

UNITED STATES v. LAKE SHORE & MICHIGAN
SOUTHERN RY. CO.

IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION.

In Equity No. 1584.

THE UNITED STATES OF AMERICA, PLAINTIFF,
VS.

THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COM-
PANY, THE CHESAPEAKE & OHIO RAILWAY COMPANY,
THE HOCKING VALLEY RAILWAY COMPANY, THE TOLEDO
& OHIO CENTRAL RAILWAY COMPANY, THE KANAWHA
& MICHIGAN RAILWAY COMPANY, THE ZANESVILLE &

WESTERN RAILWAY COMPANY, SUNDAY CREEK COMPANY, CONTINENTAL COAL COMPANY, KANAWHA & HOCKING COAL & COKE COMPANY, DEFENDANTS.

FACTS CONCERNING PROGRESS OF THE CASE BETWEEN
THE FIRST HEARING AND THE ULTIMATE SUBMISSION
FOR DECREE.

This cause was heard before the circuit judges of the Sixth Judicial Circuit (pursuant to certificate of the Attorney General of the United States, filed herein according to act of Congress of February 11, 1903). The court held that the plaintiff was entitled to relief, but reserved certain questions touching the nature and extent thereof. After hearing upon these questions, plaintiff was permitted to file an amendment to its bill and to bring in additional defendants, named below. Forms of decree were presented, but they indicated that both sides were in some respects claiming relief which could not be granted. With a view of eliminating these difficulties, a memorandum opinion was filed. Thereafter, counsel for the plaintiff, and counsel for three of the defendants: the Lake Shore, the Toledo & Ohio Central, and the Zanesville & Western, each submitted a form of decree; and counsel for two of the defendants, the Hocking Valley and the Chesapeake & Ohio, presented suggestions as to certain provisions the decree should contain. Since then the attorney general of Ohio upon leave appeared, as a friend of the court, for the purpose only of calling attention: (1) to the pendency in the Court of Appeals of Franklin County, Ohio, of three actions in *quo warranto*: State, *Ex rel.* against the defendant railways herein (some of such railway companies being defendants in the first of those actions, one in the second, and all in the third); (2) to the issues presented, which in the main concern the power of certain of the railway companies to hold stock in certain of the other railway companies and in the coal companies, and to the relief sought, under a statute of the State, called the "Valentine Anti-Trust Act"; and (3) to objections of the State to certain provisions of the last form of decree

U. S. v. LAKE SHORE & MICHIGAN SOUTH'N RY. ;

submitted, as stated, in the instant case on behalf of certain of the defendants, and also to the suggestions offered for others of the defendants touching the form of decree to be entered herein.

I

FINDINGS OF FACT.

Plaintiff's counsel request the court to file separate findings of fact, and counsel for defendants object thereto; notwithstanding Equity Rule 71, it is deemed permissible and proper in this case to accompany the decree by the following findings of fact:

(1) ORIGINAL DEFENDANTS — WHERE ORGANIZED.

The railroad companies named in the above-recited title of the case are all Ohio corporations, except the Chesapeake & Ohio, which was organized under the laws of Virginia. The coal companies there named were organized; the Sunday Creek under the laws of New Jersey, and the other two under the laws of West Virginia.

(2) DEFENDANTS BROUGHT IN UNDER AMENDMENT
TO BILL.

The Central Trust Company of New York, as trustee under the first consolidated mortgage of the Hocking Valley Railway Company; the said Central Trust Company, as trustee of stock in the Sunday Creek Company under the agreement of April 30, 1908; John H. Doyle, as trustee of stock in the Sunday Creek Company under the agreement of April 30, 1908; J. P. Morgan & Company, as trustee of the stock of the Kanawha & Hocking Coal & Coke Company and of the Continental Coal Company, to secure agreement for division of coal traffic, such trustee, however, having resigned and the Bankers' Trust Company of New York having been duly substituted in the place and stead of J. P. Morgan & Company as such trustee; these additional defendants have appeared and filed separate answers, setting up their respective claims as trustee, and, with the original defendants, have stipu-

lated that the cause should be submitted upon the proofs previously offered.

(3) THE RAILROADS.

The Lake Shore extends from Buffalo to Chicago, passing through the northerly portion of Ohio by way of Toledo, and has a number of intermediate branches. Connection is maintained in Toledo, though not described, between the Lake Shore and the Toledo & Ohio Central, and also the Hocking Valley. A large majority of the capital stock of the Lake Shore is owned by the New York Central. The Chesapeake & Ohio extends from Old Point Comfort to Cincinnati, running (in West Virginia) along the southerly side of the Kanawha River from Gauley (connecting with Gauley Bridge and Charleston) to Scary, thence (leaving the Kanawha River) westwardly to the Ohio River at Guyandotte, and thence along the south side of the Ohio River to Covington, Ky., where it crosses the river to Cincinnati; it owns a great majority of the stock of the Chesapeake & Ohio Railway of Indiana, and so reaches Chicago. Two of the remaining railroads are entirely within Ohio, running generally in a north and south direction, viz, the Hocking Valley, from Toledo by way of Fostoria, Columbus, Logan, Gallipolis, Kanauga, and Hobson to Pomeroy (Kanauga being on the Ohio River opposite Point Pleasant, W. Va.), with a branch line from Logan to Athens; and the Toledo & Ohio Central with two divisions running from Toledo, the easterly one by way of Fostoria and Thurston to Corning, and the other by way of Columbus to Thurston. The Kanawha & Michigan extends south from Corning by way of Athens and Hobson to Kanauga, where it crosses the Ohio River to Point Pleasant, and continues thence along the northerly side of the Kanawha River by way of Charleston to Gauley Bridge, using the tracks, however, of the Hocking Valley between Hobson and Gallipolis. The Zanesville & Western is also entirely within Ohio and extends east from Thurston to Zanesville. This sufficiently shows the geographical relations and the common termini and common points of connection as respects these railroads.

(4) THE COAL FIELDS DIRECTLY AFFECTED.

The coal lands tributary to the three exclusively Ohio railroads, are situated in that State and well known as the Hocking coal fields, and a portion of those fields, but principally coal lands situated in West Virginia, are tributary to the Kanawha & Michigan Railroad, and those latter coal lands are in the well-known Kanawha coal district.

(5) COAL TRAFFIC, AND OTHER COAL FIELDS INVOLVED.

The principal freight traffic of all the railroads mentioned, except the Lake Shore, is bituminous coal. The principal coal mines along the Chesapeake & Ohio are in the Kanawha, New River, and Big Sandy coal districts of West Virginia and Kentucky. A substantial part of the freight traffic of the Lake Shore is bituminous coal, originating not only in the Hocking Valley coal fields and the Kanawha coal district, but also on two or more of its branch roads connecting with coal fields situated in other portions of Ohio and in Pennsylvania. Coal derived from these various fields is carried over the defendant railroads and their connections to destinations, some of them common destinations, situated in States (including lake ports therein) other than the States in which the coal originated.

(6) COMPETITIVE CONDITIONS.

(a) Between 1890 and 1899, through ownership of stock and guaranty of bonds of the Kanawha & Michigan, the Toledo & Ohio Central controlled and operated that line in connection with its own. During that period the Hocking Valley and the Toledo & Ohio Central were naturally competing lines, and, as far south as the Ohio River, were parallel lines. Aside from the Kanawha & Michigan, the Hocking Valley, as far south as Athens, and the Toledo & Ohio Central are parallel and naturally competing roads. Prior to and in 1899, free competition was maintained between the Toledo & Ohio Central and the Kanawha & Michigan, on the one hand, and the Hocking Valley, on the other, as respects the coal traffic derived from the Hocking Valley coal fields and the Kanawha coal district,

(7) RAILROAD REORGANIZATION OF 1899.

as well as of the other traffic carried over their lines; this traffic included both interstate and intrastate shipments.

(b) The Kanawha & Michigan is dependant for the movement of its traffic north of Corning upon either the Toledo & Ohio Central or the Hocking Valley, or both. The Kanawha & Michigan, if used as a carrier exclusively in connection with either the Toledo & Ohio Central or the Hocking Valley, would be a natural competitor of the one or the other of such roads according as the connection and use might be maintained; and the capacity of the Toledo & Ohio Central to increase its competing traffic is enhanced by its connection at Thurston with the Zanesville & Western. The competitive conditions naturally existing between the Hocking Valley and the Toledo & Ohio Central would manifestly be preserved by traffic derived from the Kanawha & Michigan, if that line were owned and operated independently of either of the others.

(c) What is known as the southern division of the Hocking Valley, to wit, the portion between Logan and Pomeroy, has not since 1899, while the Kanawha & Michigan has, been improved in grades, roadbed, and bridges, so as practically to accomodate the heavier railroad equipment and freight traffic which have been introduced since that year; and, further, it is shown that the configuration of the territory adjacent to the Kanawha River is such as reasonably to prevent construction of a track additional to that of the Kanawha & Michigan on the one side, or the branches of the Chesapeake & Ohio on the other as far westwardly as Scary. It is not shown, however, that construction of an independent connection is impracticable by a line uniting with the Chesapeake & Ohio at Scary or at some point in its existing tracks between Scary and Guyandotte, and running thence northwardly either to Gallipolis or Kanauga; nor that the southern division of the Hocking Valley can not reasonably be improved and utilized for heavy equipment and traffic; that division was an essential part of the Hocking Valley during the period of free competition mentioned.

The immediate predecessor of the Hocking Valley Railway Company was the Columbus, Hocking Valley & Toledo Railway Company. A plan or reorganization of the latter was entered into under date of January 4, 1899. After judicial sale of its property, the purchasing trustees conveyed the railroad property to the Hocking Valley, and the title thereto is still in that company. It was part of this plan to have the Hocking Valley acquire interests in the Toledo & Ohio Central Railway Company and the Columbus, Sandusky & Hocking Railroad Company (predecessor of the Zanesville & Western), and in February, 1899, the Hocking Valley reserved 50,000 shares of its preferred and 50,000 shares of its common stock for the purpose of acquiring such interests. The purchases of stock in the Toledo & Ohio Central were made in the name of a New Jersey corporation, called the Middle States Construction Company. In 1899 and 1900 the Hocking Valley purchased the bonded indebtedness of this construction company; and this indebtedness was secured by and convertible into stock in the Toledo & Ohio Central, under a deed of trust of the Construction Company to the Central Trust Company of New York. In 1899 and 1900, the Construction Company acquired the controlling interest in the capital stock of the Toledo & Ohio Central. The Hocking Valley, in 1902, purchased all the stock in and all the bonds of the Zanesville & Western, which, through judicial sale, had acquired the portion of the Columbus, Sandusky & Hocking Railroad extending from Thurston to Zanesville with certain branch lines. From 1902 to 1909 the president and general manager of the Hocking Valley, as well as other officers of the company selected later, occupied corresponding positions in the Toledo & Ohio Central and the Zanesville & Western. The control thus acquired by the Hocking Valley carried with it also the control of the Kanawha & Michigan, through the control of the latter by the Toledo & Ohio Central, before mentioned. In 1903 the Hocking Valley exchanged its holdings of stocks and bonds in the Zanesville & Western for the

shares held by the Toledo & Ohio Central in the Kanawha & Michigan; and, apart from influence exercised by certain trunk lines, the Hocking Valley remained in control of this system of exclusively Ohio railroads and the Kanawha & Michigan until March, 1910.

(8) CERTAIN TRUNK LINES PURCHASE MAJORITY OF
HOCKING VALLEY STOCK.

In June, 1903, five trunk-line railroads, viz: Lake Shore & Michigan Southern Railway Company, Erie Railroad Company, Baltimore & Ohio Railroad Company, Chesapeake & Ohio Railway Company, and the Pittsburgh, Chicago, Cincinnati & St. Louis Railway Company, purchased a majority, to wit, 69,242 shares, of the common capital stock of the Hocking Valley, and each of the purchasing companies obtained a one-sixth interest in such shares, except the Pittsburgh, Chicago, Cincinnati & St. Louis Railway Company, which acquired two-sixths. An advisory committee composed of representatives of the trunk lines, with the president of the Hocking Valley, controlled the financial affairs of the Hocking Valley and of certain coal companies (mentioned below), in which it was interested. Among the results thus reached were the incorporation of the Sunday Creek Company for the purpose of handling the coal interests of the Hocking Valley, and the maintaining of a general operating system that was satisfactory to the trunk lines. One of the features of this operating system was to restrict rail connections with coal mines to such as were already in operation, and to refuse and by litigation to contest applications for rail connections with new mines. These conditions were in practical effect continued until March, 1910.

(9) RAILROAD ACQUISITION AND CONTROL OF
COAL PROPERTIES.

Pursuant to the plan of reorganization of 1899, the Buckeye Coal & Railway Company was incorporated under the laws of Ohio, and the Hocking Valley and this coal company joined in the execution of a mortgage under date of March 1, 1899, providing for the issue of first-

mortgage bonds in the sum of \$20,000,000, and secured by the properties acquired by such companies. This coal company was organized for the purpose of obtaining the coal properties of the Hocking Coal & Railroad Company, and these properties were bid in and conveyed to the Buckeye Coal & Railway Company by the purchasing trustees at the judicial sale before mentioned; and such trustees received from the new coal company 2,495 shares of its total capital stock of 2,500 shares, and thereupon entered into a traffic agreement with the Hocking Valley to secure rail connections between coal mines and the main railroad line, and also coal transportation, and the trustees at the time turned over the stock in the coal company to the Hocking Valley. Out of the sales proceeds of the first-mortgage bonds mentioned, the Hocking Valley acquired the stock and properties of four other coal companies, and also a large majority of both the preferred and common shares of stock in the Sunday Creek Coal Company.

A different method was adopted for securing control of the properties of the Kanawha & Hocking Coal & Coke Company and the Continental Coal Company, as also of a number of other coal properties. The Toledo & Ohio Central Railway Company and the Hocking Valley Railway Company entered into a contract to guarantee the first mortgage bonds of the coal companies last named; and the last-named railway companies and coal companies, including the Kanawha & Michigan Railway Company, agreed that the traffic derived from the property or mines of the coal companies should be equally divided between the Toledo & Ohio Central Railway Company and the Hocking Valley Railway Company; and, for the purpose of securing the performance of such agreement and also of the terms and conditions of a certain mortgage made by the Kanawha & Hocking Coal & Coke Company to the Morton Trust Company, trustee, of New York, dated July 1, 1901, and of another mortgage made by the Continental Coal Company to the Standard Trust Company, trustee, of New York, dated February 1, 1902, all the

capital stock of each of these two coal companies (except certain qualifying shares) was placed in the name of and deposited with J. P. Morgan & Company, of New York, as trustee. This stock was to be held by such trustee (but is now held by the successor trustee, the Bankers Trust Company, a defendant herein as before stated) until such time as all the conditions of the agreement and mortgages aforesaid, respectively, should be complied with; and the beneficial interests in the capital stock of the said coal companies are now owned and held by the Sunday Creek Company. Further, the Toledo & Ohio Central owned the entire capital stock of the Imperial Coal Company and also the National Coal Company.

(10) MERGER OF COAL INTERESTS INTO SUNDAY
CREEK COMPANY.

(a) The holdings in these coal properties were subsequently merged and placed in the Sunday Creek Company (not Sunday Creek Coal Company). The Sunday Creek Company was organized under the laws of New Jersey with a capital stock of \$4,000,000; and it now controls more than 100,000 acres of land situated in the Hocking coal fields and the Kanawha coal district, together with about 50 coal mines and about 350 coke ovens, which are tributary to the exclusively Ohio railroads before named and the Kanawha & Michigan. When the Sunday Creek Company was incorporated, the Hocking Valley owned \$3,236,300 par value of stock in the Sunday Creek Coal Company and exchanged said stock for a like amount in the Sunday Creek Company, and the Toledo & Ohio Central owned \$513,700 par value of preferred and common stock in the Sunday Creek Coal Company and exchanged such stock for a like amount of stock in the Sunday Creek Company—a total of \$3,750,000; and on April 23, 1906, 2,488 shares of the Sunday Creek Company were issued in a single certificate in the name of the Central Trust Company of New York to prevent their issue except upon its approval, the remaining 12 shares having been issued to qualify directors.

(b) SPECIAL TRUSTS CREATED RESPECTING SHARES
IN SUNDAY CREEK COMPANY.

The Toledo & Ohio Central caused its shares in the Sunday Creek Company to be issued in the name of John H. Doyle, trustee; and in April, 1908, just before the commodities clause of the Hepburn Act was to take effect and in view of the doubts as to its constitutional validity, the company entered into an agreement with him, by which the stock was in terms sold to him as trustee for the stockholders of the company, in whose names its stock might from time to time be registered and to whom dividends should be paid, and the certificate of stock and the contract have ever since been in his possession. On April 30, 1908, another contract similar to the one just mentioned was entered into between the Hocking Valley and the Central Trust Company of New York, respecting the shares of the former in the Sunday Creek Company. After reciting, among other things, that all of these shares with others were pledged to the trustee as collateral security for the bonds issued under the first consolidated mortgage of the Hocking Valley and the Buckeye Coal & Railway Company, it was in terms agreed that the Hocking Valley had sold and assigned to the trustee all its interest in such shares of stock, subject to the lien of the mortgage and the rights of the bondholders thereunder, in trust, for the proportionate benefit of the holders of the stock of the Hocking Valley and for any distribution of its assets; that the trustee should have the right to vote the shares, to collect dividends, and (if the company was not in default under its mortgage) to distribute them among the holders of the stock. Further provision was made, common to both of such trust agreements, that in the event the Supreme Court should hold the commodities clause of the Hepburn Act constitutional, the trustees should sell such shares of stock and distribute the proceeds (subject to the lien of the mortgage before mentioned respecting the Hocking Valley shares) among the registered stockholders in the Toledo & Ohio Central and the Hocking Valley, respectively. However, this provision has never been executed; the trustees still hold the legal title to the stock.

(11) THE MARCH AGREEMENT.

(a) For the avowed purpose of complying with a judgment in *quo warranto* of a circuit court of Ohio (in effect ousting the Hocking Valley from its control of and relations with the Toledo & Ohio Central, Zanesville & Western, Kanawha & Michigan, and certain coal companies before named), the Lake Shore and the Chesapeake & Ohio entered into an agreement in March, 1910, pursuant to which the Lake Shore acquired all the stock in the Toledo & Ohio Central, 45,100 shares (a majority) of stock in the Kanawha & Michigan, 5,137 shares of stock in the Sunday Creek Company, and the entire capital stock in and all the bonds of the Zanesville & Western, at an aggregate purchase price of \$10,197,874.67, and obligated itself to make provision for loaning to the Sunday Creek Company as needed, and on its notes, \$1,143,110.50; and thereupon it sold to the Chesapeake & Ohio 22,550 shares of the Kanawha & Michigan for \$1,623,600, and 11,540 shares of the Hocking Valley for \$1,384,800 (the latter stock, being the one-sixth interest that the Lake Shore had acquired through the purchase made by the trunk lines). The Chesapeake & Ohio then acquired the holdings of the other trunk lines in Hocking Valley stock, which (with the one-sixth it had previously obtained through the trunk lines purchase and the one-sixth derived under the March agreement) gave to the Chesapeake & Ohio 69,240 shares of such stock. The preferred stock of the Hocking Valley was retired in April, 1910, leaving 110,000 shares of common, of which the Chesapeake & Ohio now owns (through increase of its holdings) 88,258 shares; and that company and the Lake Shore through additional purchases now each own 40,271 shares of the stock of the Kanawha & Michigan (being 80,542 of a total capital of 90,000 shares). The interests of the Lake Shore and the Chesapeake & Ohio in the Sunday Creek Company (through their respective holdings in the Toledo & Ohio Central and the Hocking Valley) now cover its entire outstanding capital stock, subject to the trusts and pledge before stated.

(b) Certain other portions of the March agreement are in substance as follows: A further contract for 25 years was to be made, providing that the line of the Hocking Valley and the western division of the Toledo & Ohio Central, between their terminals at Toledo and their connections with the Kanawha & Michigan at Chauncey, might (for cost of maintenance and operating expenses according to joint use) be used at the option of either for the movement of its through freight trains; that an additional contract should be made to protect the Toledo & Ohio Central and the Hocking Valley under their previous guaranty of bonds of coal companies, given under an agreement for an equal division of the coal traffic derived from the properties of such coal companies; and that an arrangement for distribution of the business, so far as could legally be made, should be effected to protect the interests of the Toledo & Ohio Central and the Hocking Valley respecting their guaranty of such coal bonds; that still another contract should be made "for trusteeing or otherwise jointly handling" the 45,100 shares in the Kanawha & Michigan. In case this stock was so placed in trust, provision was to be made for such trackage agreement with the Kanawha & Michigan as would protect the purchasing companies against loss of control of the property. Privilege was to be given, on request of either of the purchasing companies, to make certain connections between the Kanawha & Michigan Railway and the Virginian Railway or the Lake Shore or Chesapeake & Ohio, the intent being that the lines of the Kanawha & Michigan could be used to the fullest extent by either of the purchasing companies in building up its interests either in local territory on the Kanawha & Michigan or in making through routes with connections beyond it, protecting, however, all the stockholders of that company. Provision was also made for acquiring all or part of the outstanding stock of the Kanawha & Michigan; for having that company purchase the securities of the Pomeroy Belt Railway Company, and indemnifying the Hocking Valley against liability assumed by it in the purchase thereof, and grant-

ing to it a trackage right over such belt road, etc., and for securing to the Hocking Valley trackage over the Kanawha & Michigan between Athens and Hobson, to accommodate Hocking Valley through business from or to its line between Gallipolis and Pomeroy. The whole agreement was made subject to a condition that the other roads embraced in the trunk lines purchase should sell their holdings in the stock of the Hocking Valley to the Chesapeake & Ohio.

(12) CONDITIONS INAUGURATED AND MAINTAINED
UNDER THE MARCH AGREEMENT.

Since the March agreement separate and distinct officers and offices of the railroads, respectively, have been selected and maintained; and this is true also of the Sunday Creek Company. The managerial officers of the three exclusively Ohio railroads, and also of the Kanawha & Michigan and Sunday Creek Company, were, after the execution of the March agreement, instructed to exercise their own judgments respecting the interests they severally represented. Some of the provisions of that agreement have not been formally observed. Thus, the additional contract which was intended to provide for an equal division between the Toledo & Ohio Central and the Hocking Valley, of the coal traffic and business derived from the Kanawha & Michigan, has not been prepared and signed. And the independent coal operators in the coal fields in question have received greater concern and accommodations at the hands of the railroads since the agreement than they were given before. Nevertheless, since then there has not been effective competition among these exclusively Ohio railroads, including the Kanawha & Michigan, as respects the coal traffic derived either from the Sunday Creek Company or from other shippers of coal mined in the coal fields tributary to such railroads; nor has the Sunday Creek Company done anything to induce or promote competition among such railroads. The coal traffic of the Chesapeake & Ohio, destined northwardly by way of Gauley and Gauley Bridge, and also that of the Hocking Valley originating on its line between Gallipolis and

U. S. v. LAKE SHORE & MICHIGAN SOUTH'N RY.

Pomeroy, have been carried over the Kanawha & Michigan from the respective connections at Gauley Bridge and Hobson; and all such traffic, including that originating on the Kanawha & Michigan and the exclusively Ohio railroads, destined to Toledo, has been carried northwardly from Chauncey to the terminals in Toledo over the tracks embraced in the reciprocal trackage arrangement called for by the March agreement; and a substantially equal division of the coal traffic derived from the Kanawha & Michigan Railway Company has been maintained between the Hocking Valley and the Toledo & Ohio Central. In short, the practical operation and uses of the three exclusively Ohio railroads and the Kanawha & Michigan, as well as the Sunday Creek Company, have closely corresponded with the terms of the March agreement and (apart from the added Chesapeake & Ohio traffic) with such operation and uses prior to that agreement.

(13) INTENT AND EFFECT OF THE REORGANIZATION
OF 1899 AND ITS SUBSEQUENT DEVELOPMENT, AND
ALSO OF THE MARCH AGREEMENT.

The union of interests designed by and brought about under and pursuant to the reorganization agreement of 1899, was intended to and did combine and monopolize the railroad and coal stocks and properties there involved in restraint of trade among the States; and the transactions that have since been carried out in accordance with the March agreement, and the union of interests there rearranged, with the concert of action occurring since then among the companies in control and those engaged in the operation of the roads and coal interests involved, have in effect, though in different form, operated to continue the substantial evils of the old combination and monopoly, and so have resulted in unreasonably restraining trade among the States.

II
DECREE.

This cause came on to be heard before Circuit Judges Warrington, Knappen, and Denison, upon the bill, the amendment thereto, the several answers and replications,

the exhibits and evidence offered by the respective parties (defendants producing certain witnesses who testified in court), and the arguments of counsel; upon consideration whereof, and being fully advised in the premises, the court, on the issues joined, adjudges and decrees that the acts and transactions committed and carried into execution in pursuance of the reorganization agreement and otherwise, until the date of the agreement of March, 1910, were, and, further, that the acts and transactions committed and carried out in accordance with that agreement, in connection with the course of business pursued since its date, by and among the defendants and those in their control, respectively, were and are, as the same are in substance stated with respect to both periods, in the foregoing findings of fact, in violation of the act of Congress of July 2, 1890; and, in order effectively to dissolve the combination now existing, it is further ordered, adjudged and decreed, as follows:

SALE OF RAILWAY COMPANIES' INTERESTS IN STOCK
OF SUNDAY CREEK COMPANY.

(1) That the equity and interest of the Lake Shore & Michigan Southern Railway Company, the Toledo & Ohio Central Railway Company, the Chesapeake & Ohio Railway Company, and the Hocking Valley Railway Company, and each of them, in the capital stock of the Sunday Creek Company, shall be disposed of by absolute sale. That the legal title to said stock held by the trustees, viz, John H. Doyle and the Central Trust Company, under the certain agreements of April 30, 1908, in substance described in the finding of fact aforesaid, be included in said sale, and that said sale be made free from every interest or claim of said trustees or either of them, and of any and all the railway companies last named, and of the stockholders of each and all of them.

The said the Hocking Valley Railway Company, the Toledo & Ohio Central Railway Company, the Lake Shore & Michigan Southern Railway Company, and the Chesapeake & Ohio Railway Company, each and all of them, be, and they hereby are, perpetually enjoined from directly,

or indirectly, owning, holding, or acquiring any stock in said Sunday Creek Company, or in any of the companies hereinbefore named, the property of which is owned, leased, or controlled by said Sunday Creek Company, intending hereby to impose an absolute prohibition against said railway companies, or any of them, owning or controlling any shares of stock in said Sunday Creek Company, or otherwise owning or controlling, directly or indirectly, any interest in any of the coal properties in which that company is interested; and that the Sunday Creek Company be, and it hereby is, perpetually enjoined from directly or indirectly permitting any share or shares of its capital stock to be voted by or on behalf of any of the said railway companies for any purpose whatever, at any meeting or otherwise of the stockholders of said Sunday Creek Company, or permitting any of such railway companies to exercise any control over or to have anything to do with the management of said Sunday Creek Company, and likewise from paying any dividends to or for any of such railway companies.

That for the purpose of enabling said railway companies and said trustees to comply with this decree respecting the sale of stock in the Sunday Creek Company, they and each of them shall have two months from the entry hereof so to comply herewith; and if said railway companies and said trustees are able to sell said stock, they shall be and are hereby authorized and empowered to sell the same, free of any claim, lien, or equity of any of the parties to this suit, including the lien of the Central Trust Company of New York, as trustee under the consolidated mortgage made by the Hocking Valley Railway Company to it, referred to in the finding of fact aforesaid, and freed from any equity in the stockholders, or any of them, of said The Hocking Valley Railway Company or said The Toledo & Ohio Central Railway Company.

That if within said period of two months from the entry hereof, said defendants are able to comply with this decree by the absolute sale of said stock, they and each of them

U. S. v. LAKE SHORE & MICHIGAN SOUTH'N RY.

shall, before concluding such sale, report to this court the manner of such compliance, the name of the proposed purchaser, and tendering such purchaser before the court for examination, and the said sale and all proceedings toward the compliance with this order, shall be subject to approval, rejection or modification by the court.

That if within said period defendants do not comply with the decree in this respect, and report the same to the court for its action thereon, as above provided, then the court will otherwise provide for the sale of such stock, unless for good cause the court further extends said time, by such action as it may deem necessary and adequate to such purpose, either through appointment of a master to make such sale or of a receiver to take possession of said stock, with the power to sell and dispose of the same, or in such other manner as will enforce compliance with this decree in this respect.

(2) That the Bankers' Trust Company, as successor trustee of J. P. Morgan & Company, be, and it hereby is, perpetually enjoined from in any manner undertaking to enforce or claim any rights or benefits under the provisions of the contracts referred to in the findings of fact and relating to the equal division of the freight traffic derived from the mines or property of, or formerly held by, either the Kanawha & Hocking Coal & Coke Company or the Continental Coal Company or both; and the defendant railway Companies herein, and each of them, are also perpetually enjoined from in any manner undertaking to carry out the provisions of such contracts.

MARCH AGREEMENT ANNULLED.

(3) That the agreement entered into on or about March 10, 1910, between the Lake Shore & Michigan Southern Railway Company and the Chesapeake & Ohio Railway Company, in substance set out in the findings of fact aforesaid, be, and the same is hereby, wholly annulled; and said railway companies, and each of them, are hereby perpetually enjoined from executing or further carrying out any of the provisions or covenants of said agreement:

Provided, That nothing in this paragraph shall be construed as intending to determine any question of corporate power of either of such companies, at the date of the March agreement, or since then, to purchase or hold any of the stocks or bonds acquired in pursuance of said agreement, or as intending to disturb such titles thereto as were in fact acquired, except only as respects the stock purchased and now held in the Kanawha & Michigan Railway Company.

DISPOSITION OF STOCK IN THE KANAWHA &
MICHIGAN RAILWAY.

(4) That the ownership of the Lake Shore & Michigan Southern Railway Company and the Chesapeake & Ohio Railway Company (although not in form joint, but separate) in the stock of the Kanawha & Michigan Railway Company, and the resulting control of the latter company inhering in such holdings, were acquired in violation of the laws of the United States and are unlawful; and in order to avoid further infraction of the Federal law in this respect either the stock so held by the Chesapeake & Ohio Railway Company shall be sold and transferred to the Lake Shore & Michigan Southern Railway Company, or such holdings of both of said companies shall be disposed of by absolute sale, in manner following:

(a) If the Lake Shore & Michigan Southern Railway Company shall elect so to do, upon its own responsibility as to its corporate authority to acquire and hold the same, it may, within forty days from the date hereof, propose in writing to pay for the stock in the Kanawha & Michigan Railway Company so held by the Chesapeake & Ohio Railway Company a sum equal to one-half the total price paid therefor by both companies, without interest, or such other sum as the two companies shall agree upon, either in cash or upon time and terms of security satisfactory to the Chesapeake & Ohio Railway Company; and such proposal, whether it be the specific sum above stated or an agreed sum, including all terms and conditions of the proposal, shall be submitted to the court for approval,

U. S. v. LAKE SHORE & MICHIGAN SOUTH'N RY.

modification, or rejection; but no proposal involving a trackage privilege in favor of the Chesapeake & Ohio Railway Company in or over any portion of the tracks of the Kanawha & Michigan Railway Company will be considered save only on cause shown to meet temporary exigency; but if the Lake Shore & Michigan Railway Company shall within twenty days from the date hereof file with the court a written refusal to make such proposal, or failing so to do and also failing, within the period of forty days before fixed, to present any proposal for the purchase of such stock, then and in either such event;

(b) Said the Lake Shore & Michigan Southern Railway Company and the Chesapeake & Ohio Railway Company shall thereupon comply with the requirement of this decree respecting the absolute sale of their stock in the Kanawha & Michigan Railway Company; and they shall have sixty days from the date of the filing of such written refusal, or, in case written refusal is not filed, then from the expiration of the time so given, to effect the purchase as aforesaid, to dispose of their said stock; and if the companies are able to sell the same, they shall be and are hereby authorized to sell it to any responsible railroad company not a party to this suit and entitled to purchase and hold the stock; such sale to be free from any claim, lien, or equity, of any of the parties to this suit; but said selling company shall, before concluding the sale, report to this court all its terms and conditions, the name of the proposed purchaser, and bring such purchaser (through an authorized representative) before the court for examination; and the said sale and all proceedings looking to the compliance with this decree, shall be subject to the courts approval, modification or rejection.

That if within said period said companies do not comply with the decree in this respect and report the same to the court for its action thereon, as above provided, then, unless for good cause the time shall be further extended, the court will otherwise provide for the sale of such stock by such action as it may deem necessary and adequate to such purpose, either through appointment of a master

to make such sale, or of a receiver to take possession of said stock with the power to sell and dispose of the same, or in such other manner as will enforce compliance with this decree.

(c) That in case a sale of the shares of stock of the Chesapeake & Ohio Railway Company in the Kanawha & Michigan Railway Company shall be made to the Lake Shore & Michigan Southern Railway Company and such sale shall be approved by the court, then the Chesapeake & Ohio Railway Company shall be and it is hereby perpetually enjoined—and in case such sale shall not be so effected and approved, then both of said companies, to wit, the Lake Shore & Michigan Southern Railway Company and the Chesapeake & Ohio Railway Company, and each of them, shall be and they are hereby perpetually enjoined—as respects the owning, holding, acquiring or controlling of any stock or interest in said Kanawha & Michigan Railway Company (and said last-named company is in either such event also perpetually enjoined in respect of its capital stock and property) in the same manner and to the same extent in each and every particular as is above provided in relation to the capital stock and the management and control of the Sunday Creek Company and its property; and each and all of the provisions in paragraph one (1) of this decree (concerning Sunday Creek Company), in the respects mentioned, are hereby referred to, and so far as they can in effect be made applicable hereto, they shall be treated the same as if each were at large repeated and incorporated herein with respect to the several railway companies named in this paragraph.

(5) Nothing in this decree is intended or shall be construed to prevent any of the defendant railway companies from entering into agreements for the joint carrying of through traffic according as the same is or shall be permitted by the laws regulating common carriers of interstate commerce.

QUESTIONS RESERVED AS TO CERTAIN RECIPROCAL
TRackage USE.

(6) All questions touching the continuance of the recip-

rocal trackage arrangement between Toledo and Chauncey or Armitage, as the case may be, are reserved until completion of terms of sale of stock in the Kanawha & Michigan Railway Company according to the requirements of this decree.

FURTHER COMBINATION ENJOINED.

(7) That the parties defendant in this cause, each and all of them, are perpetually enjoined from carrying into further effect the combination adjudged unlawful in this cause, and from entering into or forming any similar combination, the effect of which will be to restrain commerce among the States, or to prolong the unlawful monopoly of such commerce, as adjudged herein, in violation of the act of Congress approved July 2, 1890.

(8) That jurisdiction of this cause be retained by this court for the purpose of making such other and further orders and decrees as may be necessary to the due execution of this decree and the complete dissolution of the combination and monopoly herein condemned.

Dated March 14, 1914.