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LEGISLATION TO CONTROL ANTHRACITE COAL MINING.—The REGISTER has received a pamphlet on this subject by Judge R. M. Benjamin, of Illinois. The author is of the opinion that the paramount question at the next session of the Pennsylvania Legislature will be the possibility of enacting under the Constitution a law to control the contract between the mine owner and the mine worker.

And it may very well be, that if a standard of wages is fixed by the present Commission to investigate miners' grievances, and is found satisfactory, the Legislature will consider its adoption as a permanent remedy for the evils arising from recurring disagreements.

"The legislation of the state of Illinois establishing reasonable maximum rates of charges for transportation on the railroads in the state, suggests," says the author, "appropriate legislation for securing to the miners reasonable minimum prices per ton for mining coal. In 1873 the Legislature of Illinois created a Railroad and Warehouse Commission and gave it

authority to make schedules of reasonable maximum rates of charges for the transportation of passengers and freight. The schedules are to be taken in all courts of the state as prima facie evidence that the rates therein prescribed are reasonable. They are subject to revision from time to time as often as circumstances may require, and penalties are prescribed for charging more than a reasonable rate. The character of the legislation is such that in a proceeding for a penalty a railroad corporation may escape conviction if it is able to show on a trial before a jury that its charges, although above those prescribed in the schedule, are only reasonable. Such, in brief, is the character of the legislation in Illinois to prevent extortion by railroad corporations in their rates charged, or contracts made for the transportation of passengers and freights. It is confidently believed that legislation in Pennsylvania providing for a classification of the mines with reference to the depth and thickness of the coal veins and any other 'differential' that may be deemed important, and providing for schedules prescribing what shall be taken in the courts as prima facie reasonable minimum prices per ton for mining coal and fixing a suitable penalty against any corporation which may make contracts with miners for less than reasonable prices, will be held to be constitutional."

In objection to this proposition, it immediately suggests itself that a control of contract is in conflict with the United States Constitution, with its general spirit and more particularly with the Fifth Amendment: "No person shall be deprived of life, liberty or property without due process of law;" and the Fourteenth Amendment: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person the equal protection of the laws" (substantially incorporated in the Constitution of Pennsylvania, Art. 1, § 1).

The object of this note is not an exhaustive discussion, but a presentation of the arguments and authorities of Judge Benjamin, and of the possible views and citations contra.

The author claims that "the right of the Legislature of Pennsylvania to enact such a law and thus restrict to a reasonable extent the power of these corporations in making contracts with their employes in mining coal, can be sustained in the courts upon each and all of the following grounds:

"I. The business of mining coal is 'affected with a public interest.'

"2. The business of mining coal in the anthracite region has become a monopoly of a necessity of life."

"3. The state can restrict the liberty or freedom of contract so as to prevent imposition and extortion."

"4. The state can prescribe what contracts may be made by the corporations of its own creation."

"5. 'The right to contract is not absolute but may be subjected to the restraints demanded by the safety and welfare of the state.'"

In support of the first proposition, viz.: "the business of mining coal is *affected with a public interest,*" the author cites the case of *Munn* v. *Illinois,* 84 U. S. 113, 1873, in which the operation of grain warehouses was held to be such a business; and "the limitation by legislative enactment of the rate of charge for warehouse services was therefore held constitutional." In its decision the Supreme Court of the United States affirmed the decision of the Supreme Court of Illinois and "reaffirmed the doctrine announced by Lord Chief Justice Hale more than two hundred years ago, that when private property is 'affected with a public interest' it is subject to governmental control."

In the course of its decision the court says: "Under these powers (inherent in every sovereignty) the government regulates the conduct of its citizens one toward another, and the manner in which each shall use his own property, when such regulation becomes necessary for the public good. In their exercise it has been customary in England from time immemorial, and in this country from its first colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, innkeepers, etc., and in so doing to fix a maximum of charge to be made for services rendered, accommodations furnished and articles sold."

The Supreme Court followed this decision in *Budd* v. *New York,* 143, U. S. 517, 1891, emphasizing the close relation between the storage and the carriage of grain, and justifying the right to control grain elevators by the acknowledged right of the state to control common carriers.

The author applies these authorities to the question under discussion thus: "In each of these cases the liberty or freedom of a private, natural person to make contracts was regulated by the state on the ground that he was engaged in a business affected with a public interest. If there is any business in this country affected with a public interest, it is that of mining coal. These corporations were created by the state for the express purpose of supplying the public with coal. With some legislation securing reasonable wages to the miners, the mines will be steadily operated. Without such legislation we have every reason to expect constantly recurring strikes and repetitions of the present situation, which, in the languages of the president, 'has become literally intolerable.'"

In considering the value of these cases as authorities, it should be mentioned that none of the decisions were by an undivided court. In the Illinois case Justices Strong and Field

dissented, and in the case of *Budd* v. *New York, supra,* there was a strong dissent by Brewer, Brown and Field, J. J. The tenor of these dissenting opinions was that the freedom of private contract could not be thus abridged, even though the business under discussion was declared public by a constitutional provision (Constitution of Illinois, Art. 13, § 1, 1870).

This points to a fundamental difference between a public and a private business,—the one affects the public directly; the other indirectly. The public itself is a party to the contract with the innkeeper, the wharfinger and the common carrier; the public is affected but indirectly by the contract of hire between the mine owner and the mine worker. In the cases cited above, it is the fact that the contracts are with the *public* that gives the right of legislative control. Although it may follow from this that the mine owner can be controlled in some of his contracts, —namely those with the public,—it does not follow that he may be controlled in all of his contracts—including those in which the public is not a party.

In development of this phase of legislative power, Judge Benjamin points out that the business of mining coal is not only "*affected* with a public interest,—it is a *monopoly* of a necessity of life." And he presents this syllogism: "If the state can regulate the prices at which such a public necessity as water or fuel shall be sold by one who has a monopoly of the sale (*S. V. Water Works* v. *Schottler,* 110 U. S. 347, 1883) it surely can reasonably regulate the wages to be paid by the monopolistic coal combine to its employes so as to secure the labor of duly qualified miners and a steady supply of coal for the public."

This second proposition is clearly but a corollary of the first; indeed, it merely omits the words: "business affected with a public interest" and supplies the more particular term, "monopoly." *Munn* v. *Illinois* (*supra*) holds that the legislature may fix the rates of a *business affected with a public interest; Water Works* v. *Schottler,* cited here, holds that the Legislature may fix the rates of a *monopoly* (and the court rests its decision on the authority of *Munn* v. *Illinois*). The author's deduction that the Legislature may also control wage contracts is therefore open to the following objection in either case: that there is an unbridged gulf between the control of a contract with the public (rates), and the control of a private contract (wages).

Water Works v. *Schottler* is moreover limited in the opinion of the court: "The question here is not between buyer and seller as to prices, but between the state and the corporation as to what corporate privileges have been granted." When then the court say it is within the power of the government to control the prices at which a monopoly shall sell water, the court's reasoning might be added as context; *because* said monopoly is a *corporation* controlled by the Legislature under the Constitution of the State of California.

And this brings us naturally to another phase of legislative power: "The state can prescribe what contracts may be made by *corporations* of its own creation." Judge Benjamin thus makes a full and direct statement of his contention and continues: "There are certain important distinctions between a citizen or natural person and a corporation or artificial person. It has been repeatedly held by the Supreme Court of the United States that while a corporation is a person it is not a citizen within the meaning of the Fourteenth Amendment. Unlike the citizen, a corporation has no natural or original rights or powers. A corporation is an artificial person created by the law and endowed with only such capacity or powers as may be conferred upon it by the act of incorporation. No lawyer has ever contended that the state in granting a special privilege or immunity to a corporation has not a right to prescribe the conditions upon which such privilege or immunity shall be enjoyed. . . . But while corporations have no original rights or capacities and are subject to legislative control it has been suggested that the proposed legislation would violate the miner's—the citizen's liberty or freedom of contract. What is the natural person's original liberty or freedom to contract? It is nothing more than the liberty or freedom to contract with natural persons. And when in addition to this liberty or freedom of the citizen, he acquires the capacity or power to make contracts with a corporation, he, as well as the corporation with whom he may contract, is subject to the legislative restrictions accompanying the capacity or power of the corporation. In the Rhode Island case (*State* v. *Brown Mfg. Co.*, 18 R. I. 16, 1892) holding that a law requiring corporations to pay the wages of their employes weekly is constitutional, the court further say: 'Corporations are artificial bodies, and possess only such powers as are granted to them, and natural persons dealing with them have no right to demand that greater power should be granted to corporations in order that they may make other contracts with such corporations than the corporations are authorized to enter into.'"

While granting that the charter of a corporation is, as it were, a contract in which the legislature has reserved the right to insert new terms, we suggest that legislative action is not thereby entirely relieved from judicial restraint; the legislature cannot insert what terms it pleases into said contract. We reach this conclusion by the course of reasoning employed by the United States Supreme Court, *St. L. & S. F. R. R.* v. *Gill*, 156 U. S. 657, 1894, in considering an analogous question, viz: "Whether if the power of the state to fix and regulate the passenger and freight charges of railroad corporations has not been restricted by contract, there can be found by judicial inquiry, a limit to such power in the practical effect its exercise may have on the earnings of the corporations. This court has declared in several

cases that there is a remedy in the courts for relief against legislation, establishing a tariff of rates which is so unreasonable as to practically destroy the value of property of companies engaged in the carrying business, and that especially may the courts of the United States treat such a question as a judicial one, and hold such acts of legislation to be in conflict with the Constitution as depriving the companies of their property without due process of law and as depriving them of the equal protection of the laws." The same court early stated the broad reason for this position in *Peik* v. *R. R.*, 94 U. S. 164, 1876: "that the reservation of power to alter or repeal charters gave the legislature the *same* power over the business and property of corporations that it has over individuals; nothing more could have been intended than to leave the stockholders in corporations in such a position that the legislature could place them on the same footing with natural persons before the law, and disable them from permanently evading the burdens on all others engaged in similar vocations, by appealing to the letter of their charter. Their object was not to open the door to oppression, but to secure simple equality between citizens of the state, whether working singly or in corporate associations."

And in considering the same question the court said in *Reagan* v. *Farmer's Loan and Trust Co.*, 154 U. S. 399, 1893: "It is a part of judicial duty to restrain anything which in the form of a regulation of rates operates to deny to the owners of property invested in the business of transportation that equal protection which is the constitutional right of all owners of other property. It has always been a part of the judicial function to determine whether the act of one party (whether that party be a single individual, an organized body or the public as a whole), operates to divest the other party of any rights of person or property. The equal protection of the laws, which by the Fourteenth Amendment no state can deny to the individual, forbids legislation in whatever form it may be enacted, by which the property of one individual is without compensation wrested from him for the benefit of another, or for the public. This is a government of law, not a government of men, etc."

The Supreme Court of the United States decided the above cases on a course of broad fundamental reasoning which admits Judge Benjamin's entire contention on this point and finds nevertheless a ground for the judicial restraint of the legislative police power over corporations. The court admits the right of the legislature to limit, alter, vary, or repeal a charter, but it insists that the state's police power unlimited by contract, is limited by *reasonableness* and necessity *interpreted by the court* in the light of the Fourteenth Amendment. This well-settled position is the result of the court's conviction that the public welfare demands for corporations the protection granted to "persons" by this provision of the Constitution, and that therefore

the legislature stop short at the unreasonable regulation of quasi-public contracts,—the taking of property without due process of law. The court has often said that the undue regulation of freight and passenger rates (a quasi-public contract) may amount to the taking of property without due compensation. We suggest that this precedent offers a basis for the decision that the enforced payment of certain rates of wages (a private contract) is under all circumstances an unreasonable restraint,—that it is, in other words, an undue taking of private property by the state within the prohibition of the Fourteenth Amendment.

Since the author proposes the control of corporations as a solution of the strike problem, we venture an economic objection. The establishment of control over corporations leaves uncontrolled private dealers, doing business individually and in the various forms of unincorporated association. If a body of men are materially restricted when incorporated and can make what contracts they please when they deal privately, they will steadily tend toward this economic result,—they will not do business as a corporation.

It is natural therefore that Judge Benjamin should base his final argument on the general police power of the state, not alone over the corporate parties to the contract, but over the inherent nature of the wage contract itself. He writes: "The right to contract is not absolute, it is limited by the right of the legislature to prevent imposition and extortion; . . . it is subject to the restraints demanded by the safety of the state."

"In view of the long train of evils following the present struggle between the mine operators and mine workers over the price of labor, would not the proposed legislation come strictly within the so-called, but never closely defined, police powers of the state? Would not such legislation be as clearly within the police powers as the laws prohibiting or restricting the sale of intoxicating liquors or laws making illegal the contracts for the purchase of 'future delivery' cotton or grain?"

"In *Holden* v. *Hardy,* 169 U. S. 366, 1897, it was held that a statute of Utah providing that 'the period of employment of workingmen in all underground mines or workings shall be eight hours per day, except in cases of emergency, where life or property are in imminent danger,' does not violate the provisions of the Fourteenth Amendment by abridging the privileges or immunities of its citizens, or by depriving them of their property, or by denying to them the equal protection of the laws."

"In *Booth* v. *Illinois,* decided March 3, 1902. (Supreme Court Reporter, Vol. XXII, p. 42), the Supreme Court of the United States hold that the prohibition against options to buy or sell grain or other commodities at a future time, which is

made by the Illinois Criminal Code, Sec. 130, does not invade the liberty granted to every citizen by the Fourteenth Amendment of the Constitution of the United States. The court say: 'The argument is, that the statute directly forbids the citizen from pursuing a calling which, in itself involves no element of immorality, and therefore by such prohibition it invades his liberty as guaranteed by the supreme law of the land. Does this conclusion follow from the premises stated? We think not. A calling may not in itself be immoral, and yet the tendency of what is generally or ordinarily or often done in pursuing that calling may be towards that which is admittedly immoral or pernicious.'"

"In the language of the Supreme Court of Colorado, *In re Serip Bell,* 23 Col. 507, 1897: 'No one doubts the authority or questions the duty of the state to interfere with such force as may be necessary to repress such disturbances and maintain the public peace and tranquillity; and as well may the state provide in advance against certain kinds of fraud and oppression which lead to these outbreaks.'"

"And in *Peel Splint Coal Co.* v. *State,* 36 W. Va. 794, 1891, the court say: 'It cannot be possible that the state has no police power adequate to the protection of society against the recurrence of such disturbances, which threaten to shake civil order to its very foundations.'"

The author is surely right when he says that the police power is indefinite; that is shown peculiarly well by the fact that the very jurisdictions whose general dicta he cites as authority, have stopped far short of controlling the miner's contract in particular cases.

In Colorado, *Re House Bill,* 39 Pac. 431, 1895, a bill entitled "an act to regulate the weighing of coal in mines" was referred to the Supreme Court for an opinion and was there pronounced unconstitutional.

In West Virginia, *State* v. *Goodwell,* 33 W. Va. 179, 1889, the court held unconstitutional an act prohibiting the payment by miners of their employes in orders or other papers unless redeemable in thirty days in lawful money of United States.

In *Holden* v. *Hardy, supra,* cited by the writer, the court limits its decision thus: "We have no disposition to criticise the many authorities which hold that state statutes restricting the hours of labor are unconstitutional. It is sufficient to say of them that they have no application to cases where the legislature had adjudged that a limitation is necessary for the preservation of health of the employes, and there are reasonable grounds for believing that such determination is supported by the facts. The question in each case is whether the legislature has adopted the statute in exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination; or the oppression and spoliation of a particular class."

We see then, that the general language of the courts, cited by the author concerning the scope of the police power, is materially narrowed in those very same jurisdictions by actual decisions. Where the court has refused to uphold the regulation of the weighing of coal (W. Va.), and the payment of miners in store orders (Colo.), it could sustain a statute regulating wages in any form, only by a complete reversal of decision.

But however strong these decisions might be, their authority must always be limited in its application to legislation in Pennsylvania. For when, as in these cases, the court, in protecting the Constitution considers whether the legislature has adopted a statute in the use of *reasonable* discretion, it exercises, as it were, a *local* political function. In other words, the reasonableness of a statute in Colorado does not prove its reasonableness in Pennsylvania; that essential of its constitutionality can only be judged in the light of the social and economic condition of the particular community over which the statute extends.

This fact gives peculiar value to the decisions which have already been made in Pennsylvania on the freedom of contract under the police power. In *Godcharles* v. *Wigeman,* 113 Pa. 431, 1886, the "Store Order Act" prohibiting the payment of miners in store orders was held unconstitutional on the ground that "an attempt had been made by the legislature to do what in this country cannot be done, that is, prevent persons who are *sui juris* from making their own contracts."

The Company Store was again attacked by the "Terrekee Store Order Act," passed by the last Legislature, in the form of a heavy tax on store orders. The Dauphin County Court on December 9, 1902, declared this act unconstitutional in the following words: "The taxation imposed on defendant by said act and charged against it in said settlement was intended to and, if the act were sustained, would inflict a penalty on defendant for doing that which it has a legal and constitutional right to do, and the act is, therefore, unconstitutional." Even if these decisions were reversed, the court in recognizing the right to prohibit store orders would still be far from sustaining the Legislature's right to regulate wages.

Owing to the local character of the police power and to its general indefiniteness, we believe that its application to the freedom of the employment contract can best be shown by a reference to particular cases in particular jurisdictions. We present, therefore, a short list of decisions in which this phase of the police power is substantially involved.

CALIFORNIA. *Ex parte Kubach,* 85 Cal. 274, 1890. Ordinance of Los Angeles making it a misdemeanor for a contractor to employ any person to work more than eight hours; held *unconstitutional.*

COLORADO. *Re House Bill,* 39 Pac. 431, 1895 (*supra*).

ILLINOIS. *Millett* v. *People,* 117 Ill. 294, 1886. Statute compelling weighing on a standard scale of coal hoisted from the mine; *unconstitutional.*

Ramsey v. *People,* 142 Ill. 380, 1892. Statute recognizing right of parties to contract for other modes of payment, but providing for the weighing of coal where the miners were paid by weight; *unconstitutional.*

Braceville Coal Co. v. *People,* 147 Ill. 66, 1893. Statute compelling weekly payment of wages; *unconstitutional.*

Illinois Criminal Code, § 130. Prohibition against options to buy or sell grain; *constitutional.*

INDIANA. *Hancock* v. *Yaden,* 23 N. E. 253, 1890. Statute requiring the payment of miners once in two weeks; *unconstitutional.*

MASSACHUSETTS. *Com.* v. *Perry,* 155 Mass. 117, 1891. Statute prohibiting an employer of weavers from withholding wages because of imperfections in the weaving; *unconstitutional.*

MARYLAND. *Schaffer* v. *Min. Co.,* 55 Md. 74, 1880. Statute compelling the payment of miners in legal tender of the United States; *constitutional.*

MISSOURI. *State* v. *Loomis,* 115 Mo. 307, 1893. Statute prohibiting the payment of wages in orders or checks, not negotiable and redeemable at face value; *unconstitutional.*

NEBRASKA. *Low* v. *Rees Printing Co.,* 41 Neb. 127, 1894. Statute providing that eight hours shall constitute a day's work, and that employe shall receive extra pay for extra work; *unconstitutional.*

OHIO. *Wheeling Bridge Co.* v. *Gilmore,* 8 Ohio C. C. 858, 1894. Statute limiting work by employes of mines or railroads to ten hours a day (1) and requiring eight hours rest after twenty-four hours' consecutive work (2); (1) *unconstitutional;* (2) *constitutional.*

RHODE ISLAND. *State* v. *Brown Mfg. Co.,* 18 R. I. 16, 1892 (*supra*).

WEST VIRGINIA. *State* v. *Goodwell,* 33 W. Va. 179, 1889. Statute prohibiting payment in orders not redeemable within thirty days in lawful money; *unconstitutional.*

The Constitutions of Louisiana and Wyoming expressly define the legislative power over the employment contract.

LOUISIANA. Const. Art. 44. "No law shall be passed fixing the price of manual labor."

WYOMING. Const. Art. 1, § 22. "The rights of labor shall have just protection through laws calculated to secure to the laborer proper rewards for his service, and to promote the industrial welfare of the state."

Since the police power of the legislature over contractual freedom depends so greatly on the conditions of the community, and the economic status of its corporations, it cannot be said

that decisions in different communities are squarely conflicting or exactly analogous. Different statutory interpretations in the *same* jurisdiction, however, offer an opportunity of observing where the police power clashes with the Constitution. Especially when, as in Ohio, the same statute contains a twofold provision: first, for a ten-hour day; second, for an eight-hour rest after twenty-four hours of labor. The first provision was overthrown, the second declared constitutional. Is there any difference between them. except one of degree? We think there is. A statute compelling an eight hours' rest after a day and night's work is plainly a health regulation. A statute, on the other hand, which inserts in a contract the condition "ten hours" before the word "day" and then provides a method of computing extra pay for "extra hours" may incidentally affect the public health, but it is aimed at an economic relation between employer and employe; it breaks open the sealed contract between them and inserts the wages: a day's pay for ten hours' work. The court disregarding as immaterial the incidental benefit to public health, looked to the true intention of the legislature, and declared that statute unconstitutional. Just as in the oleomargarine cases, where the true object is to control or do away with business competition, the court does not go behind the primary economic effect contemplated by the legislature, and rules out as immaterial all evidence to show whether or not substitutes for butter are incidentally unhealthful. *People* v. *Marx,* 99 N. Y. 377, 1885.

And so with the author's proposition of controlling wages. We have shown that its constitutionality depends upon whether the legislature has exercised a reasonable discretion tested in the light of the *direct* legislative object. Now the declared object of the proposed legislation is not to benefit the corporation; is not to benefit the miner; it is to *control* the corporation, to *control* the protests of the miner, not for the benefit of both or either of these parties to the contract, but "to secure to the public a steady supply of coal."

To this extent, we believe, the courts have never gone. In Illinois where the statute forbidding contracts to buy or sell in the future, has been upheld, the court has consistently overthrown repeated attempts at the regulation of wages. And this points to the fundamental distinction. Of the right of the legislature to control directly public health and public morality there can be little doubt; as where liquor or oleomargarine are forbidden because injurious to public health. Thus also, there is a necessity for the regulation of private contracts that bear within themselves the seeds of peculation and immorality; as for example the dealing in "futures" or in lottery tickets. We admit also the legislative right to prevent imposition and fraud; the prescribing of a set form of insurance policy; or the regulation

of the charges of hackmen, etc.; or even the limitation (to $10) of the fee of an attorney procuring a pension for his client (held constitutional in *Frisbie* v. *U. S.*, 157 U. S. 160, 1894).

These are all cases of legislation where the contract itself was either inherently bad or it was necessary to protect the ignorance or peculiar position of one contracting party against the fraud or imposition of the other. But that is not the object of fixing a standard of wages; and we have shown that it is by its true object, that the statute stands or falls. The aim of the proposed legislation is *not* to regulate a contract inherently bad, or to protect the miner against the corporation,—it seeks to control them *both;* to prevent the corporation from lowering the wages; to prevent the miner from possibly demanding more than he earns. In other words, it seeks to control both the rise and fall in wages; to substitute a state standard, for the automatic economic standard of wages. It seeks to repress their natural economic differences, not for the benefit of either, but for the advantage of another person; and we submit that the court has never taken that step, whether that other person be an individual, a set of individuals or even the public.

And finally we recall Judge Benjamin's argument in its completeness. His proposition is that a standard of the wages of miners be prescribed by the legislature, to be taken by the court as *prima facie* reasonable minimum wages, and further that a suitable penalty be imposed on any corporation which may make contracts with miners for less than "reasonable" prices per ton. This involves of course a detailed schedule with reference to the depth and thickness of the coal veins, of what the corporation ought to pay and of what the miner ought to get, throwing upon the mine owner the burden of proving the reasonableness of lower wages, and, we suppose, throwing upon the miner the burden of proving the reasonableness of higher wages. This legislation goes right to the heart of a private contract, in fact, its very object is to make the contracts for both parties by settling all their differences. The author argues that the coal companies may be controlled in their contracts with their employes because their business is affected with a public interest, more particularly, because it is a monopoly, and more strongly still because it is a monopoly in a corporate form.

But at this point the author is met by the objection that the fiction, that a corporate association of persons is a creation of the state, is not to be carried to the extent of depriving the corporation of that first right of a private person,—the economic freedom of private contract. And therefore, to preclude this argument, it is finally urged by Judge Benjamin that the police power of the state extending over corporations and private persons alike, includes the right to regulate the contract between the operator and the miner. In the last analysis of his reason-

ing, then, we find that the author grounds his proposed legislation on the general power of the state to protect its citizens and their property; and the whole structure of his argument for constitutionality stands or falls with this, the foundation upon which it rests. It is true that the legislature has the right to provide for the peace and welfare of the state, but it is also true that for this very end, its power has a certain and permanent limitation, for the police power of the state must yield when it comes in conflict with the Federal Constitution.

Walter Loewy.