

F. E. Berquist

Chart No. 22, with supporting table No. 22a, shows a similar treatment of production and realization for selected competing areas. The areas compared are Northern West Virginia as against Western Pennsylvania; Western Pennsylvania, Ohio and Panhandle of West Virginia as against Southern High Volatile (including portions of Southern West Virginia, Eastern Kentucky and Tennessee); Western Kentucky as against Indiana and Illinois; Western Kentucky and Southern High Volatile as against Indiana and Illinois. This chart is significant because it shows the realizations as between competing areas which enable a more accurate picture to be obtained than from Chart No. 21, which shows a comparison between entire states which are not as strictly comparable as competing areas.

Chart No. 23 shows an index of tons loaded at mines for shipment and realization, f. o. b., mine, during the period of the Jacksonville wage agreement (1924-1927) for selected competing states.

The data shown in this Chart are based upon publications issued by the U. S. Bureau of Mines. This Chart proposes to compare two competing states as to their tons loaded for shipment and their sales realization per ton f. o. b. the mine. Tons loaded at the mine for shipment were used in order to consider that portion of the production which is more likely to enter into interstate commerce. The data are shown in percentages based upon the year 1923.

The year 1923 was selected as a base because, except for the first two months when some railroad congestion existed, no significant disturbing elements appeared. Efforts were made to use a five year average, 1919 to 1923, but were found to be unsatisfactory because that period included a number of abnormal situations. For example, in 1919 general strikes occurred; in 1920 a runaway market with panic prices was found; in 1921 a general depression existed in most industries; and in 1922 a general suspension of mining again took place. The year 1923 was selected as a base also because it is the closest "normal" year to the beginning of the Jacksonville Wage Agreement period, April 1, 1924, to April 1, 1927.

In each comparison, broken lines were used to indicate states which were predominately non-union, while the solid lines indicate states operating on a union basis, and in which the bulk of production was produced under the terms of the Jacksonville contract. It must be remem-

F. E. Berquist

bered that the Jacksonville contract specified a \$7.50 basic day rate, while in the non-union states, although no single wage rate can be shown because of the variety of rates at various mining operations, it is generally known that they ranged between \$4.00 and \$5.00 a day.

Beginning on the left side of the Chart and comparing Pennsylvania and West Virginia, we find that by 1924 West Virginia's shipments were only 4 per cent less than the base year, while in Pennsylvania the decrease in shipments amounted to 20 per cent, indicating that the area which was paying the Jacksonville scale lost in tonnage more rapidly than the area which did not pay that scale. This is further shown in the realization comparison. Pennsylvania, because of the specifications in the Jacksonville scale, could not reduce its realization as rapidly as in West Virginia where many operators had ceased to pay Jacksonville rates and, therefore, could lower their sales realization in order to secure tonnage. From 1924 on to 1926 West Virginia's gain in shipments was continuous and amounted to about 40 per cent. In Pennsylvania no gain in shipments is shown until early in 1925, when many operators ceased to pay the Jacksonville scale and became non-union so that from 1925 on Pennsylvania and West Virginia drew closer together in production and in realization. The cessation of wage payments on the Jacksonville scale in Pennsylvania in 1925 is reflected by the lower realization appearing at the same time. The decline in shipments in Pennsylvania in 1927 reflects the strike condition, whereas West Virginia continues to show an increase.

Turning next to a comparison of Ohio and West Virginia, the contrast in tons loaded for shipment is more pronounced because Ohio was more organized than Pennsylvania, and therefore more of its production came at the Jacksonville rate. Thus we find that West Virginia's shipments declined 4 per cent in 1924 from the base year and Ohio's shipments declined 26 per cent for the same period. After the Jacksonville Agreement came into effect, the divergence widens. Ohio consistently loses tonnage until 1925 when it began to break away from the union and the Jacksonville scale, while West Virginia, on the contrary, consistently gains in tonnage. Not until 1926 do we find the realization in Ohio approaching that of West Virginia. Again the decline in production in 1927 in Ohio is to be attributed to the strike, as is also the gain in shipments in West Virginia, so that by 1927 West Virginia had gained 38 per cent in

F. E. Berquist

shipments and Ohio had lost 66 per cent in shipments, as compared with the base year 1923.

The next comparison is between Ohio and Kentucky and shows that when the Jacksonville Agreement became effective the divergence in shipments between Kentucky and Ohio widens considerably. Kentucky, from 1924 to 1927, shows a consistent gain in shipments, amounting to a total of 57 per cent for the period, whereas Ohio lost approximately 64 per cent. Similarly, in comparing realization, we find that Ohio was not able to lower its sales price f. o. b. the mine until it began to break away from the Jacksonville wage scale; but at all times Kentucky's realization decreased more rapidly than had that of Ohio, again explaining Kentucky's gain in tonnage in contrast with Ohio.

In comparing Indiana with Kentucky, we find that Indiana, a highly organized state, lost approximately 18 per cent in shipments by 1924 and then remained fairly constant, showing a slight gain in the year 1926 and then a sharp decline in 1927 due to the strike. Kentucky's shipments, as in the preceding chart, show a consistent increase in tonnage. In comparing the realization of the two states, we find that Indiana, bound to the rigid specifications of the Jacksonville scale, was not able to reduce its realization to the same degree as Kentucky, whose flexible wage rates allowed reductions in price f. o. b. mine.

The comparison between Illinois and Kentucky shows a similar situation to that which applied in the comparison of Indiana and Kentucky. Illinois being perhaps the most highly organized state in the country held rather rigidly to the Jacksonville scale during the period of the agreement and so was scarcely able to reduce the realization, whereas Kentucky throughout the period shows ability to reduce realization, as has already been pointed out.

A factor to be kept in mind throughout these comparisons is the effect of the British general strike, May to September, 1926, and the consequent increase in production and temporary increase in price.

The conclusions to be drawn from this Chart are that those states during the Jacksonville period which were predominantly union were compelled to comply with the established contract wage rate, and since the wage cost represents approximately 60 per cent of the total cost, operators in those states were not able to reduce the sales price f. o. b. the mine sufficiently to compete with the non-union operators paying lower than Jacksonville

F. E. Berquist

scale wages and therefore reducing price f. o. b. mine and so securing a part of the market which formerly went to the high wage states.

Chart No. 24 shows the same facts as Chart No. 23, but for producing areas rather than for whole states.

The purpose of these divisions is to bring out still more clearly the difference between Union and non-union areas. For example, data for the whole state of Pennsylvania would be based upon both union and non-union operations. If however, we turn to Western Pennsylvania only, we can detect rather clearly the point at which the operators broke from the Jacksonville scale. From that point on, West Pennsylvania gains in shipments and lowers its realization in order to compete more effectively with Northern West Virginia, which had broken from the Jacksonville scale somewhat earlier. Similarly, if we compare Western Pennsylvania and Southern West Virginia, we find that the divergence in shipments is even wider than was true in the comparison of Western Pennsylvania and Northern West Virginia. That is to be explained by the fact that throughout the period Southern West Virginia was nonunion, whereas Northern West Virginia had been union until 1925. The comparison between Central Pennsylvania and Southern West Virginia does not show a great contrast because both areas were on the non-union basis.

The lower portion of the Chart does bring out a wide contrast in shipments and realization because the areas being compared are either union or non-union. For example, Ohio until 1925 continued on the union basis, and Indiana and Illinois were strongly union throughout the period. In contrast, Northern West Virginia broke from the union earlier than Ohio. Eastern Kentucky was unorganized throughout the period and Western Kentucky ceased to operate on a union basis after 1925. Here again we find that those areas operating under a union contract and meeting the rigid specifications of a \$7.50 wage scale were unable to compete effectively with the non-union areas and lost tonnage. The inability to compete effectively is indicated by the fact that price f. o. b. the mine in union areas could not be reduced as rapidly as in the non-union areas.

Chart No. 25 shows a comparison of average hourly earnings of bituminous coal miners in selected competing states for specified periods. The periods covered are those for which data is available in the publications of United States Bureau of Labor Statistics. The states selected for comparison are West Virginia and Pennsyl-

F. E. Berquist

vania; West Virginia and Ohio; Kentucky and Ohio; Kentucky and Indiana; Kentucky and Illinois. This chart shows that average hourly earnings in West Virginia were below those in Pennsylvania in 1919, 1924, 1926-1927, 1929 and 1931, were above those in Pennsylvania in 1921-1922, and were substantially the same in 1933; the average hourly earnings in West Virginia were below those in Ohio in 1919, 1921-1922, 1924, 1926-1927 and were above those in Ohio in 1929, 1931 and 1933; that average hourly earnings in Kentucky were below those in Ohio in 1919, 1921-1922, 1924, 1926-1927 and 1929, were above those in Ohio in 1931, and were substantially the same in 1933; that average hourly earnings in Kentucky were considerably less than those in Indiana and Illinois in all of the years since 1919 for which data are available.

Table No. 26 shows by the production of bituminous coal in each state during the years 1913 to 1934, inclusive, and the proportion of the production of each state to the total production of the United States.

Table No. 27 shows the average value per ton of coal at the mines in each state from 1913 to 1934, inclusive.

Chart No. 28, with accompanying Table No. 28(a), shows the effect of three strikes, those in 1919, in 1922 and in 1927 on the production for selected competing states.

Chart No. 29, with accompanying Table No. 29(a), shows the monthly production of bituminous coal for the years from 1917 to the middle of 1933, in the states of Pennsylvania, Ohio, and West Virginia, and also the number of man-days lost per year due to strikes and lock-outs in the years from 1917 to the middle of 1933 in these same states.

Chart No. 30, with accompanying Table No. 30(a), shows the same data for the states of Indiana, Illinois and Kentucky.

Tables No. 31, 31(a) and 31(b) show a comparison of wage scales in union and non-union mines which are available in published sources. That data in Tables 31 and 31(a) are taken from hearings before the Committee on Interstate Commerce of the Senate in 1928 and the data of Table 31(b) is taken from the May, 1929, issue of the publication "Coal Age."

Chart No. 32 shows a comparison of indices of f. o. b. mine prices of bituminous coal with certain prices during the period between 1923 and 1934. The price in 1923 was taken as a base and the percentage of variation of the mine price of bituminous coal is compared with the percentage of variation of the price of all com-

F. E. Berquist

Dr. Homer L. Morris

modities exclusive of farm products and foods, with the prices of metal and metal products; and with the prices of anthracite coal.

The testimony of DR. HOMER L. MORRIS, admitted in evidence under the stipulation is as follows:

I was born in Dublin, Indiana, in 1886, and was educated at Fairmount Academy and graduated from Earlham College, Richmond, Indiana, in 1911; received the degree of Ph. D. at Columbia University in 1921, having specialized in economics and political science. I am the author of a book entitled "The Plight of the Bituminous Coal Miner," published by the University of Pennsylvania Press in 1934.

I was instructor of history in Penn College, 1911-1915, and instructor in economics at Hunter College, 1917-1918; professor of economics, Earlham College, 1918-1928; director of Child Feeding Work in the Berlin District, Germany, under the auspices of the American Friends Service Committee, 1921; field director of famine relief in the Buzuluk District, Russia, under the auspices of the American Friends Service Committee, 1923. Served as Special Commissioner of the American Friends Service Committee to study health conditions among children in the Ruhr District in Germany during the French occupation of the Ruhr. I have been a member of the American Friends Service Committee since 1917 and at the present time I am secretary of the Social-Industrial Section of that Committee. The headquarters of the American Service Committee is 20 South 12th Street, Philadelphia. In 1928-1930 I was director of public relations of the Reading Hospital, Reading, Pennsylvania. From 1930-1934 I was professor of economics, head of Department of Economics, Fisk University.

From 1933 to 1934 I was Field Supervisor for the Division of Subsistence Homesteads, Department of the Interior, in the establishment of homesteads primarily for the mining group.

In the spring of 1931 President Hoover asked the American Friends Service Committee to undertake the program of child feeding in the bituminous coal fields. This action was taken as a result of the investigation made by the Children's Bureau under the direction of Miss Grace Abbott. This investigation revealed such dire need among the children of the miners that the Children's Bureau appealed to President Hoover that some national action be taken to relieve the situation.

Dr. Homer L. Morris

President Hoover asked the American Friends Service Committee to undertake this service, which they agreed to do. I was asked become organizer and field director for that work. During 1931 and 1932 child feeding program was undertaken in 690 schools in 40 counties scattered through six States, those States being Pennsylvania, West Virginia, Kentucky, Tennessee, Illinois and Ohio. We had a corps of about 50 workers organizing and directing this child feeding program. The workers came under my supervision. In the annual reports of 1932-1933 of the Service Committee will be found a record of this work.

These contacts with the miners, operators, and public officials in counties and States where we worked gave an unusual opportunity to observe conditions in the coal fields and to study the social economic and industrial forces which impinged on the coal industry. This led me to make a special study of conditions, especially in West Virginia and Kentucky. I published the results of this investigation in a book entitled "The Plight of the Bituminous Coal Miner," published by the University of Pennsylvania Press in 1934. I had the benefit of the experience of a corps of 50 workers in making this study and had six special assistants making detailed investigations for a period covering one to six months. I spent practically two and one-half years in making this study, from 1931 (September) until the end of 1933.

My study grouped itself briefly under the following topics: the plight of the coal mining industry itself, the number of miners needed, the unemployed miner and his family, the fact that if a man is once a miner he is always a miner, the training and skill of the laborers, their living conditions in company-controlled communities, the extent and effects of unemployment upon them, something of the miner's mental processes and his reactions to the conditions in which he lives, some suggestions as to how mining could be improved by improving his condition and his relationship to the industry, the laborer's economic status, his ambitions and desires, rehabilitation of displaced miners, and comments upon my idea of the obligations of the Government to help in the process of retraining the displaced worker. I also examined and commented upon the way in which England deals with the situation and particularly in the way she transfers her surplus miners.

In 1919, 70% of the bituminous coal was produced under union wage agreements, and in 1924 the operators and miners in the central competitive fields, including

Dr. Homer L. Morris

Illinois, Indiana, Ohio and Western Pennsylvania, signed the Jacksonville agreement which extended the wage agreement for three years and established a wage scale of \$7.50 for a basic eight-hour day and \$1.08 a ton for piece workers. The southern operators in West Virginia, Kentucky, Tennessee and Alabama began to take advantage of this high wage scale. The New River field in West Virginia desired the union in 1921, and Alabama refused to continue to recognize the wage agreement. In 1924 western Kentucky refused to be bound by the Jacksonville agreement. In 1925 the Bethlehem Mines Corporation and the Consolidation Coal Company in West Virginia severed their connections with the union. The lack of union regulation and wage standards, leaving each operator free to determine his own wage scale upon the basis of individual bargaining, gave the new non-union fields an advantage in the highly competitive market. This was soon reflected in production. In 1922 the non-union fields produced about 22% of the total bituminous coal output. By 1925 this had increased to 60% and amounted to 80% in 1930. In West Virginia the most important unorganized fields' production increased from 71,254,000 (71,309,000 ?) net tons in 1913 to 107,900,000 net tons in 1923 and amounted to 138,519,000 net tons in 1929, an increase of 94% in 16 years. In the non-union territory of Kentucky the development was even more pronounced. Production increased from 19,617,000 net tons in 1913 to 44,777,000 net tons in 1923, an increase of 128% in the decade, and reached to 60,463,000 net tons in 1929, an increase of 35% in six years. Production in the union fields of Ohio, Indiana and Illinois decreased from 146,086,000 net tons in 1923 to 102,691,000 net tons in 1929, a loss of 30%. Since the World War the center of the bituminous coal industry has shifted from the unionized fields of the North to the non-union fields of the South. The payment of the lower wage scale hastened the development of the coal industry in the South and brought new sources of supply on the market which were not needed to supply the demand of the country. The production figures given came from the reports of the Bureau of Mines.

Coal production reached the peak of 579,000,000 net tons in 1918. In 1919 there was a slump of almost 20%; in 1920 there was a slight rebound to 569,000,000 net tons. This level was not reached again until 1926 and even in the boom year of 1929 production reached only 535,000,000 net tons. By 1930 there was a decrease of 18% below even the 1920 level. Regardless of the decreased

Dr. Homer L. Morris

demand for coal, after 1918 the productive capacity of the industry continued to increase for the next five years even faster than before the War. In West Virginia and Kentucky the industry continued to expand until 1927. The productive capacity of the operating mines working full time in 1918 was 717,000,000 net tons. By 1920 this increased to 796,000,000 net tons, or an increase of 11%. It climbed to 970,000,000 net tons in 1923, an increase of nearly 22% in three years.

The number of commercial mines increased from 8,319 in 1918 to 9,331 in 1923, an addition of more than 1000 new commercial mines during the five-year period when the demand for coal was decreasing. During this period more than 3,000 wagon mines were opened. From the peak of 1923 the relentless force of competition reduced the number of mines each year except 1926, until there survived in 1931 5,642 commercial mines. The reason for this expansion was that the unorganized fields of the South were being opened or production was shifted from the central competitive fields to the southern territory, and the expansion in spite of the decrease in demand continued in Kentucky and West Virginia until 1927. In West Virginia in 1900 only 29,163 miners were employed; by 1923 the number had increased to 117,300. But the point of highest employment of miners in West Virginia—119,799—was not reached until 1927. In Kentucky the number of miners in the State increased from 9,680 in 1900 to 60,811 in 1923 and continued to increase until 1927 when there were 64,747 miners employed.

Employment of bituminous coal miners reached a peak of 705,000 in 1923. There has been a decrease in the number of miners employed each year since 1923, with the exception of 1926 and 1927. In 1929 503,000 miners were employed; in 1931 only 450,000 miners were employed. In July 1932 the number dropped to 294,758. Between 1923 and 1929, years in no way connected with the depression, 202,000 miners were pushed out of the industry.

The decrease in the employment of miners has not fallen with equal force in all parts of the bituminous territory. Between 1923 and 1930 the ranks of the miners were decreased by 33% in Pennsylvania, 46% in Illinois, 53% in Ohio and 61% in Indiana. These States represent the unionized territory. In the non-union fields of Kentucky and West Virginia the employment trend between 1923 and 1929 did not conform to the trend in the industry as a whole; in fact, the number of miners in these States continued to increase until 1927, and the down-

Dr. Homer L. Morris

ward swing there did not start until the next year. Production increased for four years in this new non-union territory after retrenchment began in the other section of the coal fields, and this contributed largely to the over-expansion of the coal industry. Between 1927 and 1930 there was a decrease of 11.5% in the number of employed miners in West Virginia and 12.5% in Kentucky.

In the central competitive field the reduction in the number of miners employed began in 1923. This was during a period of general upswing of business many of the displaced miners were able to secure jobs in the nearby industrial centers. In West Virginia and Kentucky the reduction in the number of miners employed did not begin until 1928. Although the number of miners displaced in these States was of as great as the Northern States their plight was worse. They were located in rural sections far removed from industrial centers. Because the expansion of the coal industry continued longer in these States than in the northern States, the displaced miners had less time to gain a foothold in other industries before the crash in 1929. The expansion in the southern fields was due in no small part to the fact that labor was unorganized and a lower wage scale prevailed in the southern fields than in the unionized competitive field.

The source of mine labor in Kentucky and West Virginia. When the mines were opened in Kentucky and West Virginia the operators found cheap and unorganized labor near at hand. Of the 956 miners interviewed in my study, 24% of those in Kentucky were born in the county in which they now live, 20.6% in adjacent counties, an additional 18.7% within the State. This makes a total of 63.3% who were natives of the State in which they now live; an additional 24.2% were born in the adjoining States of Tennessee, Virginia and West Virginia. It is significant that in this group of miners only two were born in Ohio, bordering on the north, none in Indiana and only one in Illinois, that is, the source of the labor supply was either local or drawn from farther south. In West Virginia, 46.4% of the miners interviewed were natives of the States; 18.7% born in the county in which they now live, and 34.4% in adjacent counties. 81.2% were native whites; 11% were negroes, and only 7.8% foreign-born.

When the mines were opened in Kentucky and West Virginia the operators were able to draw their labor from the farms and hills of Kentucky and West Virginia. Insofar as the labor could not be supplied locally it was drawn from farther south. Almost for the first time

Dr. Homer L. Morris

negroes were drawn into the mines. This was done first as strike breakers. In Kentucky 84.2% of the miners are whites, 13.6% negroes, and only 2.2% foreign-born. In West Virginia 21.8% of the miners are negroes, 61.2% native whites, and 17% foreign-born. In Pennsylvania 55.4% of the miners are foreign-born and only 1.4% negroes. In Illinois 38.3% are foreign-born, 2.4% negroes; in Ohio 30.5% are foreign-born and 1.9% negroes.

Attempts at organization in southern fields. During the War and immediately afterwards the unions did gain a foothold in West Virginia and Kentucky but this proved to be temporary. About half of the 100,000 miners in West Virginia were reported to have been members of the United Mine Workers in 1920 and in Kentucky their membership was more than 18,000. The operators were determined to defeat his union movement at all costs. The leaders provided by the miners' organization were neither clever nor aggressive enough to hold the ground which they had gained during the prosperous years. The names of Domingo, Logan, Kanawha, Harlan and Bell Counties are all associated with lost causes in the history of the United Mine Workers' attempt at organization. By 1929 the membership in Kentucky had dwindled to 1,500 and in West Virginia the paid-up membership was alleged to be barely 600.

Approximately half of all the bituminous coal miners in the United States in 1922-23 lived in company-owned houses. This percentage varied in different coal fields, ranging all the way from less than 9% in Illinois and Indiana to 64% in Kentucky and almost 80% in West Virginia. These figures are taken from the report of the United States Coal Commission. The report of the United States Coal Commission, 1925, Part III, pages 1430, 1435, 1431, 1436-1437, 1469, 1467 made a very exhaustive study of housing conditions. The Coal Commission made a special study of 713 company-owned communities. More than two-thirds of all the houses were finished outside with weatherboard, usually nailed directly on the frame, with only paper for sheathing and even this was often missing. The houses were built without cellar and usually perched on post foundations. Only 38% of the houses were plastered; 2.4% had bathtubs and showers. 3% had inside flush toilets and 13.8% had running water. The Commission scored these communities on the basis of eight different factors and then rated each community on the basis of 100. Only 66 out of 713 received a score of 75 or above.

Dr. Homer L. Morris

32 of these communities were in West Virginia and only six in Kentucky. Of 81 communities receiving scores of less than 50, 26 were in West Virginia and 23 in Kentucky. Nothing needs to be added to the indictment made by the Commission after its exhaustive investigation and report.

“In the worst of the company-controlled communities the state of despair at times runs beyond the power of verbal descriptions or even photographic illustrations, since neither words nor pictures can portray the atmosphere of abandoned dejection or introduce the smells. Old, unpainted board and batten houses—batten going or gone and boards fast following, roofs broken, porches sagging, steps staggering, and riots of rubbish and a medley of odors—such are the worst camps. They are not by any means in the majority, but wherever they exist they are a reproach to the industry and a serious matter to such mine workers and mine workers’ families as are dependent upon the companies for living facilities.”

The company-owned camps were built to provide living accommodations for the workers. Although a system of control has been established and carefully developed in order to dominate the workers, it was probably inevitable that such a policy should have been developed since the primary purpose of a camp is to provide dwellings for the workers only so long as they remain in the employment of the company. The miner living in a company-owned house is far less independent than the miner living in an outside community. In the latter situation he is entitled to the protection of the tenancy laws of the State which gives him surety of tenure and guarantees him a certain number of days of grace before he can be evicted.

The lease which the miner is required to sign before he moves into the company property differs in phraseology from camp to camp but they all have the common purpose of depriving the miner of protection under the tenancy laws. These leases usually specify that the miner forfeits his right to occupy the house as soon as he ceases to work for the company, whether this termination of employment is brought about by voluntary withdrawal or by discharge. The lease frequently requires the miner at the termination of his employment and without further notice immediately to remove his

Dr. Homer L. Morris

furniture and family from company property. In some cases the company is given the right immediately to enter the dwelling and remove all goods and possessions with the specific provision that it is relieved of all responsibility for the care of these goods and all other liability for damage to them during their removal. The company usually is authorized by the lease to deduct the rent for the property from the miner's wages semi-monthly. The provision is frequently added that if the premises are not vacated at the termination of the lease, the company has the right to deduct from any wages it owes the miner \$2 per day for each day of delinquency. One lease has been examined which specifies that if the renter moves or attempts to move his furniture from the property when his rent is unpaid, such act shall be deemed fraudulent and clandestine, entitling the landlord to seize the goods at any time within 30 days. Some leases specify that the renter shall neither harbor any person objectionable to the company nor permit him to use, occupy or to be on the premises. Furthermore, the renter must agree to remove any such objectionable person upon the request of the company. Some leases grant only to the miner and his immediate family the right to ingress and egress to and from the house. Frequently the miner is prohibited from keeping boarders who are not in the employment of the company. Some leases stipulate that all streets, alleys, lanes or highways about the premises are private property, subject to any police regulation which the company may make. The companies frequently reserve the right to keep from the premises any person they may deem undesirable. The companies not only reserve the right to exercise all police power but in some leases they retain the right to enter the premises at any time to enforce the provisions of the lease. Some leases go so far as to state that the lessee expressly waives any benefit or protection to which he might otherwise be entitled by law.

It is true that the provisions of these leases are not always strictly enforced. In some instances the miner is permitted to occupy a company house after ceasing to work for the company on account of an accident, illness, prolonged period of unemployment, or incompetency caused by old age. This privilege is frequently given to the miner's family after his death. But these are all privileges apart from the letter of the lease and continue only by sufferance. They may be terminated at any time, depending upon the whim of the com-

Dr. Homer L. Morris

pany. They are not rights to which the miner is entitled or upon which he may depend with any degree of assurance.

Most companies when they have houses to rent require the workers to move into the camp. If men live outside because of a shortage of houses in the camp they are usually first to be laid off during the slack season and the last to be taken on when production is stepped up. The real import of these regulations is apparent during periods of labor difficulties. At such times the evidence is overwhelming and indisputable that the constitutional guarantees of freedom of speech, freedom of the press, and the right of assemblage are abrogated. These restrictions apply not only to the residents on company-owned property but to any outsider who attempts to enter the community, especially if he is suspected of being connected with a labor organization. The significance of all this lies in the fact that it is at just such times of stress and conflict when the laborer is attempting to protect his standard of living that he needs most the protection of the tenancy laws of the State and the security to which his domicile is supposed to entitle him. But the lease in a company-owned community gives to the operator the power and the right to restrict the miner's movements and to evict him and his family without any possibility of redress. This picture is not typical of all company towns. There are company towns where housing conditions are deplorable; there are some company towns where housing conditions are very good, but even where housing conditions are the best the restrictions upon the rights of citizenship are the greatest during strikes and industrial difficulties.

The miners in a camp are huddled physically close together; although every vestige of social cohesion is broken by industrial conflict, fear, jealousy, suspicion, intimidations and acts of violence are all mobilized by conflicting groups. The battle of Evarts at Evarts, Kentucky, on May 5, 1931, in which four men were killed and several wounded, was only one phase of the civil warfare in the community. The notes from a special investigator six months later under date of October 16, gave a glimpse of the continued bitterness in the community. "So bitter is the strife in Evarts that eleven injunctions and law suits have been started by the rival factions in order to gain control of the school system before the schools open in the autumn. This morning we called upon the president of the school board. He is a kindly old man apparently dazed by

Dr. Homer L. Morris

his recent rough experience. When miners were evicted last spring after the strike he let some families live in some of his empty cottages in the town. A soup kitchen was opened in one of them. During the summer this kitchen was blown up by a bomb and Mr. Middleton was arrested on a charge of criminal syndicalism, which is a phrase whose meaning he has never been able to fathom. He was finally released but another member of the school board who also let strikers move into some empty houses is still under \$20,000 bond for the same offense. A merchant of the town whose wife fed 40 school children for about six weeks last spring has been hounded out of town. She was in hiding about four months and has only recently returned home. Two local men who had a shack from which they distributed relief funds for some radical out-of-town organizations were shot and killed one night a couple of months ago."

Following the collapse of the strike called by the West Virginia mine workers in the summer of 1931 there were wholesale evictions in many camps in the Kanawha fields. According to the statement of Frank Keeney, President of the Union, 439 families in the Cabin Creek District were evicted from company houses by the middle of October. This does not include the judgments which had been granted but not executed. These evictions continued for many months after the strike was over.

The effects of excessive competition. The extent to which cheap coal flooded the market is illustrated by the bids for locomotive coal opened February 29, 1932, by the New York, New Haven & Hartford R. R. Co. There were 36 bids which offered almost 4,000,000 tons of locomotive coal for 80c and less per ton. The rail road company awarded the contract to the lowest bidder at the rate of 61c for 50,000 tons and 64c for 200,000.

After the coal for the early part of 1932 was purchased the New York, New Haven & Hartford R. R. Co. sent the following letter to the unsuccessful bidders:

"Gentlemen:

"For your information there is attached a tabulation in the order of price of bids for locomotive coal at 80c and less per ton, received February 29, 1932, which shows, after eliminating duplications, that several times our annual requirements have been offered us at 80c and less as follows: 1,250,000 tons offered at 75c and less; 1,645,000 tons offered at

Dr. Homer L. Morris

75c down to 70c; 1,080,000 tons offered at 80c down to 75c; 3,975,000 tons offered at 80c and less.

“The most favorable bid having been accepted, we are now ready to discuss the purchase of the remainder of our locomotive coal for the period April 1st, 1932, to March 31st, 1933.

“As there is so much coal available at the prices quoted on the attached tabulation, I hope you are in position to offer coal at competitive prices. Would like to have you bid promptly if you are interested or a word that you are not interested at this time in business at these prices if that is the case, in which case, will consider you in further purchases when we all hope conditions will be more favorable.”*

When this letter was published, the editor of the Fairmont Times remarked that the prospects are that the railroad company will buy their 1932 requirements at 20c to 30c less than last year, all at the expense of the miner.

Competition became so keen that even the United Mine Workers Union in northern West Virginia in District 31 joined in the process of wage cutting. In order to save the union and to meet competition the organization entered into an agreement with the union operators to accept a 25% wage cut as of October 1, 1931, which reduced the basic loading rate to 21½c per ton. The non-union operators charged that this agreement was only a clever trick to out-scab the scabs. At the time the agreement was made 67.5% of the coal in that region was being produced by non-union operators, and only about 5% of them were paying less than the prevailing union rate of 30c per ton. Most of the operators were paying from 30c to 40c per ton. The editor of the Fairmont Times asserted that “as a result of this agreement the entire wage structure of northern West Virginia crumbled into ruin. The big companies reduced their scales to the 30-cent level and the smaller companies have been forced to come down to a point where they can meet the price cutting competition of the unions.” Following this agreement the Montfair Gas and Coal Company operating the Francis Mine in Harrison County on a non-union basis, announced a 25% wage cut, making a basic loading rate of 22c per ton.

*This letter was published in the Fairmont Times, Fairmont, W. Va., March 14, 1932.

Dr. Homer L. Morris

The operators in the northern West Virginia field tried to place the onus of this wage cut in the unions. Yet similar wage reductions were taking place in every non-union section of the southern field. In some of the so-called outlaw mines, the loading rates were reduced to as low as 12½¢ per ton.

Labor costs largest item in production of coal. Labor costs constitute by far the largest item in the cost of producing coal. Even in 1931 with the very low wage scale, the labor costs in 150 mines located in 17 States ranged from 52.5% to 91% of the total cost of production. In only four of the 150 mines were labor costs under 60%. In more than 60% of the mines the labor costs ranged from 70% to 79%. Hence when an operator considers the reduction of cost he usually thinks first of labor cost, and a reduction in the price of coal which he quotes almost invariably means a reduction of the wage scale.

Thereupon the parties, by written stipulation, filed as part of the evidence to be considered by the Court a contract between Hickman William & Company and Southern Extract Company, and accepted by Harlan-Wallins Coal Corporation, dated June 24, 1935, as typical of the contracts made by the plaintiffs, Harlan-Wallins Coal Corporation, Green-Silvers Coal Corporation and P V & K Coal Company, after October 2, 1933, and prior to August 30, 1935, referred to in the evidence in this cause, said contract being identified as Exhibit "A" to said written stipulation; and also a contract between the Kearns Coal Company, of Cincinnati, and Oglebay Norton & Company, as Agent for the American Radiator Company, approved and accepted by the Harlan Collieries Company, dated April 29, 1935, as typical of the contracts referred to in the evidence and made by all the plaintiffs, other than said Harlan-Wallins Coal Corporation, Green-Silvers Coal Corporation and P V & K Coal Company, after October 2, 1933, and prior to August 30, 1935, said contract being identified as Exhibit "B" to said written stipulation.

Thereupon in open court the parties by agreement, and at the suggestion of the court, filed the following exhibits: General Order No. 1 of the National Bituminous Coal Commission; General Order No. 2 of the National Bituminous Coal Commission; General Order No. 3 of the National Bituminous Coal Commission; Form of Acceptance of Membership in Bituminous Coal Code;

Form of Notice to Bituminous Coal Producers of District Board Organization; Form of Affidavit of Service of Notice of Organization Meeting of District Board; Form of Proxy for Organization Meeting of District Board; Form of Affidavit of the Tonnage of Producers; General Order No. 4 of National Bituminous Coal Commission Providing for Provisional Approval of Marketing Agencies; General Order No. 5 of National Bituminous Coal Commission Designating the Employes' Member of the Respective District Boards; General Order No. 6 of the National Bituminous Coal Commission Deferring the Filing of Reports by Producers; TD-4596, being regulations relating to the tax on the sale or other disposal of Bituminous Coal issued to Collectors of Internal Revenue, etc.; Form No. 1 (coal) Treasury Department Internal Revenue Service of Producers Return to be used in reporting monthly sales; said exhibits being identified as Exhibit "C," "D," "E," "F," "G," "H," "I," "J," "K," "L," "M," "N," and "O," respectively.

The foregoing is a full and correct statement of all the evidence offered, heard or rejected on the trial of this cause, together with the objections of counsel to said evidence, the rulings of the Court thereon and the exceptions of counsel to such rulings; and the same is hereby approved and ordered made a part of the record in this cause for the purposes of appeal, without being spread at large upon the order books of this court.

This the 23 day of November, 1935.

Elwood Hamilton,
U. S. District Judge.

STIPULATION—Filed November 23, 1935.

It Is Stipulated that the tables and charts attached to and identified in the statements of Frederick C. Tryon, Charles O'Neill, H. L. Findlay, George W. Reed, Fred S. McConnell, Phillip Murray, F. E. Berquist and Homer L. Morris, which statements, with said charts and tables,

Stipulation

were permitted by the Court to be filed in the record as the avowals of said named parties; the contract between Hickman Williams & Company and Southern Extract Company, and accepted by Harlan-Wallins Coal Corporation, dated June 24, 1935, and the contract between Kern Coal Company of Cincinnati and Ogelsby, Norton & Company as agent for the American Radiator Company, approved and accepted by the Harlan Collieries Company, dated April 29, 1935, said two contracts being filed with and attached to a stipulation filed herein as Exhibits "A" and "B" to such stipulation; and also that the following exhibits filed in this cause, to-wit: General Order No. 1 of the National Bituminous Coal Commission; General Order No. 2 of the National Bituminous Coal Commission; General Order No. 3 of the National Bituminous Coal Commission; Form of Acceptance of Membership in Bituminous Coal Code; Form of Notice to Bituminous Coal Producers of District Board Organization; Form of Proxy for Organization Meeting of District Board; Form of Affidavit of Tonnage of Producers; General Order No. 4 of National Bituminous Coal Commission Providing for Provisional Approval of Marketing Agencies; General Order No. 5 of National Bituminous Coal Commission Designating the Employes' Member of the Respective District Board; General Order No. 6 of the National Bituminous Coal Commission Deferring the Filing of Reports by Producers; TD-4596, being regulations relating to the tax on the sale or other disposal of Bituminous Coal issued to Collectors of Internal Revenue, etc.; form No. 1 (coal) Treasury Department Internal Revenue Service of Producers Return to be used in reporting monthly sales; Form of Affidavit of Service of Notice of Organization Meeting of District Board; said exhibits being identified as Exhibits "C," "D," "E," "F," "G," "H," "I," "J," "K," "L," "M," "N," and "O" respectively, may be transmitted to the United States Circuit Court of Appeals for the Sixth Circuit on the appeal of this cause, without the necessity of copying same.

Woodward, Dawson & Hobson,
Attorneys for Plaintiffs.
John S. L. Yost,
Special Assistant Attorney
General,
Bunk Gardner,
United States Attorney,
Oldham Clarke,
Assistant U. S. Attorney,
Attorneys for Defendant.

ORDER—Filed November 23, 1935.

The parties having stipulated that the charts and tables attached to and identified in the statements of Frederick C. Tryon, Charles O'Neill, H. L. Findlay, George W. Reed, Fred S. McConnell, Philip Murray, F. E. Berquist and Homer L. Morris, appearing in the record as the avowals of the said named parties; the contract between Hickman Williams & Company and Southern Extract Company, and accepted by Harlan-Wallins Coal Corporation, dated June 24, 1935, and the contract between Kerns Coal Company of Cincinnati and Ogelsby, Norton & Company as agent for the American Radiator Company, approved and accepted by the Harlan Collieries Company, dated April 29, 1935, said two contracts being filed with and attached to a stipulation filed herein as Exhibits "A" and "B" to such stipulation; and the following named exhibits filed in the record by stipulation of the parties made in open court, to-wit: General Order No. 1 of the National Bituminous Coal Commission; General Order No. 2 of the National Bituminous Coal Commission; General Order No. 3 of the National Bituminous Coal Commission; Form of Acceptance of Membership in Bituminous Coal Code; Form of Notice to Bituminous Coal Producers of District Board Organization; Form of Affidavit of Service of Notice of Organization Meeting of District Board; Form of Proxy for Organization Meeting of District Board; Form of Affidavit of Tonnage of Producers; General Order No. 4 of National Bituminous Coal Commission Providing for Provisional Approval of Marketing Agencies; General Order No. 5 of National Bituminous Coal Commission Designating the Employes' Member of the Respective District Board; General Order No. 6 of the National Bituminous Coal Commission Deferring the Filing of Reports by Producers; TD-4596, being regulations relating to the tax on the sale or other disposal of Bituminous Coal Issued to Collectors of Internal Revenue, etc.; Form No. 1 (coal) Treasury Department Internal Revenue Service of Producers' Return to be used in reporting monthly sales; said exhibits being identified as Exhibits "C," "D," "E," "F," "G," "H," "I," "J," "K," "L," "M," "N," and "O," respectively, may be transmitted to the United States Circuit Court of Appeals for the Sixth Circuit as a part of the record without the necessity of copying; and the Court being advised,

Order

It Is Ordered that said charts and tables and said exhibits be transmitted by the Clerk of this Court to the United States Circuit Court of Appeals for the Sixth Circuit, as a part of the record in this case, without the necessity of copying.

Elwood Hamilton,
U. S. District Judge.

PETITION FOR APPEAL—Filed November 23, 1935.

The plaintiffs, R. C. Tway Coal Company, Kentucky Cardinal Coal Corporation, Harlan-Wallins Coal Corporation, Creech Coal Company, Harlan Central Coal Company, Harlan Fuel Company, Crummies Creek Coal Company, Three Point Coal Company, Clover Fork Coal Company, Harlan Collieries Company, High Splint Coal Company, Cornett-Lewis Coal Company, Kentucky King Coal Company, P. V. & K. Coal Company, Mary Helen Coal Corporation, Green Silvers Coal Corporation, Pioneer Coal Company, Black Star Coal Company, and Gatliff Coal Company, conceiving themselves aggrieved by the decree made and entered herein on the 14th day of November, 1935, in the above entitled cause, hereby appeal from said decree to the United States Circuit Court of Appeals for the Sixth Circuit, for the reasons specified in the assignment of errors which is filed herewith; and they pray that their appeal be allowed and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Sixth Circuit.

R. C. Tway Coal Company, Et Al.,
Plaintiffs.
By Woodward, Dawson & Hobson,
Attorneys.

ASSIGNMENT OF ERRORS—Filed November 23, 1935.

Now comes the plaintiffs, R. C. Tway Coal Company, Kentucky Cardinal Coal Corporation, Harlan-Wallins Coal Corporation, Creech Coal Company, Harlan Contract Coal Company, Harlan Fuel Company, Crummies Creek Coal Company, Three Point Coal Company, Clover Fork Coal Company, Harlan Collieries Company, High Splint Coal Company, Cornett-Lewis Coal Company, Kentucky King Coal Company, P. V. & K. Coal Company, Mary Helen Coal Corporation, Green-Silvers Coal Corporation, Pioneer Coal Company, Black Star Coal Company and Gatliff Coal Company, and make and file the following assignment of errors upon which they will rely upon their appeal to the United States Circuit Court of Appeals for the Sixth Circuit from the decree entered herein on the 14th day of November, 1935:

1. The Court erred in holding that the Bituminous Coal Conservation Act of 1935 is constitutional, and a valid exercise of the power of Congress to regulate interstate commerce.

2. The Court erred in holding that said Act is not violative of the Fifth and Tenth Amendments to the Constitution of the United States.

3. The Court erred in holding that said Bituminous Coal Conservation Act does not improperly delegate legislative power.

4. The Court erred in holding that Sections 3 and 9 of the Act are a valid exercise of the power of Congress to impose penalties for the purpose of coercing compliance with the regulations of the Act dealing with interstate commerce.

5. The Court erred in holding that Sections 3 and 9 of the Act do not deprive the plaintiffs of their property without due process of law, in violation of the Fifth Amendment.

6. The Court erred in holding that Sections 3 and 9 of the Act do not violate the rights reserved to the respective States and to the people under the Tenth Amendment to the Constitution of the United States.

7. The Court erred in holding that plaintiffs are not entitled to the relief sought in their bill as amended, and in dismissing the action at the cost of the plaintiffs.

8. The Court erred in refusing to hold that the Act is an unconstitutional attempt on the part of Congress to regulate matters not within the competency of Congress.

9. The Court erred in refusing to hold that the Congress of the United States, under the Constitution, has

Assignment of Errors

no jurisdiction over and no power to legislate upon the matters required by Section 4 of the Act to be embraced in the Bituminous Coal Code therein required to be formulated, and particularly in refusing to hold that the fixing of minimum and maximum prices of coal free on board transportation facilities at the mines, and the regulation and control of contracts for the sale of coal, are not within the competency of Congress under the Constitution.

10. The Court erred in refusing to hold that the regulation of the relations between producers of bituminous coal and their employees in the production of coal, including the regulation and fixing of wages and hours of service, as authorized in part III of Section 4 of the Act, are each and all matters not within the competency of Congress under the Constitution of the United States.

11. The Court erred in refusing to hold that the attempted regulation by Congress of the matters enumerated in the 9th and 10th assignment herein, and of the matters required by Section 4 of the Act to be embraced in the Bituminous Coal Code therein provided for, is violative of the due process clause of the Fifth Amendment to the Constitution of the United States, and of the reserved rights of the States and of the people, secured to them by the Tenth Amendment.

12. The Court erred in refusing to hold that Sections 3 and 9 of the Act, in so far as they purport to impose upon those producers of bituminous coal who refuse to accept and operate under Section 4 of the Act and of the Code formulated thereunder, a tax equal to fifteen per cent of the sale price at the mine of the coal produced by them, is not a good faith exercise of the taxing power conferred upon Congress by Clause 1, Section 8, Article 1 of the Constitution of the United States, but is an unconstitutional attempt on the part of Congress, under the guise of taxation, to punish those producers of coal who are unwilling to surrender their constitutional right to conduct their business free of unconstitutional interference and regulation by Congress and in refusing to hold that such penalties operate to deprive the plaintiffs of their property without due process of law, in violation of the Fifth Amendment, and is an unconstitutional invasion of the rights reserved to the plaintiffs by the Tenth Amendment to the Constitution of the United States.

13. The Court erred in refusing to hold that Sec-

Assignment of Errors

tion 4 of the Act is an unconstitutional delegation of legislative power.

14. The Court erred in refusing to hold the Act unconstitutional in its entirety.

15. The Court erred in refusing to hold the Act invalid in its entirety, because of the inseparability of its provisions.

16. The Court erred in refusing to grant the plaintiffs the relief sought, and particularly in refusing to grant them a permanent injunction against the collection of the penalties or so-called taxes sought to be imposed upon them by Sections 3 and 9 of the Act for their failure to accept and operate under the Code provided for by Section 4 of the Act.

17. The Court erred in striking on its own motion the statement of Roy Carson.

18. The Court erred in overruling plaintiffs' motion to strike paragraph II of defendant's answer.

Wherefore, they pray that the said decree may be reversed, and that such other and further relief be given to them as to the Court may seem just and proper.

R. C. Tway Coal Company, Et Al.,
Plaintiffs,
By Woodward, Dawson & Hobson,
Attorneys.

ORDER—Filed November 23, 1935.

This day come the above named plaintiffs and tendered and offered to file their petition for appeal herein, together with their assignment of errors, which are ordered filed; and the Court having considered same,

It Is Ordered that an appeal to the United States Circuit Court of Appeals for the Sixth Circuit from the decree entered herein on the 14th day of November, 1935, be and the same is allowed, and a certified tran-

Order

script of the record herein is ordered forwarded to the United States Circuit Court of Appeals for the Sixth Circuit at Cincinnati, Ohio.

It Is Ordered that the appeal bond herein be and the same is fixed at the sum of Five Hundred Dollars (\$500.00).

Elwood Hamilton,
U. S. District Judge.

APPEAL BOND—Filed Nov. 23, 1935.

Know All Men By These Presents:

That R. C. Tway Coal Company, Kentucky Cardinal Coal Corporation, Harlan-Wallins Coal Corporation, Creech Coal Company, Harlan Central Coal Company, Harlan Fuel Company, Crummies Creek Coal Company, Three Point Coal Company, Clover Fork Coal Company, Harlan Collieries Company, High Splint Coal Company, Cornett-Lewis Coal Company, Kentucky King Coal Company, P. V. & K. Coal Company, Mary Helen Coal Corporation, Green-Silvers Coal Corporation, Pioneer Coal Company, Black Star Coal Company and Gatliff Coal Company, as principals, and R. C. Tway, as surety, are held and firmly bound unto Selden R. Glenn, individually and as Collector of Internal Revenue for the District of Kentucky, in the sum of Five Hundred (\$500.00) Dollars to the payment of which they bind themselves and their successors firmly by these presents.

Signed and dated this 23 day of November, 1935.

Whereas, the above named principal hath prosecuted an appeal for the Sixth Circuit to reverse the order rendered in the above entitled suit by the District Court of the United States for the Western District of Kentucky, at Louisville—

Now Therefore, the condition of this obligation is such that if the above named principal shall prosecute its

Appeal Bond

said appeal to effect and answer all costs if it shall fail to make good its plea that this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

P. V. & K. Coal Company,	R. C. Tway Coal Company,
Mary Helen Coal Corp.,	Kentucky Cardinal Coal Cor-
Green-Silvers Coal Corp.,	poration,
Pioneer Coal Company,	Harlan-Wallins Coal Corpo-
Black Star Coal Company,	ration,
Gatliff Coal Company,	Creech Coal Company,
	Harlan Central Coal Com-
	pany,
	Harlan Fuel Company,
	Crummies Creek Coal Com-
	pany,
	Three Point Coal Company,
	Clover Fork Coal Company,
	Harlan Collieries Company,
	High Splint Coal Company,
	Cornett-Lewis Coal Company,
	Kentucky King Coal Com-
	pany,

By Woodward, Dawson & Hobson,
Attorneys.

R. C. Tway,
Surety.

Approved Nov. 23, 1935:
Elwood Hamilton,
U. S. District Judge.

CITATION—Issued by Judge Hamilton,
November 23, 1935.

To Selden R. Glenn, Individually, and as Collector of
Internal Revenue for the District of Kentucky:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Sixth Circuit, in the City of Cincinnati, Ohio, thirty days from and after the date of this citation, pursuant to an appeal allowed and filed in the office of the Clerk of the District Court of the United States for the Western District of Kentucky, wherein R. C. Tway Coal Company, Kentucky Cardinal Coal Corporation, Harlan-Wallins Coal Corporation, Creech Coal Company, Harlan Central Coal Company, Harlan Fuel Company, Crummies Creek Coal Company, Three Point Coal Company, Clover Fork Coal Company, Harlan Collieries Company, High Splint Coal Company, Cornett-Lewis Coal Company, Kentucky King Coal Company, P. V. & K. Coal Company, Mary Helen Coal Corporation, Green-Silvers Coal Corporation, Pioneer Coal Company, Black Star Coal Company and Gatliff Coal Company are the appellants and you are the appellee, to show cause, if any there be, why the decree rendered against the said appellants, as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Charles Evans Hughes, Chief Justice of the United States, this the 23 day of November, 1935.

Elwood Hamilton,
U. S. District Judge.

Service accepted this November 23, 1935.

Bunk Gardner,
United States Attorney,
Oldham Clarke,
Assistant U. S. Attorney,
Attorneys for Appellee.

**STIPULATION SETTLING RECORD IN LIEU OF
PRAECIPE**—Filed Nov. 23, 1935.

It Is Stipulated by and between the undersigned attorneys for the plaintiffs and the defendant, respectively, that the following described pleadings, exhibits, orders, other papers, documents and statement of evidence shall be printed under the supervision of the office of Woodward, Dawson & Hobson, attorneys for the plaintiffs, and the District Attorney's office for the Western District of Kentucky, attorneys for the defendant, and included in the transcript of the record of this case for appeal to the United States Circuit Court of Appeals for the Sixth Circuit, and shall constitute the record herein for the purposes of appeal, and that the Clerk of the United States District Court for the Western District of Kentucky may certify such printed transcript as the transcript of the record on appeal herein, and that if necessary or proper, the Court may enter an order authorizing the Clerk to so certify the same without further notice, and that this stipulation shall be printed as a part of said record, to-wit:

1. Style of this case in appellate court and index.
2. This stipulation.
3. Original bill in equity.
4. Amended bill filed October 21, 1935.
5. Order filing same.
6. Amended bill filed November 1, 1935.
7. Order of November 1, 1935, filing amended bill and controverting same and amended bill filed October 21, 1935 of record.
8. Answer.
9. Order filing answer.
10. Petition of Pioneer Coal Company and Black Star Coal Company to be made parties plaintiff.
11. Order filing petition of Pioneer Coal Company and Black Star Coal Company to be made parties plaintiff, and making them parties plaintiff.
12. Petition of Gatliff Coal Company to be made a party plaintiff.
13. Order filing petition of Gatliff Coal Company to be made a party plaintiff, and making it a party plaintiff.
14. Motion to strike Paragraph II of answer.
15. Stipulation that statements attached thereto and exhibits referred to in said statements may be offered as evidence, subject to objection of the parties for want of relevancy and materiality. (The attached statements

Stipulation Settling Record in Lieu of Praecipe and exhibits referred to are not to be copied at this point, but only the stipulation with reference thereto.)

16. Defendant's objection to and motion to strike as evidence plaintiffs' statements attached to stipulation above referred to.

17. Plaintiffs' objection to and motion to strike defendant's evidence and exhibits attached to such stipulation.

18. Order filing stipulation and objections to the statements attached thereto; motions to strike same and rulings on such objections and motions; overruling plaintiffs' motion to strike paragraph II of defendant's answer, and finally submitting the case.

19. Stipulation filing typical contracts. (Copy stipulation, but not contracts.)

20. Statement of evidence.

21. Opinion of the Court.

22. Decree.

23. Finding of facts.

24. Stipulation for transmission of certain original papers to the United States Circuit Court of Appeals as part of the appeal record without copying.

25. Order authorizing transmission of such original papers.

26. Petition for appeal.

27. Assignment of errors.

28. Order allowing appeal.

29. Appeal bond and order approving same.

30. Citation, including acceptance of service.

31. Stipulation of counsel settling record.

32. Clerk's certificate to transcript of record.

Woodward, Dawson & Hobson,
Attorneys for Plaintiffs.

John S. L. Yost,
Special Assistant Attorney General,
Bunk Gardner,
United States Attorney,
Oldham Clarke,
Assistant U. S. Attorney,
Attorneys for Defendants.

STIPULATION—Filed December 6, 1935.

It is hereby stipulated and agreed that the foregoing is a true and correct transcript of the record in the above entitled cause, as agreed upon by the parties for the purposes of appeal herein, and the Clerk may so certify.

Woodward, Dawson & Hobson,
Attorneys for Plaintiffs.
Bunk Gardner,
United States Attorney,
Oldham Clarke,
Assistant U. S. Attorney,
Attorneys for Defendant.

CLERK'S CERTIFICATE.

I, Lilburn Phelps, Clerk of the United States District Court for the Western District of Kentucky, do certify that the foregoing is a correct transcript of the record in this court in the above entitled cause, as agreed upon by the parties for the purposes of appeal.

In Witness Whereof, I have caused the seal of said court to be hereunto affixed, this the 10th day of December, 1935.

(Seal) Lilburn Phelps,
Clerk, U. S. District Court,
Western District of Kentucky.

[fol. 229] UNITED STATES CIRCUIT COURT OF APPEALS, SIXTH
CIRCUIT

I, J. W. Menzies, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of the printed transcript of record in the case of R. C. Tway Coal Company, et al., vs. Selden R. Glenn, Individually and as Collector of Internal Revenue for the District of Kentucky, No. 7283, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

I further certify that this cause is now pending, that it has not been heard by this Court, and it is awaiting a date for argument and presentation to this Court.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 17th day of December, A. D. 1935.

J. W. Menzies, Clerk, U. S. Circuit Ct. of Appeals
for the Sixth Circuit. (Seal United States Circuit Court of Appeals, Sixth Circuit.)

[fol. 230] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 23, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.