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Section 31, Pages 901 - 930

These reports of the Kansas State Mine Inspector mostly concern coal mining, though by 1929 the scope of the reports broadens to include metal mines. The content of individual reports will vary. The reports address mining laws and mining districts; industry production and earnings; fatal and non-fatal accidents; accident investigations and transcripts of oral interviews; labor strikes; mine locations; mining companies and operators; and proceedings of mining conventions. The reports document the political, economic, social, and environmental impacts of more than seventy years of mining in southeastern Kansas.

Creator: Kansas. Inspector of Coal Mines

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The defendant in this case invokes for his protection, against the claimed interference by the legislature with the exercise of his natural rights, the provisions of the state and federal constitutions which guarantee to him life, liberty and the pursuit of happiness as his natural and inalienable right, and which deny to the state the right to deprive him of either without due process of law. The right of life, liberty and property is not a grant from the state. It is the birthright of every freeman, and was clearly protected by the common law as a fundamental principle. Our bill of rights is simply a declaration of a principle which lies in the very foundation of civil liberty. It is not a glittering generality—a word of promise to the ear, to be broken to the hope—but, in the language of Chancellor Kent, "It is the muniment of a freeman, showing his title to protection." Kent's Com. vol. 1, p. 618. And no act of the legislature which trenches upon the right thus guaranteed can be sustained as the proper exercise of legislative power. Street Rly. Co. v. Mo. Pac. Rly. Co., 31 Kas. 666.

The terms used in our bill of rights declaring the natural and inalienable rights of a citizen cannot be frittered away by the legislature in enactments which invade, weaken, abridge or destroy the right of a citizen to their enjoyment. This nation is founded on the declaration that, "to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed," and the people have nowhere surrendered to the legislature the power or authority to destroy or abridge their rights. It cannot take life without due process of law, nor can it authorize the taking of life except as a punishment for crime committed. The term "life" means more than mere animal existence. It extends to all those limbs and faculties by which life is enjoyed. And the provision which guarantees protection to life prohibits mutilation of any of the members of the body. The term "liberty" is not limited in its meaning to mere freedom from physical restraint or imprisonment. It includes the free exercise of all those faculties of mind and body with which man has been endowed by his creator. The right to go where one will, to pursue such calling or vocation as may in his judgment tend to his happiness or prosperity, to dispose of the product of his skill or labor, to secure for himself as the result of his labor the highest wages possible, to acquire and enjoy property, are among the natural rights guaranteed to him by the constitution.

The term "pursuit of happiness," as used, is equivalent to the term "property," and the same construction which is required for the protection of "life" and "liberty," in which they are of any value, must be applied to protection of property. The means of acquiring and possessing property are as much within the protection of the constitution as property is itself within its protection. The Virginia resolution of 1776 clearly expresses the whole scope and purpose of these declarations. "All men," says the declaration, "are by nature equally free and have inherent rights, of which, when they enter into a state of society, they cannot by any compact deprive or divest their posterity, viz., the enjoyment of life and liberty, with the means of possessing and acquiring property and obtaining happiness and safety." 4 Bancroft Hist. U. S. 417.

Labor is property, and the right to dispose of it is a natural right, and it cannot be abridged except in the interest of the public welfare. In Butcher's Union Co. vs. Crescent City Co., 111 U. S., it is said that among the inalienable rights "is the right of men to pursue any lawful vocation in any manner not inconsistent with the equal rights of others which may increase their property or develop their faculties, so as to give them their highest enjoy-

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ment. The common business and callings of life, the ordinary trades and pursuits which are innocent in themselves, and have been followed in all communities from time immemorial, must therefore be, in this country, to all alike free upon the same terms. The right to pursue them without let or hindrance, except that which is applied to persons of the same age, sex, and conditions, is a distinguishing privilege of the citizens of the United States, and an essential element to that freedom which they claim as their birthright." In Live Stock Association vs. Crescent City, 1 Abb. (U. S.) 388, 389, it is said: "There is no more sacred right of citizenship than to pursue unmolested a lawful employment, in a lawful manner. It is nothing more or less than the sacred right of labor."

The business of coal-mining has been followed in all countries from time immemorial. The right to contract with reference thereto has always been considered lawful. There is nothing which distinguishes it from other kinds of mining, and therefore it has not been deemed necessary for the health of those engaged in that vocation that there should be placed upon the right of contract a limitation different from that applied in any other calling or vocation. The fact that the miner labors underground, and is unable to be at the surface when his coal is brought there to see the same weighed, and therefore the opportunity of perpetrating fraud upon him is greater, is put forth as a reason justifying this species of legislation. No one questions the power of the legislature to enact laws for the prevention and punishment of frauds. But in so doing it cannot interfere with the right of contract concerning matters that are neither harmful nor immoral. The right of the miner to dispose of his labor on such terms as will be most advantageous to himself is a sacred right, and he should be left free to fix by contract the amount of wages to be paid, and the mode by which such wages shall be ascertained and computed. There is nothing in the business of mining coal which renders either the employer or employee less capable of contracting with respect of wages than in many other numerous branches in which men are employed under like conditions. In this country many men are engaged in mining for lead, zinc and other materials. The conditions are analogous to the mining of coal. The miner for lead or zinc works beneath the surface and sends the product of his toil to the surface, where it is cared for, separated, cleaned and disposed of by the owner or operator of the mine. The same opportunities for the commission of fraud on the miner exists as in the case of coal-mining. Necessarily in the product sent to the surface there is much waste, and material of comparative little value, for which the miner receives no compensation. It has not been thought necessary to legislate in the interest of these miners, as a class, to protect them from possible fraud and to give them a new basis by which their wages are to be computed. In the character of the business there is no distinction between the miners engaged in coal or the mining for other ores. Both are private undertakings, conducted with private means and for private ends. In what respect does the business of coal-mining differ from the mining of any other ore, minerals or substance which make it necessary for the legislature to single it out from all others of the same class, and, in effect, declare that those engaged in the mining of coal are less capable of taking care of their own business than those engaged in other kinds of mining? This is the effect of this legislation which discriminates between these classes, and which, in an arbitrary manner, declares a contract entered into between the coal-miner and his employer to be void, which, if entered into between the miner of any other substance and his employer, would be valid.

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Does not this restrict the coal-miner in the enjoyment of his rights, privileges, and capacities, in a manner heretofore unknown to the law? Distinctions in these respects must rest upon some reason upon which they can be defended—like the want of capacity in infants and insane persons. If the legislature should undertake to provide that persons following some specified lawful trade or employment should not have capacity to make contracts, or to receive conveyances, or to build such houses as others are allowed to erect, or in any other way to make such use of their property as was permissible to others, it can scarcely be doubted that the act would transcend the due bounds of legislative power, although no express constitutional provision could be pointed out with which it would come in conflict. To forbid an individual or class the right to the acquisition or enjoyment of property in such manner as should be permitted to the community at large, would be to deprive them of liberty in particulars of primary importance to their pursuits of happiness.

See Cooley's Const. Lim. 393; Millet vs. The People, 117 Ill. 294, 57 Amer. 869, and cases cited.

The case of Millet vs. The People called for the interpretation of a statute similar to the one under consideration, and the act was held void, as being in conflict with the constitution of that state, which declares that "No person shall be deprived of life, liberty or property without due process of law." The question was again presented to the court in the case of Ramsay vs. The People, 32 N. E. Rep., and the act was held invalid as being class legislation, and as making a distinction between employer and employees engaged in coal-mining and other classes of business.

In Froer vs. The People, 31 N. E. Rep. 295, an act of the legislature of Illinois making it unlawful for any company, corporation or association engaged in mining or manufacturing business to engage in or be in any wise interested in the keeping of any truck store, or controlling any store, shop or scheme for the furnishing of supplies or necessaries to employees, was considered, and on the principle that it interfered with the liberty of contract and was violative of constitutional rights it was held invalid. In State vs. Goodwill (W. Va.) a statute declaring that all persons engaged in mining coal, ore or other materials, or engaged in other mining or manufacturing, shall not issue for their labor any order or other paper, unless the same purports to be redeemable in legal money of the United States, at its face value, and bearing interest at the legal rate, and made payable to bearer and redeemable in 30 days by maker thereof, is held to be void, as in conflict with the bill of rights of that state, as well as to the fourteenth amendment to the constitution of the United States, the court saying:

"The vocation of an employer, as well as that of employee, is his property. Depriving the owner of property or one of its attributes is depriving him of his property, under the constitution. The right to use, buy and sell property, and contract in respect thereto, including contracts for labor, which is, as we have seen, property, is protected by the constitution. If the legislature, without any public necessity, has the power to restrict or prohibit the right of contract between private persons in respect to one lawful trade or business, then it may prevent the prosecution of all trades and regulate all contracts."

"Questions of power," says Chief Justice Marshall, in Brown vs. Maryland, 12 Wheat. 419, "do not depend on the degree to which it may be exercised. If it may be exercised at all it must be exercised at the will of those in whose hands it is placed." 25 Am. St. Rep. 863.

In the case of The Firecreek C. & C. Co., 33 W. Va. 188, same case, 25 Am.

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St. Rep. 891, an act of the legislature declaring it unlawful for persons engaged in mining or manufacturing to sell any merchandise to their employees at a greater per cent. of profit than they sold like goods to other buyers for cash was held void, as being class legislation and an unjust interference with the rights, privileges and property of the parties, the court saying: "The act is an infringement alike of the rights of employers and employees. More than this, it is an insulting attempt to put labor under legislative tutelage. This is not only degrading to his manhood but subversive of his rights as a citizen of the United States."

In support of the general principles hereinbefore discussed, the following cases are cited: In re Jacobs, 96 N. Y. 98, same case, 50 Am. Rep. 636; People vs. Gilson, 109 N. Y. 389, same case, 4 Am. St. Rep. 465; The Braceville C. Co. vs. The People, 36 N. E. Rep. 63; State vs. Loomis, 22 S. W. Rep. 351 (overruling same case in 20 S. W. Rep.); Lowe vs. Rees Printing Co., 59 N. W. Rep. 362, and cases cited in these cases.

It is contended that, notwithstanding this constitutional guaranty, the legislature has the right to regulate the privileges and immunities of the citizen; that he holds his life, liberty and property subject to the right of the legislature to regulate or deprive of any or all of them in the interest of the public welfare. It will be conceded that the right of making a contract, as affects the subject-matter, is subject to the restraint that such contracts shall not be against public policy or immoral. It will be conceded also that certain persons, by reason of tender years or mental infirmities, are incapable of entering into contracts which shall, under all circumstances, be binding on them. The power of a state over the life, liberty and property of a citizen is well defined; that the state may take life as a punishment for crime is unquestioned; that it may deprive a citizen of liberty as a punishment for criminal conduct is also conceded. But aside from these forfeitures, that the state may deprive the citizen of either by an arbitrary expression of the legislative will is denied. The state may take property for the public use, on due compensation being made, or it may take a portion thereof for the support of the government. It may also regulate the control and use of property, if necessary to be done for the protection of the rights of others. This is founded on the maxim that each one must so use his own as not to injure his neighbor. Within these limitations the state may act, and to this extent it may interfere with the absolute enjoyment of the natural and inalienable rights of a citizen. Statutes regulating the interest on money and statutes of frauds and perjuries are cited as the rightful exercise of legislative power, although in effect they interfere with the freedom of contract. By the ancient common law, the right to take interest for the use of money did not exist, and statutes conferring the right to take such interest ameliorate the rule of the common law by conferring it as a privilege, so that the right grows out of a privilege conferred by the legislature, and may be regulated by such conditions as the legislature may see fit to impose. The statutes of fraud are enacted for the prevention of frauds and perjuries, and are the rightful exercise of legislative authority for the prevention of wrongs. They do not prevent the voluntary performance of contracts entered into between the parties, and as a rule, and in the effect only, prescribe a rule of evidence by which the contract may be proven. The parties to such contract may perform such contract according to its terms without incurring any criminal liability for so doing.

Legislation of the character under consideration has been upheld in sev-

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eral cases to which I shall refer. The reason given for sustaining such legislation is not entirely satisfactory. In Hancock vs. Yaden, 121 Ind. 366, same case, 16 Am. St. Rep. 396, a statute forbidding the execution in advance of contracts whereby the employee waives his right to his payment of wages in money was held valid. It was sustained on the ground of the power of the government to protect the money which it makes the standard of value throughout the country. If the reason advanced is sound, the legislature may, in the interest of the money of the country, declare contracts of any kind or nature whereby anything of value is given to another must be paid for in money. Such a rule would do away with and entirely destroy the system of barter and exchange prevailing through the country. A., the owner of a coal-mine, is also the owner of a horse which B. desires to purchase. B. is a miner, and not being able to pay the money for the horse, is willing to mine and offers to mine a certain number of tons of coal for the horse, which offer A. accepts. B. mines the coal, but demands his pay in money. A. is willing to perform as agreed upon. Under the decision cited he must pay him money, although, by his contract entered into in good faith, he was to pay in something else than money. In what way does the contract suggested impair the value of the currency of the country?

In the case of Leep vs. St. L. I. M. & S. R. R., 25 S. W. Rep. 85, a statute requiring certain employers to pay their employees at date of discharge was held valid, by a divided court, as affecting corporations, but invalid as affecting individuals, because it was class legislation and an arbitrary subversion of the right to contract.

In the case of Peel Splint Coal Co. vs. The State, 15 S. E. Rep. 1012, the supreme court of West Virginia passed upon a screen bill very similar to our own, and, by a divided court, reached the conclusion that the act was valid, as the proper exercise of police power of the state, and that the coal companies were public licensees in whose favor the right of eminent domain is exercised. In justifying the majority opinion, it is said that the disturbances growing out of the relations of the employer and employee, resulting from differences concerning wages, and which disturbances threaten the public peace, will, in the interest of public tranquillity, warrant the legislature in regulating the contracts between the employer and employees. That such disturbances disturb the public peace is unquestioned.

In this country, and within a recent period, great disturbances growing out of differences between the miners and their employers have existed, and such disturbances have required the interposition of the peace officers of the county to prevent acts of violence and disorder. Strained relations between operators of mines and their employees endangered the public peace, and threatened for a time to require the supreme power of the state to preserve order and suppress violations of law and of property rights. The causes leading to these conditions are not matters of such public notoriety that I may consider them. If the public tranquillity is threatened, there can be no doubt of the power of the state to exercise such authority as may preserve the peace, and if conditions exist which are liable to produce such commotion and disturbances, the legislature may, in the exercise of its police powers, enact such laws as may prevent them. The breach between employers and employees, leading to the condition I have suggested, came after the present law went into effect, and is not the result of conditions existing prior thereto. Can the legislature, for the reasons I have suggested, on the claim that such disturbances grow out of contracts of the nature prohibited by

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this act, invade and impair the right of the citizen to enter into the same? The fact is, these disturbances are not confined to employers and employees in the coal business, against which this act is directed. Within the last year disturbances between employers and employees arose in this country which for a time threatened the entire peace of the country; the wheels of commerce were stopped, and the torch lighted the way to anarchy. This grew out of differences between employers and employees in another department of life, and by sympathy brought into the conflict by those associations and unions designed for the benefit and protection of labor.

So great in magnitude was it that the strong arm of the federal government was interposed to restore peace. The same conditions exist, the same dangers threaten all other classes of employment where great numbers of men are engaged in the performance of labor incident to a common employment; but do these authorize the legislature to deny the right of the employee to sell his labor, which is his property, to his best advantage, and on such terms as will best advance his interest? Will such action by the part of the legislature prevent the recurrence of these scenes? I am not persuaded that such legislation is a panacea for these ills. The widest liberty to the citizen in matters of contract, consistent with public welfare, is his surest passport to prosperity, and any curtailment of this right, when not demanded by the public welfare, is an invasion of his natural rights, which it is the purpose of the constitution to protect.

The changing conditions in our social life, the opportunities afforded for the acquisition of property in this country, demand, not only in the interest of the employer, but the employee as well, that the right shall not be trammeled by any other consideration than the public welfare.

The act may be sustained, it is claimed, on the following grounds: Coal-mining at the common law is effected with a public interest or use. Munn vs. Illinois, 94 U. S. 133; Budd vs. New York, 12 Sup. Ct. Rep. 468; and Bass vs. Dakota, Sup. Ct., opinion June, 1894, 965, are relied on.

Munn vs. Illinois sustained an act of the legislature dividing public warehouses into three classes and requiring a license and the giving of a bond. It also prescribed a maximum charge for warehouses belonging to class A. The constitution of that state declared all warehouses and elevators where grain is stored for compensation to be public warehouses. Munn was indicted for not taking out a license and giving bond, and for charging higher rates than allowed by the act. The case reached the supreme court of the United States. It was there held that the private property of Munn & Scott was devoted to a public use, and in pursuing their business they occupied a quasi-public office, like innkeeping and others, and were therefore subject to public regulation. The case originated in Illinois. 69 Ill. 80.

And in the case of Millet vs. The People, 17 Ill. 294, same case, 57 Am. Rep. 69, it was relied upon as decisive of that case. The court distinguishes the Munn case, saying:

"It cannot be claimed that mining for coal was, by the common law, affected with a public use, and therefore specially regulated by law, like the business of innkeepers, common carriers, millers, etc., and in our opinion it is not like the business of public warehousing, within the principle controlling such classes of business. The public are not compelled to resort to mine owners any more than they are compelled to resort to owners of wood, or turf, or even to the owners of grain, domestic animals, or to those owning any of the other ordinary necessities or conveniences of life which form a part of the commerce of the country. The owner of a coal-mine is under no obliga-

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tion to obtain a license from any public authority, and therefore when he chooses to mine his coal he exercises no franchise. We are aware of no case wherein it has been held that the owner or operator of a coal-mine stands of a different footing, as respects the control and sale of his property, than the owner or operator of any other kind of property in general demand by the public."

To constitute a public use, there must exist a right in the state to create and maintain it, one which the public has a right to demand and share in, and property can only be considered as devoted to a public use when its use is demanded by the public. There is a distinction between a public use and a public interest in the use of property. The public has an interest in the development, growth and prosperity of individual enterprises, but it does not follow therefrom that such enterprise is affected by such a public use as gives the right of public regulation. Coal-mining is a private undertaking. So is the raising of wheat. In each the public may feel an interest, as the quantity of production may tend to cheapen the price thereof. Coal is necessary to produce warmth. Wheat is necessary to sustain life. Both enter into the common use of the people, but one is no more affected with a public use than the other, and the right to regulate the production of one is no different than to regulate the production of the other. In what way is coal-mining affected with a public use, different from the mining of any other ore or mineral? And in what way does the miner of coal devote his property to a public use different from that of the miner of any other ore or mineral? I cannot discover anything in the connection which distinguishes the one from the other, or that gives the public a greater right of use and control in the case of the mining of coal than it has in the mining of any other mineral.

It is urged that this legislation is the proper exercise of the police power of the state. The limits of this power have never been fully defined. It is much easier to perceive and realize its existence than to mark its boundary or prescribe its limitations. The sphere of its operation is contantly widening; new conditions are constantly arising which call for the exercise of this power. In the absence of arbitrary definition, it is difficult to determine just where the power begins or where it ends. Cooley, in his Constitutional Limitations, in the chapter treating of the police power of the state, says:

"The police of a state, in a comprehensive sense, embraces the system of internal regulation, by which it is sought not only to preserve the public order and to prevent offenses against the state, but also to establish, for the intercourse of citizen with citizen, those rules of good manners and good neighborhood which are calculated to prevent a conflict of right, and to insure to each the uninterrupted enjoyment of his own so far as is reasonably consistent with a like enjoyment of rights by others."

Its exercise, in so far as it affects the use and enjoyment of property, is bounded by the maxim, "to so use your own that you injure not another," and to whatever enactment, affecting the conduct of business, it cannot fairly be applied, the power itself will not extend. All-pervading as this power seems to be, it has its limitations in the constitution itself, and where the constitution guarantees a right, the legislature cannot, under the police power, invade, limit, abridge or destroy its enjoyment. Regulations by the police power must have reference to either the public health, public morals, or the public welfare, and, as applied to property and business, must be to such property as is affected with a public use or interest; and if the property is not so affected its use cannot be regulated, except it fall within one of these enumerated cases. In determining whether business or property is affected with a

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public use or interest, and therefore subject to regulation under the police power of the state, the following tests may be applied:

First, Is the business one that may not be followed as of right, but is permitted by the state as a privilege or franchise?

Second, Does the state on public grounds render to the business special assistance by taxation or otherwise?

Third, Is there for the accommodation of the business some special use allowed to be made a public property or of a public easement?

Fourth, Is there an exclusive privilege granted for some specified return to be made to the public?

Fifth, Is the business of such a character as gives to the persons engaged therein a virtual monopoly of the same, in the exercise of which they may impose, demand and take tolls or charges for services performed?

Tested by these rules, is there anything in the conduct of the business of coal-mining which authorizes the state to interfere with its conduct, or regulate the same by interdicting contracts, heretofore lawful, between the operator and his employees? That the operator may be required to do certain things, as to provide proper air-shafts, so that the mines may be properly ventilated and pure air furnished the miner; that he may be required to keep his mine in such condition as the safety of the miner may demand, and to do such acts as will tend to the health and safety of the miner, goes without saying. These fall within the legitimate scope of the police power of the state, and their exercise will not be questioned. The exercise of this power is so clearly necessary to the safety, comfort and well-being of the miner, that no one will think of questioning it. But when neither the health, comfort nor welfare of the miner is advanced by legislation which, under the guise of police regulation, attempts to regulate the conduct of his personal and private affairs, and which cramps him in the exercise of his natural rights, by depriving him of the right to contract his labor as others may do in similar business, can such legislation be sustained as the proper and legitimate exercise of the police power of the state? As has been said, necessity furnishes the justification of police regulations which would otherwise be prohibited by the constitution. Such legislation, to be sustained, must be clearly necessary to the safety, comfort and well-being of society, or so imperatively required by the public necessity as to lead to the rational conclusion that the framers of the constitution did not intend to prohibit its exercise in the particular case.

To my mind there is nothing growing out of the business of coal-mining that makes it necessary for the state to interfere with the parties' natural right of contract, and such legislation cannot be sustained as a police regulation on any of the grounds which sanction the exercise of that power. This legislation is an unreasonable and arbitrary transaction upon the right of contract, and it is not within the power of the legislature to make those contracts criminal which are necessarily innocent in purpose.

This legislation is sought to be sustained as valid as against corporations under that provision of the constitution by which the state reserves the right to alter, amend or repeal corporate charters. The case of Shaffer vs. Union M. Co., 55 Md. 74, is relied on as supporting this contention. The act itself does not in terms deal with corporations; it does not in terms attempt to alter, amend or repeal any corporate charter; and before the court shall apply the rule contended for, some such purpose should appear in the act, and the legislative will should not be left for inference and doubtful interpretation. It applies to all persons engaged in the business of coal-mining. It attempts

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to regulate the right of contracting with reference to the business. It denies to the miner and the mine owner, whether such owner be a private person, partnership or corporation, the right to enter into a contract concerning a business purely private, and attempts to punish by a fine and imprisonment one of the parties to such contract. If section 4 of the act is to receive the interpretation contended for by the state, we have the strange picture presented of a contract heretofore lawful, in no wise immoral, being made criminal and being punishable as a crime. I do not recall legislation of a similar character which visits with such penalties acts that have heretofore been deemed innocent and which result from the common agreement of parties *sui juris*, concerning a matter affecting themselves, and in no wise affecting the public. It is said that this legislation is necessary to protect labor against the aggression of capital; that it is the result of the demand of the people engaged in mining, repeatedly made to the legislature of this state, and, after the expenditure of many thousands of dollars, has been put on the statute-book in the form of a law, and therefore ought to be upheld. With the policy prompting this enactment I have nothing to do. Concerning it there are differences of opinion, dividing the people into different political parties. It may well be doubted whether such demands for legislative protection are really productive of the good desired. Such legislation has a tendency to array class against class, instead of harmonizing the differences between them, and if upheld will lead to aggression by the class in power upon the one out of power. To protect all, the safer course for the courts is to maintain in their vigor the individual rights guaranteed the citizen, which are found in the healthful restrictions of the constitution, and which are safeguards against legislative encroachment, whether to-day it be exerted in favor of capital as against labor, or to-morrow in favor of labor as against capital. The constitution is the safeguard of the individual against the encroachments of the legislature.

The act under consideration is, in my judgment, violative of and repugnant to the constitution of this state and the federal constitution, and is therefore void.

PENITENTIARY LABOR vs. FREE LABOR, PARTICULARLY WITH REFERENCE TO COAL-MINING.

Action of the Leavenworth and Osage county miners:

Leavenworth, Kas., January 11, 1896.

Hon. Bennett Brown, State Mine Inspector:

Sir—Being that your office was created for the purpose of looking after the safety and welfare of the miners, we wish to call your attention to the effect that the output of coal from the state penitentiary interferes with free labor, to wit:

1. The coal above mentioned comes in competition with our products and regulates the market prices of coal dug by free labor.

2. The state penitentiary mine employs 400 convicts the whole year round, consequently throwing out of employment about the same number of free laborers, leaving their families in destitute circumstances.

3. For ever so long we have striven hard to better our conditions, to raise our wages, or at least prevent further reductions, and in fact tried to do most everything to secure for ourselves and families a decent living—something that, even in this great, free, rich country, is hard to obtain for most miners.

4. Every political party in this locality has the above in the platform—anything to get the miners' votes; we would therefore beg some party to prove itself and carry out its promises.

We again wish to call your attention to the above, and ask your hearty support in our cause in stopping the penitentiary mine from interfering with outside and free labor. Very respectfully yours, GEORGE B. HEWITT,
ABE LAID,
R. S. FRAMMIT,
DAN. MORIARTY,
Committee.

The above was adopted by Local Union No. 12, United Mine Workers of America.
WM. J. JOHNSON, President.
T. E. GAJEWSKI, Secretary.

Scranton, Kas., January 13, 1896.

Hon. Bennett Brown, State Mine Inspector:

Sir—I have been instructed to forward the following resolutions to you passed by Local Assembly No. 1045, K. of L., at its last regular meeting:

Resolved, That Local Assembly No. 1045, K. of L., comprised principally of coal-miners, does hereby enter its protest againt the production of penitentiary coal being placed in the market in open competition with the product of free and patriotic miners.

The general depression and close competition of the last few years have made it almost impossible for the coal-miner to honestly exist. We believe this is somewhat due to the unnatural condition of placing the product of the criminal to the debasement and degradation of the free and honest toiler.

We therefore solicit the aid and assistance of the Inspector of Coal-Mines in the state of Kansas to intercede for us, and bring all the pressure he can to bear upon the suppression of this great and growing evil. (Signed)

JOHN F. YOUNG.
ROBERT CURLEY.
WILLIAM NIXON.
[Seal.] WILLIAM NIXON, Master Workman.
ROBERT CURLEY, Recording Secretary.

It was also suggested for you to try the trades assembly to have a conference for the abolition of all criminal competition; second, to try to get a miners' state convention to be held in Topeka during the next legislative session, for the consideration of this question and others. Yours truly,

ROBERT CURLEY.

The following was inclosed with the resolutions above:

Convict Labor on Roads.—It has proved successful wherever a fair trial has been given. There is no doubt whatever of the practical value of employing convict labor on the public highways; whenever it has been tried it has proved highly successful, says R. P. Crandall, of the United States navy.

In the Hawaiian islands, for instance, the road work is done entirely by the convicts, and the result is that the little republic away off in the Pacific ocean can boast of far better roads than the United States.

During over a year's stay in the islands I had an excellent opportunity to watch the working of this system, and in several hundred miles of wheeling never came across an unridable road. The Hawaiian convicts themselves told me they preferred road work to any other form of punishment, as it gave them a chance to be out in the free air and occasionally see their friends.

From the Honolulu prison gangs are constantly being sent out to the other islands to open up new roads or keep the old ones in repair. The majority of the prisoners taken in the recent revolution are employed in this way. No trouble has ever been caused by the prisoners during the many years the system has been in operation.

In various South American countries also the convict system has proved highly successful. Why should not the system be tried in the United States, where good roads are so badly needed. Yes, and why not try the experiment in the state of Kansas.

The good-roads movement is a matter of discussion in almost every state in the union. All intelligent men are discussing the necessity of good roads and how to get them, and several state conventions have been held to forward the matter.

The League of American Wheelmen has been urging the making of good roads, both in and out of season, at all its meetings.

Then why not all those interested in the good-roads movement unite their energies with the miners and other tradesmen whose labor is placed in competition with the product of the penitentiary to avert this evil of pen.-made goods and put the convicts to work on the roads?

In 1883 the legislature made provisions to have a road made by the convicts from Lansing to Leavenworth, four miles, and it has been a pleasure and profit to the state and vicinity of Leavenworth ever since, and is a standing example of what good roads are worth to any community.

Agitation on the above subject is neither of a local character nor of recent date. Scarcely a civilized government on the face of the

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earth but has had this same problem brought before it in some manner, at some time, for solution. In Kansas, within the last few years, much has been thought, written and spoken concerning the degrading and injurious effects, moral and physical, of this baneful practice; nor is Kansas the only state in the union which in recent years has been troubled with and found it necessary in the interest of humanity to change its laws on this question, as the following quotation from the Kansas City "World" will show:

"Between 3,000 and 4,000 honest laboring men will be given work in New York state next year that is now being done by convicts. This is because of the workings of the new constitution, which, under section 29 of article III, provides: 'And on and after the 1st day of January, in the year 1897, no person in any such prison, penitentiary, jail or reformatory shall be required or allowed to work while under sentence thereto at any trade, industry or occupation wherein or whereby his work, or the product or profit of his work, shall be farmed out, contracted, given or sold to any person, firm, association or corporation.' "

This action on the part of the great state of New York, adopted, not through enthusiastic feeling, conceived in the heat of partizan or catering debate, but after calm and mature deliberation by perhaps the greatest minds in the state, should, and doubtless will, have great weight with all other legislative bodies which have the same difficulty to contend with. That the measure is just and equitable no man will have the temerity to deny, although perhaps some might not believe it politic. All men realize the embarrassing position in which a legislator is placed when he is requested to lend his voice and vote in cutting off what is believed to be a known source of revenue to the state at large without having any very definite conception of how the loss is going to be covered, unless by direct appeal to the pockets of the taxpayers, who are already groaning under what they consider the burden of excessive taxation, and especially is this position unenviable when the overwhelming majority of those who must bear the extra burden are not directly detrimentally affected by the continuance of the evil it is considered by others desirable and absolutely necessary to remove.

Nevertheless, the great agricultural heart of the state of Kansas can be counted upon as beating in sympathy with the honest workingman, and will uphold and sustain any action on the part of its representatives intended to mete out justice, equal rights and privileges to all. That the mechanic, artisan, miner or laborer, the product of whose labor has to be sold in the open market in compe-

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titon with the products of subsidized convict labor is not receiving justice, is patent to all men who are not blinded by prejudice or self-interest.

A committee of representative men appointed by the legislature in 1893 to investigate and report on the subject relative to coal being mined and sold in the open market by the state unanimously condemned the practice, and in their report to that body urged the legislature to pass a law confining the product of the state mine to the requirements of state institutions, or, if this was found not to be advisable, they further recommended that the superintendent of the mine be instructed not to sell a pound of coal to outside parties at less than the cost of production. This recommendation was surely only fair and just to the coal-miners employed outside the walls of the penitentiary who had their children, their wives and themselves to maintain out of the proceeds of their labor, the product of which was being sold in competition with that of the state-fed, -clothed, and -lodged convicts. It cannot be fair or just to the honest, self-sustaining, laboring man that the state, of which he is a part, appropriates money, a portion of which he has to pay, to place a premium on the product of the convict, which is sold in competition with that produced in the sweat of his own face.

That the product of this mine can be and has been used to reduce the wages paid to outside miners, has been demonstrated beyond all question. (See details of Leavenworth county strike.) Notwithstanding the fact that the parties to whom the contract had virtually been awarded did not finally handle the coal, the result was none the less mischievous, because the party who finally did get the coal got it from the state at 10 cents per ton less than his original offer when bidding against the coal company, enabling him to sell the coal at much less, and thus reducing the market value to all. The market price of coal having gone down, the miners had either to submit to a reduction or see the mines stand idle; the consequence is that the price for mining coal in Leavenworth, Osage and Shawnee counties is lower to-day than it ever has been in the history of the trade. Again, it is not just or fair to a coal operator to deprive him of the right to contract and dispose of the product of the penitentiary as long as it is sold under contract by the state. It requires no argument to enable every man to understand that unless he has this right his business prosperity is virtually at the mercy of the contractor of the penitentiary coal. It is absolutely necessary to self-preservation from a business standpoint that

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he should have equal rights and privileges with any and all men to bid for and secure this product to enable him to keep the price of the coal up to the point it is possible or profitable to operate his own mine; otherwise both miners and operators are subject to ruin from this unjust competition—competition fostered and encouraged by the state to which they owe fealty and to which they look for protection.

But the question is asked, "What are we to do with our convicts? We cannot allow them to live in idleness; that, besides being expensive, would be the essence of cruelty to those poor unfortunates, and would be the means of driving many of them insane." That is a question for wiser heads than mine to answer; it is for the wise and learned men of the state—the statesman, the law-giver, the men of brains and ideas; the representative men of the people; the men who are sworn to support the constitution, which guarantees equal rights and privileges to all men—to answer this question; sufficient for me to point out clearly the injustice under which my fellow workingmen and those engaged in the business of producing coal are suffering now through the operation of this mine, and appeal for, if I may not demand, relief for them.

It would seem, however, with the present facilities aiding the productive capacity of man, and the avenues of distribution open through all the other state institutions, that it should be possible to make a body of 1,000 able-bodied men self-sustaining without resorting to the demoralizing practice of offering the product of their labor for sale in competition with that of free men.

FATAL AND NON-FATAL ACCIDENTS.

FATAL ACCIDENTS.

No. 1. Hamilton & Braidwood's mine No. 2, January 5, Lewis Salvien, caught in cage.

No. 2. Cherokee & Pittsburg Coal-Mining Company's mine No. 4, February 1, John Fogarty, fall of rock.

No. 3. Zucea Coal Company's mine No. 1, February 11, Charles Seydoux, fall of rock.

No. 4. Leavenworth Coal Company's mine No. 1, February 25, William Becker, electrocuted.

No. 5. J. H. Durkee Coal Company's mine No. 4, April 3, Laris Hendrickson, caught in cage.

No. 6. Hamilton & Grant Coal Company's mine No. 1, June 21, B. Adams, fall of coal.

No. 7. Southwestern Coal Company's mine No. 1, October 28, Thos. Lakey, fall of rock.

No. 8. Kansas & Texas Coal Company's mine No. 37, November 5, Bass Dence (or Dinson), shot-firing.

No. 9. Leavenworth Coal Company's mine No. 1, November 30, Samuel Evans, caught in cage.

No. 10. Peter Graham shaft No. 1, December 16, Joe Veitrich, drowned.

No. 1. Fatal accident to Lewis Salvien, at Hamilton & Braidwood's mine No. 2, on Saturday, January 5, 1895.

Between 5 and 5:30 p. m., Saturday, January 5, Lewis Salvien and Victor Cavelia, two Italian miners employed at said mine, came to the bottom, and as usual proceeded to give the regular signal for hoisting men. The testimony of Victor Cavelia, the only man who was on the cage at the time the deceased, Lewis Salvien, met his death, is as follows: He stated that they rang three bells, and immediately after the engineer, J. M. Hendricks, signaled back, viz., one ring, indicating that he was ready. Victor Cavelia and the deceased, Lewis Salvien, stepped onto the west cage from the north side of bottom; then the deceased, Lewis Salvien, pulled the bell wire while standing on the cage, giving the final signal for hoisting to the top. In doing so his lamp fell off his bucket, where he sometimes used to carry it, and rolled into the east cage seat. As the engineer did not hoist the cage for a few seconds after the last signal was given the deceased, Lewis Salvien, thought he would have time to secure his lamp, and stepped off the cage. As he turned around again and put his foot upon the cage, at the same time catch-

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ing the iron bar that runs from the top to the bottom of the cage, the engineer hoisted the cage with the deceased half on. In doing so, as soon as the cage came on level with where the shaft cribbing terminates—generally called the door heads in mining phrase—the deceased was caught, killing him instantly. The engineer immediately detected something wrong and stopped the cage, lowering said cage at the same time a little. As soon as he had done so the lifeless form of the deceased fell to the bottom, a distance of about nine feet. A pusher who happened to come to the bottom with a loaded car about the time the accident occurred rang two bells, which was a signal to lower, and the engineer lowered the same cage, which rested partly on the deceased after falling with his legs into the cage seat. I was notified by Mr. Hamilton, and went the following morning, Sunday, the 6th, and brought Victor Cavelia, the man who was on the cage at the time of the accident. We went to the shaft, and went down and had the witness, Victor Cavelia, explain how the accident occurred. Mr. Braidwood and Mr. Hamilton accompanied us. No man is supposed to attempt to step on or off after the last signal for hoisting is given. But whether it was ignorantly or unthinkingly, the poor fellow met an untimely death. The deceased was a married man whose wife and two children are in Italy. He had not been in the United States two years. He was about 30 years of age, and a Catholic in religious belief. (Signed) A. C. Gallagher, Inspector.

No. 2. Fatal accident to John Fogarty at the Cherokee & Pittsburg Coal and Mining Company's mine No. 4, about 2 o'clock p. m., on Friday, February 1, 1895, in room No. 18 on eleventh west, on south side of shaft.

On the date above mentioned, John Fogarty, a miner, was instantly killed by a fallen piece of roof rock or slate, which measured about seven feet in length, and about four feet in width, and about six inches in thickness on one side, and tapered to about two inches in thickness on the other side. When found by Hugh Bone and Con Kelliher he was lying face downwards, with the rock or slate lying flat upon him. The deceased was then dead. I was in Topeka on duties pertaining to my office when the accident occurred. On my return to the southern district on February 7, I went to the mine and examined the place where the deceased was killed, and the roof in said room was good, and I consider safe. I carefully examined the surroundings and found posts in said room. In my opinion it was one of those unavoidable accidents which the poor miners are subject to. The deceased, Fogarty, was considered a very careful

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miner, having years of experience. He was a single man, of good reputation, respected by all who knew him; was 28 years of age, an Irish American, and a Catholic in religious belief. An inquest was held, but I did not receive a copy of the jurors' verdict from the coroner. (Signed) A. C. Gallagher, Inspector.

No. 3. Fatal accident to Charles Seydeoux, a miner in the Zucea Coal Company's mine, located two miles south of Burlingame, Osage county, Kansas, on February 11, 1895.

On February 11, 1895, between the hours of 3 and 4 o'clock in the afternoon of the above date, the deceased, Charles Seydeoux, was working in the fourth room in first south, on the east side of mine. Being sick and unable to work for a number of days, his room, which was worked on the long-wall system, got behind the other rooms adjacent to his place, which caused the roof to break and settle down at the face of his room. He was notified by the mine-boss, Peter Carr, to set some props before any coal should be mined, as it was considered dangerous. The deceased promised to properly secure said place, but as soon as the mine-boss left the place he seemingly forgot the instructions given him, in his anxious desire to get as much coal out as possible before commencing to properly secure his place. But the poor unfortunate, like a good many of our craft, waited too long. Consequently a piece of roof rock fell upon him; it was about 10 inches in thickness, 18 inches in width, and about 7 feet in length, the estimated weight of which was about 800 pounds, killing him instantly. The deceased, Charles Seydeoux, was a single man, about 26 years old, and a native of France. The investigation goes to show that said accident was wholly due to the negligence of the deceased, as there were plenty of props in said room. Deputy Inspector Jno. Billings, of Osage county, examined the place wherein deceased met his death on February 12, 1895, and investigated the matter thoroughly, and was unable to learn wherein any blame rested upon the company or its officials.

No. 4. Fatal accident to William Becker, at the Leavenworth Coal-Mining Company's mine No. 1, on February 25, 1895.

The following letter from the superintendent and a clipping from the Leavenworth "Times" fully explain this accident:

A. C. Gallagher, Inspector of Mines, Pittsburg, Kas.:

Dear Sir—Replying to yours of 5th inst.: On February 25, Wm. Becker, employed by us working with mining-machine, died in the mine, supposed to be from a shock of electricity. As we were denied a post-mortem examination, we are in doubt as to electricity being the cause of death, as the current had to pass through two other men before reaching him, neither one of

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them being injured in the least by the shock. The voltage we carry in our operations is declared by all electricians to be absolutely safe, and will not cause death. The actual voltage at the point of contact where the accident occurred was 279 volts, while 500 volts are considered safe.

I inclose herewith the verdict* of the coroner's jury. An apology is due for omitting to inform your office of the accident at the time. In the excitement attending the thorough investigation of the cause it entirely escaped my mind. Yours truly, LEAVENWORTH COAL COMPANY,

By John E. Carr, treasurer and superintendent.

I was not notified and did not know anything about the accident until I read of same in newspapers. A. C. Gallagher, Inspector.

No. 5. Fatal accident at the Schwab mine, or Durkee Coal Company's mine No. 4, Crawford county, Kansas, April 3, 1895. Laris Hendrickson, employed as mine-boss and cager, was instantly killed on the above date, about 5:15 p. m.

The particulars are as follows: Op Holmen and Alfred Lerson, shot-firers, state that they were at the bottom of shaft when the deceased, Hendrickson, came to the bottom with a mule; he got the mule on the west cage, and was on cage himself also. Four bells were rung, which was the signal to let the engineer know that a mule was on cage. The engineer gave the back signal, viz., one bell, to let them know that he was ready to hoist. The final signal, viz., one bell, was given from the bottom to hoist, and as the cage started from the bottom, as both Op Holmen and Alfred Lerson swore as witnesses at the coroner's inquest, the deceased, Laris Hendrickson, attempted to step off the cage, which resulted in his death, as he got caught between the cross-timbers near the bottom, which are generally called in the mining terms "collars," the cage killing him almost instantly. In our opinion it was the fault of an inexperienced individual, in the person of Frank Watson, a mule-driver, who was acting as engineer. Our opinion is that when the cage started from the bottom it was jerked. The testimony showed that it was necessary to do so on several occasions, as the hoisting machinery at said mine is a single engine which may "center" occasionally, especially when handled by an inexperienced engineer.

I was notified, and was present at the coroner's inquest. However, the jurors exonerated all parties, and rendered a verdict as is customary in all such cases (accidental), by which deceased is to blame. Deceased was 27 years old; a native of Sweden; been in United States only seven years. (Signed) A. C. Gallagher, Inspector.

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*The jury returned a verdict that Becker came to his death by an electric shock received from an electric mining-machine at the Leavenworth Coal Company' shaft. They held no one responsible, and made no recommendations.

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No. 6. Fatal accident to Benjamin Adams, at Hamilton & Grant's shaft mine, at Weir City, Cherokee county, on June 21, 1895.

Between 3 and 4 o'clock on the afternoon of the above date the deceased, B. Adams, was killed by a fall of top coal, in his room on the first east, on south side of mine. I was notified the following day by Messrs. Hamilton & Grant. I went to the mine and examined the place where the deceased met his death. He was working under some top coal which was not propped; evidently he considered it safe, as he was an experienced miner. However, about 1,200 or 1,500 pounds of coal fell upon him, killing him instantly. In my opinion there is no one to blame. There were props in his place close at hand, and he must have negligently overlooked the necessity of setting one post which would have saved his life. Deceased was a married man, aged 54 years, an Englishman by birth. (Signed) A. C. Gallagher, Inspector.

No. 7. Fatal accident to Thos. Lakey, at the Southwestern Coal Company's mine No. 3, at Cornell, Crawford county, on October 28, 1895.

This man was buried before I heard of the accident. He was killed on the 28th day of November, and I received notice on the 1st of December. I visited the mine and examined the place in which Mr. Lakey was working when the accident occurred. The room had just passed through a clay vein or "horseback." There were two other slips in the roof, one on the right side of his place, angling toward the left, which he could see and must have been cognizant of; another on the left side, running so as to intersect with the first, was hidden by the coal left standing by a shot which he was in the act of mining and taking out. The moment the coal was taken down from under the last-named slip or fault in the roof the rock in the form of a right-angle triangle fell, striking Mr. Lakey on the neck and shoulders, breaking his spine. This was an accident familiar to all miners, and one which it seems impossible wholly to guard against. Had Mr. Lakey known of the presence of the last-mentioned slip he would have known what must be the inevitable result of mining off the coal before propping the roof; but the danger was hidden from his sight; consequently he lost his life. There is no blame attached to anyone. The following is the testimony of his fellow workmen who took the body from under the rock and examined the place at the time:

We, the undersigned, have carefully examined the locality of said accident, and find that the injury consisted of neck broken, which was caused by a fall of slate 6 feet 4 inches long, 2½ feet wide, and 11 inches thick. To the best

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of our judgment the injury was caused by accident, and the responsibility for said accident rests upon Thos. Lakey. October 28, 1895. (Signed) Patrick Couley, John Wilkenson, Dan. Reosdan, R. B. Brown, John Lakey.

No. 8. Fatal accident to Bass Dence (or Dinson) at the Kansas & Texas Coal Company's shaft No. 37, near Pittsburg, Crawford county, on November 5, 1895.

State of Kansas, Crawford county, ss.—An inquest holden at shaft No. 37, Kansas & Texas Coal Company, in Crawford county, on the 5th day of November, A. D. 1895, before me, G. E. Cole, coroner for said county, on the body of Bass Dence, a person there lying dead, by the jurors whose names are hereto subscribed. The said jurors upon their oaths do say: He came to his death by a shot fired from his own hand, accidentally, at mine No. 37, Kansas & Texas Coal Company, six south, back entry, east side, on November 4, 1895. His death was not felonious. In testimony whereof, The said jurors have hereunto set their hands, the day and year aforesaid. (Signed) Jackson Gary, Charles Mahone, Mark Reed, Isaac Hunter, Henry Miller, W. H. Salisbury.

Walter Wells, being first duly sworn, on his oath testifies as follows:

Ques. Where do you live?
Ans. In house 64, at 37 mine.
Q. What was deceased's name?
A. Bass Dinson.
Q. Did you know Dinson during his lifetime?
A. Yes, since April, 1895.
Q. Were you both shot-firers in K. & T. mine 37?
A. Yes, sir.
Q. Did you work together?
A. Yes, on one entry—not all the time.

As near as I can come at it, I asked him last night about what time—I met him as I came out of the first north—and he said about half past seven. He then went on to the straight east, and told me to mark the entry frog of the track with a white rock. He told me if I came out first to move the rock, and if he came out first he would move it. This is the last time I spoke to him. I was firing last of my shots on the second round, and he told me if I got through to go on home, and said when he got through he would go home. This was last night, on November 4, 1895, in Crawford county, state of Kansas. We were not together at time Dinson was killed. We had received instructions when we went shot-firing to go together. After three days he told me he would rather that we separate and go by ourselves, so he could get done quicker. I had never notified the pit-boss that we were not together. I do not know how Dinson came by his death. Dinson lived at No. 22. I went to work this morning, November 5, 1895. Did not know Dinson was in the mine and was not there when they found him. (Signed) Walter Wells. Witness, A. A. Jones.

Kasper Laneger, being first duly sworn, on his oath, testifies as follows:

I live at Litchfield. I work at K. & T. mine 37. I did not know Dinson during his lifetime, but might have seen him. The first time I saw him that I know of was this morning, about seven o'clock, in my own place where I work in the mine. This is on the sixth south, back entry. When my buddy went into the room this morning he went in on the right-hand side and never saw Dinson. Afterward I went in with an empty car, and saw him lying in the

room on the left-hand side. I then called my buddy and said there was a man there dead: that it was the shot-firer. Dinson's back was straightened out, and his foot, head and arms were covered up a little. Then I sent for the pit-boss. He (Dinson) was covered with fine coal that I expect the shot threw on him. Dinson was lying about 16½ feet from where shot was put in. The shot was in the break-through—there was no shot in the entry. He (Dinson) was lying on his face. His feet were nearer than his head to the place where shots had been fired. The shot had been fired. I do not know of any trouble with the shot. It threw out coal and was not a blown-out shot. I did not examine Dinson. I didn't make up the powder for Dinson's shots. There were no cars in the entry. My buddy, John Wingebach, is not here. (Signed) Kasper Laneger. Witness, A. A. Jones.

Green Gibbons, being first duly sworn, on his oath testifies as follows:

I went down in the mine this morning with Mr. Willege. I do not know whether there had been any one there before we got there or not. When I got there I looked for the man who was killed, and saw him; then looked for the shot. The shot was on east side, on right-hand side, and he was lying on west side, with his feet pointing towards the shot. He was partly covered with coal; his feet and part of his hips were out, but his head and shoulders were covered with coal. I never knew Dinson, but knew he was a shot-firer and that he had worked in this part of the mine. He had shot for me about two weeks. I know the gentlemen who drive the entry. I saw the shot. There was small coal on Dinson—no large lumps. There were no loaded cars in entry. I do not know whether there had been a driver in the entry this morning or not. Dinson was lying about 16 feet from the shot. (Signed) Green Gibbons. Witness, A. A. Jones.

Vincent Glades, being first duly sworn, on his oath testifies as follows:

I am pit-boss at K. & T. No. 37. I knew Dinson while he worked for me—I think about one year. He was coal-miner and shot-firer. I think he has been shot-firing since last spring, which he was doing at the time he was killed. The last time I saw him alive was yesterday morning. I next saw his body at sixth south, back entry, on east, about half past 7 o'clock this morning. When I got report of his death this morning I went in room to see where he got killed. When I got there part of his leg and part of his back were sticking out. I then went back to see where shot was standing, and the shot was on right-hand rib, on back sixth, south entry. The shot was put in to start a break-through, and the coal was all thrown off except a little stump, and thrown all over the place. I did not examine him and do not know whether there were any bones broken. He was lying on his face, with his feet towards the shot. It looked as though he was going out after having fired the shot. I had given the shot-firers instructions as to how they were to work. I instructed them to go together in pairs. I never knew they were going separately, but supposed they were going together. I took Mr. Dinson's time. I knew he was one of the shot-firers when I found him dead this morning. The shot-firers come out of the mine by the manway and are not hoisted out of the mine by the engineer. I receive no report as to any misfortune to a shot-firer. I have no watchman, and put two shot-firers together, so that in case anything happened to one of them the other could report. Dinson gets one-half shift. When one shot-firer is not at mine to go down his partner makes report of his absence. (Signed) Vincent Glades.

The testimony of Walter Wells in this case marks a custom all

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too prevalent in Cherokee and Crawford counties. It is not possible to do anything to protect men, either by law or otherwise, who deliberately set at naught the instructions of their foreman, and run the extra risk to their lives in order to get through with their work a few hours earlier than they otherwise would by complying with the orders given them by their employer. Personally I do not think that any man endowed with the intellectual capacity manifested by either of these two men is capable of being employed in a coal-mine at all. What a brilliant idea it was between two men to agree to make a mark at a certain point, indicating that one of them was through with his work; then walk off home, satisfied that he had done his whole duty. Why, it may be asked, make a mark at all under such conditions? This is also the manner in which men bring upon themselves the evil of which they complain the loudest, namely, too little pay for the amount of work performed. A pit-boss or mine superintendent cannot long wink at the fact that a man he is paying the customary remuneration for eight hours' work is getting through with it in four hours. The consequence is inevitable: instead of employing two men he reduces the force to one.

The Inspector earnestly hopes the men will discontinue this practice, and keep together in pairs while performing this dangerous work.

No. 9. Fatal accident to Samuel Evans, at the Leavenworth Coal Company's mine No. 1, on November 30, 1895.

Copy of proceedings of coroner's inquest on the body of Samuel Evans, November 30 and December 3, 1895.

State of Kansas, Leavenworth county, ss. Be it remembered, that on the 30th day of November, A. D. 1895, notice was received by me, J. F. McGill, coroner of Leavenworth county, in the state of Kansas, of a dead body found and being in said state, of a person supposed to have died from unlawful means.

I thereupon issued subpenas to Constable Julius W. Newbauer for jurors and witnesses to appear before me at 2 p. m. December 3, 1895, at the office of Justice Wm. H. Bond, to inquire into the cause of death of one Samuel Evans, found dead in the Leavenworth Coal Company's shaft, and the evidence there and then produced was as follows:

Wm. R. Van Tuyl, M. D., being duly sworn, presented a statement in writing of the result of post-mortem examination of the body of Samuel Evans shortly after his removal from the bottom of shaft.

Statement.

I was called Saturday eve, November 30, 1895, to make a post-mortem examination on the body of Samuel Evans.

I found him at his home, 766 Seneca street, this city. Upon examination, I found him with his mining clothes on. I found a crease across the top of right shoe about two inches from the toe, also a crease along the bottom of

the shoe, with a depressed point about 2½ inches from the toe; neither foot nor toes injured.

Upon examination of the body, I found the first, second, third, fourth and fifth ribs on the right side crushed in and fractured in two or three places, each making a depression large enough to put your fist in; the sternum was fractured at about the junction of manubrium and gladiolus.

The ribs on the left side did not appear to be fractured, but appeared to be separated from their cartilaginous attachments. The skin was not broken, but on the right side of the sternum was a space about three inches long by two wide where the cuticle was scraped off. The injury was of a crushing nature, and was sufficient to cause instant death.

The next morning, in company with Superintendent Carr, I visited the bottom of the Leavenworth Coal Company's shaft and made an examination of the cage and pit, and arrived at the following theory: That the deceased, after ringing for the cage to go up, probably thought he could not get on that one in time and had to wait for a cage to come down; that he stood at the west side of the north half of the shaft, with his right foot resting on the pit rail and his toe extending over the edge of pit shaft, when the cage came down, which it does very quietly, it making no noise at all; the lower floor of the cage caught the shoe of the right foot. This would naturally throw the body forward. Having done this, the floor of the upper deck caught him as described above, i. e., across the chest, and crushed him between the floor of the pit and the deck of the cage, in a space of about six inches in a part of the distance and about three inches in the balance. The guide on the floor of the cage caught the ribs of the right side of chest and crushed them as above described. After passing about 12 or 15 inches below the floor of the pit, the head, being released, would naturally fall upon the lower deck, as he was found.

From examination of deceased and the place of death it is my opinion that it was purely accidental, and due entirely to his own carelessness. (Signed) W. R. VanTuyl, M. D.

Mr. Bennett Brown, being duly sworn, says he is State Mine Inspector; that he made an examination of the mine shafts after the death of Samuel Evans, and that from the examination he cannot say positively how the man was killed; thinks that the man must have attempted to get on the cage when it was first stopped at the bottom of the mine and just when the engineer lowered away to bring the lower floor of the upper cage on a level with the floor of head-house—that is, when the cage first came down.

Wm. Graham, being duly sworn, says he is engineer at the Leavenworth Coal Mining Company's shaft; that he was on duty Saturday, November 30, 1895; that all the men were supposed to be out of the mine on Saturday by 5 p. m.; but that about 6:15 p. m., when he was washing up to go home, he received a signal of six bells from the pit; that it was an unusual signal for that time of day, but that he went to the engine and raised away about 12 inches—the usual proceeding—and then waited a short time and raised the cage to the top, as he would for a "man to ride," and he was surprised when the cage came into view to see no one on the upper deck, the place where men are supposed to ride always; but he then, in scarcely any time at all, raised the cage so as to bring the lower deck into view, and there being no one on it either, he called to his fireman to take a lamp and go to the bottom of the pit, and that the fireman got on the cage just brought up; that he attempted to lower away, and that he saw something was holding the lower cage at the bottom of pit. He then called the fireman to go for the pit-boss, and he got the engine of the other shaft in readiness, and when the pit-boss came he sent the fireman and pit-boss down, telling them that as soon as they were down he would go back to the other engine and await their signal there. After a time he received the proper signal (four bells) for a man to ride, and raised away and brought cage into view; there stood the pit-boss and fireman, and on the

lower deck was a dead man. That on receiving the unusual signal of six bells he took the extra precaution to raise away very slowly; that he did not know the man; did not know whether he had had any experience in caging or not.

In answer to some questions put by Mr. Bennett Brown, he said there was no way of communication between pit and engineer except by bells—no telephone or tube. Mr. Carr here volunteered "that it was customary sometimes to take hold of the wire and repeat the signals back down, and that they were read off the motion of the lever." Mr. Graham said there was no mistaking the number of bells, as the strokes were all registered on a dial in plain view of the engineer; that the man was brought out of shaft at about 6:30 p. m.

Samuel Lowrey, being sworn, says he is a pit-boss at Leavenworth coal-mine; was on duty Saturday, November 30, 1895, and that he left the mine about 5:15, thinking all the men were out except himself and the south pit-boss; that he knew the deceased; that he had been in the mine four days this time, but had been employed in the mine twice before; did not know that he was familiar with the working of the cage, but thinks he should have been from the time he had been working in the mine, and should have known perfectly how to get himself out of the mine in the regular way. Evans seemed in his normal condition when he saw him last alive, at 2 p. m. My idea of the accident is or has been explained by Mr. Brown.

John Dobson, being sworn, says he is a pit-boss at Leavenworth mine; was on duty Saturday, November 30, 1895; did not know Sam. Evans. I saw him lying on the cage; one foot was over the edge of the cage against the shaft wall, acting as a wedge; that this was the cause of the catching of cage felt by engineer on attempting to lower the fireman. Evans's cap and lamp were both on the cage—lamp out; that he has worked in the mines for 50 years; think any one working in the mines any time at all would learn how to get himself out in the proper way. It is customary to ride on upper deck always; there is no exception to this except when men are working on the sides of the shaft, in making repairs, etc.

John Smith, being sworn, says he is a fireman at the Leavenworth Coal Company's mine; that he was there Saturday eve, November 30, 1895; that Mr. Graham called to him to go on the cage and go down in the pit and see what was the matter; that he got a lamp and got on the cage; the engineer first raised a little and then lowered away slowly, but the cage did not move; and he called witness to get the pit-boss and go down in the other shaft. On reaching the bottom of shaft, they found the dead man as already described, and brought him up.

Verdict.

State of Kansas, Leavenworth county, ss. We, the jurors, having been duly impaneled and sworn, find that Samuel Evans came to his death from being crushed by the cage in the Leavenworth shaft.

In testimony whereof, We have hereunto set our hands, this the 3d day of December, A. D. 1895. (Signed) Wm. E. Evans, foreman, M. McDonald, Frank Hunter, W. H. Burton, Geo. Lord, Wm. Coleman.

I certify that the above is a true and correct copy of evidence and verdict. J. F. McGill, M. D., coroner Leavenworth county.

I was called to the shaft immediately on the discovery of this accident. It seems that this man remained at his work beyond the regular hour to quit, 5:30 p. m., and on reaching the bottom of the

shaft found that all the men in the shaft had gone out. According to the statement of the engineer, Mr. Graham, the man rang the signal bell six times, indicating that he wanted to come up. This was an unusual signal; but the engineer, supposing that the man at the bottom did not know the proper signal, considered that all was right and raised the cage, slowly from the bottom to the top.

The Leavenworth elevators or cages are what are known as double-decked—that is, there are two compartments, one above the other; the top compartment is about five feet in height and the lower compartment about four feet. When the floor of the top compartment of one cage is on a level with the floor of the head-house, the floor of the lower compartment of the other cage is on a line with the roadways of the mine. When Graham had raised the southwest cage from the bottom to the top of the shaft he stopped the cage with the floor of the upper compartment on a line with the floor of the head-house, to enable any person who might be on the cage to get off, as the upper compartment is the one in which the men are supposed to ride, and the one which was on a level with the roadways in the mine when the signal was given to hoist.

The engineer, seeing no one get off the cage, lifted the lower compartment to a level with the floor of the head-house. Not seeing any one on the cage, and receiving no further signal from the bottom, he became alarmed, and, fearing there was something wrong, called to his assistant and instructed him to get on the cage and go to the bottom and find out what was the matter.

The assistant did as he was instructed, got on the cage, and gave the signal to lower. The engineer, on attempting to move the cage, felt that there was something obstructing the one at the bottom, and instructed the assistant to go to the residence of the pit-boss, Mr. John Dobson, and tell him to come to the shaft, as there was something wrong. The pit-boss immediately hurried to the pit, and he and the engineer's assistant went down the water (or communication) shaft.

On reaching the bottom of the hoisting shaft, they discovered the body of a man lying dead in the lower compartment of the cage, and pressing against the timbers of the cage seat. They drew the body of the man clear into the cage and brought him to the top of the shaft.

It would seem that when the engineer raised the cage, after having received the signal to do so, the person who had given the signal failed to get on. When the other cage reached the bottom, the engineer, as before described, stopped the floor of the lower compartment of the cage on a level with the roadways of the mine;

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the man apparently attempted to enter that compartment, and while in the act of doing so, the engineer, as above described, had raised the cage on top and necessarily lowered the one below.

The top of the lower compartment, being the floor of the upper compartment of the cage, struck the man while descending, and in all probability was the cause of his death.

No. 10. Fatal accident to Joe Veitrich, at the Peter Graham shaft, Scammon, Cherokee county, on December 16, 1895.

Copy of testimony taken at an inquest holden by C. S. Huffman, coroner of Cherokee county, Kansas, on January 16, 1896, over the body of Joe Veitrich, a person here lying dead. Said testimony taken down by Artley B. Callahan, clerk, by the direction of C. S. Huffman, coroner.

B. F. Thomas, being duly sworn, says: I went to-day with parties to hunt him. Found him about 100 yards from the bottom, lying face down, his feet to the north and his head to the south. I was not acquainted with him. I never worked near him but worked a good piece away on the other entry. I think he was drowned. The body was in the main entry where we found it. (Signed) B. F. Thomas.

John Grant, being duly sworn, says: I have known Joe Veitrich since he started to work in the shaft, two or three months I presume. I do not know when he went down in the shaft the last time. I was in the shaft until about eight o'clock that night, but I do not know when he went down in the shaft the last time, and I do not know the date. I know him to have been in the shaft the last day the shaft run. I do not know that he worked that night. I know of no necessity of his being there that night. I have known him to go in at night to work. I do not know that he had been ordered to go there that night. I looked in his room the last night the shaft run. I am a shot-firer and was in his room that day, but saw nothing for him to do. The last day the shaft worked was Tuesday, December 16. His room—the face of his place—I should guess to be about 275 yards from the bottom of the shaft. To the best of my judgment he would be cut off by the water before he would discover that the mine was flooded. I do not know whether he went in of his own accord or not. He worked on the day shift. I have known him to go in and fire shots at night. I do not know whether those in authority told him to work at night or not. It is usual to have work done at night when it would stop men to have it done in the daytime. He was working at the face where it would interfere with no one on the day before the water broke in. I think he came to his death by drowning. To the best of my knowledge, there would be no object in the company putting him in there to work at night. From the general appearance, I think this is the body of Joe Veitrich. (Signed) John Grant.

M. L. Walters, being duly sworn, says: Mr. Glenn and I are lessees. I know Joe Veitrich. He worked for me about a month and a half in the capacity of a coal-miner. The date when he is supposed to have gone down the last time was Tuesday, December 16. He had no work that he was instructed to do at night. On two or three occasions I had known him to go down at night, though he was never employed to go down at night. I think he came to his death by drowning. I was in the shaft to-day. His body was found

about 100 yards from the bottom, face downward, on the first south, west of shaft. He never drove any entry for our company. The place where he worked was originally a 12-foot place for an entry, but it was made into a room by Charley Hodge before this man worked there. We employed this man to work it as a room. All that he was employed to do in the way of extra or yardage work was brushing. The first part of the work would have been necessary to do at night, but the brushing was stopped some 6 or 8 or 10 days before the water broke in. I could not say whether he worked the last day or not. The shaft worked until about 10:30 or 11, and then stopped work. The water broke in south of hoisting shaft, probably 100 yards, at an old cave hole—an old place where the water broke in once before. The hole was not in use and had been filled up, and was supposed to be secure. I think the water broke in about six o'clock. I was there about 6:20, and the water was about two feet deep; that was not enough water to shut him in. Had we known the man was in, we could have got him out up to nine o'clock. I first learned that he was there at two the next day, Thursday. It was about 23 feet deep then. He must have been drowned at that time. The cave hole stood full of water at that time. I met my partner, Mr. Glenn, about a quarter of a mile from Scammon, who told me. He learned it from Mr. Graham. His mother-in-law knew that he was in the shaft, and she told my wife that she prepared enough lunch for him to last until Wednesday night. Mr. Graham learned it from Mr. Thixton. (Signed) M. L. Walters.

James Kelly, being duly sworn, says: I was in this shaft when it was drowned out. I am a coal-miner and was acquainted with Joe Veitrich, and worked about 25 or 30 yards from him. I worked the day before it filled up. Joe worked that day. I knew him to do night work. He did brushing—shooting down roof. He did it from the time he started in there, but had it down two or three days before he was drowned. I knew of nothing for him to do the last night before the water broke in. I never knew him to work at night to get extra coal. I was in the shaft when his body was found. I think he was drowned. I do think he was alone responsible for his own death.

Q. For what purpose was you in his room the day before?

A. Just for a chat. I do not know this to be the body of Joe Veitrich, but I think it is. I do not know what his object was in going in there. I am satisfied that this is the body of Joe Veitrich. (Signed) Jas. Kelly.

Wm. Smith, being duly sworn, says: My work in this shaft is that of working in the interest of Mr. Walters, in doing anything that comes along. I am mine foreman. I have seen Joe Veitrich to speak to; am not acquainted with him. I recognize this as his body. I was working the last day the shaft worked. I do not know whether he was there or not. I know that he had no night work to do. The water broke in on Wednesday, at 6 o'clock. I did not know he was in the shaft until Thursday, the 18th. There was 20 feet of water in the shaft on Thursday. There was about an inch of water at a quarter of six, Wednesday; that was two hours before work time. If he had gone in at the usual time he would have known there was something wrong. (Signed) Wm. Smith.

This is to certify that the foregoing is a true and correct copy of all the testimony taken at said inquest. (Signed) Artley B. Callahan, clerk. C. S. Huffman, coroner.

Verdict.

State of Kansas, Cherokee county, ss. An inquisition holden in Cherokee county, on the 16th day of January, A. D. 1896, before me, C. S. Huffman, cor-

oner of Cherokee county, on the body of Joe Veitrich, there lying dead, by the jurors whose names are hereunto subscribed.

We, the jury, find that deceased came to his death by accidental drowning, and that he alone is responsible for his death. (Signed) M. Tindall, W. D. Walker, Wm. Robertson, Sam. L. Harris, W. N. Enfield, John Hardison.

The first notification I had of this accident was on January 1, 1896, at least 12 days after the owner and operators of the mine had every reason to believe a man had been drowned therein; they were at once notified to have the water taken out of the shaft as quickly as possible, and notify me when I could get into the mine or when they discovered the body, which was done. According to all the evidence and the knowledge I could glean on the subject, it would seem that this man must have been asleep in the mine when the water broke in, as he had ample time, between the water flooding the floor and reaching the roof, to get out, as the distance to travel was short—five minutes' walk, and at least one hour must have transpired between the time that the water had covered every portion of the floor and reaching the roof of any part of the mine.

While I do not think that the owner or operators of this mine are in any way to blame for this accident, yet it would be well for them and all men having mines located in such position to take every precaution to prevent inundations of this character, and also to post notices in a conspicuous place at the mine warning men of the danger of going into the mine at night, and forbidding them to do so. In those shallow mines men are in the habit of wending out and in at will.

NON-FATAL ACCIDENTS.

Fifteen were caused by falling roof; 8 by coal falling down while men were in the act of holing or mining it; 6 by premature blast, while charging shots; 3 by being caught with or while on cage; 2 while firing shote; 2 while lifting coal in pit-cars, overstraining themselves; 2 while riding on loaded mine-cars; 1 finger cut off, jammed between two lumps of coal; 1 finger cut off, jammed between mine-cars; 1 by falling off ladder while repairing upcast smoke-stack; 1 while emptying mine-car—door of car fell down and bruised hand.

Of these 42 accidents, one proved fatal within a few weeks. Charlie Giovanna, while sitting in his room in mine No. 9 of the Pittsburg & Midway Coal Company, conversing with a comrade, was struck on the head and shoulders by a piece of slate falling from the roof, which bent his head downwords, breaking his spine just above the hips. This was a most remarkably simple accident to be attended with such grave results. The slate could not weigh

more than 30 or 40 pounds; it did not fall more than three inches before striking him on the head; had he been sitting in a position so that his body could have resisted or yielded to the strain, he would not have been injured at all; but his legs, being extended before him, acted as a brace to the lower part of his body, preventing him from turning, with the above result.

A man named Robert Crane was severely injured on the 29th day of April, in the Fuller coal-mine, Crawford county, by rock falling from the roof in his room, breaking his spine. This man is still alive, but his body is paralyzed below the fracture, making him a physical wreck for life.

Another accident with nearly the same result happened to George Fulton, on the 10th day of October, while he was repairing a roadway in the Hamilton & Braidwood No. 1 mine, at Weir City. He is, however, slowly recovering, and shows signs of being able to get around, although he will never fully recover from the effects of the injury to his spine.

One man, a carpenter, while repairing the wooden air- or smoke-stack of the Osage Carbon Company's mine No. 13, Osage county, fell from the ladder, fracturing one leg so badly that it had to be amputated; his life was in great danger for some time, but he is now fully recovered. The local superintendent of the company warned this man that his ladder was not properly placed, and said he should get down and fix it; he himself was wiser than the superintendent, with the result as above noted.

Three men had each one leg fractured; two by falling coal, and one by trying to jump on a loaded trip of cars while they were in motion. Two men had each one arm broken; one by a stone falling from the roof in his room, and one by slate falling from the roof while he was in the act of wedging down his coal. One man had his foot badly bruised by having it jammed between the descending cage and the edge of the cage-seat. One was caught by descending cage while standing on the "buntons" in the center of the shaft, above the lower top landing, repairing the signal wire. How this man escaped with his life is a miracle. One man had his head bruised and cut by a piece of rock or coal falling down the shaft while he was standing on the cage, at or near the bottom of the shaft; there had been a cover on the top of this cage, but it had been broken off some time previous to this accident, and had not been replaced; had the cover been put back where it belonged this man would not have been injured.

Six men were injured by premature blasts, the powder igniting while the men were in the act of forcing the cartridge into a hole

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too small to admit it, and tamping carelessly. There is no earthly reason why any accident of this kind should occur; a copper needle and a small piece of copper on the end of the tamping bar would forever prevent it; or care on the part of the workman to see that his cartridge was not broken while ramming it into the hole. If a cartridge proved to be too large in diameter to go in easily, it is much better and safer to make another than to attempt to force it. Two men were injured while firing shots, by being struck with the flying coal from the blast. All the other accidents were of a general description such as usually happen in connection with operating mines, and with a few exceptions were of a trifling character.

The Inspector appeals to the managers and men to notify him promptly of all accidents causing injury to workmen, no matter whether they are serious or not.