenants and agreements between the Central Railroad Company and the Navigation Company

Page 253 U. S. 43

contained in a lease, by the latter to the former, of the Lehigh & Susquehanna Railroad, constitute a like violation of the act.

Fourth. That the transportation in interstate commerce by the Reading Railway Company and by the Central Railroad Company, of coal mined or purchased by the coal companies affiliated with each of them constitutes a violation of the commodities clause of the Act to Regulate Commerce.

Pursuant to the provisions of the Act of June 25, 1910, c. 428, 36 Stat. 854, the case was heard by three Circuit Judges of the Third Circuit who, while holding against the contention of the government on many of the prayers for relief in the bill, some generally and some without prejudice, also held that the Reading Coal Company and the Wilkes-Barre Coal Company were naturally competitive producers and sellers of anthracite coal, and that their union through the Holding Company and the Central Company constituted a combination in restraint of trade

within the Anti-Trust Act, and for this reason the Central Company was ordered to dispose of all the stock, bonds, and other securities of the Wilkes-Barre Coal Company owned by it, and was enjoined from requiring the Coal Company to ship its coal over the lines of the Central Company.

The court also held that clauses in mining leases by the Reading Coal Company and by the Wilkes-Barre Coal Company and their subsidiaries requiring the lessees to ship all coal produced over roads, named or to be designated, were unlawful and void.

The case has been appealed by both parties, and is before us for review on all of the issues as we have thus stated them.

Reference to the history of the properties now controlled by the Holding Company will be of value for the assistance it will be in determining the intent and purpose

Page 253 U. S. 44

with which the combinations here assailed were formed. *Standard Oil Co. v. United States*, [221 U. S. 1](#) , [221 U. S. 46](#) , [221 U. S. 76](#) .

The Philadelphia & Reading Railroad Company was chartered by special Act of the Pennsylvania General Assembly in 1833, and it conducted the business of a railroad carrier prosperously for about 30 years, when, as its annual reports show, it embarked upon the policy of attempting to control the anthracite tonnage of the Schuylkill field by acquiring extensive ownership of coal lands. Thus, the report of the company for 1870 contains the following:

"Up to this time, about 70,000 acres of the best anthracite coal lands in Pennsylvania have been acquired, and will be held by an auxiliary company known as the Philadelphia & Reading Coal and Iron Company, of which the Philadelphia & Reading Railroad Company *is the only stockholder*. The result of this action has been to secure, and *attach to the company's railroad*, a body of coal land capable of *supplying all the coal tonnage that can possibly be transported over the road for centuries*. "

And this is from the report for 1880:

"The transportation of coal has always been a source of great profit to the railroad company, and the only doubt in the past as to the permanency of the earning power of the company as a transporter was due to the *fear that rival companies would tap the Schuylkill region*, and divert the coal tonnage to their own lines. *This danger was happily averted by the purchase of the coal lands.* "

And this from the report of 1881:

"The coal estates of the Philadelphia & Reading Company . . . consist of 91,149 acres (142 square miles) of coal lands, *which is sixty percent of all the anthracite lands in the Schuylkill district, and thirty percent of all in Pennsylvania.* "

This area of coal lands had increased by 1891 to 102,573 acres, of which the report said:

Page 253 U. S. 45

"The coal lands comprise in extent about thirty-three percent of the entire anthracite coal fields of the state, and, taking into account the aggregate thickness of the veins on the company's lands and the greater proportionate depletion of the estates in the other regions which has been going on for many years, it must be conceded that we have *at least fifty percent of the entire deposit remaining unmined.* "

As if in further pursuit of this now settled purpose, in the following year, 1892, the Reading Railroad Company leased the Lehigh Valley Railroad and the Central Railroad of New Jersey for 999 years. These were both anthracite carriers competing with the Reading, and each had an important coal mining subsidiary company. But the lease by the Central Railroad Company was assailed in the New Jersey courts, and all operations under it were enjoined, with the result that both leases were abandoned.

It is obvious that these reports show an avowed and consistently pursued purpose (not then prohibited by statute) to secure by purchase a dominating control over the coal of the Schuylkill field and over the transportation of it to market.

In the large financial operations incident to the expansion policy thus described, bonds were issued secured by a mortgage on all of the property of the Reading Railroad Company and of the Reading Coal Company. In 1893, there was default in the payment of interest on these bonds, and receivers were appointed who operated both properties until 1896, when they were sold to representatives of the creditors and stockholders of the two companies, and, under a scheme of reorganization, the validity of which is assailed in this suit, both properties were transferred to three corporations in the manner now to be described.

1st. To the Reading Railway Company, a corporation newly organized under the laws of Pennsylvania, were allotted about 1,000 miles of the railroad (but none of

Page 253 U. S. 46

the equipment) which had been owned or leased by the former Reading Railroad Company. The capital stock of this company was fixed at \$20,000,000, and it issued \$20,000,000 of bonds, all of which were given to the Holding Company. The property thus transferred was valued, in the representations made at the time to the New York Stock Exchange, at \$90,000,000. In 1896, this railroad carried in excess of 9,000,000 tons of anthracite -- more than one-fifth of the then total production of the country. But, by the plan of reorganization adopted, it was disabled from performing its functions as a carrier, except with the aid of the Holding Company, for all of the equipment, engines, cars, and ships owned by the former Railroad Company and its tidewater terminals at Philadelphia and on New York Harbor were allotted to the Holding Company.

2nd. By the decree of sale, the Reading Coal & Iron Company was released from its former obligations and to it, thus freed, the principal part of the property (coal and other) owned by it before the sale was allotted, and retransferred upon condition that it would deliver all of its capital stock to the Holding Company, would

become co-obligor with that company on bonds to be issued, and would join with it in executing a mortgage for \$135,000,000 on all of its property to secure such bonds. This company thus came into possession of 102,573 acres of anthracite lands, owned and leased -- almost two-thirds of the entire acreage of the Schuylkill coal field -- stocks and bonds in other coal companies, coal in storage and other property, all of the estimated value of \$95,000,000.

3rd. To serve the purposes of the intended Holding Company, a charter granted in 1871 by special Act of the General Assembly of Pennsylvania, but unused for 20 years, was utilized. This charter was of the class denominated "omnibus" by the Supreme Court of Pennsylvania,

Page 253 U. S. 47

and, in terms, it authorized the company to engage in or control almost any business other than that of a bank of issue -- this broad charter was the occasion for making use of the company in this enterprise. The corporate name was changed to "Reading Company," its capital stock was increased from \$100,000 to \$140,000,000, and the purchasers at the receivers' sale allotted and transferred to it railroad equipment, real estate, colliers and barges, formerly owned by the Reading Railroad Company, together with stocks which gave it control of more than 30 short line railroads, aggregating 275 miles of track, and other property of large value, in addition to all of the bonds and stock of the new Reading Railway Company and all of the stock of the Reading Coal Company.

The result of this intercorporate transfer of the property, owned before the reorganization by the Reading Railroad Company and the Reading Coal & Iron Company, was that the Holding Company, without any outlay -- solely because the creditors and stockholders of the former Reading Railroad Company and of the Reading Coal Company desired to establish the proposed scheme for control of the properties formerly owned by the two companies -- became the owner of the title to railway equipment, real estate, colliers, and barges of an estimated value of \$34,400,000, plus all of the capital stock and bonds of the new Railway Company, \$40,000,000; plus all of the capital stock of the Coal Company, \$8,000,000, and a

contract by that company to mortgage, for the use of the Holding Company, its entire property, plus other stocks, bonds, and mortgages owned by the former Railroad Company of the estimated value of over \$38,000,000 -- making a total value, as represented at the time to the New York Stock Exchange, of \$193,613,000.

Thus, this scheme of reorganization, adopted and executed

Page 253 U. S. 48

six years after the enactment of the Anti-Trust Act, combined and delivered into the complete control of the board of directors of the Holding Company all of the property of much the largest single coal company operating in the Schuylkill anthracite field, and almost 1,000 miles of railway over which its coal must find its access to interstate markets. This board of directors obviously, thus acquired power to increase or decrease the output of coal from very extensive mines, the supply of it in the market, and the cost of it to the consumer, to increase or lower the charge for transporting such coal to market, and to regulate car supply and other shipping conveniences, and thereby to help or hinder the operations of independent miners and shippers of coal. This constituted a combination to unduly restrain interstate commerce within the meaning of the act. *United States v. Union Pacific R. Co.*, [226 U. S. 61](#) .

Obviously also, it made the Coal Company and the Railway Company mere agents or instrumentalities of the Holding Company -- the mining and transportation departments of its business -- for producing, purchasing, and selling coal and for transporting it to market. The Reading Railway Company and the Reading Coal Company each had, thereafter, but one stockholder -- the Holding Company -- and their earnings were to be distributed not in proportion to the shares of their capital stocks, aggregating \$28,000,000, but were to go to the creditors and shareholders of the Holding Company, with its mortgage debt of \$135,000,000 and its capital stock of \$140,000,000. The Holding Company thus served to pool the property, the activities, and the profits of the three companies. *Northern Securities Co. v. United States*, [193 U. S. 197](#) , [193 U. S. 327](#) , [193 U.](#)

It will be profitable to consider next what use was made of the great power thus gathered into the one Holding Company.

Page 253 U. S. 49

In 1898, this Holding Company entered into a combination with five other anthracite carrying railroad companies to prevent the then contemplated construction of an additional line of railway from the Wyoming field to tidewater, which independent miners and shippers of coal were promoting for the purpose of securing better rates on their coal to the seaboard. In a mere holding company, the Temple Iron Company, all six carriers combined, as stockholders for the purpose of providing \$5,000,000 with which the properties of the chief independent operators, Simpson and Watkins, were purchased, and thereby the new railroad project was defeated. The president of the Holding Company was active in the enterprise, and that company, although only one of six, became responsible for 30 percent of the required financing. In *United States v. Reading*, [226 U. S. 324](#) , [226 U. S. 351](#) , this Court characterized what was done by this combination, under the leadership of the Holding Company, in these terms:

"The New York, Wyoming & Western Railroad Company was successfully strangled, and the monopoly of transportation collectively held by the six defendant carrier companies was maintained."

And, again, p. [226 U. S. 355](#) :

"We are in entire accord with the view of the court below in holding that the transaction involved a concerted scheme and combination for the purpose of restraining commerce among the states in plain violation of the Act of Congress of July 2, 1890."

About the year 1900, the Holding Company and many other initial anthracite carriers and their controlled coal Companies, pursuant to an agreement with each other, made separate agreements with nearly all of the independent producers of

coal along their lines to purchase at the mines "all the anthracite coal thereafter mined from any of their mines now opened or operated or which might thereafter be opened and operated," and to pay therefor

Page 253 U. S. 50

65% of the average price of coal prevailing at tidewater points at or near New York, computed from month to month. In the case above cited, this Court discussed these contracts and declared that they were made for the purpose of eliminating the competition of independent operators from the markets, and thus removing "a menace to the monopoly of transportation to tidewater which the defendants collectively possessed;" that, before these contracts, there existed not only the power to compete, but actual competition, between the coal of the independents and that produced by the buying defendants, but that, after the contracts were made, "such competition was impracticable;" that the case fell well within not only the *Standard Oil* and *Tobacco* cases, [221 U. S. 1](#) , [221 U. S. 106](#) , but was of such an unreasonable character as to be "within the authority of a long line of cases decided by this Court," and finally that the defendants had combined, by and through the instrumentality of the 65% contracts with the purpose and design of unlawfully controlling the sale of the independent output of coal at tidewater.

Thus, this Court held that, once within two years and again within four years after it was organized, this Holding Company used the great power which we have seen was centered in its board of directors, by adroit division of property and of corporate agency, for the purpose of violating, in a flagrant manner, the Anti-Trust Act of 1890.

Almost immediately after the two attempts to monopolize the trade in anthracite thus condemned by this Court, the Holding Company, in January, 1901, purchased a controlling interest in the capital stock of the Central Railroad Company. When this suit was commenced, that company was operating 675 miles of track, over which it carried, in 1913, 10,783,000 tons of anthracite -- almost one-half of its total freight traffic. Its capital stock was then \$27,436,000 and its funded

debt was \$46,881,000.

This Central Company owned at the time in excess of

Page 253 U. S. 51

eleven-twelfths of the capital stock of the Wilkes-Barre Coal Company, with a capital stock of over \$9,000,000 and a funded debt of about \$17,000,000. And that company owned or had leased in excess of 14,000 acres of coal bearing lands -- 13,000 acres in the Wyoming field -- and, in the year ending June 30, 1913, it shipped from its lands thus owned or controlled 6,243,000 tons of coal, which was sold for over \$20,000,000.

Immediately after this purchase, the president of the Holding Company, Mr. Baer, was made president of the Central Railroad Company and of the Wilkes-Barre Coal Company, and remained such until his death, after the commencement of this suit, and from one-third to one-half of the directors of each company were thereafter chosen from the board of the Holding Company. Thus, from the time of this purchase, both companies have been actively dominated by the Holding Company management.

It is argued that the Central Railroad, thus acquired, and the Reading System were not competitors, but this question is put beyond discussion by the testimony of Mr. Baer, the president of the Reading Company, and his immediate predecessor in office, Mr. Harris. The former testified:

"Q. You are president of the defendants, the Reading Company, Philadelphia & Reading Railway Company, Philadelphia & Reading Coal & Iron Company, the Central Railroad of New Jersey, the Lehigh & Wilkes-Barre Coal Company, and the Temple Iron Company?"

"A. I am . . ."

"Q. What do you regard as the competitors of the Philadelphia & Reading now in New York Harbor as to anthracite coal?"

"A. All the companies that ship to New York. They would be the Pennsylvania Railroad, the Lehigh Valley, the Delaware & Lackawanna, the Delaware & Hudson,

Page 253 U. S. 52

the Erie, Ontario & Western. I guess those are all the roads leading to New York directly or indirectly. [He did not name the Central Company, because it was a part of the Reading System when he testified.]"

"Q. Those roads are all carrying anthracite coal to New York Harbor?"

"A. Yes, sir."

"Q. And you regard them as competitors who must be considered in fixing rates?"

"A. Yes, sir, unquestionably."

Mr. Harris testified:

"Q. During the time that you were president of the Philadelphia & Reading Railroad Company, from 1893 to 1901, what were the competitive roads in the coal trade with which you came in competition?"

"A. We came in competition with all the roads that were carrying coal from Pennsylvania."

"Q. Name the principal ones in reference to carrying coal from the coal mines to New York Harbor."

"A. The Reading, the Lehigh Valley, *the Central Railroad of New Jersey*, the Delaware, Lackawanna & Western, the Erie, and the Pennsylvania Railroad."

That the Reading Coal Company and the Wilkes-Barre Coal Company were competitors before the latter passed under the control of the Holding Company is obvious, but Mr. Baer put this also beyond disputed by testifying:

"Q. Prior to 1901, were the Philadelphia & Reading Coal & Iron Company and the Lehigh & Wilkes-Barre Company competitors as sellers of coal in New York Harbor?"

"A. Yes, and they are today."

"Q. And generally, throughout the eastern territory, they were competitors at that time?"

"A. Yes, sir; through that northern territory. Not in this territory, nor in the southern."

Thus, by this purchase, the Reading Holding Company

Page 253 U. S. 53

acquired complete control not only of one of the largest competitive anthracite carriers, but also of one of the largest competitive coal producing and selling companies in the country. The anthracite tonnage of the Central and Reading Railway Companies, thus combined, exceeded at the time 18,000,000 tons -- over one-third -- of the then total production of the country, and the revenue derived from it was more than one-third of the total earnings of the two railroad companies.

In 1915 the Interstate Commerce Commission concluded an investigation of the "rates, practices, rules and regulations governing the transportation of anthracite coal," which had been in progress for three years. The eleven initial anthracite carriers which have lines penetrating the coal producing region were required to furnish special reports as to their anthracite coal transportation operations, and they appeared and participated in the hearing. The result of this exhaustive investigation was that the commission found that, since about 1901, with variations and exceptions which are negligible here, the carriers have had the same fixed and flat rates to tidewater regardless of the distance and character of the haul; that these rates were the result of cooperation or combination among the carriers, and that they were excessive to such an extent that material reductions by all of the carriers were ordered, including, of course, those of the Central and Reading

Companies. The commission also found, and this appears in the record of this case, that the Reading Coal Company had never paid any dividends on its stock, and that, while the books of the Holding Company showed the Coal Company to have been indebted to it in a sum exceeding \$68,000,000 for advances of capital made by the Reading *Railroad* Company before the reorganization in 1896, it has paid interest thereon only occasionally and in such small amounts that, up to 1913, it fell short by more than \$30,000,000 of equaling 4% per

Page 253 U. S. 54

annum on the indebtedness. In the meantime, advances of large sums had been made by the Holding Company to the Coal Company, and unusual credits had been allowed the latter in the payment of its freight bills. This dealing of the Holding Company with the Reading Coal Company, and similar dealing of the Central Company with the Wilkes-Barre Coal Company and the Navigation Company, are denounced by the Commission as unlawful discrimination against other shippers of coal over the rails of these two companies, and obviously such favoritism tends to discourage competition and to unduly restrain interstate commerce.

Upon this history of the transactions involved, not controverted save as to some findings of the Interstate Commerce Commission, we must proceed to judgment, and very certainly it makes a case calling for the application of repeated decisions of this Court, which clearly rule it.

It will be convenient to first dispose of several minor contentions.

In 1871, the Navigation Company leased the Lehigh & Susquehanna Railroad, which it owned, to the Central Railroad Company by an instrument containing a covenant which the government claims requires the Navigation Company to ship to market over the leased line three-fourths of all of the coal which it should produce in the future. This covenant has been amended and supplemented by several agreements, but not so as to essentially modify it with respect to the contention we are to consider.

It is argued that this covenant necessarily imposed an undue restriction upon the Navigation Company in selecting its markets and in shipping its coal, in violation of the Anti-Trust Act.

It is not entirely clear that the covenant will bear the restrictive interpretations as to shipments which the

Page 253 U. S. 55

government puts upon it, but, assuming that it may be so interpreted, nevertheless, the conditions and circumstances of the case considered, the result contended for cannot be allowed.

When the lease was made, in 1871, the Central Railroad extended from Jersey City to its western terminus at Phillipsburg, New Jersey, and it was without access to the coal fields. The Lehigh & Susquehanna Railroad was about 100 miles in length, and extended from Phillipsburg into the Wyoming field, where the Navigation Company owned extensive coal producing properties and mines. The lines of the two companies were in no sense competitive, but, on the contrary, the Lehigh & Susquehanna line served as a natural extension of the Central Company's lines to the great tonnage producing coal districts. The rental to be paid was one-third of the gross earnings of the railroad, and it was natural and "normal" that the lessor should desire that the traffic should continue to be as large as possible. Plainly this covenant was not written with the purpose of suppressing interstate commerce and the history of its operation shows that, instead of suppressing it, it has greatly promoted it. The claim is quite too insubstantial to be entertained, and the decree of the district court with respect to it will be affirmed, and the bill, as to it, dismissed.

In many leases for the operation of coal producing lands, the Reading Coal Company and the Wilkes-Barre Coal Company incorporated a covenant that the lessee should ship all coal mined by rail routes, which were named or which were to be designated. Since this covenant was resorted to as a part of the scheme to control the mining and transportation of coal which is condemned as unlawful in

this opinion, the decree of the district court enjoining the lessors and the other defendants herein from attempting to enforce such covenants will be affirmed.

The other charges against the Lehigh Coal & Navigation

Page 253 U. S. 56

Company and the case stated in the bill with respect to the Wilmington & Northern Railroad Company, the Lehigh & Hudson River Railway Company, and the Lehigh & New England Railroad Company are substantially abandoned in the government's brief, and, having regard to the results arrived at with respect to the principal defendants, the ends of justice will be best served by dismissing the bill as to all of these defendants, without prejudice, as was done by the district court as to all but the Wilmington & Northern Railroad Company, as to which the dismissal was unqualified. A majority of the individual defendants have died since the suit was instituted, and their successors in office have not been made parties, and, since the conclusion to be announced can be given full effect by an appropriate decree against the corporation defendants, the case as against the remaining individual defendants need not be considered, and as to them, the bill will be dismissed without prejudice.

We are thus brought to the consideration of what the decree shall be with respect to the really important defendants in the case, the three Reading Companies, the Central Railroad Company of New Jersey, and the Wilkes-Barre Coal Company.

Before the reorganization of 1896, the gathering of more than two-thirds of the acreage of the Schuylkill field into the control of the two Reading Companies was, as their reports show, for the frankly avowed purpose, then not forbidden by statute, of monopolizing the production, transportation and sale of the anthracite coal of the largest of the three sources of supply.

When in 1896 the problem was presented of reorganizing the financial affairs of the two companies, it was not solved as it might have been, by creating separate coal and railroad companies to conduct independently interstate commerce in the two departments to which their railroad and coal properties were adapted, but, on

the

Page 253 U. S. 57

contrary, and very obviously for the purpose of evading the provision of the Constitution of Pennsylvania prohibiting any incorporated common carrier from, directly or indirectly, engaging in mining "articles" for transportation over its lines (Constitution of Pennsylvania 1874, Art. 17, 5), and also of evading the provisions of the federal Anti-Trust Act against restraining and monopolizing interstate commerce, resort was had to the holding company device, by which one company was given unrestricted control over the other two, with the power, inherent in that form of organization, of continuing and carrying forward the restraint and monopoly which had previously been acquired over that large volume of interstate commerce which was to be conducted by the coal and railroad companies.

Again, when, in 1901, a rivalry, imaginary or real, arose for the control of the Central Railroad Company, the Holding Company, regardless of the law, did not hesitate to purchase control of that great competing anthracite coal carrying system, with its extensive coal owning and mining subsidiary. This acquisition placed the Holding Company in a position of dominating control not only over two great competing interstate railroad carriers, but also over two great competing coal companies, engaged extensively in mining and selling anthracite coal, which must be transported to interstate markets over the controlled interstate lines of railway.

Again, and obviously, this dominating power was not obtained by normal expansion to meet the demands of a business growing as a result of superior and enterprising management, but by deliberate, calculated purchase for control.

That such a power, so obtained, regardless of the use made of it, constitutes a menace to and an undue restraint upon interstate commerce within the meaning of the Anti-Trust Act has been frequently held by this Court.

Page 253 U. S. 58

Thus, in *Northern Securities Co. v. United States*, [193 U. S. 197](#) , [193 U. S. 327](#) , when dealing with a holding company, such as we have here, this Court, in 1903, held:

"No scheme or device could more certainly come within the words of the act -- 'combination in the form of a trust or otherwise . . . in restraint of commerce among the several states or with foreign nations' -- or could more effectively and certainly suppress free competition between the constituent companies. . . . *The mere existence of such a combination and the power acquired by the holding company as its trustee, constitute a menace to, and a restraint upon, that freedom of commerce which Congress intended to recognize and protect, and which the public is entitled to have protected.*"

And again, in *United States v. Union Pacific R. Co.*, [226 U. S. 61](#) , [226 U. S. 88](#) , decided nine years later, in 1912, this Court held:

"The consolidation of two great competing systems of railroad engaged in interstate commerce by transfer to one of a dominating stock interest in the other creates a combination which restrains interstate commerce within the meaning of the statute, because, in destroying or greatly abridging the free operation of competition theretofore existing, it tends to higher rates. . . . Nor does it make any difference that rates for the time being may not be raised and much money be spent in improvements after the combination is effected. *It is the scope of such combinations and their power to suppress or stifle competition or create monopoly which determines the applicability of the act.* "

It will suffice to add that this doctrine was referred to as the settled conclusion of this Court in 1914, when discussing a similar state Anti-Trust Act in *International Harvester Co. v. Missouri*, [234 U. S. 199](#) , [234 U. S. 209](#) , it was said:

"The specification under this head is that the Supreme Court [of Missouri] found, it is contended, benefit -- not

injury -- to the public had resulted from the alleged combination. Granting that this is not an overstatement of the opinion, the answer is immediate. *It is too late in the day to assert against statutes which forbid combinations of competing companies that a particular combination was induced by good intentions and has had some good effect. . . .* The purpose of such statutes is to secure competition and preclude combinations which tend to defeat it."

Thus, this record clearly shows a group of men selecting the Holding Company with an "omnibus" charter and not only investing it by stock control with such complete dominion over two great competing interstate carriers and over two great competing coal companies extensively engaged in interstate commerce in anthracite coal as to bring it, without more, within the condemnation of the Anti-Trust Act, but it also shows that this power of control was actually used, once successfully, to suppress the building of a prospective competitive railway line, and a second time, successfully until this Court condemned the 65% contracts as illegal, to suppress the last prospect of competition in anthracite production and transportation. To this it must be added that, up to the time when this suit was commenced, this Holding Company had continued in active, dominating control of the Reading Railway Company and of the competing Central Railroad System, and also of the two coal companies, thus effectually suppressing all competition, between the four companies and pooling their earnings. It is difficult to imagine a clearer case, and in all essential particulars it rests on undisputed conduct and upon perfectly established law. It is ruled by many decisions of this Court, but specifically and clearly by *United States v. Union Pacific R. Co., supra*.

For flagrant violation of the first and second sections of the Anti-Trust Act, the relations between the Reading

Page 253 U. S. 60

Company, the Reading Railway Company and the Reading Coal Company and between these companies and the Central Railroad Company of New Jersey must be so dissolved as to give to each of them a position in all respects independent and free from stock or other control of either of the other corporations.

With respect to the contention that the commodities clause of the Act of June 29, 1906, 34 Stat. 584, 585, is being violated by the Reading Railway Company and the Central Railroad Company:

The circuit judges centering their attention upon the fact that the Reading Railway Company did not own any of the stock of the Reading Coal Company, that the two companies had separate forces of operatives and separate accounting systems, and upon the importance of maintaining "the theory of separate corporate entity" as a legal doctrine, concluded, upon the authority of *United States v. Delaware & Hudson Co.*, [213 U. S. 366](#) , [213 U. S. 413](#) , that the evidence did not justify holding that, in transporting the products of the Reading Coal Company's mines to market, the Reading Railway Company was carrying a commodity "mined or produced by it or under its authority" or which it owned "in whole or in part" or in which it had "any interest, direct or indirect."

But the question which we have presented by this branch of the case is not the technical one of whether ownership by a railroad company of stock in a coal company renders it unlawful for the former to carry the product of the latter, for here, the railroad company did not own any of the stock of the coal company. The real question is whether combining in a single corporation the ownership of all of the stock of a carrier and of all of the stock of a coal company results in such community of interest or title in the product of the latter as to bring the case within the scope of the provisions of the act.

The purpose of the commodity clause was to put an

Page 253 U. S. 61

end to the injustice to the shipping public which experience had shown to result from discriminations of various kinds which inevitably grew up where a railroad company occupied the inconsistent positions of carrier and shipper. Plainly, in such a case as we have here, this evil would be present as fully as if the title to both the coal lands and the railroads were in the Holding Company, for all of the profits realized from the operations of the two must find their way ultimately into its

treasury -- any discriminating practice which would harm the general shipper would profit the Holding Company. Being thus clearly within the evil to be remedied, there remains the question whether such a controlling stock ownership in a corporation is fairly within the scope of the language of the statute.

In terms, the act declares that it shall be unlawful for any railroad company to transport in interstate commerce

"any article or commodity . . . mined or produced by it, or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect."

Accepting the risk of obscuring the obvious by discussing it, and without splitting hairs as to where the naked legal title to the coal would be when in transit, we may be sure that it was mined and produced under the same "authority" that transported it over the railroad. All three of the Reading Companies had the same officers and directors, and it was under their authority that the mines were worked and the railroad operated, and they exercised that authority in the one case in precisely the same character as in the other -- as officials of the Holding Company. The manner in which the stock of the three was held resulted, and was intended to result, in the abdication of all independent corporate action by both the Railway Company and the Coal Company, involving as it did the surrender to the Holding Company of the entire

Page 253 U. S. 62

conduct of their affairs. It would be to subordinate reality to legal form to hold that the coal mined by the Coal Company, under direction of the Holding Company's officials, was not produced by the same "authority" that operated the Reading Railway lines. The case falls clearly within the scope of the act, and for the violation of this commodity clause, as well as for its violation of the Anti-Trust Act, the combination between the Reading Railway Company and the Reading Coal Company must be dissolved.

The relation between the Central Railroad Company and the Wilkes-Barre Coal Company presents a different question, for here the Railroad Company owns over eleven-twelfths of the stock of the Coal Company, and therefore the holding in 213 U.S. [213 U. S. 366](#) , *supra*, is especially pressed in argument -- that the ownership of stock by a railroad company in a coal company does not cause the former to have such an interest in a legal or equitable sense in the product of the latter as to bring it within the prohibition of the act. But this holding was considered in *United States v. Lehigh Valley R. Co.*, [220 U. S. 257](#) , [220 U. S. 272](#) , and it was there held not applicable where a railroad company used its stock ownership for the purpose of securing a complete control over the affairs of a Coal Company, and of treating it as a mere agency or department of the owning company. This rule was repeated and applied in *United States v. Delaware, Lackawanna & Western R. Co.*, [238 U. S. 516](#) , [238 U. S. 529](#) . It results that it may confidently be stated that the law upon this subject now is that, while the ownership by a railroad company of shares of the capital stock of a mining company does not necessarily create an identity of corporate interest between the two such as to render it unlawful under the commodities clause for the railroad company to transport in interstate commerce the products of such mining company, yet where such ownership of stock is resorted to not for

Page 253 U. S. 63

the purpose of participating in the affairs of the corporation in which it is held in a manner normal and usual with stockholders, but for the purpose of making it a mere agent, or instrumentality or department of another company, the courts will look through the forms to the realities of the relation between the companies as if the corporate agency did not exist, and will deal with them as the justice of the case may require. *United States v. Lehigh Valley R. Co.*, [220 U. S. 257](#) , [220 U. S. 272](#) -273; *United States v. Delaware, Lackawanna & Western R. Co.*, [238 U. S. 516](#) , [238 U. S. 529](#) ; *Chicago, Milwaukee & St. Paul R. Co. v. Minneapolis Civic & Commerce Association*, [247 U. S. 490](#) , [247 U. S. 501](#) .

Applying this rule of law to the relation between the Central Railroad Company and the Wilkes-Barre Coal Company, with the former owning over eleven-twelfths of

the capital stock of the latter and using it as the coal mining department of its organization, we cannot doubt that it falls within the condemnation of the commodities clause, and that this relation must also, for this reason, be dissolved.

It results that the decree of the district court will be affirmed, as to the Lehigh Coal & Navigation Company, the Lehigh & New England Railroad Company, the Lehigh & Hudson River Railway Company, as to the restrictive covenants in the mining leases with respect to the shipping of coal, as to the dissolution of the combination between the Philadelphia & Reading Coal & Iron Company and the Lehigh & Wilkes-Barre Coal Company, maintained through the Reading Company and the Central Railroad Company of New Jersey. As to the Wilmington and Northern Railroad Company and as to the individual defendants, the bill will be dismissed without prejudice. As to the Reading Company, the Philadelphia & Reading Railway Company, the Philadelphia & Reading Coal & Iron Company, and the

Page 253 U. S. 64

Central Railroad Company of New Jersey, the decree of the district court will be reversed, and the cause remanded with directions to enter a decree in conformity with this opinion, dissolving the combination of the Reading Company, the Philadelphia & Reading Railway Company, the Philadelphia & Reading Coal & Iron Company, the Central Railroad Company of New Jersey and the Lehigh and Wilkes-Barre Coal Company, existing and maintained through the Reading Company, with such provision for the disposition of the shares of stock and bonds and other property of the various companies, held by the Reading Company, as may be necessary to establish the entire independence from that company and from each other, of the Philadelphia & Reading Railway Company, the Philadelphia & Reading Coal & Iron Company, the Central Railroad Company of New Jersey, and the Lehigh & Wilkes-Barre Coal Company, and also that such disposition shall be made by the decree of the stocks and bonds of the Lehigh & Wilkes-Barre Coal Company held by the Central Railroad Company of New Jersey as may be necessary to establish entire independence between these two companies to the end that the affairs of all of these now combined companies may be conducted in harmony with the law.

Affirmed in part; reversed in part, and remanded, with direction to enter a decree in conformity with this opinion.

* *United States v. Reading Co. et al.*, 183 F. 427; *United States v. Reading Co. et al.*, 226 F. 229; *United States v. Delaware & Hudson Co.*, [213 U. S. 366](#) ; *United States v. Lehigh Valley Railroad Co.*, [220 U. S. 257](#) ; *United States v. Delaware, Lackawanna & Western Railroad Co.*, [238 U. S. 516](#) ; *United States v. Reading Co.*, [226 U. S. 324](#) .

MR. CHIEF JUSTICE WHITE, MR. JUSTICE HOLMES, and MR. JUSTICE VAN DEVANTER, dissenting.

Except insofar as the decree below commanded a separation of interest between the Central Railroad of New Jersey and the Lehigh & Wilkes-Barre Coal Company, the court below dismissed, for want of equity, the bill of the United States brought to sever the existing relations

Page 253 U. S. 65

between the Reading Company, the Philadelphia & Reading Railway Company, the Philadelphia & Reading Coal & Iron Company, the Central Railroad of New Jersey, the Lehigh & Wilkes-Barre Coal Company, and other corporations, on the ground that the relations between those companies resulted in a monopoly or combination in restraint of trade in violation of the Sherman Act and gave rise to a disregard of the commodities clause of the Act of Congress.

By the opinion now announced, this action of the court below, insofar as it directed a dismissal, is reversed, and virtually the full relief prayed by the government is therefore granted. We are unable to concur in this conclusion because, in our opinion, neither the contentions as to the Sherman Act, nor the reliance upon the commodities clause, except to the extent that in the particulars stated they were sustained by the court below, have any foundation to rest upon. We do not state at any length the reasons which lead us to this view because the court below, composed of three circuit judges, in a comprehensive and clear opinion announced by McPherson, Judge, sustains the correctness of the action which it

took and also demonstrates the error involved in the decree of this Court reversing its action. *United States v. Reading Co.*, 226 F. 229. To that opinion we therefore refer as stating the reasons for our dissent.

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