63D CONGRESS, 2d Session. SENATE. REPORT No. 321.

INVESTIGATION OF PAINT CREEK COAL FIELDS OF WEST VIRGINIA.

MARCH 9, 1914.—Ordered to be printed.

Mr. SWANSON, from the Committee on Education and Labor, submitted the following

REPORT.

[In pursuance of S. Res. 37.]

The Committee on Education and Labor, to which was referred Senate resolution 37, met, and acting in accordance with the authority in said resolution, appointed a subcommittee, consisting of Senator Swanson as chairman, and Senators Shields, Martine, Kenyon, and Borah, to conduct said investigation on behalf of the committee. The said subcommittee immediately organized and promptly proceeded with its work. On account of the very broad field of inquiry and the varied subjects of investigation, it was deemed that the work could be more thoroughly and satisfactorily accomplished if it should be specifically divided among the different members of the subcommittee. The chairman of the subcommittee was directed to assign the subjects of investigation to the different members of the subcommittee as he should think advisable.

Acting under this authority the chairman assigned to Senator Borah resolution No. 1, which is as follows:

Whether or not any system of peonage has been or is maintained in said coal fields.

Also resolution No. 4, which is as follows:

Investigate and report all facts and circumstances relating to the charge that citizens of the United States have been arrested, tried, and convicted contrary to or in violation of the Constitution or the laws of the United States.

To Senator Martine resolution No. 2, which is as follows:

Whether or not postal services and facilities have been or are interfered with or obstructed in said coal fields; and if so, by whom.

Also resolution No. 3, which is as follows:

Whether or not the immigration laws of this country have been or are being violated in said coal fields; and if so, by whom; and whether or not there have been discriminatitons against said coal fields in the administration of the immigration laws at ports of entry.

To Senator Shields, resolution No. 5, which is as follows:

Investigate and report to what extent the conditions existing in said coal fields in West Virginia have been caused by agreements and combinations entered into contrary to the laws of the United States for the purpose of controlling the production, sale, and transportation of the coal of these fields.

To Senator Kenyon, resolution No. 6, which is as follows:

Investigate and report whether or not firearms, ammunition, and explosives have been shipped into the said coal fields with the purpose to exclude the products of said coal fields from competitive markets in interstate trades; and if so, by whom and by whom paid for.

Also, resolution No. 7, which is as follows:

If any or all of these conditions exist, the causes leading up to such conditions.

Each Senator thus designated procured and introduced all available evidence upon the subject assigned to him. This investigation has been most thorough, rarely excelled in this respect. All persons and interests affected were permitted to appear by counsel, introduce and examine witnesses, and submit briefs for the consideration of the committee. The hearings were not closed until all the witnesses desired by anyone interested had testified, all important and pertinent evidence available to the committee had been obtained and examined, and all relevant documentary evidence inserted in the record. A study of the 2,291 pages of the hearings will give one full and fair information concerning the matters referred to the committee for investigation, and also the conditions prevalent in the mining section which were made the subject of this inquiry. The apprehension entertained by many that this investigation would tend to increase and intensify the severe conflict and strife existing between the contending parties, at the time the resolution was passed, has not been realized.

The hearings of the committee were commenced on June 10, 1913, at Charleston, W. Va., and continued there until June 18. The hearings were discontinued at that time on account of important legislation pending in Congress, but were resumed in Washington on September 3, 1913, and concluded there on October 29, 1913.

On July 29, 1913, the operators and miners entered into a contract entirely satisfactory, which will continue in force until April 1, 1916. The differences between the operators and miners which were considered irreconcilable have been amicably adjusted. Peace now reigns in this section where heretofore existed strife, contention, and armed conflict. The relations between the operators and miners have become friendly and conciliatory. Business has been resumed, and the mines are being operated. Martial law has been abolished and civil law and authority fully reestablished. The committee is satisfied that the investigations have greatly aided in the accomplishment of these beneficial and much desired results. The committee confined its investigations to the subjects designated in the resolution and refused to enter into other or irrelevant matters when suggested.

When the investigation was completed, Senator Swanson, chairman of the subcommittee, requested each Senator to write a report to him upon the subject especially assigned to the Senator. This request has been complied with.

These reports have been approved by the committee and adopted and made a part of this report so far as they relate to the subject

designated to the Senator for investigation. So far as these reports discuss other matters—proposed legislation, governmental ownership or operation of mines—they are the individual views of the Senators making them and are published as such. The committee did not consider that it was authorized to investigate and report upon these subjects.

After carefully considering the evidence of witnesses, documents introduced, the briefs of counsel, and the reports of the various Senators upon the particular subjects assigned to them, the committee makes and respectfully submits the following report and findings:

First. The committee has been unable to find that any system of peonage has been or is maintained in the Paint Creek or Cabin Creek coal fields of West Virginia.

Second. While there was evidence tending to show some delay, some inconvenience and annoyance in connection with the delivery of mail in this district, yet there was no proof showing any attempt to prevent the usual receipt or delivery of mail from or to the patrons of the various offices. The excited and disturbed conditions in the district caused large crowds to congregate around the post offices, including private armed guards and soldiers during martial law, which engendered frequently misunderstandings, bitterness, and strife, but this was occasioned by other causes and was no part of an intention or an attempt to interfere with the mails.

Third. No evidence was furnished to show that the immigration laws of the country were in any way violated by the coal operators in order to obtain miners to take the places of those striking. Many cases were proven where persons were induced to go to the district to work upon misrepresentation and misinformation furnished by employment bureaus in some of the large cities. Some hardships in this respect were disclosed. The importation of this labor into the district intensified the bitterness, greatly increased the strife and disturbance, and delayed the chance of an amicable settlement.

In regard to the second part of the inquiry under this division, while there was evidence showing that the former Commissioner of Labor declared a desire to prevent any immigrants from entering these coal fields where the strike among the miners then existed, yet no proof was furnished to show any such discrimination was ever exercised or any immigrant was prevented from going to these coal fields.

Fourth. This branch of the inquiry was assigned to Senator Borah, who has made to the chairman of the subcommittee a very complete report and from which the committee briefly forms the following conclusions:

(1) That martial law was declared as to Paint and Cabin Creek country about September 2, 1912, and continued in force with the exception of short intervals until in June, 1913.

(2) That during the reign of martial law a number of individuals were arrested, tried, and convicted and sentenced and punished for offenses alleged to have been committed by them.

(3) That these parties were arrested upon orders issued by the military authorities and not by virtue of any warrant issued by the civil authorities or from the established courts of the State, and were put upon their trial, without the finding of any indictment by the grand jury, before a court martial created by the order of the commander in chief and composed of individuals selected by him.

(4) That the charges made against these parties thus put upon their trial were in the nature of specifications drawn up and presented by the military authorities, and upon these they were put upon their trial before said court-martial without a jury.

(5) That in the trial of these parties and in the assessing of punishments the court before which they were tried deemed itself bound alone by the orders of the commander in chief, the governor of the State, and in no respect bound to observe the Constitution of the United States or the constitution or the statutes of the State of West Virginia relative to the trial and punishment of parties charged with crime. That they acted under the claim that all the provisions of the constitution, both State and National, and the statutes of the State relative to such matters were suspended and for the time inoperative by reason of the existence of martial law.

(6) That at the time these arrests were made and the trials and convictions had the civil courts were open, holding their terms as usual, disposing of cases and dispensing justice in the usual and ordinary manner.

That in some instances arrests were made outside the military zone for offenses alleged to have been committed outside the military zone and at a time when martial law did not prevail, and when such arrests were made the parties were turned over by the civil authorities to the military authorities for detention, trial, and punishment.

(7) That in rendering judgment and assessing punishment the parties were punished by terms of imprisonment unknown to the statutes or in excess of the punishment provided for such offenses under the laws of the State.

That a number of these parties were sent to jail and many to the State penitentiary under sentence from this court-martial as approved by the governor. Most of those who were sent to the penitentiary were given a conditional pardon before the term for which they were sentenced had expired, the pardon being conditioned in a general way upon good behavior. That the parties sentenced to the penitentiary were received into the penitentiary as ordinary convicts and treated in every respect as parties sentenced for crimes by the criminal courts of the State.

(8) That under the laws of West Virginia a warrant of arrest may be issued from one justice of the peace court, and the hearing and trial upon the said warrant of arrest may be transferred and brought on for hearing before any other justice of the peace in the same county.

(9) That a place of holding court—that is, for the civil or common law courts—was at Charleston, W. Va., a distance of several miles from the disturbed district or military zone.

(10) That no threats of violence or use of force was made or had against the judges or the courts at any time during the existence of the disturbance or the reign of martial law.

(11) That great feeling and interest doubtless prevailed generally throughout the country, but the existence of this feeling and its effect upon grand or petit juries was not tested by the calling of a grand jury, or the submitting of the charges against these persons to a grand jury, and no attempt was made to try them before a petit jury—the officers of the country, after the declaration of martial law, proceeding upon the assumption that the feeling and prejudice was so strong as to prevent the operation of the civil authorities, together with a further belief that the declaration of martial law had

the effect of suspending and nullifying all constitutional and statutory rights of the accused.

Fifth. The matter contained in this branch of the inquiry is now the subject of investigation by the United States courts, both in a civil suit and in a criminal prosecution. The committee deems it would be improper for it to determine in advance questions of either law or fact which courts of competent jurisdiction have under consideration in cases pending before them. The committee confines itself in this matter to submitting a summary of the evidence collated and prepared by Senator Shields.

Sixth. The investigation disclosed that large quantities of ammunition, pistols, shotguns, rifles, and machine guns were brought into the district by both parties to the controversy and freely used. There is no evidence to prove that these shipments were made by competitors for the purpose of creating conditions in this district so as to exclude its coal from the competitive markets in interstate trade.

Seventh. The conditions existing in this district for many months were most deplorable. The hostility became so intense, the conflict so fierce, that there existed in this district for some time well-armed forces fighting for supremacy. Separate camps, organized, armed, and guarded, were established. There was much violence and some murders. Pitched battles were fought by the contending parties. Law and order disappeared, and life was insecure for both sides. Operation and business practically ceased.

As these unhappy conditions no longer exist, as the differences between the contending parties have been amicably adjusted and an agreement entered into for several years, and as peace and confidence now prevail, work and business having been resumed, the committee does not consider it wise or necessary to elaborate upon the many causes which produced these deplorable conditions.

Among the contributing causes may be enumerated the following: The failure of the operators in the Paint Creek district to renew their expiring contract with the United Mine Workers; the determination of the coal operators under no circumstances to recognize the miners as an organization or union, and the equal determination of the miners to organize and form a union, a right as they claim guaranteed to them without discrimination by the laws of West Virginia; the employment by the operators of mine guards, many of whom were aggressive and arbitrary; mine guards in the employment of the operators acting as deputy sheriffs and clothed with the authority of law; the failure of the civil authorities to attempt even to preserve peace and order at the beginning of violence and permitting things to drift from bad to worse without vigorous interference and assertion of authority; discontent among the miners occasioned by no opportunity to purchase homes; no cemeteries except upon the company's grounds; post offices located in the company's stores; private roads only to the schools and stores; the disposition of the coal operators to keep strict espionage of all strangers who entered the district and to exercise their right of private ownership of this large district and to exclude from it all persons objectionable to them. These may be stated as some of the immediate contributing causes.

The committee makes no recommendation of remedial legislation, as it was not authorized to do so under the Senate resolution, but was limited in its powers to the investigation and ascertainment of designated facts.

Senator Borah submitted the following report to the chairman of the subcommittee:

COURT-MARTIAL TRIALS.

The fourth subdivision of the resolution under which this investigation was made provides as follows:

Investigate and report all facts and circumstances relating to the charge that citizens of the United States have been arrested, tried, and convicted contrary to or in violation of the Constitution or the laws of the United States.

The committee understands that this limits its authority to the simple proposition of investigating and reporting the facts and circumstances relating to this charge and nothing more.

On the 1st day of April, 1912, the contract between the union miners in Kanawha Valley and the operators expired. Upon the expiration of this contract Gov. Glasscock became interested, or perhaps we should better say was consulted, with reference to the troubles between the miners and operators in the Kanawha Valley. The progress of this trouble we need not refer to here, as that is discussed under another head. Suffice it to say that the governor upon the 2d day of September, 1912, declared martial law as to that portion of the State of West Virginia which was involved in the strike difficulties. Martial law remained in this district from the 2d of September up to and including the 14th or 15th of October. The second period of martial law began on the 15th of November, 1912.

During the first period of martial law there were certain trials before the military tribunals held at Pratt, in Kanawha County, W. Va. The men who were tried before these tribunals were arrested by order of some military officer upon charges formulated before the judge advocate general, and the arrest was made by serving a copy upon the party charged and taking him into custody. That is to say, they were brought before this military court by virtue of the specifications served upon them and not by any civil process issued by any common law or civil court. The parties charged were given time to get their witnesses and counsel, but the courts proceeded wholly and exclusively upon what was deemed to be military authority, and under the military law and not under the civil law.

At these first trials there were some 55 or 66 persons tried altogether—about 15 persons who were known as Baldwin guards, 2 miners, and a group of persons consisting largely of Greeks, amounting to some 40 or 43 individuals. They were tried as high as 30 in a group.

Three of the parties were adjudged guilty and sent to the penitentiary, some as high as two years; others to one year in the penitentiary, and some were sentenced to the county jail. There were some acquittals.

In proceeding with these trials the tribunal adhered to military law and procedure in so far as it recognized any law at all, and did not in any respect follow the law and practice provided by the civil law.

There were also trials by court-martial during the second period of martial law. These trials were held in the same way and the procedure was precisely the same. In the second trials most of the parties charged were found guilty and sentenced to long terms in the penitentiary, some as high as seven and one-half years, ranging from that down to one year.

It is proper perhaps to state here, as it is a fact, that these persons when received at the penitentiary were treated in the same way and subjected to the same rules and discipline and regarded in every respect as if they had been sentenced by the civil law courts.

The number who were tried during the second period of martial law was somewhat indefinite, but perhaps from 15 to 20. The offenses were offenses alleged to have been committed both during the reign of martial law and also at a time when martial law did not prevail.

There were also court-martial trials at a later period, during the reign of martial law. This was what was known as the big trial, by reason of the number of parties tried. The trials grew out of offenses alleged to have been committed during what was known as the battle of Mucklow. The parties were charged in the specifications with conspiracy with intent to destroy personal property, and conspiracy to inflict bodily injuries, murder committed in pursuance of conspiracy, accessories after the fact, and carrying deadly weapons. These offenses were all charged in one set of specifications. The offenses for which these parties were tried, both in this trial and in the other trials, were offenses which could have been punished under the civil law and in the common-law courts of the State. That is to say, they were offenses against the laws of the State of West Virginia. Just what the result of this latter trial was, as to convictions, the committee was unable to ascertain, as the judgments were perhaps never approved by the governor, but the parties, a number of them, were detained and imprisoned in the different county jails of the State.

It will be sufficient to give one of the orders under which these trials were had:

GENERAL ORDERS, No. 23.

The following is published for the guidance of the military commission, organized under General Orders, No. 22, of this office, dated November 16, 1912:

1. The military commission is substituted for the criminal courts of the district covered by the martial-law proclamation, and all offenses against the civil laws as they existed prior to the proclamation of November 15, 1912, shall be regarded as offenses under the military law, and as a punishment therefor the military commission can impose such sentences, either lighter or heavier than those imposed under the civil law, as in their judgment the offender may merit.

2. Cognizances of offenses against the civil law as they existed prior to November 15, 1912, committed prior to the declaration of martial law and unpunished, will be taken by the military commission.

3. Persons sentenced to imprisonments will be confined in the penitentiary at Moundsville, W. Va.

By command of the governor:

C. D. ELLIOTT, *Adjutant General.*

The civil courts of Kanawha and Clay Counties, the counties in which the military zone is situated, were open, holding their regular terms at all times during the existence of martial law. No threats of violence or of force were had or made against the courts or judges

thereof. Joseph H. Gaines, a member of the bar of West Virginia and residing at Charleston, the capital, testified as follows:

The State is divided into what we call circuits, and the circuit court is the court of general jurisdiction. This circuit comprises Kanawha County and Clay County. Then there is an intermediate court, which is coextensive only with the County of Kanawha, and that has criminal jurisdiction; that is the court which has a grand jury, and offenses against the statute or State—ordinary criminal offenses—are tried in the criminal court and then appeal may be had to the circuit court and then to the supreme court of appeals of the State. The court sits in this county at the courthouse in Charleston. The courts have not been closed. There have been grand juries.

The witness further testified that Cabin Creek and Paint Creek were principally in Kanawha County, Paint Creek extending, however, to Fayette County.

In this connection it may be properly stated that Kanawha County has a population from eighty to eighty-seven thousand, and the city of Charleston a population of some 25,000, and the military zone is comprised of a comparatively small proportion of the county.

None of the offenses for which the parties were tried by court-martial were ever submitted to the grand jury and no indictments were had or sought before any regularly impaneled grand jury.

As to the manner in which the military court was constituted Charles R. Morgan, an attorney of Charleston, testified:

I am and was connected with the military service all through the six months that martial law was enforced. The military commission was composed of Mr. Morgan (the witness), James I. Pratt, Capt. S. L. Walker, Lieut. Roberts, and Capt. Sherwood, all members of the State militia.

The witness further states, in general, that no civil process was used to bring the parties before the court, that the evidence upon the hearing was taken down, and that the offenses for which the parties were tried were statutory offenses under the laws of West Virginia.

Capt. James I. Pratt testified in substance that he was a major in the militia; that his headquarters were at Pratt, in Kanawha County; that he was a member of the second military court, which he said was composed of Maj. Pratt, Capt. Walker, Capt. Morgan, and Lieut. Roberts, all members of the State militia; and that the offenses for which the parties were tried were offenses known to the statutes of the State of West Virginia and punishable under the laws of that State; that no preliminary hearings or indictments of the grand jury were had with reference to any of the defendants who were tried before the military courts.

None of the defendants who were tried and convicted, referred to in this report, were members of the State militia or in the military service.

As to the authority or power of the military court Capt. Morgan was asked:

Do I understand that the court of which you are a member, the military court, recommended sentences for punishment in excess of the punishment which was permitted by the statutes of the State?

Mr. MORGAN. That is my understanding, sir.

Senator BORAH. As we understand the matter, the military court was undertaking to follow out the orders and exercise the discretion permitted it from the commander in chief, rather than undertaking to follow the statutes?

Mr. MORGAN. It was our understanding, Senator, and it appeared so to us, having been in the field quite a good while, that a state of war existed in that locality; and having been in the field myself for about three months at that time, and having known of the disorders, and having had connection with a great deal of it, having taken up several hundred guns myself, and having seen the conditions and knowing

the conditions going on at that time, we took it to be that a state of war actually existed at that time and punished the offenders accordingly.

Senator BORAH. Regardless of what the statute of the State might provide?

Mr. MORGAN. Yes, sir.

Senator BORAH. Now, then, Captain, if the military tribunal of which you were a member had seen fit to sentence a man to the penitentiary for life for perjury, you would have felt that you had the power to do it, would you not?

Mr. MORGAN. Well, we might have made that recommendation—a commission might have been found to make that recommendation.

Senator BORAH. I am not assuming you did it. I am now testing the question of your power as you viewed it.

Mr. MORGAN. Yes, sir; as I viewed it at that time I considered it to be a law.

It is proper to say that it was contended very earnestly upon the part of the then prosecuting attorney and other parties that the feeling was such through Kanawha County that it would have been impossible to have convened the grand jury and thereafter a trial jury which would have impartially tried the defendant; that the people had taken sides and that they were all partisans of either one side or the other of those who were in conflict in the military zone. It was not contended that the courts were closed, but the contention was that they were inoperative and powerless by reason of the prejudice and bitterness of the partisanship prevailing throughout the county; that they neither could get the evidence nor get the juries who would pass properly upon the evidence.

(Mr. Avis, then prosecuting attorney, testified:)

I would say that nearly 20,000 people resided in the military zone, from my information of that zone.

Senator BORAH. The balance, 60,000 or 67,000, resided outside the military zone?

Mr. AVIS. Outside of the military zone; but a large number of them within the affected region, just across the river, where the other mines were.

Senator BORAH. No part of the balance of the county was under martial law at any time?

Mr. AVIS. I think not.

Senator BORAH. Outside of the military zone, as I understand your testimony, you believe that that which affected the enforcement of the civil law or the effectual action of the civil authorities was due to the prejudice or feeling which arose by reason of this contention?

Mr. AVIS. Yes.

Senator BORAH. In other words, you desire to convey to the subcommittee the belief that the community had taken sides either with the operators or with the miners?

Mr. AVIS. I do.

Senator BORAH. And that by reason of that feeling the civil authorities were unable to hold their courts and proceed under the ordinary rules of procedure?

Mr. AVIS. That is true as relates to trials. As to performing other official functions there were other things which prevented.

Senator BORAH. Did that include the entire community, in your judgment?

Mr. AVIS. Does what include the entire community?

Senator BORAH. This feeling or prejudice?

Mr. AVIS. I think it did, Senator, at that time.

There was other evidence setting forth this view of the situation.

Senator BORAH. At what time were these offenses alleged to have been committed for which these men were tried with reference to the date of criminal law?

Col. WALLACE. Most of them had been committed in the interim between the 15th of October and the 15th of November, when martial law was withdrawn, and they were for offenses that had to do with the disturbances going on in that district. I mean by that disorders of certain kinds that happened.

Senator BORAH. How long prior to the second declaration of martial law had these offenses been committed, how many days?

Col. WALLACE. There had only been 30 days' interval between the withdrawal of the first proclamation and the publishing of the second, and only from memory; my idea is, would be anywhere from 10 to 15 or 20 days.

Senator BORAH. Now, at the time they committed these offenses or alleged offenses and were charged with committing these offenses there was no martial law?

Col. WALLACE. No, sir.

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Col. WALLACE. Well, now, I do not know what you are getting at. My theory of that whole situation was that the governor had a right to declare martial law. If he declared martial law, then the laws of war applied, and the laws of war would fix the punishment within the discretion of the military power.

Mr. BELCHER. Then you assumed that the constitution and civil law was suspended?

Col. WALLACE. I did; and the supreme court has sustained that assumption.

Mr. BELCHER. And you also contended that the National Constitution was suspended by the act of the governor in declaring martial law?

Col. WALLACE. I made no contention as to the National Constitution, as it was not in issue.

Mr. BELCHER. You did not, then, recognize that the citizens of the United States residing in West Virginia had any constitutional rights; that is, under the Federal Constitution?

Col. WALLACE. I do not understand that the Federal Constitution applies to the citizens of West Virginia as such except in so far as the fourteenth amendment requires the State to give them an equal protection of its laws.

Mr. BELCHER. Was that done in these cases?

Col. WALLACE. I understand so. That was my judgment of it, sir.

Mr. BELCHER. Is there any law in West Virginia that authorizes the trial of civilians for criminal offenses by a military commission?

Col. WALLACE. I was under that impression. We did it and the supreme court said we were right in the case of Mays and Nantz, which are reported in the supreme court decisions.

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Mr. BELCHER. You took the position all the way through this case you have referred to that there was no law within the military zone other than the will of the commander in chief?

Col. WALLACE. Absolutely; and maintain that yet.

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Col. WALLACE. The test is, as I understand it: Is there open and operative courts? And if it is shown that the courts are not open and operative, then it was not only the duty of the governor, but the right of the governor under the law, to declare martial law, and in his action he is responsible to the people of his State or to the legislature by way of impeachment.

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Mr. KNIGHT. Who took up the question?

Col. WALLACE. Capt. Avis.

Mr. WATTS. The prosecuting attorney?

Col. WALLACE. The prosecuting attorney. And I asked him the question as to where the offense had been committed, and he stated, as I recall, in Charleston, and stated what the offenses were, and I said, "Do you regard that as an offense under the law?" He said, "Yes; and I want you to try them." I says, "Have you tried them?" He says, "No; I can not get an indictment, neither can I get a conviction." He says, "Juries are so that I can not get it." I said, "Have you tried?" He says, "No; it is useless." A short time after that a conference was had between the then governor—but I was not present at that and it would not be proper for me to say, as I only know of it by information—and that was the understanding I got from the sheriff and the prosecuting attorney and other persons in this county—that by reason of the strife and bitterness going on here that pretty nearly every man you met was a partisan on one side or the other and the courts were closed, and that is the theory I went upon in justifying martial law.

Attorney General LILLY. Do you mean they were actually closed as such, or were inoperative in the strike region?

Col. WALLACE. No; the courts were not closed, but were going on with their duties in a good many ways; but my understanding was that so far as matters that grew out of the killings and beatings and one thing and another that grew out of the strike zone no indictments were returned and nobody was tried, and that was excused by the local officers on the ground of intense feeling on one side or the other. That was put in the shape of an affidavit—in what case was that, Mr. Belcher? I think the Dan Chain case or the Nantz case. They filed an affidavit of the sheriff of this county and the prosecuting attorney setting out those facts.

Senator BORAH. Did the county attorney call a grand jury?

Col. WALLACE. No, sir; the governor asked the local people to call a grand jury, and put his contingent fund at their disposal. It was not called, and whatever reason was given I do not recall, but the general reason, as I understand it, was that it was so that they felt they could not do it. At least they did not do it.

Senator BORAH. Why could they not do it?

Col. WALLACE. That would be a matter I could not answer. A good many people have different ideas and different views why they could not. It was just the difference between won't and can't. Whether they would not or could not I do not know. The fact remains they did not.

Senator BORAH. No grand jury has ever ignored any offenses, have they?

Col. WALLACE. My information is that they have, and the prosecuting attorney stated to me no longer ago than this morning that in the case of a man named Ray Morse, if I recollect it, who was charged of beating up Bobbett—he introduced a large number of witnesses before the grand jury, and they declined to indict.

Senator BORAH. When was that?

Col. WALLACE. Bobbett was beaten up in August preceding the declaration of martial law, and the grand jury convened in October—in the interval of martial law.

Senator BORAH. After martial law had been declared?

Col. WALLACE. The grand jury met in the interval, as I understand.

Senator BORAH. But no grand jury, prior to the 2d of September, had been called upon to indict these different men for these offenses, had there?

Col. WALLACE. My understanding is there was one grand jury between that—I am not sure of that—and that the evidence was offered, and I think that is in the affidavit. But my recollection is—if it is not in the affidavit—I was told that the Baldwin guards went in and testified as to the killing of one of their number, and instead of indicting the person that they testified against they were indicted themselves.

Senator BORAH. Perhaps that was a true indictment.

Col. WALLACE. Well, they were indicted upon their evidence. I do not know whether that is right or not.

Mr. JACKSON. Do you recall the action of the governor telegraphing Judge Black, who was out of town, to come to town and hold a special term of court?

Col. WALLACE. Yes, sir; I recollect that.

Mr. JACKSON. Do you remember what happened in regard to that?

Col. WALLACE. No; my mind is not clear on that. I know there was a conference on that at the statehouse, and I was not present at the time, but my impression is when it was over they concluded to put it over for a more opportune time. The campaign was going on and it might not have been a good thing.

Senator BORAH. The courts were running here, so far as the general business was concerned, just the same as on previous occasions, were they not?

Col. WALLACE. Yes, sir.

Senator BORAH. The courts were not closed in any sense that they were not being held according to the stated terms when they should be held?

Col. WALLACE. I think not. My information is they were being held at stated terms and conducting the usual business outside this business up here.

Senator BORAH. And petit juries and trial juries, etc., were on hand or could be on hand?

Col. WALLACE. I believe so; yes, sir.

Senator BORAH. If they were closed, then, in your sense of the idea of being closed, it would be from the fact that the prosecuting officers thought that the prejudice was such there was no use to try to indict or convict these men?

Col. WALLACE. I will not make it that strong. It was because the prosecuting officers had attempted in some instances to get indictments and failed, and in their judgment further attempts were useless. I do not mean to say they did not try.

Senator BORAH. When did this grand jury convene? This presents a very interesting and important feature of this case.

Col. WALLACE. I am not familiar with the terms of the grand jury of Kanawha County; but it seems to me, if you will pardon me, there are several lawyers here who can tell you the exact time. There is no use to say something I do not know anything about.

Senator BORAH. All you know about the courts being closed is what these men stated as to the ineffectiveness of their efforts to prosecute?

Col. WALLACE. And what was going on. We could see as a matter of common knowledge what was going on in part of the county.

Senator BORAH. But you did not know except what they told you as to what they had done in reference to enforcing the law?

Col. WALLACE. No.

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(Mr. Townsend, the present prosecuting attorney of Kanawha County, testified as follows:)

We asked the governor for troops.

Senator BORAH. Mr. Townsend, you are the present prosecuting attorney?

Mr. TOWNSEND. Yes, sir.

Senator BORAH. You have had grand juries regularly at such times as you wanted them, or such times as they were provided for, since you have been prosecuting attorney?

Mr. TOWNSEND. Since the 1st of January, 1913.

Senator BORAH. Three grand juries?

Mr. TOWNSEND. Four. We had a special grand jury. I forgot that.

Senator BORAH. You did have a special grand jury?

Mr. TOWNSEND. Yes, sir.

Senator BORAH. You presented the evidence with reference to the crime in which Bobbitt was interested?

Mr. TOWNSEND. Yes, sir.

Senator BORAH. What was this offense?

Mr. TOWNSEND. The indictment was returned for malicious wounding.

Senator BORAH. Who was Mr. Bobbitt?

Mr. TOWNSEND. Mr. Bobbitt was bookkeeper for one of the coal companies on Paint Creek.

Senator BORAH. You said that no one was able to identify the individuals who assaulted Bobbitt but himself?

Mr. TOWNSEND. That is all.

Senator BORAH. Nevertheless, the grand jury returned an indictment?

Mr. TOWNSEND. On his evidence; yes, sir.

Senator BORAH. Who were the men who were indicted—that is, their relationship to this controversy—were they miners, mine operators, militiamen, or watchmen, or what?

Mr. TOWNSEND. They were all miners, is my understanding. That is my information.

Senator BORAH. How many were indicted?

Mr. TOWNSEND. Five.

Senator BORAH. Then, upon the testimony of Mr. Bobbitt as to identification, five of these miners were indicted by this grand jury?

Mr. TOWNSEND. Yes, sir.

Senator BORAH. Can you give me the date of that?

Mr. TOWNSEND. That the indictment was returned?

Senator BORAH. Yes.

Mr. TOWNSEND. The first Monday in January the grand jury convened and it remained in session some three or four days. It would be about the 8th or 9th of January.

Senator BORAH. When did you have your next grand jury?

Mr. TOWNSEND. We had a special session of the grand jury in February.

Senator BORAH. That was the time when Mr. Miller's matter was presented.

Mr. TOWNSEND. No, sir.

Senator BORAH. When was his affair presented?

Mr. TOWNSEND. Indictment was returned against Mr. Miller at the January term—I do not mean Mr. Miller; I mean L. J. Michael.

Senator BORAH. Who is Mr. Michael?

Mr. TOWNSEND. Mr. Michael is a gentleman connected with the militia in some way. I do not know what position he holds.

Senator BORAH. What was the charge, in a general way?

Mr. TOWNSEND. He was charged with shooting and killing a man by the name of Miller, a negro.

Senator BORAH. Was there an indictment?

Mr. TOWNSEND. Yes, sir.

Senator BORAH. What was the date of this indictment's return?

Mr. TOWNSEND. The same time the indictment was returned against Bobbitt; early in January.

Senator BORAH. Then, at the time of this first meeting they indicted four or five miners and also a member of the militia?

Mr. TOWNSEND. Yes, sir.

Senator BORAH. That grand jury, so far as the general results are concerned, returned indictments upon those matters which you submitted to them.

Mr. TOWNSEND. Yes, sir; in every instance.

Senator BORAH. That was in 1913?
Mr. TOWNSEND. Yes, sir.
Senator BORAH. That is all.

* * * * * * *

(Gov. Glasscock, upon this subject, testified as follows:)

Senator BORAH. I do not know that I understand you exactly, Governor. Is it not true that parties were arrested here in Charleston upon warrants issued from the civil courts, and that after being arrested by the civil authorities they were turned over to the military authorities and tried by the military authorities?

Gov. GLASSCOCK. Not during my administration, so far as the trial was concerned.

Col. WALLACE. May I make a suggestion? What I think you are getting at is, there were three persons arrested in the city of Charleston. Mrs. Jones—I think there were four—Mrs. Jones, Batley, Boswell, and Paulson, by warrants issued by justice of the peace, and they were taken to the strike zone and there arrested by the military authorities, and that was done by the civil authorities. I have in my possession the original warrants with the return thereon.

Senator BORAH. These parties that were taken in charge by the military authorities later were, in the first instance, arrested by the civil authorities?

Col. WALLACE. Yes, sir; and in their custody.

Senator BORAH. And then turned over to the military authorities?

Col. WALLACE. Yes, sir.

Senator BORAH. As a matter of fact, the civil authorities were turning over these parties, in some instances, to the military authorities?

Col. WALLACE. In the instances I have referred to for offenses that had been committed in the zone up there.

Senator BORAH. That seems to demonstrate that the civil authorities were capable of making an arrest.

Col. WALLACE. That demonstrates this: That they were arrested in the city of Charleston. As to whether or not they could have tried them in a court here, that is another question.

Gov. GLASSCOCK. These people were tried, Senator Borah, if at all, after my term. I know nothing about the trial.

Senator BORAH. Now, Governor, did you have any evidence before you, other than the opinion of the judge and the opinion of the prosecuting attorney, that you could not get a fair and a partial jury to try these cases?

Gov. GLASSCOCK. I did. I had the opinion of the miners up there on the one side and the operators on the other side and the fact that, at least in my judgment, 25 or 30 murders had been committed and nothing done.

Senator BORAH. Well, that was not the fault of the grand jury that was never convened, that nothing was done.

Gov. GLASSCOCK. That is a matter of argument, Senator. You asked me for the fact and I am trying to give it to you.

Senator BORAH. Exactly; but I want to know why nothing was done. The grand jury had not been convened; nobody knew whether a grand jury would indict or not until the matter was submitted to them; therefore I infer that the matter was based upon the opinion of the judge and prosecuting officer, rather than an actual attempt to secure a grand jury and an actual demonstration that it would not indict?

Gov. GLASSCOCK. Well, you are entirely logical, Senator, in your judgment of the case. At the same time these things had been going on not only for these months during which this strike had taken place, but for months before that, and nothing had been done. Now, miners were coming to me and complaining that they could not get justice in that territory. They told me of the outrages that has been committed upon them and nothing done. The operators, on the other hand, were complaining of things that had been done and they had no redress. And I knew that murders were being committed and no prosecutions were being had, and to my mind that was about as convincing as anything could be that if the courts of this county were open to these people, they were not open to any purpose, or at least the guilty people, whoever they were, were not being prosecuted; and I want to be understood here as saying that I do not believe for a minute that all these offenses were being committed by one side at all, because if I understood the situation pitched battles were being fought and both sides were to blame, and it was not a question of prosecuting one side, it was a question of prosecuting whoever might be guilty, regardless of which side he was on.

Senator BORAH. Well, Governor, the thing that the subcommittee is most interested in is the question of whether or not there was ever called into action a grand jury which refused to indict these men or a petit jury which refused to convict these men. Now, I do not say this as the opinion of the committee, but it would seem to

be the assumption only of the prosecuting attorney and the district judge that it could not be done unless there had been a demonstration of the fact by the calling of the juries into action.

Gov. GLASSCOCK. I can see how you might arrive at that conclusion.

Senator BORAH. In view of the fact that the grand jury was not called, according to your request, and the evidence was never submitted to the grand jury, we have only now the assumption that it could not be done.

Gov. GLASSCOCK. The prosecuting attorney, however, did, Senator Borah, give me instances of where people had been summoned before the grand jury and no indictments found prior to this trouble—I mean prior to this strike—and instances where cases had been submitted to petit juries and no convictions had.

Senator BORAH. Do you have reference now to what was known as the Italian case, or the case where the Italians were sought to be indicted and they indicted the men who appeared against the Italians?

Gov. GLASSCOCK. No; there were still other cases than those, but prior to that time.

Senator BORAH. Can you refer to the cases and identify them?

Gov. GLASSCOCK. I could not.

Senator BORAH. I suppose the prosecuting attorney will be able to do that?

Gov. GLASSCOCK. I think so.

Senator BORAH. Well, the courts generally were operating here in this county, aside from anything which might have occurred in the military zone, were they not?

Gov. GLASSCOCK. Yes.

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(Frank C. Burdette, assistant district prosecuting attorney, testified as follows:)

Col. WALLACE. Why didn't you believe you could get any results from a special grand jury?

Mr. BURDETTE. Owing to the expressed opinions throughout the county.

Col. WALLACE. Expressed opinions, how; what do you mean by that?

Mr. BURDETTE. I was of the opinion then, and I still entertain the same opinion, that a great majority of the people throughout this county had expressed themselves one way or the other.

Col. WALLACE. Are we to understand you, that if the grand jury had been convened at that time and the evidence submitted to it, that, in your opinion, you could not have gotten 12 members of that grand jury who would have concurred in an indictment against persons in this trouble up here?

Mr. BURDETTE. I really don't want to say that. I have my doubts about that.

Col. WALLACE. Do you believe that the civil authorities of Kanawha County, in August, 1912, were able to take care of that situation in the Cabin Creek district?

Mr. BURDETTE. We were not.

Senator BORAH. This first grand jury to which you have directed our attention was the June term, 1912?

Mr. BURDETTE. Yes, sir.

Senator BORAH. And at that time there was an indictment returned against these guards for the killing of the Italian?

Mr. BURDETTE. Yes, sir.

Senator BORAH. And the evidence before the grand jury showed, upon the part of the guards, that they did not do the shooting?

Mr. BURDETTE. Yes, sir.

Senator BORAH. You expected, then, the grand jury to return an indictment, didn't you?

Mr. BURDETTE. I did.

Senator BORAH. You drew the indictment?

Mr. BURDETTE. I did.

Senator BORAH. And approved of the return of the indictment?

Mr. BURDETTE. If I had not approved it, I would have nolled it, Senator?

Senator BORAH. Then the grand jury, so far as your opinion is concerned, did perform what you think was its duty?

Mr. BURDETTE. Yes; in reference to that indictment against the guards.

Senator BORAH. You say there were some other indictments which you felt yourself ought to have been found?

Mr. BURDETTE. That is, against the Italians?

Senator BORAH. They were not found.

Mr. BURDETTE. There were no indictments made against the Italians, and I thought at the time that the indictments should have been made against the Italians, and I so reported to Capt. Avis, who was the prosecuting attorney.

Senator BORAH. It is a familiar experience upon the part of prosecuting attorneys that grand juries frequently find indictments contrary to his views?

Mr. BURDETTE. Oh, yes.

Senator BORAH. The grand jury is sworn to do its duty under its oath?

Mr. BURDETTE. Oh, yes.

Senator BORAH. And its judgment must control its actions?

Mr. BURDETTE. Yes, sir.

Senator BORAH. Now, these cases were continued on account of the absence of Dr. Anderson?

Mr. BURDETTE. Yes, sir.

Senator BORAH. The courts were open all this time, the regular sitting of the court?

Mr. BURDETTE. At the June term.

Senator BORAH. And they were then open at the regular term in the fall?

Mr. BURDETTE. We had a term in October.

Senator BORAH. Whatever terms you would have had, had there been no martial law, you did have, notwithstanding there was martial law?

Mr. BURDETTE. Yes, sir.

Senator BORAH. Your regular terms came along?

Mr. BURDETTE. Yes, sir; our regular terms came along.

Senator BORAH. You had your regular petit juries?

Mr. BURDETTE. Yes, sir.

Senator BORAH. And your regular grand jury?

Mr. BURDETTE. Yes, sir. I beg your pardon. Just a moment, so I can get in the record on that. While the case against these guards was continued, owing to the absence of Dr. Anderson, Mr. Littlepage, who represented the guards, we all agreed that they had a legal continuance—that is, the guards—and we did not very vigorously fight for a trial at that term of the court, because the feeling was very high and it was very doubtful that the State could get a fair trial before a jury.

Senator BORAH. Speaking with reference to the special grand jury, you thought it might not be a practical proposition to call it at that time?

Mr. BURDETTE. That is the way I felt about it, and I did not feel like burdening the State with the additional expense. What I done was on my own responsibility. I put an advertisement in the papers and I consulted the friends of the miners and I consulted the head of the Baldwin & Felts Detective Agency and I told them we were ready, at any time the evidence was forthcoming, to ask the court for a special grand jury.

Senator BORAH. And if the evidence had been presented to you, satisfactory to you as the prosecuting attorney, that there were cases there, you would have called for a special grand jury, would you not?

Mr. BURDETTE. I want to say in connection with that, Senator, that the feeling was very high in this community at that time, all over the county, even in the agricultural districts, and it was very doubtful that we could have secured an indictment; but, as I say, if we had secured the evidence, we would have made an effort.

Senator BORAH. If you had had the evidence which satisfied you?

Mr. BURDETTE. Which satisfied me.

Senator BORAH. But you never did have that evidence?

Mr. BURDETTE. But I never did have that evidence.

Senator BORAH. Then there was no occasion for calling a special grand jury?

Mr. BURDETTE. Why, sure.

* * * * * * *

(S. P. Smith, sheriff of Kanawha County in 1912, testified as follows:)

Senator BORAH. Was there any feeling here against the State upon the part of the people?

Mr. SMITH. No; I did not see any.

Senator BORAH. The feeling was against the mine operators and miners, was it not?

Mr. SMITH. And against the guards.

Senator BORAH. There was no feeling against the State as an organization?

Mr. SMITH. No.

Senator BORAH. Was there any feeling against the State officers here on the part of the people throughout the county, aside from the people who were convicted in this district?

Mr. SMITH. No; I never heard of any threats being made against any official outside of districts up there.

Senator BORAH. Now, these magistrates and constables in the district or zone where this trouble was, was their sympathy with the miners or against them?

Mr. SMITH. I believe that Squire Eskins's was entirely with the miners; I believe that Crawford's sympathy was with the operators.

Senator BORAH. How about the constables?

Mr. SMITH. I do not know about that.

Senator BORAH. Is it not true that you may file a complaint before any magistrate in this county and have it returnable to any other magistrate in the county?

Mr. SMITH. Yes, sir; you can file a complaint against one magistrate and take him to another district and at the other end of the county.

Senator BORAH. Then you could have filed a complaint before any of these magistrates, whether they were friendly or unfriendly, and upon return being issued you could have taken the man to another magistrate for the purpose of having the preliminary examination, could you not?

Mr. SMITH. Yes, sir.

Mr. MONNETT. You can file the original in any township.

Mr. AVIS. My impression is that a magistrate can not sit for trial outside of his own district.

Mr. BELCHER. The law is this, that while a justice of the peace can not go out of his own magisterial district and hear or try cases, yet he can send the person charged before any justice of any magisterial district in the county, there to be tried.

Senator BORAH. In other words, complaint could have been filed before a magistrate in the district up there which was affected, and then it could have been transferred to a magistrate in Charleston to have been heard, could it not?

Mr. SMITH. Yes, sir; it could.

Senator BORAH. As I understand, the mine owners had a man in that district who was in sympathy with them and the miners had a man in that district who was in sympathy with them.

Mr. SMITH. That is the way I looked at it.

Senator BORAH. A man being complained of before either of them could have been taken to a magistrate in this part of the county.

Mr. SMITH. I have always thought and understood that.

Senator BORAH. Now, did you serve the warrant in the case of Mary Jones, Boswell, Batley, and Paulson?

Mr. SMITH. My time expired before that time.

Senator BORAH. You were not an officer at that time?

Mr. SMITH. No.

Senator BORAH. You were not officially connected with those arrests in any way?

Mr. SMITH. No.

Senator BORAH. I want to ask you this question: In what respect would the declaring of martial law aid in the finding of evidence—not, now, in keeping the peace? I can see readily how martial law would be necessary in policing the situation and preventing disturbances, but how would it enable anyone to find evidence with reference to a murder which had been committed?

Mr. SMITH. I do not see how it would help to find evidence, only in this way, that it would give each side the protection they needed, and they would feel safe in giving testimony that they would not give unless they were properly protected.

Senator BORAH. Then, after martial law was declared, was there any reason that you knew of why civil officers should not have the same success in finding evidence that the representatives of a military tribunal would have?

Mr. SMITH. I think they could find the same evidence. You mean while the martial law was on?

Senator BORAH. While the martial law was on.

Mr. SMITH. Yes.

Senator BORAH. Martial law being declared, and the situation policed, was there any reason that you know of why a civil officer like yourself could not go in there and find evidence just as well as a man who would go in there representing a military tribunal and find evidence?

Mr. SMITH. No; not if he is allowed to go in there. I believe he could have the same success during martial law.

Senator BORAH. Now, Mr. Sheriff, what was there that was impracticable about the proposition of this evidence being gathered by whoever it was gathered by, whether by you or by a representative of the martial law, being turned over to the prosecuting attorney or the proper civil authorities to be utilized before a grand jury?

Mr. SMITH. Well, any man, either an officer or a citizen, would have the right to turn that evidence over to the grand jury. I think an officer or citizen—I know I would—would feel it would be his duty to do it.

Senator BORAH. Exactly. After the situation became policed up there by the presence of the martial law there was no reason why any evidence that might be in existence and could be found should not be turned over to the proper civil authorities to be submitted to a proper grand jury or proper body to pass upon?

Mr. SMITH. No; I do not know any reason unless the martial law would prevent your going in and securing the evidence.

Senator BORAH. Unless it was a legal proposition that you had no right to go there?

Mr. SMITH. Yes.

Senator BORAH. So far as the practical situation is concerned, you see nothing in the way of that proceeding, do you?

Mr. SMITH. No.

But the fact is, and undisputed, that after the declaration of martial law no attempt was had to impanel the grand jury to test the question of the capacity and willingness of the grand jury to act, no civil trial was attempted, and the laws of the State providing for grand juries and the trial of parties charged with crime were not attempted to be put into operation. We think it is not unfair to say that upon the assumption and presumption that the civil authorities could not and would not effectually operate, no attempt was made to test the question. In this connection it is pertinent to call attention to the fact that Gov. Glasscock made the following request, on or about the 16th day of August, in the form of a telegram to Judge Black and also to the county attorney, Capt. S. B. Avis:

On account of so many recent violations of law in Kanawha County and the imminent danger of further disturbances, I earnestly and most respectfully request you to convene a special grand jury at the earliest possible date to investigate such violations and cause a trial to be had on any indictment that may be returned as speedily as may be consistent with justice and a fair and impartial administration of law.

But no special session of the court and no grand jury were called as the result of this request or at all.

We insert here some provisions of the State constitution of the State of West Virginia which seem necessary for a true understanding of the situation:

Article 1, section 3: The provisions of the Constitution of the United States and of this State are operative alike in a period of war as in time of peace, and any departure therefrom or violation thereof under the plea of necessity, or any other plea, is subversive of good government and tends to anarchy and despotism.

Article 3, section 4: The privilege of the writ of habeas corpus shall not be suspended. No person shall be held to answer for treason, felony, or other crime not cognizable by a justice unless on presentment or indictment of a grand jury.

Article 3, section 14: Trials of crimes and of misdemeanors, unless herein otherwise provided, shall be by a jury of 12 men, public, without unreasonable delay, and in the county where the alleged offense was committed, unless upon petition of the accused, and for good cause shown, it is removed to some other county. In all such trials shall be fairly and plainly informed of the character and cause of the accusation, and be confronted with the witnesses against him, and shall have the assistance of counsel, and a reasonable time to prepare for his defense; and there shall be awarded to him compulsory process for obtaining witnesses in his favor.

Article 3, section 17: The courts of this State shall be open, and every person, for an injury done to him, in his person, property, reputation, shall have remedy by due course of law; and justice shall be administered without sale, denial, or delay.

Senator Martine submitted the following report to the chairman of the subcommittee:

JANUARY 13, 1914.

Hon. CLAUDE A. SWANSON,
Chairman Subcommittee Committee on Education and Labor Paint and Cabin Creek Investigation.

SIR: As a member of your subcommittee appointed by the Senate to inquire into the labor disturbances existing in the Paint and Cabin Creek sections of West Virginia, and having been specially assigned to that portion of the inquiry relating to interference with the distribution of the United States mails, I do most respectfully report that in my judgment the charge was not well maintained.

While there was some delay in distributing mail owing to the strike and general disturbed conditions existing in this district, I found no attempt to suppress the general mail delivery to all legitimate patrons of the respective post offices of this district. The presence of armed guards (private), however, naturally excited bitter feelings, and their presence can not be too strongly condemned. In many instances it was found that these guards loitered around the coal company stores, which stores constituted in the same building the office of the coal company and the post office.

I further beg to report, having been assigned to that phase of the investigation regarding the employment of immigrant labor in blocks or on contract from foreign countries, that this, too, was found impossible to establish. Though the fact was plainly brought out that labor was hired by agents of the mine owners in the great cities of our country, that the said agents did not tell the men so hired the whole truth of the situation at the place of destination, that in most instances these men were unable to speak or understand our language, the burden of testimony tended only to prove that the transportation of these men was a serious reflection on our boasted civilization.

God has blessed West Virginia with prolific hand; a topography grand to contemplate; a wealth unparalleled in coal, iron and oil—her hills fairly groan with undeveloped resources, and all of these at the very threshold of the great marts of trade and commerce of our country. Here, above all sections, should peace, plenty, and happiness reign supreme. On the contrary, your committee found disorder, riot, bitterness, and bloodshed in their stead.

In no spirit of malice or hatred, but with a view that the country, through knowledge of the true conditions, may right the wrong, I charge that the hiring of armed bodies of men by private mine owners and other corporations and the use of steel armored trains, machine guns, and bloodhounds on defenseless men, women, and children is but a little way removed from barbarism. To the end of making impossible the recurrence of such methods I earnestly urge the speedy passage of Senate bill No. 2741, which was introduced by me on July 14, 1913—the first session of the present Congress.

Asked what is my solution of this and similar unhappy conditions, I would state: A millionaire owner of a great section of the State of West Virginia calmly admitted on the witness stand that so long as he got his per ton lease he never inquired further. Our duty under the premises: Coal, under our civilization is a necessity. This great commodity can not be increased a fraction of a pound, yet our population is multiplying by leaps and bounds each year, thereby increasing the demands for this article. We must have warmth for our bodies and fuel with which to cook our foods. With this condition existing and, with avarice as the dominating characteristic in man, I, at the risk of criticism by my many friends and countrymen, unhesitatingly say that Government ownership of the mines is the only hope or solution for those who may come after us.

Every instance of Government or municipal ownership and control has resulted in lowering the rate cost to the people, bettering the service, reducing the hours of labor for those employed and better pay for the toiler.

These thoughts are not a dream of to-day but of many years of thought and consideration. My recent investigation into conditions in the Paint and Cabin Creek strike, with all the attendant horrors, has confirmed my thoughts into fixed judgment. I full well realize the magnitude of this proposition and also the results and blessings that would follow such action.

As to working out of the details of this step, it will require much consideration and deliberation, which, I feel sure, may safely be left to the Congress of the United States.

Respectfully submitted.

JAMES E. MARTINE.

Senator Kenyon submitted the following report to the chairman of the subcommittee:

In the sixth division of the resolution the committee were directed to investigate and report whether or not firearms, ammunition, and explosives had been shipped into the coal fields with the purpose to exclude the products of such coal fields from competitive markets in interstate trade; and if so, by whom, and by whom paid for. The facts disclosed by the investigation are not sufficient for the committee to report specifically as to this. Machine guns, rifles, and shotguns were shipped in for the purposes of the strike and apparently by both sides to the controversy, but whether this has been with a purpose to exclude the products of said coal fields from competitive markets in interstate trade the committee is unable to say.

The committee was directed to investigate and report the causes leading up to the conditions in the Paint Creek and Cabin Creek coal fields of West Virginia. Our endeavor has been to make a thorough investigation of these causes and, while there are apparent surface causes, the fundamental, underlying cause is, to the mind of some members of the committee, apparent. The conditions found by the committee as existing on Cabin and Paint Creeks—the employment of mine guards and arming them to go out to shoot and kill the employees, the arming of employees likewise to go out and shoot and kill their employers—is a condition that can not continue to exist in a free Republic

It is well to inquire as to the reasons for such deplorable conditions. Many things appear on the surface which might be deemed causes, but they are only surface indications of a deeper trouble. A reading of the record will lead one to the belief that there were many causes for the conditions existing.

Among them might be related the employment of mine guards, high prices charged the miners at company stores, mine guards acting as deputy sheriffs, post offices located in company stores, private roads to the schools and stores, no opportunity to purchase homes, cemeteries upon company grounds, attempts to unionize the miners, alien ownership of large tracts of land—in one instance 21,000 acres. All of these various things appearing in the testimony might be cited as causes leading up to the conditions which the committee investigated. However, it is the opinion of some of the committee that the cause of all this trouble is deeper and more fundamental. The basic cause is the private ownership of great public necessities, such as coal; this coupled with human greed, incident to such ownership, has brought about the deplorable and un-American conditions in the West Virginia coal fields under investigation.

Bishop Donahue was asked the question as to what was the fundamental trouble. He answered that the causes were deep rooted and very obscure to a man unless he thinks, and thinks, and thinks, and traces the roots down into their primary causes. Quoting from the bishop:

I should say if I were asked to put it very briefly that it is human greed on both sides.

It is a little difficult to realize how there can be much human greed on the side of a man who is supporting a family and working day by day in the mines at ordinary living wages, but there is greed on the part of the owners of the property, and there always will be such greed. There are apparently more labor troubles in mining properties than in any other line of business, and all of these troubles are leading more or less to the dissipation of the coal of the country.

If the Government should take over the coal properties of the country, in some manner, of course, to be provided by law, whereby reasonable compensation would be made therefor, and itself lease these coal properties, maintaining a strict governmental regulation over the same, the question of labor troubles in relation thereto would doubtless be solved. The element of profit in those things that should be for the benefit of all the people would be, to some extent, eliminated. We do not find strikes among postal clerks and Government employees. There is no good reason why great public utilities and public necessities such as coal—essential to the life and comfort of the people—should not be held by the Government for the use and benefit of all the people, and the ownership of the same should not be an instrumentality in the making of great profits and fortunes.

So that, in investigating the seventh division of the resolution, the committee has been led to the belief that the private ownership of these great coal properties, with the attendant human greed, is the underlying cause of the conditions such as the record shows existed in the Paint and Cabin Creek coal fields.

WM. S. KENYON.

Senator Shields submitted the following report to the chairman of the subcommittee:

The fifth section of Senate resolution 37, under which this report is made, is in these words:

> Investigate and report to what extent the conditions existing in said coal fields in West Virginia have been caused by agreements and combinations entered into contrary to the laws of the United States for the purpose of controlling the production, sale, and transportation of the coal of these fields.

The investigation directed by this section concerns certain charges made by the Paint Creek Collieries and others, coal operators in West Virginia, that B. F. Chapman and others, coal operators, having their mines and doing business in the States of Ohio, Indiana, Illinois, and western Pennsylvania, acting in concert for their common interest, conspired and combined with Willliam Green and others, coal miners residing in the same States and members and officers of the United Mine Workers of America, an unincorporated organization of miners in America, to restrain and monopolize interstate commerce in coal in the States of Ohio, Indiana, Illinois, Wisconsin, and Michigan, and certain territory along the shores of the Great Lakes in the United States and British America, and in the State of West Virginia, by suppressing the importation and sale in the States first named of coal mined in the State of West Virginia, to be done by increasing the cost of mining and decreasing the production of coal in that State, for which purpose William Green and others agreed to organize the miners in that State, and especially those employed on Cabin Creek and Paint Creek, and induce them to become members of the United Mine Workers of America, and that the disturbed conditions on Cabin Creek and Paint Creek were the direct cause of efforts upon the part of the said parties so combining, conspiring, and confederating to carry their unlawful arrangement, agreement, and contract into effect.

This unlawful arrangement and combination is charged to have been first made in a joint conference of the coal operators, or their representatives, of the States of Ohio, Indiana, and Illinois, and the western district of Pennsylvania, and the coal miners of those States, or their representatives, held in Chicago January, 1898, and renewed and continued in biannual conferences held thereafter by the same parties, the last one at Cleveland, Ohio, in March, 1912, shortly previous to the beginning of the strike and disturbances on Paint Creek and Cabin Creek. The consideration of the contract moving to the miners being a reduction of working hours from 10 to 8 hours a day, and an increase of 10 cents per ton for coal mined, and subsequent increases of the same character.

The proceedings of all of these conferences, except the one held in 1898, seem to have been reported by stenographers and printed in pamphlet form by authority of the operators and miners, liberal excerpts from which are in evidence. There is no controversy but that the keenest competition has existed for some time between the coal fields of Ohio, Indiana, Illinois, and western

Pennsylvania and those of West Virginia in the markets we have mentioned. The coal found in West Virginia is susceptible of being mined much cheaper and is of a superior quality to that found in the other States. The production of coal in this State has increased from 6,000,000 tons in 1888 to 70,000,000 in 1912, and nine-tenths of this output was being sold in competition with that of the four States above stated, notwithstanding transportation charges greatly to the prejudice of the West Virginia operators. The hurtful character of this competition to the other fields abundantly appears in the record. It also appears that the coal miners in the States of Ohio, Indiana, Illinois, and western Pennsylvania have been for some years members of the United Mine Workers of America, and that the organization had obtained but little foothold in the coal fields of West Virginia.

We think, considering the view we have taken of this question, that it is proper to incorporate in this report some of the evidence submitted to the committee.

The coal operators of West Virginia allege that the unlawful agreement charged to have been made is covertly contained in section 8 of the contract made between the operators and miners at Chicago, in January, 1898, which is in these words:

> That the United Mine Workers' organization, a party to this contract, do hereby further agree to afford all possible protection to the trade and to the other parties hereto against any unfair competition resulting from the failure to maintain scale rates.

They charge that the contract and agreement was thus vaguely worded and not fully stated in the record in order to conceal its wrongful and unlawful purposes, and that much was left to the verbal understanding of the parties at the time, and they rely upon statements made by the operators and miners, respectively, in subsequent joint conferences, interpreting and admitting the agreement, some of which we will here state.

Mr. Maurer, an Ohio operator, in a carefully prepared statement, read in the conference held in 1910, said:

> The chief evil was the fact that districts which did not recognize the United Mine Workers and had no agreement with them, produced coal much more cheaply than these districts which sustained contractual relations with that organization. * * * In order to correct these most harmful conditions, a joint convention of operators and miners of western Pennsylvania, Ohio, Indiana, and Illinois, at the solicitation of the miners' officials, was called to meet in Chicago, in January, 1898. At this convention an interstate joint agreement was established. * * * The granting of the 8-hour day by the operators, after making these other numerous important concessions, was with the distinct understanding and explicit promise of the miners to give to the operators of the four contracting States adequate protection against the competition of unorganized fields. From year to year they have been called upon to fulfill that promise. The operators, parties to that agreement, at the time of its execution felt that it was absolutely necessary to the safety of their investments that they be protected from the encroachments upon them by their competitors of the unorganized fields. * * * It is very evident to any candid observer that such unfair conditions should not be imposed on the operators and miners of the unionized territory. That the interests of operators and miners are mutual in every respect does not admit of controversy. Each is equally concerned in rescuing this business from its present peril. * * *
>
> Finally, we ask for the fulfillment of the pledge of 1898 upon which we made to the miners so many important and costly concessions. Though that promise has not been kept, we have continued for twelve years to make additional concessions by increasing the mining price from 66 cents, agreed upon at that time, to 90 cents, and in other respects conceding demands without any compensating concessions upon the

part of the miners, until we now find ourselves at the limit of financial safety. The operators can make no further concession. It is now, in our view, not only to the interests of the miners but their duty as well to do their share to meet these conditions.

It has been set forth as the controlling reason for an increased price for mining that the cost of living has increased during the last few years. It is not fair, equitable, or reasonable to believe that by making conditions in all competing districts equal the districts which are parties to this agreement will benefit by a larger number of days' employment, and thus the earning capacity of the miners of our district be largely increased.

We believe this to be a true statement of facts, and therefore call upon you to relieve us as well as yourselves from the unfortunate situation in which we now find ourselves, due to the failure of the miners' organization to keep the faith pledged at Chicago in 1898.

We therefore insist that your organization place the districts, parties to this agreement, on the same relative basis as the unorganized districts with which we are compelled to compete. (Record, p. 1977–1978.)

Mr. Green, who at the time was president of the United Mine Workers of Ohio, replied to this statement, saying:

Our friend, Mr. Maurer, in the well-prepared statement he has submitted to this convention, referred to an obligation he claims was assumed by the United Mine Workers of America in the meeting at Chicago in 1898. Mr. Chairman and gentlemen, we agreed that to a certain extent that was right; but I do not believe it was ever understood that one party to this contract was obligated exclusively to carry out that promise. I believe it was intended to be a mutual understanding, and that both sides would cooperate in trying to organize West Virginia and other nonunion districts in order to extend this business-like basis of adjusting the differences to those fields.

Let me point to the fact that the United Mine Workers of America have diligently and agressively attempted to carry out the promise made in Chicago in 1898; that they have done everything in their power to redeem any promise they may have made to organize West Virginia. Since 1898 our organization has at various times spent hundreds of thousands of dollars trying to unionize West Virginia. We have also sacrificed human life in the attempt to redeem that promise. In view of the fact that we have spent hundreds of thousands of dollars and that our organizers, our members who have gone there as missionaries in an attempt to redeem that promise, have sacrificed their lives and their liberties, we should be given credit for what we have done. I want to ask the operators how much money they have spent and what they have done to aid us to organize West Virginia. (Record, p. 1978.)

Mr. Chapman, another Ohio operator, in the joint conference of March, 1912, said:

When we met in Chicago in 1898 and reestablished the interstate movement the competition from nonunion fields was the element, gentlemen, that entered into negotiations in the adoption of the scale that was made there. It was agreed to by both sides, and the question also of the ability of the miner to earn a fair day's wage for the labor he performed entered into it. At that time the miners were receiving 56 cents per ton for producing coal. I made motions in that convention that increased the day-wage scale.

It was understood in that convention, although it was not placed in the agreement, that the miners of the competitive field of the four States were to bring the nonunion fields up to the price paid for mining in those States, and unless they secured the adoption of an 8-hour day at the next convention the competitive field was to be relieved of these burdens. That was not in the agreement. Unfortunately, gentlemen, the proceedings of that convention were not published. If they were published, it would be found that the president of the United Mine Workers and the gentlemen who aided and assisted him in bringing about the results there agreed that they should be relieved. * * * And the question of the prices of coal and the competition that existed were the sole questions that entered into the discussion there. * * * The State from which the keenest competition comes has increased its production 350 per cent, or 25 per cent annually for the 14 years; and Ohio, the State that is the mother of the organization, the State whose operators have ever been loyal to the organization, has increased barely 10 per cent a year. That is the record of our State, while this one State has increased annually for 14 years, taking the average of 25 per cent, and more than doubled the output of Ohio coal. * * * And if the nonunion fields continue to increase as they have been doing, there will be no coal interests remaining in Ohio. In some districts of Ohio half the miners have left and have gone to the nonunion fields. And more are going—more are going. (Record, p. 1979.)

Mr. John P. White, who was then president of the United Mine Workers, and present in the conference, evidently replying for the miners to the statement of Mr. Chapman, said:

We are as anxious to establish the organization in West Virginia fields and the other nonunion fields as the gentlemen on the other side of the house are to have us do so. But constantly holding that State up to ridicule will not help us do it. I believe, on the contrary, it will militate against a final solution of that proposition. As has been pointed out times without number, West Virginia has no markets within the State, and if it were thoroughly organized, of necessity it would have to find markets outside the confines of its own Commonwealth. Nature has favored the little mountain State with an inexhaustible vein of coal of high quality and good mining conditions, but the operators there have been successful in defeating the aims and purposes of the United Mine Workers to a large extent, although no one can deny that under the various administrations of the organization every effort has been put forth to try to break down the conditions that are complained of here by the other side. (Record, p. 1979.)

Mr. Walker, the president of the Illinois Miners' Association, also said:

Our desire is that every man who works in a mine in this country shall become a member of our organization, and before you make progress that will have to come.

You should be as willing, you should be as anxious as we are, if not more so, to give at least sufficient of an increase in wages and sufficient improvement in conditions to make the strongest incentive possible under the circumstances to induce those men to come into our organization. And if that is done, instead of hiring guards to keep our organization from being established over there you should do what you can to get the organization established. I know it will mean the giving up of a few dollars; there is no question about that. (Record, pp. 1979, 1980.)

Mr. Maurer, of Ohio, was also in the meeting of March, 1912, and and in speaking of the miners in Ohio, said:

They are the people who have to meet with us the brunt of the competition from the nonunion States. They know it is there, and I feel they are willing, or should be willing, to give it every consideration. * * * I want to repeat what I said some time ago in this meeting—when West Virginia gets a foothold she never lets go. Last year Ohio dropped back between four and five million tons in her production. Western Pennsylvania dropped back in her production. Did West Virginia drop back in her production? Did she meet this falling off in demand? If she did, gentlemen, she did it in the East; and the reports show that while she increased from four to five million tons in her production, her shipments East decreased 2 per cent and her shipments West increased 17 per cent, showing conclusively that not the four or five million tons Ohio lost only, not what Pennsylvania lost only, but added to that the whole increase went into our markets. * * * The four millions of coal that West Virginia took from Ohio last year, means a loss of $3,000,000 to the miners. * * * I say again the increase you got in Cincinnati benefited you none. Here is the record. West Virginia increased her tonnage 10,000,000 tons in 1910. In 1911 Ohio lost 4,000,000 tons and West Virginia's tonnage went up to 5,000,000; 19 per cent of that increase went west into your markets and into ours. Now it has been charged by the other side of the house that we are responsible for West Virginia's conditions. * * * In 1898, when we started this movement, the competition from West Virginia was 600,000 tons. * * * Let organized labor announce to capital, to Wall Street, if you please, to the great railroad corporations, the operators of Ohio and Pennsylvania have commenced to fight—that are independent, that are not controlled by the railroads or anybody else—"we are going to stand with them shoulder to shoulder, and every time you invest a dollar in nonunion States, we are going to help wrest it away from you. We will help through the government, we will help our operators through our votes." When you commence that policy you will commence to make that long productive line in West Virginia that has been growing crumble and shrivel away. * * * I don't like to hear men on that side of the house, with these conditions actually staring them in the face, with that line indicated growing and growing and growing—I don't like to hear them state, "We are ready to strike for our rights." I want you to say, "We are ready to strike for our rights," and include this side of the house. We are doing our duty; we are fighting to prevent West Virginia increasing her tonnage, and if you treat some of your operators in this field with the consideration they are entitled to, you might get those same operators to treat you with the same consideration when you come over to West Virginia. (Record, pp. 1980–1981.)

Mr. Penna, another operator present at this meeting, said:

It does not matter how much we want to reach the time when this vicious competition can be regulated, if not destroyed; that time is not here, and we are up to-day against unbridled competition as far as we are concerned. * * * We are up against this competition; there is no use trying to get away from it. In your nonunion fields your men work 10 hours a day as a minimum, and the maximum is unmentioned—anywhere from that to 25. For 10 hours the day men get about $1.50, and if they work 12 or 14 hours a day they may get a little more. I don't know whether they do or not. The coal is weighed or measured, and our experience has usually been that when coal is measured in coal cars, those cars seldom get any smaller. And you say you can not organize those people, and their product goes into direct competition with ours. One reason you can not organize them is because they have certain methods to which they resort to prevent organization. * * * And I say to you that were I an operator and had it in my power, I would resort to any method to keep any trade union out of my mines rather than submit to the galling meddlesomeness such as we have had displayed here on the floor to-day on the part of Illinois. * * * It is a fear on the part of those people of the effects of trade unionism as seen in places in this central competitive field that prevents your union getting a foothold in those nonunion districts. * * * They are afraid of it, and properly so. * * * Organize those Virginians and organize the Kentuckians, organize central Pennsylvania, and then move up together. Level up and then move, but don't keep moving the highest. (Record, p. 1981.)

Mr. McDonald, the secretary and treasurer of the Illinois United Mine Workers, said:

We have had thousands of men to go to the penitentiary for trying to establish our organization in West Virginia and other nonunion fields, and not only have they gone to the penitentiary, but they have been beaten up and slaughtered * * *. The most unfortunate of the matter is that some of the concerns who have fought us hardest there will come across the border line and shake hands with us in Ohio and Indiana and Illinois. If you are really sincere in your fear of the competition from West Virginia, I think you could join hands with us in two ways. You might first induce those in this movement to withdraw their opposition down there and help us do something with the political powers that prevent us from going there. I don't know of one instance on record where that has been done by one coal company or operators' association north of the Ohio River * * *. So far as the competition of West Virginia is concerned, you people have about as much chance and could help about as much to eliminate that competition as we can if you would say to the concerns that in the interstate movement that they will either do business all over the country or they will not do business at all. If you would use your influence with those politicians in West Virginia who have joined hands with the corporations to drive our men out of there and beat them up, it might be of some help. In fact, I am inclined to believe it is a handy weapon for you to have every time we meet to be able to point out to West Virginia. There is no question that there are men sitting here who are doing business in West Virginia. It looks as though it is a mighty handy proposition to have * * *. We have had men go to jail. We expect that more of us will go to jail. The penitentiary does have no terrors for us, as far as that is concerned. And if putting two or three hundred of our men in jail will organize West Virginia, we will send two or three hundred down. The chances are that we will have to get busy with that situation shortly. (Rec., p. 1982, 2032.)

Mr. Maurer, of Ohio, in the conference of 1912, further said:

When you go back over 10 years and see the vast inroads of West Virginia in the markets which belong to you and to us, because of our geographical position, can you tell us how we are going to prevent it on this side? We can not say to the operators of West Virginia, "Get more for your coal," because they are forcing their coal into our markets, and every ton of our coal that is displaced is displaced by a ton of West Virginia coal. West Virginia is growing, and in order to grow she must drive you and me out of business or she can grow no more. And the same is true of Kentucky. There is only so much demand for coal, and while year after year the great demand is increasing and the product is increasing, yet West Virginia and Kentucky are growing and growing and doubling their output, while we are barely crawling along, and we are getting no benefit from that increase and never can get any benefit from it until we stop this competition.

There may be competition among ourselves and there is bound to be competition as long as our markets are being taken from us day after day and day after day by the

product of these nonunion States, and the operators are absolutely and unconditionally helpless. If we get any relief it must be the relief that we can work out between us, and you will unionize West Virginia when you put them down to the point where they will have to become union men. You will never unionize them as long as you increase your wages and as long as you are willing to work 100 days a year and let them work 300 days a year. * * *

No; you can never unionize West Virginia on that basis, because they do not want to be unionized. You have got to meet that situation. You can not get away from it. The markets on the Great Lakes are being taken day after day by the product of West Virginia. Why, men in eastern Ohio owning docks on Lake Michigan have not been able to put a pound of coal on them this year. Why? Because West Virginia coal has been put on the docks in Lake Michigan at $1.70 and $1.80 f. o. b. You can not meet that condition; the operators can not meet that condition. The only way it can be met is by joint action between the employer and employee to protect their industry. It is your business and our business. * * *

If there is any virtue in the joint movement at all, it should be, "This is our business and we are going to work together, trying to benefit and help both sides." This should be a partnership; if you please, a little copartnership. (Record, pp. 1983–1984.)

Mr. Lewis for the miners said:

The argument made against the advance on account of competition from West Virginia is not a new one. The burden of the responsibility for failure to organize West Virginia and Kentucky is placed upon us by the operators. I make the broad statement that the operators are just as much responsible for the conditions that exist in West Virginia and Kentucky as the miners are.

The operators of West Virginia are impressed with the idea that the purpose of their movement is to organize the miners of West Virginia to keep the operators out of the market or to readjust the freight rate differential in order to make it impossible for them to get into the market. That is the one side. The other side of the proposition is that our own people—and when I say our own people I mean the miners—insist that we must organize West Virginia in order to protect the central competitive field. * * * And you fix in the minds of the nonunion operators that the entire purpose of this interstate movement is to monopolize the business north of the Ohio River and keep the fellows on the south side down there where they belong. (Record, p. 1985.)

It also is developed in the record that the members of the joint conferences were fully aware of the laws of the several States, and of the United States, prohibiting combinations in restraint of interstate commerce, and earnestly desired to have them repealed or amended so as to exclude from their application such combinations as they desired to make. In the conference of March, 1912, Mr. Lewis, in discussing these matters, said:

We talk about our inability to organize in order to get a fair price for fuel. There isn't any law in this country that compels an operator to give his coal away or to sell it at any other figure than he wants to sell it. That is a fundamental principle of law, that you are not compelled to give your property away. There isn't any law in this country that will compel the miners to work unless they want to work, and there isn't any man in public life who will assume to say that either of us will have to do other than I have stated.

If we as miners and operators, instead of spending so much of our time expressing sympathy—which is very good in its place—and granting relief, would jointly charge the representatives of the Government, State and National, who were responsible for the enactment of the Sherman antitrust law and every State anticonspiracy law in this country with being responsible for the loss of the lives of men in the coal mines, we would be doing a great deal better work for this industry. (Record, pp. 2147–2148.)

Mr. Maurer said:

I agree with Mr. Lewis that some steps must be taken, and preferably from your side of the house, to get these obnoxious laws off our statute books. They are doing nobody any good, and they are preventing every man in our kind of business—producing natural resources—from doing a legitimate business. If I, as an Ohio operator, went before the Ohio Legislature and attempted to have an amendment made to the Valentine law to protect us, the Scripps-McRae papers would paint me so black that my intimate friends would not recognize the picture.

If your side of the house, with the power of the ballot back of you, will go before the Ohio Legislature and tell them frankly, as I am telling you, that the Valentine law is preventing our operators from getting out the coal; that it is preventing the industry from making the money it should make; that it is preventing the operators from building their mines in such a way as to protect life, that law will be repealed. It is in your power. The same applies to the Sherman antitrust law. (Record, pp. 2148–2149.)

Mr. Lewis further stated:

I believe we have a very important matter before us in the committee, and I believe such a commission ought to be created. I believe we ought to give reasons for creating such a committee. Have I the consent of the chair to offering such a motion? If so, I desire to offer, as briefly as I can, a preamble and a resolution as a substitute for Mr. Penna's motion:

"Whereas it is recognized that there is a useless waste of our fuel resources in the development of the mining industry and an unnecessary loss of life; and

"Whereas the useless waste of fuel and the reckless loss of life is due to the competition in the industry that prevents any form of an agreement in establishing the selling price of fuel;

"*Resolved*, That it is the sense of this joint conference that a committee of operators' and miners' representatives of an equal number from the States here represented, together with the international officers of the United Mine Workers, should be created for the purpose of using their influence to amend or have repealed such sections of the Sherman antitrust law and the antitrust or conspiracy laws of the different States as prohibit mine owners from arranging a fair selling price of fuel, or that would prohibit miners and operators from arranging wage contracts." (Record, p. 2150.)

The matter, however, upon motion of Mr. McDonald of Illinois, was left to a standing committee. Mr. McDonald, in making his motion, said:

I am not going to oppose the views expressed by Mr. Penna; but I think in the interim between this meeting and the time the vote is announced, if the committee is called to sign the agreement in the event of its adoption we will be prepared to go into the matter fully. We can be prepared not only to go into the question of the Sherman antitrust law, but the question of competition from nonunion fields. I believe this joint conference should give power to that committee to start the machinery along all these lines of bettering the coal industry, including legislative matters and all others that are of interest to the industry. I have no desire to antagonize the motion or oppose it; I simply want to point out a way to handle it at as early a day as we can prepare ourselves to do so. (Record, pp. 2150, 2151.)

The coal operators of West Virginia in further proof of their charge of an unlawful conspiracy and combination against them submitted proof to the committee tending to show that the miners in the districts where the disturbances existed were better treated, housed, and paid than those in the States of Ohio, Indiana, Illinois, and western Pennsylvania and other districts that had been unionized (we omitted to state that the miners on Paint Creek had for several years previous to 1912 been in part unionized), and were generally satisfied with conditions as they existed previous to the time the strike was declared and efforts made to bring them into the union, in April, 1912, and therefore these efforts were not for the benefit of the miners, but in furtherance of the alleged conspiracy and agreement made in the joint conferences of the miners and operators of the other States.

Bishop P. J. Donahue, of the Catholic diocese of West Virginia, Capt. S. L. Walker, of the State militia, and Hon. F. O. Blue, State tax commissioner, were appointed by Gov. W. E. Glascock of West Virginia, in 1912, to investigate and report upon conditions concerning the mines and miners and the differences between them in the State. This committee made a personal inspection of all the dis-

tricts where the trouble existed, examined a large number of witnesses offered by the operators and the miners, and made their report to the governor, liberal excerpts from which are in the record. We will make some quotations from this report pertinent to the present inquiry:

Condition of the miners: To this inquiry we have devoted special attention within the limits of the time and opportunity at our disposal, and after careful personal investigation, supplemented by a great body of formal sworn testimony sifted and tested by severe and exhaustive cross-examination, this commission has arrived at the unanimous conclusion that the general surroundings of the miners on Paint Creek and Cabin Creek, respectively, are very good when compared with those of the miners of the few unionized plants on the right bank of the Kanawha and with those of the miners throughout the State and Nation. We have gone into their houses and carefully examined them. They are above the average of miner's homes in most places. * * *

And as to wages: A careful examination of the evidence adduced leads us to the following conclusions:

(1) The average annual wage of miners in West Virginia for the years 1905–1911, inclusive, is $554.26.

(2) The average annual wage of miners on Paint Creek and Cabin Creek is from $600 to $700.

(3) The average wage on Paint Creek and Cabin Creek (nonunion) is fully equal to if not greater than that of the miners in the very limited number of unionized plants in the State on the opposite bank of the Kanawha River.

These figures may appear small and inadequate, but slender as they are they exceed the average wage obtained in Illinois, a unionized State, which is but $510.86 a year. We have been unable to secure any official figures as to the average annual wage in the unionized States of Indiana, western Pennsylvania, and Ohio, but we are informed by experts, and we believe that the average wage in the two States first mentioned probably falls a little below that prevailing in Illinois, while the annual wage in Ohio, owing to local mining conditions, falls a little below those of western Pennsylvania. This classification, in the order of the rewards of labor, puts West Virginia at the head of the list. If we inquire into these figures more closely we will find they are very substantially affected by several causes, among which comes first the unwillingness of a large number of the miners to work more than four days a week at the most. A minute examination of the pay rolls discloses the fact that 16 or 17 days in the month constitute a high average and that many engaged in the mines decline to labor more than 12 or 14 days. This is particularly true of some of the native-born miners and many colored men, and results in the necessity of keeping 20 or 30 per cent more miners in a given operation than would be required if steady application to work were the rule. At several of the mines in the districts under investigation we found men wholly illiterate and without any special knowledge or skill other than that acquired by their daily experience, earning four to five and in some cases even six dollars a day of eight or nine hours; men with savings bank accounts of one or two thousand dollars, and others who had purchased out of their savings small farms or other properties adjacent to the mines. * * *

And as to the main causes of the trouble:

This arises, in our judgment, from the efforts of the United Mine Workers to organize the union in the whole chain of plants along said creeks. Their desire is to make the present strike region the place for the insertion of the thin edge of the wedge of unionism, with the ultimate aim of organizing the whole State. The frank declaration on oath of Mr. Thomas Cairns, local president of district No. 17, would appear to put this intention beyond the region of doubt. The United Mine Workers' Association contends that this is essential to the well-being of the 76,000 or more miners of West Virginia; that by this means and this alone can their lot be improved, their rights safeguarded, and the standard of living so raised as to bring it up to a level befitting a citizen, however lowly, of this Republic. All classes of people, recognizing the force of the adage, "In union there is strength," do so organize. Even the operators themselves form associations. "Why," say the toilers, "should we also not unite in lawful combinations?" The operators can not and do not resist this right as a general proposition, but their claim is that the peculiar industrial conditions in West Virginia would render it ruinous and therefore impossible for them to recognize the union. The geographical position of this State is such, together with the small consumption within her own borders, that of her total coal output of over 60,000,000 tons she markets barely 10 per cent within her own borders, and 90 per cent or more must be hauled

to the market through the competing territories of Pennsylvania, Ohio, Indiana, and Illinois, known as the four competitive States; that the operators of said States have always on the floors of joint miners' and mine owners' conventions shown fierce and undisguised hostility to this State, endeavoring in every way to crowd her out of the market and going the length of stating by the mouth of one of Pennsylvania's leading operators that the opening of mines here at all was "an economic blunder." Resort has even been had to the Interstate Commerce Commission, resulting in reduction of rates to the material advantage of the competitors of West Virginia operators in freight differentials. It has been claimed, too, and with some appearance of probability, that the operators of the said four competitive States are hand and glove with the United Mine Workers in their attempts to unionize West Virginia, so that the representatives of the coal interests in this State must go with their relatively small representation into conventions to regulate conditions and prices and would come home having rates imposed upon them which, taking into consideration the heavy differentials in railroad hauls, would practically put them out of business and close every mine in the State. They decline, they say, to be wiped out in such fashion; they claim the right to settle their own affairs within the borders of their own state. Even if they come to terms with the district authorities of the United Mine Workers here in West Virginia, those terms may not be approved at the headquarters in Indianapolis, and all the labored attempts at amicable adjustment may fall through.

Further, they claim that the few unionized mines in West Virginia do not and can not obtain anything like an adequate return on the capital invested. And so, to probe this deplorable situation down to the bedrock of facts, and geographical position of West Virginia is largely responsible for all this industrial strife. Our retarded manufacturing development is also a contributing cause. The consumption of coal within our borders, as elsewhere noted herein, particularly by manufactories, is almost negligible. No State in the Union has more inviting natural resources nor offers greater inducements to manufacturing enterprise than West Virginia—great areas of superior coal for steam and coke, splendid timber of many species, almost inexhaustible supply of natural gas, and unlimited water power awaiting to be utilized in the arts of industry. It is impossible not to recognize the merit of and to sympathize with many of the contentions on both sides of this unhappy quarrel. Most assuredly each party believes unreservedly in the justice of its claim. It is in the attempted enforcements of them that each has passed the limits of justice, to say nothing of Christian charity and broad humanity. Two facts loom big over the smaller one developed in this bulk of testimony—the desperate efforts and often unwarranted and unlawful acts of the United Miners to force the union into the disturbed districts and the equally desperate, unwarranted, and unlawful acts of the operators and their agents to keep the union out. Thus, for months before the actual break, union agitators, many of them strangers, attempted to invade Paint Creek and Cabin Creek to persuade the miners to join the union. They called meetings of the workers and described to them the hardships and injustice of their lot and the oppression under which they suffered. The wildest theories concerning the rights of property and the means of production were propounded and advocated, and doctrines closely verging upon anarchy were upheld with such effect that men who before were living peaceably and in comparative prosperity purchased Winchesters, revolvers, blackjacks, and other murderous weapons to shoot down the coal "barons" and their myrmidons. Mild-eyed men, 75 per cent of them with unusually cool Anglo-Saxon blood in their veins and with instincts leading to law and order inherited down through the centuries, gradually saw red, and with minds bent on havoc and slaughter marched from union districts across the river like Hugheston, Cannelton, and Boomer, patrolled the woods overhanging the creek bed and the mining plants, finally massing on the ridges at the headwaters and arranging a march to sweep down Cabin Creek and destroy everything before them to the junction.

Meanwhile the operators hurried in over a hundred guards heavily armed, purchased several deadly machine guns and many thousand rounds of ammunition. Several murders were perpetrated, and all who could got away; men, women, and children fled in terror and many hid in cellars and caves. If ever there was a case for some strong measure like martial law the conditions prevailing on Monday, September 2, 1912, the eve of the proclamation, presented it. In fact, in the opinion of expert witnesses on the scene, martial law, and martial law alone, was the only measure to meet the desperate situation. We believe, partly on the evidence adduced and in part from personal knowledge of two members of the commission who were on the ground, one in active military service, that but for such proclamation taking effect on Tuesday, September 3, at daylight, there would have been great destruction of property and loss of life in the strike zone. The enormous quantities of Winchesters, revolvers, and other weapons up to machine guns captured from each side and brought to camp

at Paint Creek Junction also bore mute but eloquent witness of the height to which the passions of the opposing forces had mounted.

Now, these propositions, trite and fundamental as they are, will assist us to apportion the blame for the strike and the subsequent disorders on Paint Creek and Cabin Creek and the close neighborhood:

First. Every man has a right to quit his employment and seek other work for any grievance he has or injustice which he may conceive to have been done him; but

Second. He has absolutely no right to obstruct, molest, threaten, or otherwise prevent another man from taking the position he has of his own accord abandoned. Organized society and natural law can never yield one jot or tittle on that head. To do so would be to acquiesce in the régime of brute force—a veritable reign of terror.

Third. Labor has the right to organize for its benefit, protection, increase of wages, and better living conditions, and to have recognition of such organization; but

Fourth. Its organization has no right to coerce by threats or violence anyone to become affiliated with it when he does not desire to do so, nor to assault or put in bodily fear one who desires to labor without belonging to it, nor to destroy property of the employer who does not desire to contract with it, nor to violate its contract with its employer without cause.

There is abundant evidence before us that a reign of terror was attempted to be organized in the strike district and outside of it. It is true that the officers of the United Mine Workers professed to counsel moderation and a strict observance of law and order on various occasions, but there is testimony tending strongly to show that harangues delivered in public, and of which stenographic reports have been submitted as exhibits, incited the miners to violence and in some cases to murder. These harangues were in some instances delivered in the presence of officers of the United Mine Workers' association and from platforms upon which they stood and from which they, too, spoke; but the murderous and anarchistic utterances referred to were never disclaimed or disapproved by them either at the time or subsequent to their delivery. Furthermore, there is some evidence tending to show that officers stood by without interfering or protesting while nonunion men were brutally beaten. Again, the warning to other miners from outside not to come into the strike region, published for many weeks in their local organ and also filed as an exhibit and amounting, in effect, to a grave threat, throws a strong light on the actual situation. We fear that the net result of the action and utterances of those acting and speaking under the apparent sanction of the officers of the United Mine Workers was to foment bitter feelings and to incite to serious breaches of the peace. In all this, even granting that they were not acting against any express law set down in the statute books, yet they were acting against the fundamental principles of right and justice. (Record, pp. 2158–2161.)

These are all the excerpts of the report that are printed in the record, but we have seen and read the report and think it fair here to state that the committee did not find the operators free from fault, but, on the contrary, reported complaints of the miners for alleged overcharges in the company stores, maintaining a system of docking and blacklisting, and especially for employing after the disturbances began about 100 mine guards, generally lawless and desperate men, imported for the purpose, who, in maintaining order and protecting the property of their employers, committed numerous outrages. They, however, state that there was conflicting evidence upon these matters, but it is evident from other proof in the record that some of the complaints were well founded. We regret that this entire report was not placed in evidence, as it is evidently carefully prepared and the result of a very painstaking investigation by the committee, covering a period of two months, who were earnestly seeking for the truth.

Bishop Donohue also testified before the subcommittee and we quote from his evidence:

Mr. KNIGHT. You found sanitation up those creeks satisfactory?

Bishop DONOHUE. Well, of course, Mr. Knight, I am not an expert on sanitation, but I argue from the effect of the cause. We inquired very carefully if there were any epidemics up there, and I was surprised to find the utter absence of any epidemic worthy of that name within 10 or 12 years next preceding the time of our investigation. I think there are very few communities that could be said of.

Mr. KNIGHT. How did the children look?

Bishop DONOHUE. Strong and robust, well fed and well clothed, as we say in this report.

Mr. KNIGHT. Now, I believe you found in your report that the fundamental and real cause of that strike was the attempt of the United Mine Workers of America to organize those districts?

Bishop DONOHUE. Yes. Well, that was from merely what I call a natural and secular point of view. I have been trying to give what I may call the religious and supernatural fundamental cause, deeper down than that, but that is the cause.

Mr. KNIGHT. But from the secular point of view the actual cause was the attempt of the United Mine Workers of America to organize that district?

Bishop DONOHUE. Yes; I think that is so.

Mr. KNIGHT. The men working in the district before the strike came on were entirely satisfied with their conditions, were they not?

Bishop DONOHUE. Well, I think that could be stated as a general proposition.

Mr. KNIGHT. And, as a matter of fact, in going about over the State and examining these other districts, did you not find that the miners on Cabin Creek and Paint Creek had larger average earnings per annum than the miners of any other district in the State and a larger earning capacity per day?

Bishop DONOHUE. Well, our examination of the other portions of the State was not sufficiently exhaustive to draw that conclusion; but that is my own impression.

Mr. KNIGHT. Did you not report there that the average annual wage of the miner in West Virginia from 1905 to 1911 was $554.26, and the average annual wage of the miner on Paint Creek was from $600 to $700?

Bishop DONOHUE. Yes; whatever is set down in figures here I wish to stand by, because they were not the result of haphazard observation, but we went into the statistics very thoroughly and whatever is stated here is the best we could bring to bear upon the solution of this question. I know we arrived at the conclusion that the wages of the West Virginia miner were away ahead of the wages of the unionized miner in Ohio, Illinois, Indiana, and western Pennsylvania. * * * (Record, 1712–1713.)

Mr. KNIGHT. As a matter of fact, did you come to the conclusion from your investigation on the ground and the evidence before your commission that the main part of the trouble makers and the gunmen who came into those creeks came from the unionized districts outside of those creeks?

Bishop DONOHUE. I think if there was one thing established more clearly and explicitly than another, that was the fact. * * * (Record, p. 1715.)

Mr. MONNETT. They ask one question in the redirect examination which I wish to follow up. You say the wages of the nonunion men, so far as you have made an examination, were in every instance higher than the union mines or union States?

Bishop DONOHUE. I suppose the best answer to that question is to read from the report.

Mr. MONNETT. Just put that in the record, will you?

Mr. BORAH. That is already all in the record.

Mr. MONNETT. In making that investigation, then, you did not find that it was a question of dissatisfaction on account of operators in other States combining with the unions in other States to raise the wages in West Virginia? You did not find that?

Bishop DONOHUE. Most emphatically we did. We found that as one of the causes, the unions and the operators in the competitive States back of them pushing them into this effort to introduce the union into the State and to make Paint and Cabin Creeks the thin edge of the wedge to get in.

Mr. MONNETT. They paid higher wages than they did in other places?

Bishop DONOHUE. Yes; and great concessions of all kinds.

Mr. MONNETT. That is, they pay higher wages for the same condition of labor than they do in Iowa and Illinois. Did you find that fact?

Bishop DONOHUE. We found what I have here on page 5 of the report.

Mr. MONNETT. On what did you base that as to other States?

Bishop DONOHUE. We hunted statistics and got reports of miners and books of all kinds and annual State reports.

Hon. William E. Glasscock, who was governor of West Virginia during the year 1912, was also examined by the subcommittee, and testified of the cause of the disturbances. We quote from his evidence:

Senator BORAH. Then it seemed to be that the mine guards were the disturbing element around which this trouble arose?

Gov. GLASSCOCK. That was my impression, Senator; yes, sir.

Col. WALLACE. I will ask you at this point to say whether or not Senator Montgomery, who appears here as counsel, made any public expression at that time as to the declaration of martial law, particularly with reference to a speech in the house of delegates up here?

Gov. GLASSCOCK. Yes, sir; I remember Senator Montgomery said, in effect, that the miners were in favor of martial law or did not oppose martial law, but the operators did, and that the miners had agreed to the propositions I had made to compromise or arbitrate the trouble and the operators had refused to arbitrate.

Senator BORAH. The things which the mine guards were doing were the things which were creating the disturbance up there, as you understood it?

Gov. GLASSCOCK. Yes, sir.

Senator BORAH. And it was to get rid of the trouble and oppression which they were causing that the miners asked you to step in with martial law?

Gov. GLASSCOCK. Yes, sir; I think that was—I understood it at the time that that was why they were anxious for martial law, and that that was the real trouble. The question of wages and these other questions that have been since injected into this trouble were not raised at that time, with me at least.

Senator BORAH. What were these mine guards doing that caused this trouble and disturbance; what were their acts of which you were informed; what did these miners say?

Gov. GLASSCOCK. Well, they complained that their men were being beaten, that they were compelled to leave the territory; and, in other words, they compelled them to do whatever the guards wanted them to do; and all of this, I think, is very fully set out in the report of the mining investigating committee that I appointed, and more in detail than I could possibly give it in this evidence.

Senator BORAH. But the reign of terror to which you referred a few moments ago, prior to the time you declared martial law, seems to have been initiated by the mine guards?

Gov. GLASSCOCK. No; I could not say that. I don't think that would be a fair statement. It was contended by the miners that that was so. On the other hand, the mine guards were complaining that these miners were continually shooting into them; that they had to protect themselves against the miners.

Senator BORAH. There was no complaint as to wages?

Gov. GLASSCOCK. Well, if there was, Senator, it was secondary. I was not paying any attention and do not remember as to that.

Senator BORAH. Was there no complaint as to hours per day?

Gov. GLASSCOCK. No; nothing said to me about it.

Senator BORAH. No complaint of any kind upon the part of the miners except of the annoyance and disturbance created by the mine guards?

Gov. GLASSCOCK. The whole thing centered around the mine guards. These things might have been mentioned, to be fair, incidentally, but they were not brought up to me, so far as that is concerned. The thing they were after me about was to get rid of those mine guards.

Senator KENYON. Why were those mine guards put in there, do you know, Governor?

Gov. GLASSCOCK. The operators said that they had them there under their legal rights to protect their property.

Senator KENYON. There were large numbers of them put in at one time or in close proximity?

Gov. GLASSCOCK. My information is that at the beginning of this there were only a few, but as the trouble arose they kept sending in others, and that finally there were a great number there; but there were only a few there, probably four or five at Cabin Creek, may be not so many as that, and on Paint Creek an equal number.

Senator KENYON. You say as the trouble arose. Going back to that step, what was the trouble?

Gov. GLASSCOCK. The shootings and battles.

Senator KENYON. But what was behind that; what caused that? That is not the usual way business has been done up there for many years, was it?

Gov. GLASSCOCK. Yes; the trouble commenced after these operators on Paint Creek who had theretofore employed union labor and had a contract with the United Mine Workers declined to enter into a new agreement with them.

Senator KENYON. That is what I wanted to get at. Was that the commencement of the trouble?

Gov. GLASSCOCK. Yes, sir; there was no complaint, so far as I know, prior to that time. Now, after that I could not tell which side was to blame; but there were

shootings after that time, after these people who had theretofore employed union labor, as I say, had refused to recontract with these people; then the troubles began to arise between the guards, on one side, and the miners, on the other.

Senator KENYON. Were the guards brought in in these large numbers immediately after this failure to agree on a scale?

Gov. GLASSCOCK. No; not immediately after.

Senator BORAH. Do you believe if the mine operators had withdrawn their mine guards and permitted you to send your own police up there, this matter could have been controlled in the beginning?

Gov. GLASSCOCK. Well, I thought so at the time, Senator Borah; but from developments since that time I am not so sure about that.

Mr. KNIGHT. There was never any objection on the part of the mine owners to permit you to police the territory, was there?

Gov. GLASSCOCK. None whatever. (Rec., pp. 373–374.)

The coal operators also submitted evidence tending to show that the miners purchased large quantities of firearms after the strike was was declared; and Gov. Glasscock testifies that when he declared martial law in the disturbed districts, after the strike had progressed for several months, in an effort to disarm the guards and miners, he took from them 6 machine guns, 1,800 long-range army guns, 450 revolvers, and 175,000 rounds of ammunition, and that the machine guns belonged to the guards and their employers.

There is also evidence that agitators and miners were imported from other States and other districts of West Virginia to aid in creating the disturbances on Paint Creek and Cabin Creek, who were very prominent in making incendiary speeches to the miners and assisting them in many acts of violence and lawlessness, tending to show that the threat of Mr. McDonald, the secretary and treasurer of the Illinois United Mine Workers, made in the Cleveland conference in 1912, to send two or three hundred men into West Virginia for the purpose of organizing it, was carried into effect.

There is also evidence in the record tending to show that the coal operators of western Pennsylvania, and those of the three States acting in concert with it, made efforts to have the West Virginia operators discriminated against in freight rates on coal to the competitive territory, and thus exclude them from that market.

The evidence seems fully to establish the contention of West Virginia operators, that on account of their greater distance from the competitive market, and therefore the greater cost of transportation, their profit on coal sold in the territory of the Great Lakes is very small, and that a very slight increase in the cost of production resulting from the organization of the miners, or other cause, will exclude them from that market, and give the operators from western Pennsylvania, Ohio, Indiana, and Illinois a complete monopoly of it.

There is other evidence in the record along the lines from which we have quoted, but we think we have herein set forth the material evidence relied upon to sustain the charges of the West Virginia operators.

The coal operators and miners who are charged to have made in their joint conferences the statements herein quoted did not appear and testify before the subcommittee, and the statements are not denied or explained in the record. However, since the close of the evidence by the subcommittee certain coal operators in western Pennsylvania and Ohio have filed unsworn statements controverting and denying the charge that they conspired or combined with mem-

bers of the United Mine Workers of America, as charged by the coal operators of West Virginia.

Mr. John P. White, the president of the International Mine Workers of America, testified before the committee appointed by Gov. Glasscock in regard to these charges, and by consent his evidence was filed in this case to save the trouble of retaking it. Mr. White is an intelligent witness, and gives a clear and strong statement of the causes leading to the efforts to unionize the miners of West Virginia, and denies fully and in detail that the said efforts were made in pursuance of a conspiracy and combination, as charged, but in good faith, for the purpose of bettering the condition of the West Virginia miners. Mr. White said:

As president of the international union I would most emphatically state that that conference, so far as I have any knowledge, also of any preceding conferences, has not entered into any agreement that I have any knowledge of, wherein they would have any evil designs or ulterior purposes on the coal fields of West Virginia to the profit and advantage of the coal fields of the central competitive fields. Since my administration, and I can speak with the most positive emphasis, it has not by any act of ours agreed, orally or otherwise, to enter into any such compact. We have only one motive in trying to aid the miners of West Virginia, and that motive is just as lofty in West Virginia as it has been in the States I have referred to. We want to try and help the mine workers in these coal fields to a little more sunshine and happiness.
* * *

When we arrived at this basic wage conference that settlement practically settled all of the coal producers of the States I have referred to. Each State went on and with their employees made a scale agreement on that particular basis. We were bound by the terms of the basic scale not to exact any more than laid down by the terms of the settlement. On the contrary, the operators were bound likewise that they should not seek to impose conditions beyond that not referred to. That most heartily disproves any statement calculated to link us a party in such a policy. It is true that in our wage conference the question of extending the organization and the question of higher wages came up; we were met by the operators, who pointed to the fact that south of the Ohio River there is little or no organization, and long, weary hours of labor are exacted of the men that toil in the mines, and that they are not having their coal weighed according to law, and that there are no check weighmen on the tipples. The superior advantages of the coal deposits give to these operators so affected a favorable advantage. That is their statement. It has always been our desire, and in accordance with the preamble of our constitution we are obliged to extend the organization to every man who is mining coal, recognizing that they are competitors in the labor world. We want to advance the interest of the miners, and must of necessity extend the organization to take them all up in our organization. We hesitated, but we knew that West Virginia for years—the mine workers who attended our convention from West Virginia—appealed to the mine workers from all parts of the country to assist them and help them to do this. They wanted to get some consideration as human beings, and naturally we are prompted, according to the foundation of the organization, to help these people.

Plans of the operators of other States against conditions prevailing here are no more than what the plan has been of the organization and policy of the operators of the Kanawha field. They have complained just as bitterly against prevailing conditions of the nonunion mines, of the nonunion condition of certain sections of Pennsylvania, Ohio, Kentucky, and other States. These contracts, as I stated, when I approach the serious question of making a wage scale, have to be met by freight rate, market conditions, and the physical condition of the mines to help the miner to produce the quality of coal, and everything enters into a discussion in order to arrive at an equitable price that will enable all to get together their proper share of the market. We are sensible enough to realize that West Virginia, in order to sell her coal production, must find a market outside the borders of its own Commonwealth. If I am correctly informed, less than 10 per cent of the coal produced is sold to home consumption. Therefore it would be foreign to our purpose, and we would be repudiated by our people, to come to West Virginia, even if we were able to, and build a scale here which would be prohibitive as against our miners and would not be subscribed to by them. We are interested to see the West Virginia miners and operators arrive at a settlement of their difficulty that will enable them to have their markets; and where the other States have advanced

the condition of employment—the short working day and recognized the rights of the miners, and brighten their lives—we want to see West Virginia do the same. We have no ulterior motive whatever upon the coal fields of West Virginia. We want to see the children of the miners enjoy the schoolhouses and playgrounds. We want the miners to have a better home. We want to see the influence of the church and other institutions radiate throughout this community. (Rec., p. 2174–2175.)

The witness repeats and elaborates this denial in absolute terms.

The purposes of the United Mine Workers of America, as set forth in their constitution, and referred to by the witness, are these:

First. To unite in one organization, regardless of creed, color, or nationality, all workmen eligible for membership employed in and around coal mines, coal washers, and coke ovens on the American continent.

Second. To increase wages and improve the conditions of employment of our members by legislation, conciliation, joint agreements, or strikes. (Rec., p. ——.)

Mr. White was present at the joint conference held at Cleveland, Ohio, in 1912, and was asked in regard to a statement he made there as follows:

Mr. KNIGHT:

Q. I find you are quoted in a speech at the Cleveland conference as saying that: "We are as anxious to establish the organization in the West Virginia field and the other nonunion fields as the gentlemen on the other side of the house (the operators) are to have us do so. We have had this pointed out times without number, that West Virginia has no markets within the State, and, if it were thoroughly organized as suggested, it would have to find a market outside the confines of its own Commonwealth. Nature has favored the little mountain State with an inexhaustible vein of coal of high quality and good mining conditions. The operators there have been successful in defeating the aim and purpose of the United Mine Workers to a large extent, although no one can deny that, under the various administrations of the organization, every effort has been put forth to try to break down the conditions that are complained of here by the other side."

Did you say that?—A. Yes.

Q. What did you mean by the statement, "that under the various administrations of the organization every effort had been put forth to break down the conditions complained of here by the other side?"—A. I meant that we had put forth every legitimate and honorable effort to establish the organization for a shorter working day, for check weighmen, and other conditions in order that competitive relations might be maintained and recognizing the fact that West Virginia had long been known as part of the competitive field. The operators on the other side, some of them owning mines in West Virginia and other States, were complaining about the unfair attitude of our organization in constantly trying to hold them up for a further advance in wages, or, in other words, seeking to convey that we were just simply fighting the efforts of the organization of operators there. They said you were a part of the central competitive field and we were not trying to do anything to put you on a relative basis with the other States. We have tried to get operators who own coal mines to take a sensible view of this thing. The instance that incited me or prompted me to make that remark was due to the fact that they were trying to defend themselves against advancing our wages. As I stated awhile ago, they will not only go to West Virginia, but anywhere to defeat the miner in getting more than he can be held down to.

Q. By "breaking down these conditions" you meant bringing West Virginia up on a wage scale, did you not?—A. Yes; taking into consideration West Virginia's ability to market its coal, its freight rates, its physical conditions of mining, and the productive power of the miners. All things considered, in other words, to try to place West Virginia's labor market on a par with the competitive fields. It did not mean that we would exact the same prices, but we would first have to go into the mines and find out what the conditions were.

Q. You do not mean that Ohio, Indiana, Illinois, and western Pennsylvania now regard the West Virginia wage scale as entirely too low?—A. I do not know the opinion the operators have, save and except as I have stated, but they were trying to keep us to a lower standard, and when we cited the fact of the increased cost of living it prompted us to make a demand for a further increase in wages, and they pointed to the fact that their wages were relatively higher from a competitive standpoint than West Virginia, and that we were doing nothing to bring them up to what we were trying to exact from those operators. (Record, pp. 2187–2188.)

There is also evidence in the record that a number of coal operators of Ohio were also engaged in the business in West Virginia and were opposed to the unionizing of the miners in their employ in that State, thus tending to controvert the charge that they were combining with others against the West Virginia operators.

The authorities which the coal operators of West Virginia have cited to sustain their contention, that the agreement and combination which they charge was made and attempted to be carried into execution was and is in violation of the Sherman antitrust law, prohibiting combinations in restraint of interstate commerce, and for the purpose of creating monopolies of such commerce, are as follows:

Clune *v.* United States (159 U. S., 590), in which it is said:

> The rules of law relating to the responsibility of individual members concerned in such combination and conspiracy are plain and well defined. Great latitude in establishing conspiracy by the admission of circumstantial evidence is allowed, circumstances tending in slight degree to a determination of the trust are allowed to be proved.

American Fur Co. *v.* United States (2 Pet., 358), it is held:

> Where two or more are associated together for the same illegal purpose, any act or declaration of one of the parties, in reference to the common object, and forming a part of the res gestae, in its execution, may be given in evidence against the others.

In United States *v.* Union P. R. Co. (226 U. S., 61), it is said:

> The act is intended to reach combinations and conspiracies which restrain freedom of action in interstate trade and commerce, and unduly suppress or restrict the play of competition in the conduct thereof. * * *

And referring to the case of Northern Securities Co. (193 U. S., 197), the court says:

> It was there held that the transfer to a holding company of the stock of two competing interstate railroads, thereby effectually destroying the power which had theretofore existed to compete upon interstate commerce, was a restraint upon such commerce, and Mr. Justice Harlan, announcing the affirmance of the decree of the circuit court said:
>
> "In all the prior cases in this court the antitrust act has been construed as forbidding any combination which, by its necessary operation, destroys or restricts free competition among those engaged in interstate commerce; in other words, that to destroy or restrict free competition in interstate commerce was to restrain such commerce. * * *"

Of the Sherman Act and kindred statutes, this court, speaking through Mr. Justice McKenna in National Cotton Oil Co. *v.* Texas (197 U. S., 115), further said:

> According to them, competition, not combination, should be the law of trade. If there is evil in this, it is accepted as less than that which may result from the unification of interest, and the power such unification gives. And that legislatures may so ordain this court has decided. * * *
>
> We take it therefore that it may be regarded as settled, applying the statute as construed in the decisions of this court, that a combination which places railroads engaged in interstate commerce in such relations as to create a single dominating control in one corporation, whereby natural and existing competition in interstate commerce is unduly restricted or suppressed, is within the condemnation of the act.
>
> 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.

In speaking of the acts which constitute restraints of interstate commerce, the court says:

> It 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.

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. * * *

In determining the validity of this combination, we have a right to look also to the intent and purpose of those who conducted the transactions from which it arose, and to the objects had in view.

In United States *v.* Patten (226 U. S., 525) the court said:

Section 1 of the act, upon which the counts are founded, is not confined to voluntary restraints, as where persons engaged in interstate trade or commerce agree to suppress competition among themselves, but includes as well involuntary restraints, as where persons not so engaged conspire to compel action by others, or to create artificial conditions, which necessarily impede or burden the due course of such trade or commerce, or restrict the common liberty to engage therein. * * *

Bearing in mind that such was the nature, object, and scope of the conspiracy, we regard it as altogether plain that, by its necessary operation, it would directly and materially impede and burden the due course of trade and commerce among the States, and therefore inflict upon the public the injuries which the antitrust act is designed to prevent. * * * And that there is no allegation or a specific intent to restrain such trade or commerce does not make against this conclusion, for, as is shown by prior decisions of this court, the conspirators must be held to have intended the necessary and direct consequences of their acts, and cannot be heard to say to the contrary. In other words, by purposely engaging in a conspiracy which necessarily and directly produces the result which the statute is designated to prevent, they are, in legal contemplation, chargeable with intending that result.

It hardly needs statement that the character and effect of a conspiracy are not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole. (W. W. Montague & Co. *v.* Lowry, 194 U. S., 38 * * *.)

The act for which Patten was indicted was brought within the statute's condemnation for the reason that—

It operated to thwart the usual operation of the law of supply and demand to withdraw the commodity from the normal current of trade, to enhance the price artificially, to hamper users and consumers in satisfying their needs, and to produce practically the same evils as does the suppression of competition.

It was the right of the defendant to prescribe the terms upon which the services of Coppage (the discharged employee) would be accepted, and it was the right of Coppage to become or not, as he chose, an employee of the railroad company upon the terms offered to him. Mr. Cooley in this treatise on Torts, page 278, well says: "It is a part of every man's civil rights that he be left at liberty to refuse business relations with any person whomsoever, whether the refusal rest upon reason or is the result of whim, caprice, prejudice, or malice. With his reasons neither the public nor third persons have any legal concern. It is also his right to have business relations with anyone with whom he can make contracts, and if he is wrongfully deprived of this right by others he is entitled to redress. The general right to make a contract in relation to business is part of the liberty of the individual protected by the fourteenth amendment of the Federal Constitution." (Allgeyer *v.* Louisiana, 165 U. S., 578.) Of course the liberty of contract relating to labor includes both parties to it—the one has as much right to purchase as the other has to sell labor. It is not within the functions of government, at least in the absence of contract between the parties, to compel any person in the course of his business and against his will to accept or retain the personal services of another, or to compel any person against his will to perform personal services for another. It was the legal right of the defendant Adair to discharge Coppage because of his being a member of a labor organization, as it was the legal right of Coppage if he saw fit to do so to quit the services in which he was engaged because the defendant employed some persons who were not members of a labor organization.

In United States *v.* Reading (226 U. S., 324), the court says:

The scheme as a whole seems to us to be within reach of the law. The constituent elements as we have stated them are enough to give to the scheme a body, and for all that we can say, to accomplish it. Moreover, whatever we may think of them separately, when we take them up as distinct charges they are alleged sufficiently as elements of the scheme. It is suggested that the several acts charged are lawful and that intent can make no difference. But they are bound together as the parts of a single plan. The plan may make the parts unlawful. * * *

The mere fact that the sales and deliveries took place in Pennsylvania is not controlling when, as here, the expectations was that the coal would, for the most part,

fall into and become a part of the well-known current of commerce between the mines and the general consuming markets of other States. Commerce among these States is not a technical legal conception, but a practical one, drawn from the course of business. (Swift & Co. *v.* United States, 196 U. S., 386, 398; Loewe *v.* Lawlor, 208 U. S., 274.) The purchase and delivery within the State was but one step in a plan and purpose to control and dominate trade and commerce in other States for an illegal purpose. As was said by the Chief Justice in Loewe *v.* Lawlor, cited above:

"Although some of the means whereby the interstate traffic was to be destroyed were acts within a State, and some of them were in themselves, as a part of their obvious purpose and effect, beyond the scope of Federal authority, still, as we have seen, the acts must be considered as a whole, and the plan is open to condemnation, notwithstanding a negligible amount of interstate business might be affected in carrying it out. If the purpose of the combination were, as alleged, to prevent any interstate transportation at all, the fact that the means operated at one end before physical transportation commenced and at the other end after the physical transportation ended was immaterial."

Whether a particular act, contract, or agreement was a reasonable and normal method in furtherance of trade and commerce may, in doubtful cases, turn upon the intent to be inferred from the extent of the control thereby secured over the commerce affected, as well as by the method which was used. Of course, if the necessary result is materially to restrain trade between the States, the intent with which the thing was done is of no consequence. But when there is only a probability, the intent to produce the consequences may become important. (United States *v.* Terminal R. Assn., 224 U. S., 383, 394; Swift & Co. *v.* United States, 196 U. S., 375.)

In the instant case the extent of the control over the limited supply of anthracite coal by means of the great proportion theretofore owned or controlled by the defendant companies and the extent of the control acquired over the independent output, which constituted the only competing supply, affords evidence of an intent to suppress that competition and of a purpose to unduly restrain the freedom of production, transportation, and sale of the article at tide-water markets.

Gompers *v* Bucks Stove & Range Co. (221 U. S., 438), the court said:

In Loewe *v.* Lawlor (208 U. S., 274) the statute was held to apply to any unlawful combination resulting in restraint of interstate commerce. In that case the damages sued for were occasioned by acts which, among other things, did not include the circulation of advertisements. But the principle announced by the court was general. It covered any illegal means by which interstate commerce is restrained, whether by unlawful combinations of capital or unlawful combinations of labor, and we think, also, whether the restraint be occasioned by unlawful contracts, trusts, pooling arrangements, black lists, boycotts, coercion, threats, intimidation, and whether these be made effective, in whole or in part, by acts, words, or printed matter.

The court's protection and restraining powers extend to every device whereby property is irreparably damaged or commerce is illegally restrained. To hold that the restraint of trade under the Sherman Antitrust Act or on general principles of law could be enjoined, but that the means through which the restraint was accomplished could not be enjoined, would be to render the law impotent.

Referring to labor organizations, it is here further said:

But this very fact that it is lawful to form these bodies with multitudes of members, means that they have thereby acquired a vast power in the presence of which the individual may be helpless. This power when unlawfully used against one can not be met except by his purchasing peace at the cost of submitting to terms which involve the sacrifice of rights protected by the Constitution, or by standing on such rights and appealing to the preventive powers of a court of equity. When such appeal is made it is the duty of government to protect the one against the many as well as the many against the one.

Loewe *v.* Lawlor (208 U. S., 302). It is held in this case, that the law prohibiting agreements in restraint of trade—

Includes combinations of labor, as well as of capital; in fact, all combinations in restraint of commerce without reference to the character of the persons who entered into them. It is true this statute has not been much expounded by judges, but as it seems to me its meaning, as far as it relates to the sort of combinations to which it is to apply, is manifest, and that it includes combinations which are composed of laborers acting in the interest of laborers.

It is the successful effort of the combination of the defendants to intimidate and overawe others, who were at work in conducting or carrying on the commerce of the country in which the court finds their error and their violation of the statute.

United States *v.* Patterson (201 Fed., 711, 712), it is said:

If the purpose is to injure the public in limiting or suppressing competition and its right of individuals to contract, thereby enhancing prices and bringing about monopoly in whole or in part, or tending to do either, then such contract or acts were held under the changed condition of things to be in restraint of trade. * * *.

From the decisions in the Standard Oil case and the Tobacco case, and the cases in the Supreme Court involving the antitrust act, and the evolution of the common law (omitting the many citations of authorities), to meet modern conditions and not unduly restrain, but to encourage trade, it may be said that a contract, combination, or conspiracy, is in restraint of trade when it directly effects trade, and is entered into with intent to do wrong to the general public and to individuals by restraining the flow of commerce, and by bringing about, or tending to bring about, the maintenance or enhancement of prices which but for such acts, would adjust themselves under conditions of free competition.

The contention and authorities in support thereof relied upon by the counsel for the United Mine Workers of America, or the members thereof charged to have made the alleged unlawful agreement, are in the language of the brief filed, as follows:

The miners' organization exists for the sole purpose of bettering the conditions of employment. It is not a monopoly. Labor is not the subject of monopoly. While it might be conceded that labor organizations might be proper subjects of legislative control and regulation, yet the legislature has not in its wisdom seen proper to do so; and at common law personal service—an occupation—could not be the subject of monopoly. In discussing that question in the case of State ex rel. Star Pub. Co. *v.* Associated Press (159 Mo., loc. cit., 456, 51 L. R. A., 151, 81 Am. St. Rep., 368, 60 S. W. 91, 104), this court used this language: "But there is nothing here on which a monopoly can attach. The business is one of mere personal service, an occupation. Unless there is 'property' to be 'affected with a public interest,' there is no basis laid for the fact or the charge of 'a monopoly.'" The authorities seem to be uniform in holding that individuals have a perfect legal right to form labor organizations for the protection and promotion of the interest of the laboring classes, and deny the power to enjoin the members of such organizations from peaceably withdrawing from the service of the employer. (Wabash R. Co. *v.* Hannahan (C. C.), 121 Fed., 563; National Protective Assn. *v.* Cumming, 170 N. Y., 315; Dowen *v.* Matheson, 14 Allen, 499; Gray *v.* Building Trades Council, 91 Minn., 171; Thomas *v.* Cincinnati, N. O. & T. P. R. Co. (C. C.), 4 Inters. Com. Rep., 788; Ames *v.* Union P. R. Co. (C. C.), 62 Fed., 7; Atchison, T. & S. F. R. Co. *v.* Gee (C. C.) 140 Fed., 153; Arthur *v.* Oakes, 63 Fed., 310.) Many more adjudications of the same nature exist and might be cited, but, as there is no conflict between the modern decisions upon this question, it would be a useless waste of time and labor to cite more. These decisions are based upon the law which permits every one to enter into any kind of contract which has for its object and purpose the protection and promotion of the interest of the parties thereto, as well as the betterment of their condition in life; and that right to so contract is not curtailed or abridged if, perchance, the contract indirectly or incidentally operates in restraint of trade. We must, therefore, hold that the United Brotherhood of Carpenters & Joiners and their allied associations, whom the defendants represent, are not unlawful combinations made and entered into in restraint of trade, but are legal and highly laudable when confined within proper bounds. (22 L. R. A. (N. S.), 616.)

Legislatures, as well as the courts, now recognize the right of laboring people to organize for the purpose of promoting their common welfare, elevating their standard of skill, advancing and maintaining their wages, fixing the hours of labor and the rate of wages, obtaining employment for their members, securing control of the work connected with their trade, or favorable terms to their employers in the purchase of material, and contracts for such persons as employ members of their society. And others may combine with them for the accomplishment of these purposes. (24 Cyc., 819, and numerous cases cited to support the text, for government and discipline of members.)

While we have herein reported the material evidence submitted to the subcommittee upon this subject of the investigation and the

authorities relied upon by the parties to sustain and refute those contentions, we express no opinion as to whether the charge made by the coal operators of West Virginia is sustained by the facts, or the law applicable to those facts, because we found there was lately pending in the District Court of the United States for the Northern District of West Virginia a case under the style of Hichman Coal & Coke Co. *v.* John Mitchell et al., and now pending in the District Court of the United States for the Southern District of West Virginia, another case under the style of the United States *v.* John P. White et al., the former being a bill in equity and the latter a criminal prosecution, both of which involve the alleged conspiracy and combination to restrain and monopolize interstate and foreign commerce in coal, which the coal operators of West Virginia charge was made by the coal operators of Ohio, Indiana, Illinois, and western Pennsylvania, and B. F. Chapman and others, members of the United Mine Workers of America, the subject of this investigation.

The case in equity has been determined in the district court, and a copy of the opinion of Judge Dayton, who presided on the hearing, has been submitted to us, from which it appears that upon a record of some 8,000 pages, he found the charges of the complainant in the case to be sustained by the facts, and granted an injunction against the defendants perpetually enjoining them from further acts in the execution of the conspiracy and combination found to exist. But it is stated by one of the counsel for the United Mine Workers of America that an appeal has been taken in the case, and therefore the questions involved are yet pending and undetermined in the courts. The criminal case is also still pending and undetermined.

We think it would be improper for a committee of a legislative body to undertake to determine in advance questions of which courts of competent jurisdiction have under consideration in cases pending in them. In other words, we are of opinion that the Senate should not and has no power to prejudge questions of either law or fact involving the property and liberty of citizens, of which the courts of the country have lawfully assumed jurisdiction. It would, we think, be an unwarranted invasion of the province of the judiciary by the legislative branch of the Government.

We therefore report merely the evidence that has been submitted to us, tending to show whether or not the unfortunate conditions existing in the coal fields of West Virginia, and especially upon Paint Creek and Cabin Creek, were caused or aggravated by an unlawful conspiracy and combination to restrain interstate commerce in violation of the laws of the United States, submitting the same for such use and consideration as may be deemed proper by the Senate.

JNO. K. SHIELDS.

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