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Part 2

INDUSTRIAL COMMISSION.

TRUSTS AND INDUSTRIAL
COMBINATIONS.

STATUTES AND DECISIONS OF FEDERAL, STATE,
AND TERRITORIAL LAW,

TOGETHER WITH A

DIGEST OF CORPORATION LAWS

APPLICABLE TO LARGE INDUSTRIAL COMBINATIONS.

IN TWO PARTS.

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INTRODUCTION.

Twenty-seven of the States and Territories have passed statutes with the intention of defining monopoly more closely in order to meet modern conditions, and to prevent the formation of monopolies by fit regulations and penalties. Fifteen States have articles in their constitutions tending to the same end, though four of these have passed no laws on the subject. Besides these restrictions, the Congress passed the antitrust act of 1890, applying to interstate commerce, and in the interstate-commerce act itself has likewise forbidden restraint of trade. The periods when the greatest activity in legislation is found are about 1890, soon after the report of the Bacon committee of Congress and the investigations of New York and Canada, and in the years 1897 and 1899, in connection with the late rapid movement toward consolidation in industries.

In this volume have been brought together the laws of Congress and of all the States and Territories on this subject that are now in force. In several of the States successive and amendatory acts have been passed in different years. The intention has been to print here all that have not been repealed.

Inasmuch as judicial interpretations of these statutes are as important as the acts themselves, it has seemed best to make a careful study of the cases decided. To that end diligent effort has been made to present a brief digest (not in the language of the court unless quoted) of all the decisions that have been made by courts of final resort in cases brought under these statutes. In some important instances the decisions of inferior courts have also been digested. It can hardly be expected that some cases have not escaped our search, but it is believed that the list is fairly complete.

So many of our States have relied upon the well-tested, time-honored principles of the common law to protect their citizens from the evils of monopoly, and so many courts have found these principles sufficient, even when special statutes were at hand, that it has seemed best to add to the list of cases

a considerable number of the most important ones decided under the common law. Legislators can thus the more readily judge the wisdom, or lack of wisdom, of seeking new remedies instead of trusting to the common law.

Legislation in the United States must be, under the Constitution, a matter of consideration by both Congress and the State legislatures in their respective fields. The line of demarcation between their powers is not readily drawn in actual practice, and in this matter of the control of corporations the puzzling entanglements of State commerce with interstate commerce have tested the acumen of the wisest judges.

To put easily within reach the means for noting part of the decisions of the United States courts on this question—a question which must be fully considered, if further legislation regarding monopolies is to be seriously undertaken—eighteen leading cases which dwell most upon the relations of the powers of Congress and the State legislatures have been added. Of course no serious and extended study can be made from brief digests; but it is hoped that enough has been given to indicate the lines of discussion followed by our Federal courts.

Two or three leading Canadian and English cases have been added as a matter of interesting comparison.

There has also been added a tabular digest of all the statutes, to render easy a comparison of those of the different States.

Part II consists of a digest of the corporation laws of the several States, in so far as these laws are applicable to large industrial combinations.

The Industrial Commission has undertaken also the compilation of the most important provisions of foreign statutes which relate to the control of corporations. It is believed that this compilation, which will take considerable time for its completion, will prove to be a valuable supplement to the present volume.

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PART I.

STATUTES AND DIGESTED DECISIONS OF FEDERAL,
STATE, AND TERRITORIAL LAW RELATING TO
TRUSTS AND INDUSTRIAL COMBINATIONS.

PREPARED BY
JEREMIAH W. JENKS,
EXPERT AGENT.

LETTER OF TRANSMITTAL.

To the Industrial Commission:

I have the honor to submit herewith a compilation of the statutes of the Federal, State, and Territorial governments on the subject of trusts and industrial combinations, together with a digest of the decisions of the courts made under these statutes, and of numerous leading cases decided under the common law.

It is as yet too early to sum up the results of recent legislation on so complex a subject; but a brief study of the statutes and of the cases thus far decided may justify the following observations:

1. Practically all of these statutes were framed with the same purpose in view: To prevent the formation of combinations in trade which might become dangerous to the public, and to destroy such as already exist. In a few cases an attempt is made through special powers granted to prosecuting officers to secure information regarding these organizations, and then to strike them down, if they are seen to be monopolies in the common-law sense.

It is a striking fact that not one of these statutes aims especially at securing publicity regarding the business of the large industrial combinations through detailed reports, in order that the publicity itself may prove a remedial measure.

2. In several of the States, as will be seen from the chart, an attempt has been made to exempt from the heavy penalties of the law dealers in certain products (agricultural products and live stock) and certain classes in the community (the farmers and laborers) on the ground that such combinations are not injurious to the public.

3. The common law is sufficient to enable learned judges to protect the welfare of the people against monopolies that can be clearly proved to be against public policy. The proof needed to establish monopoly seems to vary somewhat with the locality.

4. The statutes, by defining in specific terms, referring to modern conditions, what is the act objected to, put people and prosecuting officers more on the alert regarding their rights

and duties. It is probable, too, that through the statutes the principles of the common law are fitted more rapidly into modern conditions and that they have been somewhat extended.

Possibly at times the fear of a new form of business organization may have led to the extension of legal privileges of interference with private business beyond what the public welfare demands. Some of the statutes, if read literally, would seem to forbid many perfectly innocent associations among individuals; but the courts seem invariably to have assumed that only monopoly—at least virtual monopoly—was attacked, and the decisions have been made accordingly. The courts in most instances have not entered upon the discussion of the more difficult question as to whether the monopoly in question was against public policy; but in some few cases that has formed the basis of the decision.

5. The courts, both state and national, very generally uphold the anti-monopoly statutes. Those declared unconstitutional have been generally so declared on only minor points, which could readily be changed in subsequent statutes, but a late decision in the United States circuit court holds exceptions of special classes unconstitutional.

6. There is a tendency on the part of the courts to put combinations of labor and of capital into the same class before the law, unless special exceptions have been made.

It gives me pleasure to call attention to the very intelligent and careful work of Mr. Herbert A. Heminway, who has assisted me throughout in the preparation of this volume.

Respectfully submitted.

JEREMIAH W. JENKS.

FEBRUARY 20, 1900.

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STATUTES AND DIGESTED DECISIONS OF FEDERAL,
STATE, AND TERRITORIAL LAW ON TRUSTS
AND MONOPOLIES.

UNITED STATES.

STATUTES.

26 STATUTES AT LARGE, 209.

AN ACT to protect trade and commerce against unlawful restraints and monopolies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

§ 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

§ 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

§ 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any territory of the United States or of the District of Columbia,

or in restraint of trade or commerce between any such territory and another, or between any such territory or territories and any state or states or the District of Columbia, or with foreign nations, or between the District of Columbia and any state or states or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

§ 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the attorney-general, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

§ 5. Whenever it shall appear to the court before which any proceedings under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

§ 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one state to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

§ 7. Any person who shall be injured in his business or property by any person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

§ 8. That the word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the territories, the laws of any state, or the laws of any foreign country.

Approved, July 2, 1890.

28 STATUTES AT LARGE, 570.

AN ACT to reduce taxation and provide revenue for the Government and for other purposes.

§ 73. That every combination, conspiracy, trust, agreement, or contract is hereby declared to be contrary to public policy, illegal, and void, when the same is made by or between two or more persons or corporations either of whom is engaged in importing any article from any foreign country into the United States, and when such combination, conspiracy, trust, agreement, or contract is intended to operate in restraint of lawful trade, or free competition in lawful trade or commerce, or to increase the market price in any part of the United States of any article or articles imported or intended to be imported into the United States, or of any manufacture into which such imported article enters or is intended to enter. Every person who is or shall hereafter be engaged in the importation of goods or any commodity from any foreign country in violation of this section of this act, or who shall combine or conspire with another to violate the same, is guilty of a misdemeanor, and, on conviction thereof in any court of the United States, such person shall be fined in a sum not less than one hundred dollars and not exceeding five thousand dollars, and shall be further punished by imprisonment, in the discretion of the court, for a term not less than three months nor exceeding twelve months.

§ 74. That the several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain

violations of section seventy-three of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the attorney-general, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petitions setting forth the case and praying that such violations shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

§ 75. That whenever it shall appear to the court before which any proceeding under the seventy-fourth section of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned whether they reside in the district where the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

§ 76. That any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section seventy-three of this act, and being in the course of transportation from one state to another, or to or from a territory, or the District of Columbia, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

§ 77. That any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

Received by the President August 15, 1894, and not being returned within ten days became a law without his approval.

24 STATUTES AT LARGE, 379.

AN ACT to regulate commerce.¹

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

§ 1. That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country:

Provided, however, That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one state, and not shipped to or from a foreign country from or to any State or Territory as aforesaid.

The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage.

* * *

§ 5. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any contract, agreement or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion

¹The parts of the act not relating to combinations are omitted.

thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

§ 7. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination. * * *

[February 4, 1887.]

CASES CONSTRUING STATUTES.

United States v. Jellico Mountain Coal and Coke Co. et al.

46 Fed., 432.

June 4, 1891.

43 Fed., 898.

October 13, 1890.

Statement.

Owners of Kentucky coal mines and the coal dealers in Nashville, Tennessee, formed a combination whereby all the Nashville dealers should sell coal at the same price, said price to be fixed by the combination; and the mines agreed to sell no coal in Nashville to any person not a member of the combination. The United States brings suit, under the Trust Act of 1890, to enjoin proceedings under this agreement.

Opinion on preliminary hearing.

A preliminary injunction was refused, the court saying: "It is manifest that the act is new and this a most important application of it. It would more injure the defendants to grant this preliminary injunction if, on the final hearing, it should turn out that the case does not fall within the act than it would injure the public to withhold the injunction until the final hearing, and the more since the United States gives no bond to protect the defendants against that injury as a private suitor would be compelled to do."

Opinion on final hearing.

In making the agreement the transportation of the coal from Kentucky to Nashville, Tennessee, was a necessary incident to, and element in, the arrangement, and its execu-

tion would have been impossible without it. It was to all intents and purposes commerce between states, and as it is clear that it was a combination in restraint of trade, it falls within the Trust Act.

Defendants are enjoined.

Bishop v. American Preservers' Co. et al.

51 Fed., 272.

June 8, 1892.

The Trust Act (26 St. at Large, 209) which forbids combinations in restraint of interstate commerce, and gives a right to sue for damages to any person injured by acts in violation of its provisions, does not authorize suit where the only cause of action is the bringing of two suits which have not been decided.

In re Corning et al.

United States v. Greenhut et al.

51 Fed., 205.

June 11, 1892.

Statement.

An indictment against the prisoners charges that they, prior to the act of July 2, 1890, by lease or purchase acquired some 70 distilleries throughout the several states of the Union, and from them produced 77,000,000 gallons of distillery products, which then constituted $\frac{3}{4}$ of the entire amount of such products in the United States, and that they continued to operate said distilleries on the same extensive scale after the act became a law; that part of these products were shipped to Massachusetts, to be sold there and for transportation to other states, and to be sold by defendants to dealers, under a promise on the part of the defendants that if said dealers should purchase their distillery products exclusively from the defendants, and should sell such products not below certain prices, then defendants would pay said dealers a rebate of five cents a gallon on all their purchases. Defendants are arrested and ask for a writ of *habeas corpus*.

Opinion.

The acts alleged do not constitute a crime. To have committed a crime the defendants must have obligated the vendors of the distilleries not to build others, or to withhold their capital or experience from the business; or they must have required an agreement from the dealers that they would

buy all their liquors of defendants, or that they would not sell below a given price.

Defendants are discharged.¹

In re Terrell.

United States v. Greenhut et al.

51 Fed., 213.

June 28, 1892.

Statement.

Defendants made an agreement with Massachusetts dealers that if they should purchase all their distilled spirits of defendants they would give such dealers a rebate. The dealers did not bind themselves to buy of no other manufacturer. Suit is brought against the defendants by the United States for violating the Trust Act.

Opinion.

The dealers were entirely free to buy from whom they chose and to sell at any price they pleased. "The statute does not prohibit the offering of special inducements to such purchasers as shall make all their purchases from a single concern, even though those inducements be so favorable as to accomplish their object."

The defendants are released.

United States v. Nelson et al.

52 Fed., 646.

District Court, October 10, 1892.

Statement.

The defendants were separate dealers in lumber in numerous towns and cities in several states.

September 7th, 1892, at Minneapolis, they agreed to, and did, raise the price of lumber 50 cents on a thousand feet in Wisconsin, Minnesota, Iowa, Illinois, and Missouri. An indictment is brought against defendants charging these facts.

Opinion.

"Unless the agreement involves an absorption of the entire traffic in lumber, and is entered into for the purpose of obtain-

¹ Several other members of the distilling company were arrested under indictments substantially like the one here considered and they were discharged in the same manner as the defendants in this case. The decisions are found in *In re Greene*, 52 Fed., 104, and *In re Terrell*, 51 Fed., 213.

ing the entire control of it with the object of extortion, it is not objectionable to the statute.”

A demurrer to the indictment is sustained.

Blindell et al. v. Hagan et al.

54 Fed., 40.

Circuit Court, February 9, 1893.

Statement.

The complainants are owners of the steamship *Violante*, which they are using in the carrying trade between New Orleans and Liverpool. The defendants have combined to prevent complainants from obtaining a crew for the *Violante*. Complainants seek an injunction founded on the following provision of the Trust Act:

“The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States * * * to institute proceedings in equity to prevent and restrain such violations.”
26 St. at Large, 209.

Opinion.

The Trust Act is not meant to allow an individual the right to an injunction. An injunction can only be granted when the United States is complainant.¹

Injunction is refused under the Trust Act, but is granted on other grounds.

United States v. Patterson et al.

55 Fed., 605.

Circuit Court, February 23, 1893.

This case decides as to the sufficiency of an indictment, holding part of it bad and the remainder good. Under the Trust Act of 1890 it is insufficient for an indictment to declare the crime in the words of the statute, but it must state the means whereby it is sought to monopolize the market; and it must state such a purpose to restrain trade as is implied in the common law term “contract in restraint of trade.”

¹ The same point is decided in the same way in *Pidcock v. Harrington et al.*, 64 Fed., 821, *Greer Mills & Co. v. Stroller et al.*, 77 Fed., 1; *Gulf, C. & S. F. Ry. Co. et al. v. Miami S. S. Co.*, 86 Fed., 407; and in *Southern Indiana Exp. Co. v. the United States Exp. Co. et al.*, 88 Fed., 659.

United States v. Workmen's Amalgamated Council of New Orleans et al.

54 Fed., 994.

Circuit Court, March 25, 1893.

Statement.

In New Orleans a difference had sprung up between the warehousemen and their employees and the principal draymen and their subordinates. With the view and purpose to compel an acquiescence on the part of the employers in the demands of the employed all the members of the labor associations were made by their officers, who had authority under their various charters, to discontinue business, and one of these kinds of business was transporting goods which were being conveyed from state to state, and to and from foreign nations. By the intended effects of the doings of the defendants, goods in the commerce of the country could not be moved. These acts are sought to be enjoined.

Opinion.

If a combination affects interstate commerce, it falls within the Trust Act whether it be a combination of capital or labor.

The said interference with interstate commerce is enjoined.

Waterhouse et al v. Comer.

55 Fed., 149.

Circuit Court, April 8, 1893.

In considering an application of the Brotherhood of Locomotive Engineers the following section of their rules was declared to be in violation of the Trust Act of 1890: "That hereafter when an issue has been sustained by the grand chief and carried into effect by the Brotherhood of Locomotive Engineers it shall be recognized as a violation of the obligation if a member of the Brotherhood of Locomotive Engineers who may be employed on a railroad run in connection with, or adjacent to, said road to handle the property belonging to said road or system in any way that may benefit said company with which the Brotherhood of Locomotive Engineers are at issue until the grievances or issues of difference of any nature or kind have been amicably settled."

**Dueber Watch Case Manufacturing Co. v. E. Howard Watch and
Clock Co. et al.**

55 Fed., 851.

Circuit Court, May 22, 1893.

Statement.

Defendants are sellers of watches and watch cases throughout the United States and Canada. Plaintiff is a manufacturer of watch cases, which it sells throughout the United States and foreign countries. In 1887, defendants agreed among themselves, and gave notice to plaintiff's customers, that they would sell no goods to anyone buying or selling plaintiff's goods. After the Trust Act was passed, in 1890, defendants renewed the agreement, and as a result plaintiff has been greatly damaged in its business. It sues to recover threefold the damages sustained.

Opinion.

It is a legal act, within the provisions of the law in question, for two or more traders to agree among themselves that they will not deal with those who purchase goods of another designated trader in the same business.

A demurrer to the complaint is sustained.

United States v. Debs et al.

64 Fed., 724.

Circuit Court, December 14, 1894.

Consideration of the Trust Act is unessential to the decision of this case, but the following points are decided:

1. That the Trust Act forbids combinations of labor in restraint of commerce as much as it does combinations of capital.

2. The granting of power to the circuit courts to prevent and restrain violations of the Trust Act is not an invasion of the right to trial by jury as the jurisdiction of equity will be deemed to be limited to such cases only as are of equitable cognizance.

United States v. E. C. Knight Co.

156 U. S., 1.

January 21, 1895.

Statement.

The American Sugar Refining Company, a New Jersey corporation, being in control of a large majority of the manufactories of refined sugar in the United States, purchased stock

in four Philadelphia refineries, which gave it a practical monopoly of the sugar business throughout the United States. The United States brings a bill to have the purchases set aside as contrary to the Trust Act; and for other relief.

Opinion.

The Trust Act was passed concerning commerce among the states. Unless refining sugar is a part of interstate commerce, the Trust Act does not apply. "The regulation of commerce applies to the subjects of commerce and not to matters of internal police. Contracts to buy, sell, or exchange goods to be transported among the several states, the transportation and its instrumentalities, and articles bought, sold, or exchanged for the purposes of such transit among the states, or put in the way of transit, may be regulated, but this is because they form part of interstate trade or commerce. The fact that an article is manufactured for export to another state does not of itself make it an article of interstate commerce, and the intent of the manufacturer does not determine the time when the article of product passes from the control of the state and belongs to commerce." Some of the sugar refined is used within the state and some is sent out of the state; and this is true of the wheat, corn, cotton and cattle that are raised, and of nearly everything that is manufactured. To hold this a part of interstate commerce would give the United States, in the grant to regulate commerce among the states, control of nearly all the business in the states. It was never intended to give such power to the national government. It must be held that an article does not become a part of interstate commerce until it is started for another state; therefore, monopolies in the manufacture of a necessary of life are not covered by the Trust Act. "There was nothing in the proofs to indicate any intention to put a restraint upon trade or commerce, and the fact, as we have seen, that trade or commerce might be indirectly affected, was not enough to entitle complainants to a decree."

The bill is dismissed.

American Soda-Fountain Co. v. Green et al.

69 Fed., 333.

June 4, 1895.

Statement.

In a suit for infringement of a patent relating to soda-water fountains, the answer alleged that complainant company was an illegal combination formed by a great number of manufac-

turers of soda-water apparatus fixing the price thereof, and restraining competition; that in furtherance of this object it had acquired a large number of patents, and that in bringing this suit the complainants sought to harass defendants and destroy their business, because they refused to join the combination.

Opinion.

Held that although this was true it was no defense.

United States v. Addyston Pipe and Steel Co. et al.

78 Fed., 712.

Circuit Court, 1897.

85 Fed., 271.

Circuit Court of Appeals, 1898.

— *U. S., —*

Supreme Court, 1899.

Statement.

Defendants are six corporations, manufacturers of cast-iron pipe. They supply such pipe throughout 36 states. An association was formed by them whereby they agreed not to compete with each other. This agreement was to be carried out thus: A committee of a representative from each corporation set the price for each job, and the corporation that would give the largest bonus for the job got it, the others putting in higher bids to make an apparent competition.

The United States brings suit under the Trust Act to break up this association.

Opinion of Circuit Court.

“The object of the bonus and of the association really is not to prevent all members of the association from furnishing and shipping their manufactured products, but to determine among themselves which one of them shall do so. There is certainly no restraint in this.” It is held that this agreement does not directly restrain commerce, and that to fall within the Trust Act the combination must directly affect interstate commerce.

The bill is dismissed.

Opinion of Circuit Court of Appeals.

“The subject-matter of the restraint here was not articles of merchandise or their manufacture, but contracts for sale of such articles to be delivered across state lines and the negotiations and bids preliminary to the making of such contracts, all of which * * * do not merely affect interstate commerce but are interstate commerce.” Within a limit the

defendants could fix prices as they chose. The restraint imposed was only partial. It did not cover the United States. There was not a complete monopoly. It was tempered by the fear of competition, and it affected only a part of the price. But this fact does not take the contract of association out of the annulling effect of the rule against monopolies. "All the authorities agree that in order to vitiate a contract or combination, it is not essential that its result should be a complete monopoly; it is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition." Nor at common law is there any question of reasonableness of price open to the courts with reference to such a contract for monopoly. Its tendency is to give power to charge unreasonable prices if the parties choose to do so. "For the reasons given [that the contracts are monopolistic and are a restraint upon interstate commerce and hence a violation of the Trust Act], the decree of the circuit court dismissing the bill must be reversed with instructions to enter a decree for the United States perpetually enjoining the defendants from maintaining the combination in cast-iron pipe described in the bill."

Opinion of Supreme Court.

Application of statute.

"As has frequently been said, interstate commerce consists of intercourse and traffic between the citizens or inhabitants of different states, and includes not only the transportation of persons and property and the navigation of public waters for that purpose, but also the purchase, sale and exchange of commodities. * * * If, therefore, an agreement or combination directly restrains not alone the manufacture, but the purchase, sale or exchange of the manufactured commodity among the several states, it is brought within the provisions of the statute. The power to regulate such commerce, that is, the power to prescribe the rules by which it shall be governed, is vested in Congress, and when Congress has enacted a statute such as the one in question, any agreement or combination which directly operates not alone upon the manufacture, but on the sale, transportation and delivery of any article of interstate com-

merce by preventing or restricting its sale, etc., thereby regulates interstate commerce to that extent, and to the same extent trenches upon the power of the National Legislature and violates the statute."

Regulation of commerce may restrict individual contracts.

It has been declared "that the power of Congress to regulate commerce was never intended to be exercised so as to interfere with private contracts not designed at the time they were made to create impediments to such commerce;" but that "the reason for vesting in Congress the power to regulate commerce was to insure uniformity of regulation against conflicting and discriminating state legislation.

"It is undoubtedly true that among the reasons, if not the strongest reason, for placing the power in Congress to regulate interstate commerce was that which is stated.

"The reasons which may have caused the framers of the Constitution to repose the power to regulate interstate commerce in Congress do not, however, affect or limit the extent of the power itself.

"In *Gibbons v. Ogden* (supra) the power was declared to be complete in itself and to acknowledge no limitations other than are prescribed by the Constitution.

"Under this grant of power to Congress that body, in our judgment, may enact such legislation as shall declare void and prohibit the performance of any contract between individuals or corporations where the natural and direct effect of such a contract will be, when carried out, to directly and not as a mere incident to other and innocent purposes regulate to any substantial extent interstate commerce. (And when we speak of interstate we also include in our meaning foreign commerce.) We do not assent to the correctness of the proposition that the constitutional guaranty of liberty to the individual to enter into private contracts limits the power of Congress and prevents it from legislating upon the subject of contracts of the class mentioned.

"The power to regulate interstate commerce is, as stated by Chief Justice Marshall, full and complete in Congress, and there is no limitation in the grant of the power which excludes private contracts of the nature in question from the jurisdiction of that body. Nor is any such limitation contained

in that other clause of the Constitution which provides that no person shall be deprived of life, liberty, or property without due process of law. It has been held that the word liberty, as used in the Constitution, was not to be confined to the mere liberty of person, but included, among others, a right to enter into certain classes of contracts for the purpose of enabling the citizen to carry on his business. (*Allgeyer v. Louisiana*, 165 U. S., 578; *United States v. Joint Traffic Association*, 171 id., 505, 572.) But it has never been, and in our opinion ought not to be, held that the word included the right of an individual to enter into private contracts upon all subjects, no matter what their nature, and wholly irrespective (among other things) of the fact that they would, if performed, result in the regulation of interstate commerce and in the violation of an act of Congress upon that subject.

“The provision in the Constitution does not, as we believe, exclude Congress from legislating with regard to contracts of the above nature while in the exercise of its constitutional right to regulate commerce among the states. On the contrary, we think the provision regarding the liberty of the citizen is, to some extent, limited by the commerce clause of the Constitution, and that the power of Congress to regulate interstate commerce comprises the right to enact a law prohibiting the citizen from entering into those private contracts which directly and substantially, and not merely indirectly, remotely, incidentally, and collaterally, regulate to a greater or less degree commerce among the states.”

“If certain kinds of private contracts do directly * * * limit or restrain, and hence regulate interstate commerce, why should not the power of Congress reach those contracts just the same as if the legislature of some state had enacted the provisions contained in them? The private contracts may in truth be as far-reaching in their effect upon interstate commerce as would the legislation of a single state of the same character.”

“The power of Congress over this subject seems to us much more important and necessary than the liberty of the citizen to enter into contracts of the nature above mentioned, free from the control of Congress, because the direct results of such contracts might be the regulation of commerce among the states possibly quite as effectually as if a state had passed a statute of like tenor as the contract. * * * We conclude

that the plain language of the grant to Congress of power to regulate commerce among the several states includes power to legislate upon the subject of those contracts in respect to interstate or foreign commerce which directly affect and regulate that commerce, and we can find no reasonable ground for asserting that the constitutional provision as to the liberty of the individual limits the extent of that power."

Arbitrary increase in price is a restraint.

"If iron pipe cost \$100 a ton instead of the prices which the record shows were paid for it, no one, we think, would contend that the trade in it would amount to as much as if the lower prices prevailed. The higher price would operate as a direct restraint upon the trade, and therefore any contract or combination which enhanced the price might in some degree restrain the trade in the article. It is not material that the combination did not prevent the letting of any particular contract. Such was not its purpose. On the contrary, the more contracts to be let the better for the combination. It was formed not for the object of preventing the letting of contracts, but to restrain the parties to it from competing for contracts and thereby to enhance the prices to be obtained for the pipe dealt in by those parties. And when by reason of the combination a particular contract may have been obtained for one of the parties thereto, but at a higher price than would otherwise have been paid, the charge that the combination was one in restraint of trade is not answered by the statement that the particular contract was in truth obtained and not prevented. The parties to such a combination might realize more profit by the higher prices they would secure than they could earn by doing more work at a much less price. The question is as to the effect of such combination upon the trade in the article, and if that effect be to destroy competition and thus advance the price, the combination is one in restraint of trade."

Contract may be in restraint of trade among states though articles are subject to taxation in one state.

"Decisions regarding the validity of taxation by or under state authority, involving sometimes the question of the point of time that an article intended for transportation beyond the state ceases to be governed exclusively by the

domestic law and begins to be governed and protected by the national law of commercial regulation, are not of very close application here. The commodity may not have commenced its journey and so may still be completely within the jurisdiction of the state for purposes of state taxation, and yet at that same time the commodity may have been sold for delivery in another state. Any combination among dealers in that kind of commodity which in its direct and immediate effect forecloses all competition and enhances the purchase price for which such commodity would otherwise be delivered at its destination in another state, would, in our opinion, be one in restraint of trade or commerce among the states, even though the article to be transported and delivered in another state were still taxable at its place of manufacture."

But commerce within a state can not be interfered with by the statute.

"The views above expressed lead generally to an affirmation of the judgment of the court of appeals. In one aspect, however, that judgment is too broad in its terms—the injunction is too absolute in its directions—as it may be construed as applying equally to commerce wholly within a state as well as to that which is interstate or international only. This was probably an inadvertence merely. Although the jurisdiction of Congress over commerce among the states is full and complete, it is not questioned that it has none over that which is wholly within a state, and therefore none over combinations or agreements so far as they relate to a restraint of such trade or commerce. It does not acquire any jurisdiction over that part of a combination or agreement which relates to commerce wholly within a state by reason of the fact that the combination also covers and regulates commerce which is interstate. The latter it can regulate, while the former is subject alone to the jurisdiction of the state. The combination herein described covers both commerce which is wholly within a state and also that which is interstate.

"In regard to such of these defendants as might reside and carry on business in the same state where the pipe provided for in any particular contract was to be delivered, the sale, transportation, and delivery of the pipe by them under that contract would be a transaction wholly within the state, and the statute would not be applicable to them in that case.

They might make any combination they chose with reference to the proposed contract, although it should happen that some nonresident of the state eventually obtained it.

“The fact that the proposal called for the delivery of pipe in the same state where some of the defendants resided and carried on their business would be sufficient, so far as the act of Congress is concerned, to permit those defendants to combine as they might choose in regard to the proposed contract for the delivery of the pipe, and that right would not be affected by the fact that the contract might be subsequently awarded to some one outside the state as the lowest bidder. In brief, their right to combine in regard to a proposal for pipe deliverable in their own state could not be reached by the Federal power derived from the commerce clause in the Constitution.

“To the extent that the present decree includes in its scope the enjoining of defendants thus situated from combining in regard to contracts for selling pipe in their own state it is modified and limited to that portion of the combination or agreement which is interstate in its character. As thus modified, the decree is affirmed.”

In re Grice.

79 Fed. Rep., 627.

February 22, 1897.

Statement.

The Texas anti-trust law of 1889 makes it a crime for two or more persons to unite to raise or lower prices or limit the production of an article. It provides that persons outside of the state who commit these acts within the state are guilty of a violation of the act. It exempts from its operation agricultural products and live stock while in the hands of the raiser or producer.

John D. Rockefeller and several others, including the relator Grice, were indicted for violating this statute. Grice was imprisoned, and brought habeas corpus proceedings in the circuit court of the United States claiming that the statute is unconstitutional.

Opinion.

Swayne, district judge, who heard the case, held that the law was unconstitutional because it could not affect people outside of the state; that the state can not pass a law prohibiting reasonable restriction of trade, and reasonable combinations; that these rights are guaranteed by the federal

constitution, and that reasonable combinations are by this law prohibited; that four-fifths of the people in Texas are farmers and cattle raisers, and that a law which exempts four-fifths of the people from its operation is unreasonable class legislation, and is void under the constitutional clause that provides that no state shall deny to any person within its jurisdiction the equal protection of the laws.

The relator is discharged.

United States v. Trans-Missouri Freight Association.

166 U. S., 290.

March 22, 1897.

Statement.

Defendants are a large number of railroad companies which entered into an agreement to establish and maintain rates on all freight traffic. The United States brings suit to enjoin defendants on the ground that the agreement is in violation of the Trust Act. Defendants claim :

1. That Congress did not intend the Trust Act to apply to railroads, because the Interstate Commerce Act impliedly gave railroads the right to fix rates; and if Congress had intended to change the Commerce Act by the Trust Act it would have said so.

2. The Trust Act does not apply to reasonable restraint of trade, and the agreement in question provides for only reasonable restraint of trade.

Opinion.

1. The Commerce Act and the Trust Act are consistent with each other and, therefore, the Trust Act applies to railroads just as if there were no Commerce Act.

2. The Trust Act says *every* contract in restraint of trade. Therefore, the courts have no right to confine the scope of the Act to contracts in unreasonable restraint of trade. It includes all contracts in restraint of trade whether reasonable or unreasonable.

The agreement violates the Trust Act, and an injunction is proper.

Pierre V. A. Brett v. Martin C. Ebel et al.

29 N. Y. App. Div., 256.

May, 1898.

Statement.

Plaintiff and defendants were engaged in the business of ship brokers, chartering vessels from various ports in the West Indies and South America. Plaintiff sold defendants

“all his interest and good will in the business of freighting vessels from Port au Prince and said Brett’s Line, Haiti Packets,” and, for \$1,800 a year, promised that while H. Becker & Co. or their successors made shipments by sail to Port au Prince he would not solicit freights or do any business with Port au Prince in or from any place in the United States east of the Mississippi River. Plaintiff sues to recover money due under this contract and is met by the defense that the contract is illegal, being contrary to the United States Trust Act of 1890.

Opinion.

The Federal act “certainly was not intended to prohibit a man from selling his business in the ordinary way and from thereupon obtaining the full value thereof through the instrumentality of an incidental covenant not to compete with the purchaser within some limited area. * * * In our judgment the present contract is not in contravention of this Federal act. It certainly is not within its spirit. If that act were to be construed literally and technically so as to embrace such a contract as the present, it would involve consequences most harmful to the commercial community.”

The contract was legal.

United States v. Hopkins et al.

82 Fed., 529.

Circuit Court, September 20, 1897.

171 U. S., 578.

October 24, 1898.

Statement.

Defendants were engaged as commission merchants in receiving, buying, selling, and handling live stock at the Kansas City stock-yards. These stock-yards furnished the only available public market for that purpose for an area including many states and territories. Defendants formed themselves into an association agreeing upon certain limits to the commissions charged and the number of persons that each member could employ to travel and solicit business, and agreeing that members should do no business with nonmembers. The United States seeks to enjoin defendants from acting under this agreement.

Opinion of the Circuit Court.

By receiving stock from foreign states and shipping stock to foreign states, defendants are engaged in interstate commerce. The agreement is in restraint of interstate commerce.

The Trust Act prohibits all restraints upon interstate trade, and it is immaterial under that law whether the restraints be reasonable or unreasonable. The injunction is granted.

Opinion of the United States Supreme Court.

The business of the members of this exchange is not interstate commerce. It affects it indirectly, but that is all. "The services of members of the different stock and produce exchanges throughout the country in effecting sales of the articles they deal in are of a similar nature. Members of the New York Stock Exchange buy and sell shares of stock of railroads and other corporations, and the property represented by such shares of stock is situated all over the country. Is a broker whose principal lives outside of New York state, and who sends him the shares of stock or the bonds of a corporation created and doing business in another state, for sale, engaged in interstate commerce? * * * We think it would be an entirely novel view of the situation if all the members of these different exchanges throughout the country were to be regarded as engaged in interstate commerce.

The bill of the United States is discharged.

United States v. Coal Dealers' Association of California et al.

85 Fed., 252.

Circuit Court, January 28, 1898.

Statement.

Practically all the coal used in San Francisco is mined in Washington, Oregon and British Columbia. A very large number of the coal dealers in San Francisco formed themselves into an association, agreeing not to sell coal below certain prices. This association entered into a contract with the producers of coal in Washington, Oregon and British Columbia whereby the producers agreed to cooperate with the association to carry out its purposes, and the producers agreed not to sell coal to any non-member except for a much higher price than they charged members. United States seeks to enjoin proceedings under this arrangement.

Opinion of the court.

The combination affects the sale of coal as soon as it arrives in San Francisco from other states and before it has become a part of the mass of property in the state. Until it has become part of the mass of property in the state it remains in interstate commerce, and therefore comes under

the Trust Act. It is unnecessary to discuss whether the restraint is reasonable, for the Trust Act forbids all restraints reasonable or not.

Injunction is granted.

Anderson v. United States.

171 U. S., 604.

October 24, 1898.

Statement.

Plaintiff was a member of the Traders' Live Stock Exchange, an association composed of live stock buyers at Kansas City. He was enjoined by the Circuit Court from acting under the following rules of the exchange: "This exchange will not recognize any yard trader unless he is a member of the Traders' Live Stock Exchange. When there are two or more parties trading together as partners, they shall each and all of them be members of this exchange. No member of this exchange shall employ any person to buy or sell cattle unless such person hold a certificate of membership in this exchange. No member of this exchange shall be allowed to pay any order buyer or salesman any sum of money as a fee for buying cattle from or selling cattle to such party." An appeal was taken to the Supreme Court.

Opinion.

This association does not meddle with prices. In refusing to recognize any yard trader who is not a member of the exchange there is no purpose of thereby affecting or restraining interstate commerce. If that is affected at all, it is in a very remote manner. The rules have no direct tendency to restrain in any way interstate commerce in the cattle dealt in. Whether or not the business engaged in is interstate commerce is not decided.

The bill by the United States is dismissed.

United States v. Joint Traffic Association.

171 U. S., 505.

October 24, 1898.

Statement.

Thirty-one railroad companies, engaged in transportation between Chicago and the Atlantic coast, formed themselves into an association known as the Joint Traffic Association, which was to determine what rates should be charged, and what portion of the business each company should do, so far

as possible without violating the Interstate Commerce Act, or any other law applicable, or any provision of the charters of the companies. Every company was to follow the schedule of rates recommended by the managers of the association, except that any company's board of directors might disapprove the rates so fixed, and after thirty days' notice to the managers of the association, so far as the interest of that company was concerned, the rates need not be followed. The United States brought a bill in a Circuit Court to have proceedings under the agreement enjoined. The bill was there dismissed. On appeal to a Circuit Court of Appeals, the decision was affirmed. The United States now appeal again to the United States Supreme Court.

Opinion:

The natural, direct and necessary effect of the provisions of the agreement is to prevent any competition between the parties to it. The agreement affects interstate commerce by destroying competition. The power given Congress by the Constitution to regulate interstate commerce vests it with power to declare that no contract or combination shall be legal which restrains trade by shutting out the operation of the general law of competition; and Congress has exercised this power by passing the Trust Act of 1890. This act does not deprive the citizen of the liberty guaranteed him by the fifth amendment to the Constitution. The act is constitutional, and following the construction given it in the *Trans-Missouri* case,¹ this combination is in violation of it.

The judgments of the lower courts are reversed, and the case remanded to the Circuit Court with instructions to take such further proceedings therein as may be in conformity with the opinion of the Supreme Court.

Harry W. Dickerman, Trustee, et al. v. The Northern Trust
Company et al.

— U. S., —

January 22, 1900.

Statement.

The Columbia Straw Paper Company, organized under the laws of New Jersey, obtained control of forty paper mills. In doing this a mortgage was given on its property to secure the payment of bonds. The bonds passed into the hands of

¹166 U.S., 290; digested, p. 48.

holders in good faith for value. The bonds not being paid, though due, a bill is filed to foreclose the mortgage. One defense is that the mortgage is part of a scheme to form an unlawful combination in restraint of trade, in violation of the act of Congress of July 2, 1890.

Opinion of the United States Supreme Court.

“If this were a proceeding in *quo warranto* to attack the organization of the corporation * * * or an action against a member of the combination to enforce any of the provisions of the original contract, the validity of such contract would become an important question. But in a suit to foreclose a mortgage upon the property of the concern it is difficult to see how the purpose for which the corporation was originally organized can become a material inquiry. So long as the corporation existed it had the power to create a mortgage, and when the mortgage became due the trustee had a right to foreclose.”

The mortgage can be foreclosed.

COMMON-LAW DECISIONS.

American Biscuit and Manufacturing Co. v. Klotz et al.

44 Fed., 721.

January 8, 1891.

Plaintiff had purchased with its stock thirty-five large bakeries. One of these, claiming that the sale was void, took possession of its property and tendered back the stock received in payment. Plaintiff comes into equity and asks that an injunction issue. An injunction is denied. It is suggested that the combination would be illegal by the Louisiana statute or by the United States Trust Act of 1890, and that such a combination being against public policy should not be aided by an equity court in any way. It is not *decided* that the anti-trust acts apply. The decision rests on the ground that such a combination is not to be aided by a court of equity.

Central Transportation Company v. Pullman's Palace Car Company.

139 U. S., 24.

March 2, 1891.

Statement.

Plaintiff corporation held a ninety-nine-year charter “to carry on the business of manufacturing sleeping cars under its patents and of hiring or letting the cars or other personal

property to other corporations." A contract was made between plaintiff and defendant whereby plaintiff transferred to defendant all its cars, contracts, patents and other property for ninety-nine years and agreed not to engage in its then business for that time; for which defendant promised to pay \$264,000 rent a year. Plaintiff brings suit to recover \$198,000 rent due.

Opinion.

Where a corporation has granted to it a franchise intended in a large measure to be exercised for the public good, the due performance of its functions being the consideration of the public grant, any contract which disables the corporation from performing its functions, or which undertakes without the consent of the state, to transfer to others the rights conferred by the charter, and to relieve the grantees of the burden which it imposes, is a violation of the contract with the state and is void as against public policy.

Plaintiff can not recover.

National Harrow Co. v. Quick et al.

67 Fed., 130.

March 23, 1895.

Statement.

Plaintiff is a corporation formed to secure assignments of all patents relating to spring-tooth harrows; to grant licenses to the assignors to use the patents upon payment of a royalty; and to fix the prices at which such harrows should be sold. Defendants have infringed one of the patents thus secured, and suit is brought to have them enjoined.

Opinion.

Judge Baker: "It seems to me that such a combination is illegal. * * * The common law forbids the organization of such combinations, composed of numerous corporations and firms. They are dangerous to the peace and good order of society. * * * It seems to me that the court can not sustain the present bill without giving aid to the unlawful combination or trust represented by the complainant. The question is not free from doubt, but in a case of doubt I feel it my duty to resolve it in such a way as will not lend the countenance of the court to the creation of combinations, trusts or monopolies. They have already grown to alarming proportions, and courts, to the extent of their power, ought to discountenance them."

Equity refuses aid.

CASES SHOWING POWERS OF CONGRESS AND STATE
LEGISLATURES.

McCulloch v. The State of Maryland et al.

4 *Wheat.*, 316.

1819.

Statement

The State of Maryland passed "an act to impose a tax on all banks, or branches thereof, in the State of Maryland, *not chartered by the legislature.*" The Bank of the United States, a corporation organized by act of Congress, had a branch in Maryland, which it was sought to tax under the act aforesaid. Two main questions were raised:

1. Was the act incorporating the bank constitutional?
2. Could a state tax a corporation created by Congress?

Opinion by Chief Justice Marshall

In the Constitution "we find the great powers to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies. * * * But that instrument does not profess to enumerate the means by which the powers it confers may be executed; nor does it prohibit the creation of a corporation, if the existence of such a being be essential to the beneficial exercise of these powers. * * * We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of the Constitution must allow to the national legislature that discretion with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adopted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional." "Where the law is not prohibited, and is really calculated to effect any of the objects entrusted to the government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department, and to tread on legislative ground." The bank is a proper agency for carrying into effect the expressed powers of the Constitution hereinbefore mentioned, and "it is the unanimous and decided opinion of this court that the act to incorporate" it is constitutional.

2. The State governments have no right to tax any of the means employed by the United States government to execute its constitutional powers.

Gibbons v. Ogden.

9 *Wheat.*, 1.

1824.

Statement.

The State of New York gave Robert R. Livingston and Robert Fulton the exclusive right to navigate all waters within the jurisdiction of the state with vessels propelled by steam for a term of years. Gibbons navigated the bay of New York with a steamboat running between New York City and Elizabethport, N. J., which steamboat had been duly licensed as a coasting vessel, under acts of Congress regulating the coasting trade. Ogden, who had succeeded to the rights of Livingston and Fulton, brought suit to restrain Gibbons. The case went to the United States Supreme Court for a decision on the constitutionality of the said grant to Livingston and Fulton.

Opinion by Chief Justice Marshall.

“The sole question is, Can a state regulate commerce with foreign nations and among the several states *while Congress is regulating it?*” It can not. When the laws of Congress, enacted under the Constitution, and state laws conflict the state laws must yield. The power of Congress to regulate interstate commerce, “like all others vested in Congress, is complete in itself; may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution.”

The grant was unconstitutional.

Brown et al. v. Maryland.

12 *Wheat.*, 413.

1827.

Statement.

The State of Maryland indicted plaintiffs for violating a statute of that state requiring any person selling foreign goods to pay \$50 license. Justice Marshall, speaking for the United States Supreme Court, said:

Opinion.

“We think, then, that the act under which the plaintiffs in error were indicted is repugnant to the article of the Constitution * * * which empowers Congress to regulate commerce * * * among the several states.”

Farmers' and Mechanics' National Bank v. Dearing.

91 U. S., 29.

October, 1875.

Statement.

An act of Congress provided that a national bank should forfeit all interest for taking more than the legal rate in the state where situated. An act of the State of New York provided that both interest and debt should be forfeited for charging more than 6 per cent interest. Plaintiff, situated in the State of New York, loaned defendant \$2,000 on a note at ten per cent interest. Plaintiff sued on the note. The New York Court of Appeals held the note absolutely void. Plaintiff carried the case to the United States Supreme Court.

Opinion.

National banks are designed to be used to aid the government in the administration of the powers granted by the Constitution; and Congress, which is the sole judge of the necessity for their creation, having brought them into existence, the states can exercise no control over them, nor in any way affect their operation, except so far as Congress may see fit to permit. The state act must yield to the Federal act with which it conflicts.

Plaintiff can recover the principal of the note.

Munn v. Illinois.

94 U. S., 113.

1876.

Statement.

In 1872 Munn was manager of the Northwestern Elevator in the city of Chicago. A statute of Illinois fixed the maximum charge for storing and handling grains by warehousemen in cities of more than 100,000 inhabitants. Munn charged higher rates than the statute allowed, and was indicted. The case comes to the United States Supreme Court. Munn claims that the statute is unconstitutional because repugnant to the provisions:

1. That no State shall "deprive any person of life, liberty, or property, without due process of law."
2. That no State shall "deny to any person within its jurisdiction the equal protection of the laws," and,
3. That Congress has the power "to regulate commerce with foreign nations and among the several states."

Opinion.

“Every statute is presumed to be constitutional. * * * If there is doubt, the expressed will of the legislature should be sustained.”

1. Under the police “powers the government regulates the conduct of its citizens one towards another, and the manner in which each shall use his property, when such regulation becomes necessary for 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. * * * From this it is apparent that, down to the time of the adoption of the Fourteenth Amendment, it was not supposed that statutes regulating the use of private property necessarily deprived an owner of his property without due process of law. Under some circumstances they may, but not under all. *The amendment does not change the law in this particular.*” Elevators, like inns, are impressed with a public interest, and so the state can regulate them without “depriving any person of * * * property, without due process of law,” as the expression is used in the Fourteenth Amendment.

2. “After what has already been said, it is unnecessary to refer at length to the other provision of the Fourteenth Amendment which is relied upon, viz, that no state shall ‘deny to any person within its jurisdiction the equal protection of the laws.’ Certainly, it can not be claimed that this prevents the state from regulating the fares of hackmen or the charges of draymen in Chicago, unless it does the same thing in every other place within its jurisdiction. But, as has been seen, the power to regulate the business of warehouses depends upon the same principle as the power to regulate hackmen and draymen,” and what can be done in the one case can be done in the other.

3. “The warehouses” in question “are situated and their business carried on exclusively within the limits of the State of Illinois. They are used as instruments by those engaged in state as well as those engaged in interstate commerce, but they are no more necessarily a part of commerce itself than the dray or the cart by which, but for them, grain would be

transferred from one railroad station to another. Incidentally they may become connected with interstate commerce, but not necessarily so. Their regulation is a thing of domestic concern, and, certainly, until Congress acts in reference to their interstate relations, the state may exercise all the powers of government over them, even though in so doing it may indirectly operate upon commerce outside its immediate jurisdiction. We do not say that a case may not arise in which it will be found that a state, under the form of regulating its own affairs, has encroached upon the exclusive domain of Congress in respect to interstate commerce, but we do say that, upon the facts as they are represented to us in this record, that has not been done."

The statute is held constitutional.

Trade-Mark Cases.

100 U. S., 82.

October, 1879.

Statement.

In 1870 Congress passed an act providing for the registration of trade-marks in the Patent Office; in 1876 another act was passed punishing the fraudulent use, sale or counterfeiting of trade-marks thus registered, the two acts being so connected that they stand or fall together. Under the latter act three persons were indicted. In defense the constitutionality of the legislation is assailed. The cases come to the Supreme Court.

Opinion.

If an act of Congress can in any case be extended, as a regulation of commerce, to trade-marks, it must be limited to their use in "commerce with foreign nations, and among the several states, and with the Indian tribes." The legislation in question is not in its terms or essential character a regulation thus limited, but in its language embraces and was intended to embrace all commerce, including that between citizens of the same state.

The acts are unconstitutional.

Walling v. The State of Michigan.

116 U. S., 446.

January 13, 1886.

Statement.

Walling, a "drummer," came to Michigan to solicit orders liquors to be shipped from Chicago, and was arrested under

a Michigan statute requiring one engaged in that business to have a license. Walling carried the case to the Supreme Court of the United States.

Opinion.

“We think that the act in question operates as a regulation of commerce among the states in a manner within the exclusive power of Congress, and that it is for this reason repugnant to the Constitution of the United States, and void.”

Robbins v. Shelby County Taxing District.

120 U. S., 489.

March 7, 1887.

Statement.

A Tennessee statute required “all drummers, and all persons not having a regular licensed house of business within the taxing district, offering for sale or selling goods, wares or merchandise therein by sample” to pay for a license. Robbins was selling goods in Tennessee by sample for a firm in Ohio. Being indicted for a breach of the said statute, Robbins brings the case before the United States Supreme Court.

Opinion.

“The negotiation of sales of goods which are in another state for the purpose of introducing them into the state in which the negotiation is made is interstate commerce.” Therefore, as applied to persons soliciting orders for houses doing business in other states, the statute in question is unconstitutional, it being inconsistent with the power of Congress to regulate commerce among the several states.

Leisy v. Hardin.

135 U. S., 100.

1890.

Statement.

A statute of Iowa prohibited the sale of any intoxicating liquors, except for pharmaceutical, medicinal, chemical or sacramental purposes, and under a license from a county court of the state. Plaintiff shipped intoxicating liquor from Illinois into Iowa and sold it there in the original packages. A large number of these packages were seized by defendant, a constable of Iowa, by virtue of the said statute. Plaintiff brings replevin to obtain possession of the liquor, claiming the statute is repugnant to the power given to Congress to regulate commerce among the states.

Opinion of Supreme Court.

“The doctrine now firmly established is, * * * ‘that where the subject upon which Congress can act under its commercial power is local in its nature or sphere of operation, such as harbor pilotage, the improvement of harbors, the establishment of beacons and buoys to guide vessels in and out of port, the construction of bridges over navigable rivers, the erection of wharves, piers and docks, and the like, which can be properly regulated only by special provisions adapted to their localities, the state can act until Congress interferes and supersedes its authority; but where the subject is national in its character, and admits and requires uniformity of legislation, affecting alike all the states, such as transportation between the states, including the importation of goods from one state into another, Congress alone can act upon it and provide the needed regulations. The absence of any law of Congress on the subject is equivalent to its declaration that commerce in that matter shall be free. Thus the absence of regulations as to interstate commerce with reference to any particular subject is taken as a declaration that the importation of that article into the states shall be unrestricted. It is only after the importation is completed, and the property imported has mingled with and become a part of the general property of the state that its regulations can act upon it, except so far as may be necessary to insure safety in the disposition of the import until thus mingled.’”

The statute in question as applied to a sale by the importer, and in the original packages or kegs, unbroken and unopened, of liquors manufactured in and brought from another state is unconstitutional and void.

In re Rahrer, Petitioner.

140 U. S., 545.

May 25, 1891.

Statement.

An act of Congress (26 Stat., 313), provides that intoxicating liquors transported into any state or remaining therein for use, sale or storage shall upon arrival in such state be subject to the laws of such state as if produced therein and shall not be exempt therefrom by reason of being introduced therein in original packages. Petitioner sold beer and whiskey in the original packages as shipped from Missouri, in Topeka, Kansas. By the law of that state this was a crime. Petitioner

is arrested, and prays for a writ of *habeas corpus*. The case comes before the United States Supreme Court for a decision on the constitutionality of the said laws.

Opinion.

“The power to regulate” interstate commerce “is solely in the general government, and it is an essential part of that regulation to prescribe the regular means for accomplishing the introduction and incorporation of articles into and with the mass of property in the country or state. No reason is perceived why, if Congress chooses to provide that certain designated subjects of interstate commerce shall be governed by a rule which divests them of that character at an earlier period of time than would otherwise be the case, it is not within its competency to do so.” The act of Congress is valid. The original laws of Kansas became operative in respect to imported packages of intoxicating liquors in their original condition as soon as the act of Congress removed the impediment.

Prayer for writ of *habeas corpus* denied.

Reagan v. Mercantile Trust Company.

154 U. S., 413.

May 26, 1894.

Statement.

The Mercantile Trust Company was trustee in a deed of trust executed by the Texas and Pacific Railway Company. The legislature of the State of Texas appointed a commission to regulate the rates to be charged by railroads for business done within the state. The Trust Company seeks to enjoin the commission from enforcing any rates against the Texas and Pacific Railway Company, on the ground that being incorporated by Congress it is not subject to state legislation. The case comes to the United States Supreme Court.

Opinion.

“Conceding to Congress the power to remove the corporation in all its operations from the control of the state, there is in the act creating this company nothing which indicates an intent on the part of Congress to so remove it, and there is nothing in the enforcement by the state of reasonable rates for transportation wholly within the state which will disable the corporation from discharging all the duties and

exercising all the powers conferred by Congress. By the act of incorporation Congress authorized the company to build its road through the State of Texas. It knew that, when constructed, a part of its business would be the carrying of persons and property from points within the state to other points also within the state, and that in so doing it would be engaged in a business, control of which is nowhere by the Federal Constitution given to Congress. It must have known that, in the nature of things, the control of that business would be exercised by the state, and if it deemed that the interests of the nation and the discharge of the duties required on behalf of the nation from this corporation demanded exemption in all things from state control, it would unquestionably have expressed such intention in language whose meaning would be clear. Its silence in this respect is satisfactory assurance that, in so far as this corporation should engage in business wholly within the state, it intended that it should be subjected to the ordinary control exercised by the state over such business. * * * We are of opinion that the Texas and Pacific Railway Company is, as to business done wholly within the state, subject to the control of the state in all matters of taxation, rates, and other police regulations."

Pollock v. Farmers' Loan and Trust Company; Hyde v. Continental Trust Company.

158 U. S., 601.

May 20, 1895.

Statement.

It is provided in the Federal Constitution that direct taxes shall be apportioned among the states according to their representative population. In 1894 Congress passed an act imposing a tax on incomes from whatever source derived. This tax not being apportioned among the states according to their population, its constitutionality is assailed.

Opinion on first hearing.

A tax on the income of real estate is a direct tax, and in this act, not being apportioned as provided by the Constitution, is void.

A tax upon income derived from bonds issued by a municipal corporation is a tax upon the power of the state and its instrumentalities to borrow money, and is consequently repugnant to the Constitution.

Whether as to the income from personal property, as such, the act is unconstitutional as laying a direct tax, the judges who heard the argument are equally divided.

Opinion on second hearing.

A tax on real property is clearly a direct tax. A tax on personal property is a direct tax. That which gives value to real or personal property is its income. Property and its income are so closely connected that what is a direct tax upon one is a direct tax upon the other. Therefore, as the act imposes a tax on the income of real and personal property, and is not apportioned among the states according to their population, the act is unconstitutional.

Blake v. McClung.

172 U. S., 239.

December 12, 1898.

Statement.

A statute of Tennessee provides that the assets of an insolvent foreign corporation doing business in that state shall be used to pay the debts of residents of Tennessee before paying debts of residents of other states. A foreign corporation doing business in Tennessee has become insolvent. Among its creditors are residents of Tennessee, citizens of Ohio, and a corporation of Virginia. The Ohio and Virginia creditors claim a *pro rata* share in the assets with the residents of Tennessee, on the ground that the said statute is unconstitutional. The case comes to the United States Supreme Court.

Opinion.

1. As to the citizens of Ohio. "That [Tennessee] statute, by its necessary operation, excludes citizens of other states from transacting business with that corporation upon terms of equality with citizens of Tennessee." Therefore, it is in violation of the provision of the Federal Constitution that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

2. As to the Virginia corporation. A corporation is not a "citizen," therefore, the aforementioned provision of the Constitution does not apply to it.

The Fourteenth Amendment provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." A corporation is a "person;" but here the phrase "within its jurisdiction" is all important. "A corporation not created by Tennessee, nor doing business there under conditions that subjected it to process issuing

from the courts of Tennessee at the instance of suitors, is not, under the above clause of the Fourteenth Amendment, within the jurisdiction of that state." The Virginia corporation "does not appear to have been doing business in Tennessee * * * under any statute that would bring it directly under the jurisdiction of the courts of Tennessee by service of process on its officers or agents. Nor do we think it came within the jurisdiction of Tennessee, within the meaning of the amendment, simply by presenting its claim in the state court and thereby becoming a party to this cause." As to the Virginia corporation the statute is constitutional.

Nicol v. Ames; In re Nichols; Skillen v. Ames, and Ingwersen v. United States.

173 U. S., 509.

April 3, 1899.

Statement.

The war revenue act of 1898 imposes a tax on "each sale, agreement of sale or agreement to sell any products or merchandise, at any exchange or board of trade or other similar place," and requires that the seller deliver to the buyer a memorandum to which a revenue stamp shall be affixed. It is contended that this provision is unconstitutional, because:

1. It is a direct tax, and is not apportioned as required by the Constitution.
2. If an indirect tax, it is a stamp tax on documents not required to be made under state law in order to render the sale valid, and Congress has no power to require a memorandum to be made of transactions within the state for the purpose of placing a stamp thereon.
3. If an indirect tax, it is not uniform, as required by the Constitution.

Opinion of United States Supreme Court.

1. The tax is not upon the property sold, nor the sale, nor the person making it, but "is in effect a duty or excise laid upon the privilege, or opportunity or facility offered at boards of trade" and is, therefore, not a direct tax.

2. The tax is not upon the memorandum, nor does Congress "assume to enact anything in opposition to the law of any state upon the subject of sales. It provides for a written memorandum containing the matters mentioned, simply as a means of identifying the sale, and for collecting the tax by means of the required stamp. * * * Congress might have required a sworn report with the proper amount of stamps

thereon to be made at certain regular intervals, of all sales made subject to the tax. * * * Whether the means adopted were the best and most convenient to accomplish that purpose was a question for the judgment of Congress and its decision must be conclusive in that respect."

3. In this case there is that uniformity which the Constitution requires. The tax or duty is uniform throughout the United States, and it is uniform or, in other words, equal, upon all who avail themselves of the privileges or facilities offered at the exchanges, and it is not necessary in order to be uniform that the tax should be levied upon all who make sales of the same kind of things, whether at an exchange or elsewhere."

The act is constitutional.

ALABAMA.

STATUTES.

LAWS OF 1883, PAGE 152.

§ 2. **Illegal Tolls, Freights, and Ferries.**—Unlawful pooling of freights. Any officer, agent, or servant of a person or corporation operating a railroad, who aids in making or carrying out an agreement between railroads, commonly called a pool, for the division between themselves of the freight-carrying business of any place in this state, whereby trade is restrained by the establishment of extortionate rates and the prevention of free competition, unless such agreement has been approved by the railroad commissioners, must, on conviction, be fined not less than fifty, nor more than two hundred dollars.

LAWS OF 1896-97, ACT 634.

AN ACT to more effectively protect the people against combinations, conspiracies and agreements between insurers whereby rates of insurance are raised or fixed. Whereas existing laws have proved inadequate to protect the people against combinations, conspiracies and agreements between insurers whereby rates of insurance are raised or fixed by such practices, therefore, in order to suppress such combinations, conspiracies and agreements to the end that competition in business shall alone make such rates.

§ 1. *Be it enacted by the general assembly of Alabama,* That every contract or policy of insurance made or issued after the passage of this act shall be construed to mean that in the event of loss or damage thereunder, the assured or beneficiary thereunder may, in addition to the actual loss or damage suffered, recover twenty-five per cent of the amount of such actual loss, any provision or stipulation in such contract or policy to the contrary notwithstanding; *Provided,* at the time of the making of such contract or policy of insurance, or subsequently before the time of trial the insurer belonged to, or was a member of, or in any way connected with, any tariff association or such like thing by

whatever name called or who had any agreement or had any understanding with any other person, corporation or association engaged in the business of insurance as agent or otherwise about any particular rate of premium which should be charged or fixed for any kind or class of insurance risk; *And provided further*, no stipulation or agreement in such contract or policy of insurance to arbitrate loss or damage nor to give notice or make proofs of loss or damage shall in any such case be binding on the assured or beneficiary, but right of action accrues immediately upon loss or damage.

§ 2. *Be it further enacted*, That if it is shown to the reasonable satisfaction of the jury by a preponderance of the weight of the testimony that such assurer at the time of the making of such agreement or policy of insurance or subsequently before the time of trial belonged to, or was a member of, in any way connected with any tariff association or such like thing by whatever name called, either in or out of this state, or had made any agreement or had any understanding either in or out of this state with any person, corporation or association engaged in the business of insurance as agent or otherwise about any particular rate of premium which should be charged or fixed for any risk of insurance on any person or property or on any kind or class of insurance risk, they must if they find for the assured or beneficiary in addition to his actual damages assess and add twenty-five per cent of the amount of such actual loss, and judgment shall be rendered accordingly.

§ 3. *Be it further enacted*, That this act shall be liberally construed to accomplish its object.

Approved February 18th, 1897.

ARKANSAS.

STATUTES.

LAWS OF 1897, ACT 46.

AN ACT to prevent combinations of trusts and corporations in the State of Arkansas.

Be it enacted by the General Assembly of the State of Arkansas,

§ 1. That from and after the passage of this act, all arrangements, contracts, agreements, trusts, or combinations, between persons or corporations, made with a view to lessen or which tend to lessen full and free competition in the importation or the sale of articles imported into this state, or in the manufacture or sale of articles of domestic growth, or of domestic raw material, and all arrangements, contracts, agreements, trusts or combinations, between persons or corporations designed, or which tend to advance, reduce or control the price, or the cost to the producer, or to the consumer of any such product or article, are hereby declared to be against public policy, unlawful and void.

§ 2. *Be it further enacted,* That any corporation chartered under the laws of this state, which shall violate the provisions of this act, shall thereby forfeit its charter and franchise, and its corporate existence shall thereupon cease and determine.

Every foreign corporation which shall violate the provisions of this act, is hereby denied the right to do, and is prohibited from doing business in this state. It is hereby made the duty of the attorney-general of this state to enforce this provision by due process of law.

§ 3. *Be it further enacted,* That any violation of this act shall be deemed, and is hereby declared, destructive of full and free competition, and a conspiracy against trade, and any person or persons who may engage in any such conspiracy, or shall as principal, manager, director, or agent, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, or orders, made in furtherance

of such conspiracy, shall on conviction, be punished by any fine not less than five hundred dollars, nor more than two thousand dollars, and by imprisonment in the penitentiary not less than one, nor more than ten years, or in the judgment of the court, by either such fine or imprisonment.

§ 4. *Be it further enacted*, That the provisions of this act shall not apply to agricultural products, or live stock, while in the possession of the producer or raiser.

§ 5. *Be it further enacted*, That any person or persons, or corporation, that may be injured or damaged by any such arrangements, contracts, agreements, trusts, or combinations, described in section one of this act may sue for and recover in any court of competent jurisdiction in this state, of any person or persons, or corporations, operating such trusts, or combination, the full consideration or sum paid him or them for any goods, wares, merchandise or articles of sale of which is controlled by such combination or trust.

§ 6. *Be it further enacted*, That it shall be the duty of the judges of the circuit courts of this state to specially instruct the juries as to the provisions of this act.

§ 7. *Be it further enacted*, That all laws and parts of laws in conflict with the provisions of this act, be, and the same are hereby, repealed.

Approved March 16, 1897.

LAWS OF 1899, ACT 41.

AN ACT providing for the punishment of pools, trusts and conspiracies to control prices, and as to evidence and prosecution in such cases.

Be it enacted by the General Assembly of the State of Arkansas,

§ 1. Any corporation organized under the laws of this or any other state or country and transacting or conducting any kind of business in this state, or any partnership or individual, or other association or persons whatsoever, who shall create, enter into, become a member of, or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual or any other person or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or

premium to be paid for insuring property against loss or damage by fire, lightning or storm, or to maintain said price when so regulated or fixed or shall enter into, become a member of or a party to any pool, agreement, contract, combination, association or confederation to fix or limit the amount or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado or any other kind of policy issued by any corporation, partnership, individual or association of persons aforesaid, shall be deemed and adjudged guilty of a conspiracy to defraud, and be subject to the penalties as provided by this act.

§ 2. Any person, partnership, firm or association, or any representative or agent thereof, or any corporation or company, or any officer, representative or agent thereof, violating any of the provisions of this act shall forfeit not less than two hundred dollars, nor more than five thousand dollars for every such offense, and each day such person, corporation, partnership or association shall continue to do so shall be a separate offense, the penalty in such case to be recovered by an action in the name of the state at the relation of the attorney-general or prosecuting attorney; the moneys thus collected to go into the county school fund of the county in which the cause accrues, except as hereinafter provided.

§ 3. Any corporation created or organized by or under the laws of this state, which shall violate any of the provisions of the preceding sections of this act shall thereby forfeit its corporate rights and franchises; and its corporate existence shall, upon proper proof being made thereof in any court of competent jurisdiction in this state, be by the court declared forfeited, void and of non-effect, and shall thereupon cease and determine; and any corporation created or organized by or under the laws of any other state or country, which shall violate any provisions of the preceding sections of this act, shall thereby forfeit its right and privilege thereafter to do any business in this state, and upon proper proof being made thereof in any court of competent jurisdiction in this state, its right and privilege to do business in this state shall be declared forfeited; and in all proceedings to have such forfeiture declared, proof that any person who

has been acting as the agent of such foreign corporation in transacting its business in this state has been, while acting as such agent, and in the name, behalf, or interest of such foreign corporation, violating any provision of the preceding sections of this act, shall be received as prima facie proof of the act of the corporation itself; and it shall be the duty of the clerk of said court to certify the decree thereof to the secretary of state, and if it be an insurance company, also to the auditor of the state who shall take notice and be governed thereby as to the corporate powers and rights of said corporation.

§ 4. It shall be the duty of the secretary of state on or about the first day of July of each year, to address to the president, secretary or treasurer of each incorporated company doing business in this state, a letter of inquiry as to whether the said corporation, has all or any part of its business or interest in or with any trust, combination or association of persons or stockholders as named in the preceding provisions of this act, and to require an answer, under oath, of the president, secretary or treasurer, or any director of said company; a form of affidavit shall be enclosed in said letter of inquiry, as follows:

AFFIDAVIT.

STATE OF ARKANSAS, *County of* _____.

I, _____, do solemnly swear that I am the _____ (president, secretary, treasurer or director) of the corporation known and styled _____ duly incorporated under the laws of _____ on the _____ day of _____ 18____ and now transacting or conducting business in the state of Arkansas, and that I am duly authorized to represent said corporation in making this affidavit; and I do further solemnly swear that the said _____ known and styled as aforesaid, has not since the _____ day of _____ (naming the day upon which, this act to take effect) created, entered into or become a member of or a party to, and was not, on the _____ day of _____ nor at any day since that date, and is not now, a member of or a party to, any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual, or any other person or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchan-

dise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado or any other kind of policy issued by the parties aforesaid; and that it has not entered into or become a member of or a party to any pool, trust, agreement, contract, combination or confederation, to fix or limit the amount or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado or any other kind of policy issued by the parties aforesaid; and that it has not issued, and does not own any trust certificates, and for any corporation, agent, officer or employe, or for the directors or stockholders of any corporation, has not entered into and is not now in any combination, contract, or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which said combination, contract, or agreement would be to place the management or control of such combination or combinations, or the manufactured products thereof, in the hands of any trustee or trustees, with the intent to limit, or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article.

[President, Secretary, Treasurer or Director.]

Subscribed and sworn to before me, a _____ within
and for the county of _____ this _____ day of _____
18_____.

[SEAL.] _____

And on refusal to make oath in answer to said inquiry, or on failure to do so, within thirty days from the mailing thereof, the secretary of state shall certify said fact to the prosecuting attorney of the county wherein said corporation is located, and it shall be the duty of such prosecuting attorney, at his earliest practicable moment, in the name of the state, and at the relation of said prosecuting attorney, to proceed against such corporation, if a domestic corporation, for the recovery of the money forfeit provided for in this

act, and also for the forfeiture of its charter or certificate of incorporation. If a foreign corporation, to proceed against such corporation for the recovery of the money forfeit provided for in this act, and to forfeit its right to do business in this state: *Provided*, That within thirty days after the passage of this act all foreign corporations desiring to do business in this state shall file a new bond, as the statute directs; and such sureties and bondsmen shall be liable for the penalties and forfeitures, including costs, provided for in this act.

§ 5. It shall be the duty of the attorney-general and the prosecuting attorney of each county, respectively, to enforce the provisions of this act. The attorney-general, the prosecuting attorneys, shall institute and conduct all suits begun in the circuit courts, and upon appeal the attorney-general shall prosecute said suits in the supreme court and courts of appeal. As compensation for his services in this behalf, the attorney-general shall be entitled to his actual expenses incurred in the prosecution of such suits, to be paid by the defendant or defendants when judgment is rendered for the state, to be taxed as costs by the court hearing the cause. The attorney-general and the prosecuting attorneys shall receive for their compensation one-fourth of the penalty collected, one-fourth of which shall go to the attorney-general, and three-fourths to the prosecuting attorney.

§ 6. In all suits instituted under this act to forfeit the charter of corporations, or to forfeit the right of a corporation to do business in this state, where a judgment of forfeiture is obtained, and the cause is not appealed to the supreme court, the circuit court rendering such judgment shall allow the prosecuting attorney a fee of not less than twenty-five dollars or more than two hundred and fifty dollars, to be paid out of the assets of said corporation; and when the attorney-general takes part in said prosecution, he shall be entitled to his actual expenses to be paid in like manner. All actions authorized and brought under this act shall have precedence, on motion of the prosecuting attorney or attorney-general, of all other business, civil and criminal, except criminal cases where the defendants are in jail.

§ 7. That all laws and parts of laws in conflict herewith are hereby repealed, and this act shall take effect and be in force from and after its passage.

Approved March 6, 1899.

CALIFORNIA.

COMMON-LAW DECISION.

The San Diego Water Co. v. The San Diego Flume Co.

108 Cal., 549.

August 26, 1895.

Statement.

Plaintiff and defendant made a contract whereby defendant was to supply no water in San Diego except through the pipes of the plaintiff, and agreed that it would supply water through plaintiff's pipes; plaintiff agreed to take the water and divide the profits with defendant. The plaintiff's and defendant's presidents were appointed trustees to manage the business of both companies.

By the laws of California the city government fixes the water rates.

Defendant now refuses to live up to the contract. Plaintiff brings suit to enforce it, and is met by the defense that the contract is illegal.

Opinion.

The contract was not void on the ground that it formed a partnership between the two corporations and was hence *ultra vires*. The agreement did not make the corporations partners, but merely made plaintiff the agent of the defendant.

The agreement was not against public policy, because the city fixes the water rate.

The contract is enforceable.

COLORADO.

CONSTITUTIONAL PROVISION.

ARTICLE 15.

§ 5. No railroad corporation, or the lessees or managers thereof, shall consolidate its stock, property or franchises with any other railroad corporation owning or having under its control a parallel or competing line.

[Adopted, March 14, 1876.]

CONNECTICUT.

CONSTITUTIONAL PROVISION.

ARTICLE FIRST.

§ 1. We declare, That all men when they form a social compact, are equal in rights; and that no man or set of men are entitled to exclusive public emoluments or privileges from the community.

[Adopted, September 15, 1818.]

CASES CONSTRUING CONSTITUTION.

The Norwich Gas Light Co. v. The Norwich City Gas Co.

25 Conn., 18.

March, 1856.

Statement.

Plaintiff is granted by the legislature the exclusive right to lay gas pipes in the streets of the city of Norwich, as against all except such persons as the legislature shall hereafter grant such power to. Defendant obtains no permission from the legislature to lay gas pipes in the streets, but gets it from the city council. Plaintiff prays that defendant be enjoined from laying its pipes.

Opinion.

The policy of the law is to encourage trade by free competition.

“The business of manufacturing and selling gas is an ordinary business * * * in respect to which the government has no exclusive prerogative. * * * As the restriction of other persons than the plaintiffs from using the streets for the purpose of distributing gas by means of pipes, can fairly be viewed as intended to operate as a restriction upon its free manufacture and sale, it comes directly within the definition and description of a monopoly. * * * The whole theory of a free government is opposed to such grants, and it does not require even the aid which may be derived”

from the section of the constitution hereinbefore mentioned
“to render them void.”

The injunction is not granted.

The State v. Brennan's Liquors.

25 Conn., 277.

September, 1856.

Statement.

A law was passed prohibiting the sale of spirituous liquors by any person except a public agent. It was contended that this law is unconstitutional as it creates a monopoly.

Opinion.

“The object of the legislature in authorizing a sale by a public agent for certain purposes, was not to raise a revenue for the town, but to accommodate certain persons with spirits for particular uses, and at the same time to guard against the evils resulting from an indiscriminate sale by all persons and for all purposes.”

The law is held constitutional.

GEORGIA.

STATUTE.

LAWS OF 1896, PAGE 68.

AN ACT to declare unlawful and void all arrangements, contracts, agreements, trusts, or combinations made with a view to lessen, or which tend to lessen, free competition in the importation or sale of articles imported into this State, or in the manufacture or sale of articles of domestic growth or of domestic raw material; to declare unlawful and void all arrangements, contracts, agreements, trusts or combinations between persons or corporations, designed, or which tend to advance, reduce or control the price of such product or article to producer or consumer of any such product or article; to provide for forfeiture of the charter and franchise of any corporation organized under the laws of this State, violating any of the provisions of this Act; to prohibit every foreign corporation violating any of the provisions of this Act from doing business in this State; to require the Attorney-General of this State to institute legal proceedings against any such corporations violating the provisions of this Act, and to enforce the penalties prescribed; to prescribe penalties for any violation of this Act; to authorize any person or corporation damaged by any such trust, agreement or combination, to sue for the recovery of such damage, and for other purposes.

§ 1. *Be it enacted by the General Assembly of Georgia, and it is hereby enacted by the authority of the same, That, from and after the passage of this Act, all arrangements, contracts, agreements, trusts or combinations between persons or corporations made with a view to lessen, or which tend to lessen, full and free competition in the importation or sale of articles imported into this State, or in the manufacture or sale of articles of domestic growth or of domestic raw material, and all arrangements, contracts, agreements, trusts or combinations between persons or corporations designed, or which tend to advance, reduce or control the price or the cost to the producer or to the consumer of any such product or article, are hereby declared to be against public policy, unlawful and void.*

§ 2. *Be it further enacted by the authority aforesaid, That, any corporation, chartered under the laws of this State,*

which shall violate any of the provisions of this Act shall thereby forfeit its charter and its franchise, and its corporate existence shall thereupon cease and determine. Every foreign corporation, which shall violate any of the provisions of this Act, is hereby denied the right to do, and is prohibited from doing, business in this State. It is hereby made the duty of the Attorney-General of the State to enforce this provision by due process of law.

§ 3. *Be it further enacted by the authority aforesaid,* That any violation of the provisions of this Act shall be deemed, and is hereby declared to be destructive of full and free competition and a conspiracy against trade, and any person or persons who may engage in any such conspiracy, or who shall, as principal, manager, director or agent, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates or orders made in furtherance of such conspiracy, shall, on conviction, be punished by a fine of not less than one hundred dollars or more than five thousand dollars and by imprisonment in the penitentiary not less than one year nor more than ten years; or, in the judgment of the court, by either such fine or such imprisonment.

§ 4. *Be it further enacted by the authority aforesaid,* That the provisions of this Act shall not apply to agricultural products or live stock while in the possession of the producer or raiser.

§ 5. *Be it further enacted by the authority aforesaid,* That any person or persons, or corporations that may be injured or damaged by any such arrangement, contract, agreement, trust or combination, described in Section one of this Act, may sue for and recover, in any court of competent jurisdiction in this State, of any person, persons or corporation operating such trust or combination, the full consideration or sum paid by him or them for any goods, wares, merchandise or articles the sale of which is controlled by such combination or trust.

§ 6. *Be it further enacted by the authority aforesaid,* That it shall be the duty of the Judges of the Superior Courts of this State specially to instruct the grand juries as to the provisions of this Act.

§ 7. *Be it further enacted by the authority aforesaid,* That all laws and parts of laws in conflict with the provisions of this Act be, and the same are, hereby repealed.

Approved December 23, 1896.

IDAHO.

CONSTITUTIONAL PROVISION.

ARTICLE XI

§ 18. No incorporated company, or any association of persons or stock company, in the State of Idaho, shall directly or indirectly combine or make any contract with any other incorporated company, foreign or domestic, through their stockholders or the trustees or assignees of such stockholders, or in any manner whatsoever, for the purpose of fixing the price or regulating the production of any article of commerce or of produce of the soil, or of consumption by the people; and that the legislature be required to pass laws for the enforcement thereof, by adequate penalties, to the extent, if necessary for that purpose, of the forfeiture of their property and franchise.

[Adopted, August 6, 1889.]

ILLINOIS.

STATUTES.

LAWS OF 1891, PAGE 206.

TRUSTS AND COMBINES.

POOLS, TRUSTS, AND COMBINES PROHIBITED.

AN ACT to provide for the punishment of persons, copartnerships, or corporations forming pools, trusts, and combines, and mode of procedure and rules of evidence in such cases.

§ 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,*

If any corporation organized under the laws of this or any other State or country for transacting or conducting any kind of business in this State, or any partnership or individual or other association of persons whosoever, shall create, enter into, become a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual, or any other person or association of persons, to regulate or fix the price of any article of merchandise or commodity, or shall enter into, become a member of or party to any pool, agreement, contract, combination or confederation to fix or limit the amount or quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in this State, such corporation, partnership, or individual or other association of persons shall be deemed and adjudged guilty of a conspiracy to defraud and be subject to indictment and punishment as provided in this act: *Provided, however,* That in the mining, manufacture or production of articles of merchandise, the cost of which is mainly made up of wages, it shall not be unlawful for persons, firms or corporations doing business in this State to enter into joint arrangements of any sort, the principal object or effect of which is to maintain or increase wages.¹

¹ This section is given as amended by page 298 of the Laws of 1897.

§ 2. It shall not be lawful for any corporation to issue or to own trust certificates, or for any corporation, agent, officer or employes, or the directors or stockholders of any corporation, to enter into any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price, or lessen the production and sale of an article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article.

§ 3. If a corporation or a company, firm or association shall be found guilty of a violation of this act, it shall be punished by a fine in any sum not less than five hundred dollars (\$500), nor more than two thousand dollars (\$2,000), for the first offense; and for the second offense not less than two thousand dollars (\$2,000), nor more than five thousand dollars (\$5,000); and for the third offense, not less than five thousand dollars (\$5,000) nor more than ten thousand dollars (\$10,000); and for every subsequent offense and conviction thereof, shall be liable to a fine of fifteen thousand dollars (\$15,000): *Provided*, That in all cases under this act either party shall have the right of trial by jury.

§ 4. Any president, manager, director or other officer or agent or receiver of any corporation, company, firm or association, or any member of any company, firm or association, or any individual found guilty of a violation of the first section of this act, may be punished by a fine of not less than two hundred dollars (\$200), nor to exceed one thousand dollars (\$1,000), or to be punished by confinement in the county jail not to exceed one year, or both, in the discretion of the court before which such conviction may be had.

§ 5. Any contract or agreement in violation of any provision of the preceding sections of this act shall be absolutely void.

§ 6. Any purchaser of any article or commodity from any individual, company or corporation transacting business contrary to any provision of the preceding sections of this act shall not be liable for the price or payment of such article or commodity, and may plead this act as a defense to any suit for such price or payment.

§ 7. The fines hereinbefore provided for may be recovered in an action of debt, in the name of the People of the State of Illinois. If, upon the trial of any cause instituted under this act to recover the penalties as provided for in section three, the jury shall find for the people, and that the defendant has been before convicted of a violation of the provisions of this act, they shall return such finding with their verdict, stating the number of times they find defendant so convicted, and shall assess and return with their verdict the amount of the fine to be imposed upon the defendant in accordance with said section three: *Provided*, That in all cases under the provisions of this act, a preponderance of evidence in favor of the people shall be sufficient to authorize a verdict and judgment for the people.

§ 7a. It shall be the duty of the secretary of state, on or about the first day of September of each year, to address to the president, secretary or treasurer of each incorporated company doing business in this state, whose postoffice address is known or may be ascertained, a letter of inquiry as to whether the said corporation has all or any part of its business or interest in or with any trust, combination or association of persons or stockholders, as named in the preceding provisions of this act, and to require answer, under oath, of the president, secretary or treasurer, or any director of said company. A form of affidavit shall be enclosed in said letter of inquiry as follows:¹

AFFIDAVIT.

STATE OF ILLINOIS, *County of* ———, *ss:*

I, ———, do solemnly swear that I am the (president, secretary, treasurer, or director) of the corporation known and styled ———, duly incorporated under the laws of ———, on the day of ———, 18—, and now transacting or conducting business in the State of Illinois, and that I am duly authorized to represent said corporation in the making of this affidavit; and I do further solemnly swear that the said ———, known and styled as aforesaid, has not, since the ——— day of ——— (naming the day upon which this act takes effect,) created, entered into or become a member of or a party to, and was not, on

¹ Sections 7a and 7b were added in 1893. Laws of 1893, page 89.

the _____ day of _____, nor at any day since that date, and is not now, a member of or a party to any pool, trust, agreement, combination, federation or understanding with any other corporation, partnership, individual or any other person or association of persons, to regulate or fix the price of any article of merchandise or commodities; and that it has not entered into or become a member of, or a party to any pool, trust, agreement, contract, combination or confederation to fix or limit the amount or quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in this State; and that it has not issued and does not own any trust certificates, and for any corporation agent, officer, or employe, or for the directors or stockholders of any corporation, has not entered into and is not now in any combination, contract, or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which said combination, contract or agreement would be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price or lessen the production and sales of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article.

_____,
 [President, Secretary, Treasurer or Director.]

Subscribed and sworn to before me, a _____ within and for the county of _____, this _____ day of _____, 18____.

[SEAL.]

And on refusal to make oath in answer to said inquiry, or on failure to do so within thirty days from the mailing thereof, the Secretary of State shall certify that fact to the Attorney-General, whose duty it shall be to direct the State's attorney of the county wherein such corporation or corporations are located, and it is hereby made the duty of the State's attorney, under the direction of the Attorney-General, at the earliest practicable moment, in the name of the people of the State of Illinois, and at the relation of the Attorney-General, to proceed against such corporation for the recovery of a penalty of fifty dollars for each day after such refusal

to make oath, or failure to make said oath, within thirty days from the mailing of said notice. Or the Attorney-General may, by any proper proceedings in a court of law or chancery, proceed, upon such failure or refusal, to forfeit such charter of such incorporated company or association incorporated under the general laws or by any special law of this State, and to revoke the rights of any foreign corporation located herein to do business in this State.

§ 7b. It shall be the duty of the Secretary of State, at any time, upon satisfactory evidence that any company or association of persons, duly incorporated under the laws of this or any other State, doing business in this State, has entered into any trust, combination or association in violation of the preceding section of this act, to demand that it shall make the affidavit, as above set forth in this act, as to the conduct of its business. In case of failure of compliance on the part of the corporation, then the same procedure shall ensue as provided in section 7a of this act: *Provided*, That no corporation, firm, association or individual shall be subject to any criminal prosecution by reason of anything truthfully disclosed by the affidavit required by this act, or truthfully disclosed in any testimony elicited in the execution thereof.

The Secretary of State is hereby authorized and required to charge and collect of each corporation a fee of one dollar for receiving and filing the affidavit herein provided for, to be accounted for as other fees received by him. To enable the Secretary of State to discharge additional duties devolving upon him in the execution of this act there is hereby appropriated out of any funds in the State treasury not otherwise appropriated, or so much thereof as may be necessary, the sum of six thousand dollars per annum, payable to the Secretary of State on his order upon proper vouchers as required by law: *Provided*, That corporations organized under the building, loan and homestead association laws of the State are excluded from the provisions of this act.

§ 8. It shall be the duty of the prosecuting attorneys in their respective jurisdictions, and the Attorney-General, to enforce the foregoing provisions of this act, and any prosecuting attorney of any county, securing a conviction under the provisions of this act, shall be entitled to such fee or salary as by law he is allowed for such prosecution. When there is a conviction under this act, the informer shall be en-

titled to one-fifth of the fine recovered, which shall be paid to him when the same is collected. All fines recovered under the provisions of this act shall be paid into the county treasury of the county in which the suit is tried, by the person collecting the same, in the manner now provided by law to be used for county purposes.

Approved June 11, 1891.

LAWS OF 1893, PAGE 182.

TRUSTS AND COMBINES.

AN ACT to define trusts and conspiracies against trade, declaring contracts in violation of the provisions of this act void, and making certain acts in violation thereof misdemeanors, and prescribing the punishment therefor and matters connected therewith

§ 1. *Be it enacted by the People of the State of Illinois, represented in General Assembly,* That a trust is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or of two or more of them for either, any or all of the following purposes: First—To create or carry out restrictions in trade. Second—To limit or reduce the production, or increase or reduce the price of merchandise or commodities. Third—To prevent competition in manufacture, making, transportation, sale or purchase of merchandise, produce or commodities. Fourth—To fix at any standard or figure, whereby its price to the public shall be in any manner controlled or established, upon any article or commodity of merchandise, produce or manufacture intended for sale, use or consumption in this state; or to establish any pretended agency whereby the sale of any such article or commodity shall be covered up and made to appear to be for the original vendor, for a like purpose or purposes, and to enable such original vendor or manufacturer to control the wholesale or retail price of any such article or commodity after the title to such article or commodity shall have passed from such vendor or manufacturer. Fifth—To make or enter into, or examine or carry out any contract, obligation or agreement of any kind or description by which they shall bind or have bound themselves not to sell, dispose of, or transport any article or commodity, or article of trade, use, merchandise, commerce or consumption below a common standard figure, or card, or

list price, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its price might in any manner be affected.

§ 2. That any corporation holding a charter under the laws of this state which shall violate any of the provisions of this act shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine.

§ 3. For a violation of any of the provisions of this act by any corporation mentioned herein it shall be the duty of the attorney-general or prosecuting attorney, upon his own motion, to institute suit or quo warranto proceedings at any county in this state in which such corporation exists, does business, or may have a domicile, for the forfeiture of its charter rights and franchise, and the dissolution of its corporate existence.

§ 4. Every foreign corporation violating any of the provisions of this act is hereby denied the right and prohibited from doing any business within this state, and it shall be the duty of the attorney-general to enforce this provision by injunction or other proper proceedings in any county in which such foreign corporation does business, in the name of the state on his relation.

§ 5. Any violation of either or all of the provisions of section one of this act shall be and is hereby declared to be a conspiracy against trade, and a misdemeanor; and any person who may be or may become engaged in any such conspiracy or take part therein or aid or advise in its commission, or who shall, as principal, manager, director, agent, servant, or employee, or in any other capacity knowingly carry out any of the stipulations, purposes, prices, rates, orders thereunder or in pursuance thereof shall be punished by fine not less than two thousand dollars nor more than five thousand dollars.

§ 6. In any indictment or information for any offense named in this act it is sufficient to state the purposes and

effects of the trust or combination, and that the accused was a member of, acted with or in pursuance of it, without giving its name or description, or how or where it was created.

§ 7. In prosecutions under this act it shall be sufficient to prove that a trust or combination as defined herein exists, and that the defendant belonged to it or acted for or in connection with it, without proving all the members belonging to it, or proving or producing any article of agreement or any written instrument on which it may have been based, or that it was evidenced by any written instrument at all.

§ 8. That any contract or agreement in violation of the provisions of this act shall be absolutely void and not enforceable either in law or equity.

§ 9. The provisions of this act shall not apply to agricultural products or live stock while in the hands of the producer or raiser.

§ 10. Any purchaser of any article or commodity, from any person, firm, corporation or association of persons, or of two or more of them, transacting business contrary to any provision of the preceding sections of this act shall not be liable for the price or payment of such article or commodity and may plead this act as a defense to any suit for such price or payment.

Approved June 20, 1893.

CASES CONSTRUING STATUTES.

Ford et al. v. Chicago Milk Shippers' Association.

155 Ill., 166.

1891.

STATUTE CONSTRUED.

§ 6. Any purchaser of any article or commodity from any individual, company or corporation transacting business contrary to any provision of the preceding sections of this act shall not be liable for the price or payment of such article or commodity, and may plead this act as a defense to any suit for such price or payment. (Laws of 1891, page 206.)

Statement.

Defendant is a corporation having for its object the control of the milk business in Chicago. It made an agreement with all its members whereby they were not to sell milk in Chicago for less than the prices fixed by defendant. The plaintiff contracted with defendant in April for milk to be furnished

during the following summer. The following July the trust law went into effect and after that, under the contract made in April, milk was furnished plaintiff by defendant. For this milk plaintiff refused to pay. Defendant sued and plaintiff pleaded in defense violation of the trust law.

Opinion.

An agreement between a corporation and its stockholders is essentially like an agreement between a corporation and strangers; therefore this combination was unlawful.

Plaintiff was not bound to pay defendant for the milk until it was supplied and the milk was not supplied until after the law was passed; therefore the law did not impair the obligation of any contract, and is constitutional.

Defendant can not recover for the milk supplied.

The Distilling and Cattle Feeding Co. v. The People ex rel. M. T. Moloney, Attorney-General.

156 Ill., 448.

June, 1895.

Statement.

A large number of manufacturers of distillery products combined, and placed their business in the hands of a board of trustees. The trustees later organized plaintiff corporation and managed it as its directors. The corporation was authorized by its charter to engage in the general distilling business in Illinois and elsewhere. The distillery property of its members was turned over to it, and it acquired control of substantially all the distillery business in this country. *Quo warranto* proceedings were instituted against it for abusing its franchise.

Opinion.

Held that the corporation was formed for an illegal purpose and that *quo warranto* proceedings were proper.

Levin v. Chicago Gas Light and Coke Co. et al.

64 Ill. App., 393.

1896.

Statement.

Defendants are six gas companies which formed a trust by putting their property into the hands of a trustee. Plaintiff, a stockholder at the time of consolidation, turned over his stock to the trustee and received for it a trust certificate. He now seeks to set aside this arrangement on the ground that it was *ultra vires*.

Opinion.

The equity court refused relief because plaintiff himself had broken the law against trusts and therefore is estopped from complaining.

The People ex rel. William W. McIlhany v. The Chicago Live Stock Exchange.

170 Ill., 556.

December, 1897.

Statement.

Defendant is a corporation formed for the purpose, as stated in its charter, of maintaining a commercial exchange; to promote uniformity in the customs of merchants; to settle disputes between its members; to facilitate the receiving and distributing live stock, and to guard against the sale of unhealthy meat. A by-law was adopted by the exchange that its members should be allowed to employ but a certain number of solicitors in each state; that no solicitors should be employed on commission, and that all solicitors should be members of the association. *Quo warranto* proceedings are sought to be instituted against the corporation to take away its charter, on the ground that it has gone beyond its corporate powers to the detriment of the public.

Opinion.

“By-laws of a corporation must always be reasonable, and for a corporate purpose, and always within its charter limits. They must always be subordinate to the constitution and general laws of the land. They must not infringe the policy of the state nor be hostile to public welfare. The by-law in this case is a restriction on trade and business. * * * It is not required for corporate purposes, nor is it included in the certificate of incorporation. It is therefore unlawful, as this corporation had no right to exercise this power of enacting it under its franchise.”

Quo warranto proceedings are held to be proper.

Harding et al. v. American Glucose Company et al.

55 N. E. Rep., 577.

October 19, 1899.

Statement.

In 1897 six competing companies in the manufacture of glucose and grape sugar made an arrangement whereby there was incorporated in New Jersey the Glucose Sugar Refining Company, to which the properties of the six companies were

deeded, and they agreed not to manufacture for a certain period any glucose in the corn belt, the only section in which the business could be carried on with profit. The American Glucose Company, a New Jersey corporation doing most of its business in Illinois, is one of the six mentioned, and plaintiffs are stockholders in this company. They file a bill to have the contract annulled as far as it affects their company. In defense defendants claim:

1. That as the company has not put its property in the hands of a trustee, but has sold it, the arrangement is legal.

2. That the agreement to go out of the business in the "corn belt" is only in partial restraint of trade and so is valid.

3. That the American Glucose Company, being a corporation of New Jersey, and the transaction in question being allowed by the laws of that State, the laws of Illinois do not apply to prevent it.

Opinion.

"Any combination of competing corporations for the purpose of controlling prices, or limiting production, or suppressing competition, is contrary to public policy and void. It makes no difference whether the combination is effected through the instrumentality of trustees and trust certificates, or whether it is effected by creating a new corporation, and conveying to it all the property of the competing corporations." "The bill in this case most certainly contains allegations in regard to the existence of a combination of capital, and acts by two or more persons and corporations, to prevent competition in the manufacture of glucose and grape sugar, and their products and by-products, and to create and carry out restrictions in trade; which allegations bring the transactions referred to in the bill within the scope and meaning of section 1 of the act of 1893."

2. As the agreement was not to enter the business within the only district in which it could be carried on with profit, it amounted to an agreement in total restraint of trade.

3. "The act of 1891 * * * applies to foreign corporations as well as to domestic; and the act of 1893 * * * by providing in section 4 that every foreign corporation, violating any provision of that act, shall be denied the right to do business within this state, impliedly requires the obedience of all foreign corporations doing business in this state to the provisions of that act."

“Citizens of Illinois can not evade the laws of Illinois passed against trusts and combines and defy the public policy of the state, by going into a foreign state, and chartering a corporation to do business in this state in violation of its laws. When these foreign corporations come into this state to do business, they must conform to the laws and public policy of this state. Moreover the property transferred * * * consisted largely of real estate located in Illinois, and nothing is better settled than that the validity of all transactions relating to land depends upon the law of the state where the land is situated.”

Decree setting aside the arrangement made by the American Glucose Company with the Glucose Sugar Refining Company.

COMMON-LAW DECISIONS.

Craft et al. v. McConoughy.79 *Ill.*, 346.

1875.

Statement.

A, B, C and D are competing grain dealers in Rochelle, Ill. They secretly agree to continue to appear as competitors, but to share each other's profits; and at secret meetings they plan the business of all four. D dies, and his son brings suit for accounting by the combination.

Opinion.

At common law, contracts in restraint of trade are void, being against public policy. Plaintiff can not compel the accounting.

The Chicago Gas Light and Coke Co. v. The People's Gas Light and Coke Co.121 *Ill.*, 530.

1887.

Statement.

Two gas companies had a right to supply gas anywhere in Chicago. They agreed that one company should supply all the gas to one part of the city and the other company all the gas to another part. One company is violating the contract; the other asks for an injunction.

Opinion.

The general rule is that contracts in partial restraint of trade are valid; but this does not apply to corporations conducting a public business. Any private contract by such

corporations which is injurious to the public interests is void.

The contract between plaintiff and defendant is void, and the injunction is refused.

The People ex rel. Francis B. Peabody v. The Chicago Gas Trust Co.

130 Ill., 268.

1889.

Statement.

Defendant's charter gives it permission to manufacture and sell gas in the city of Chicago and "to purchase and hold or sell the capital stock, or purchase or lease or operate the property, plant, good will, rights and franchises of any gas works or gas company or companies." Under this charter it purchased the majority of the shares in all the gas companies in Chicago.

Opinion.

Whatever tends to prevent competition between those engaged in an employment or business impressed with a public character, is opposed to public policy, and therefore unlawful; and whatever tends to create a monopoly is unlawful, as being contrary to public policy. All grants creating monopolies, and acts tending to prevent proper competition, are, by the common law, illegal and void.

The charter did not give defendant a right to create this monopoly, and all acts done to accomplish such monopoly are void.

INDIANA.

STATUTES.

LAWS OF 1897, CHAP. 104.

AN ACT to declare unlawful and void all arrangements, contracts, agreements, trusts, or combinations made with a view to lessen, or which tend to lessen, free competition in the importation or sale of articles imported into this State, or in the manufacture or sale of articles of domestic growth or of domestic raw material; to declare unlawful and void all arrangements, contracts, agreements, trusts, or combinations between persons or corporations designed, or which tend to advance, reduce or control the price of such product or article to producer or consumer of any such product or article; to provide for forfeiture of the charter and franchise of any corporation organized under the laws of this State, violating any of the provisions of this act, from doing business in this State; to require the Attorney-General of this State to institute legal proceedings against any such corporations violating the provisions of this act, and to enforce the penalties prescribed; to prescribe penalties for any violations of this act; to authorize any person or corporation, damaged by any such trust, agreement, or combination to sue for the recovery of such damage, and for other purposes.

§ 1. *Be it enacted by the General Assembly of the State of Indiana, and it is hereby enacted by the authority of the same,* That from and after the passage of this act, all arrangements, contracts, agreements, trusts, or combinations between persons or corporations who control the output of said (any) article of merchandise, made with a view to lessen, or which tend to lessen, full and free competition in the importation or sale of articles imported into this State, and all arrangements, contracts, agreements, trusts, or combinations between persons or corporations who control the output of said article of merchandise designed, or which tend to advance, reduce or control the price or the cost to the producer or to the consumer of any such product or article, are hereby declared to be against public policy, unlawful and void.

§ 2. That any corporation, chartered under the laws of this State, which shall violate any of the provisions of this act, shall thereby forfeit its charter and its franchise, and its corporate existence shall thereupon cease and determine. Every foreign corporation which shall violate any of the provisions of this act, is hereby denied the right to do, and is prohibited from doing business in this State. It is hereby made the duty of the Attorney-General of the State to enforce this provision by due process of law.

§ 3. That any violation of the provisions of this act shall be deemed, and is hereby declared to be destructive of full and free competition and a conspiracy against trade, and any person or persons who may engage in any such conspiracy, or who shall, as principal, manager, director or agent, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates or orders made in furtherance of such conspiracy, shall, on conviction, be punished by a fine of not less than one hundred dollars or more than five thousand dollars, and by imprisonment in the penitentiary not less than one year or more than ten years; or, in the judgment of the Court, by either such fine or such imprisonment.

§ 4. The persons designed by this act to be affected hereby are those who own, control or manufacture the output of any particular article or merchandise mentioned herein: *Provided, however,* That the provisions of this act shall not apply to agricultural products or live stock while in the possession of the producer or raiser.

§ 5. That any person or persons or corporations that may be injured or damaged by any such arrangement, contract, agreement, trust or combination, described in section 1 of this act, may sue for and recover in any court of competent jurisdiction, in this State, of any person, persons or corporation operating such trust or combination the full consideration or sum paid by him or them for any goods, wares, merchandise or articles, the sale of which is controlled by such combination or trust.

§ 6. That it shall be the duty of the Judges of the Circuit Courts of this State specially to instruct the Grand Juries as to the provisions of this act.

§ 7. That all laws and parts of laws in conflict with the provisions of this act be, and the same are, hereby repealed.

LAW OF 1899, CHAP. 148.

AN ACT to prohibit contracts or combinations of persons, firms or associations intended to prevent free competition in business, to provide for civil damages, penalties and punishments for violation, repealing all laws in conflict therewith.

§ 1. *Be it enacted by the General Assembly of the State of Indiana*, That any person, firm or association of persons who shall make any contract or enter into any agreement or make any combination or enter into any arrangement, directly or indirectly, to induce, procure or prevent any wholesale or retail dealer in or manufacturer of merchandise or of supplies or of material or article intended for trade or used by any mechanic, artisan or dealer in the prosecution of his business from selling such supplies to any dealer or to any mechanic or artisan; and that any dealer in or manufacturer of such supplies or material or article of trade or supplies or material to be used by any mechanic, artisan or dealer who shall be a party, directly or indirectly, to any such contract, combination or arrangement, or who shall upon the request of any party to any such contract, combination or arrangement refuse to sell such articles of trade, supplies or materials, or articles sold by any dealer or used by any mechanic, or artisan, to any such person or persons who may require them in the prosecution of their said business, for the reason that said dealer, mechanic or artisan is not a member of a combination or association of persons, shall be guilty of conspiracy against trade. And all such contracts, agreements, combinations or arrangements shall be void and of no effect whatever in law.

§ 2. Any person or persons, firm or association of individuals, or any individual connected therewith, who shall be responsible for the making of any such contract, agreement or combination or arrangement, or shall be a party to any such contract, combination or arrangement, or that shall take any part therein, as set out in section 1 of this act, shall, upon conviction thereof in any court of competent jurisdiction, be punished by a fine of not less than fifty dollars nor more than two thousand dollars, to which may be added imprisonment in the county jail for any period not exceeding one year.

§ 3. Each and every person, firm or association of persons who shall in any manner violate the provisions of this

act shall, for each and every day that such violation shall be committed and continued after due notice given by the party interested, [to the]¹ Attorney-General or prosecuting attorney, forfeit and pay the sum of fifty dollars, which may be recovered in the name of the State on the relation of the party injured or on the relation of the prosecuting attorney in any county where the offense is committed or where the offender or offenders reside. And it shall be the duty of the prosecuting attorney of any county to prosecute any such action, and he shall be entitled to a fee of twenty-five dollars to be taxed against the defendant, in the event of recovery, as a part of the costs of said action. Any such action may be taken in any circuit or superior court of the county in which the defendant resides or in which he is engaged in business.

§ 4. Any person who shall by any such contract or combination as set out in section 1 of this act, be injured or damaged in his business thereby, or by reason of anything forbidden or declared by this act to be unlawful, may maintain a suit therefor in any court having jurisdiction thereof in the county where the defendant resides or in which he is engaged in business, or in any county where service may be obtained, without respect to the amount in controversy, and the plaintiff in any such action shall be entitled to recover all his costs and a reasonable attorney's fee therein.

§ 5. Whenever it shall appear to the court before which any proceedings under this act may be pending, that the ends of justice require that other parties shall be brought before the court, said court may cause them to be made parties defendant and cause them to be served by the process of court as now required by law in such cases provided, whether they reside in the county where said action is pending or not.

§ 6. All laws and parts of laws in conflict with any of the provisions of this act are hereby repealed.

Approved March 3, 1899.

¹ This statute is taken verbatim from the official copies of the Indiana Laws of 1899; appended to which is the following: "Words included in the brackets [thus], do not appear in the Enrolled Acts * * *, but were by me inserted in the printed copies thereof, to aid in interpreting the meaning, * * *. Union B. Hunt, Secretary of State." The inserted words, "to the" may alter materially the meaning of the statute.

IOWA.

STATUTE.

CODE OF 1897.

CHEATING.

§ 5060. **Pools and trusts.**—Any corporation organized under the laws of this or any other state or country for transacting or conducting any kind of business in this state, or any partnership, association or individual, creating, entering into or becoming a member of, or a party to any pool, trust, agreement, contract, combination, confederation or understanding with any other corporation, partnership, association or individual, to regulate or fix the price of any article of merchandise or commodity, or to fix or limit the amount or quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in this state, shall be guilty of a conspiracy.

§ 5061. **Corporation not to enter.**—No corporation shall issue or own trust certificates, and no corporation, nor any agent, officer, or employe, director or stockholder of any corporation, shall enter into any combination, contract or agreement with any person or corporation, or with any stockholder or director thereof, for the purpose of placing the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with intent to limit or fix the price or lessen the production or sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article.

§ 5062. **Penalty.**—Any corporation, company, firm or association violating any of the provisions of the two preceding sections shall be fined not less than one per cent. of its capital or amount invested in such corporation, company, firm or association, nor more than twenty per cent. of the same and any president, manager, director, officer, agent or receiver of any corporation, company, firm or association, or any member of corporation, company, firm or association, or any individual, found guilty of a violation thereof shall be fined not

less than five hundred nor more than five thousand dollars, or be imprisoned in the county jail not to exceed one year, or both.

§ 5063. **Contracts void.**—All contracts or agreements in violation of any provisions of the three preceding sections of this act shall be void.

§ 5064. **Defense.**—Any purchaser of any article or commodity from any individual, company or corporation transacting business contrary to any provisions of the four preceding sections shall not be liable for the price or payment thereof, and may plead such provisions as a defense to any action for such price or payment.

§ 5065. **Forfeiture of charter.**—Any corporation created or organized by or under the laws of this state, which shall violate any provision of the five preceding sections, shall thereby forfeit its corporate right and franchise.

§ 5066. **Notice by secretary of state.**—The secretary of state, upon satisfactory evidence that any company or association of persons incorporated under the laws of this state have entered into any trust, combination or association in violation of the provisions of the six preceding sections, shall give notice to such corporation that, unless it withdraws from and severs all business connection with said trust, combination or association, its articles of incorporation will be revoked at the expiration of thirty days from date of such notice.

§ 5067. **Proceedings—Inquiry by grand jury.**—County attorneys, in their counties, and the attorney-general shall enforce the provisions of a public nature in the seven preceding sections, and any county attorney or the attorney-general securing a conviction under the provisions thereof shall be entitled, in addition to such fee or salary as by law he is allowed for such prosecution, to one-fifth of the fine recovered. When the attorney-general and county attorney act in conjunction in the prosecution of any action under such provisions, they shall be entitled to one-fourth of the fine recovered, which they shall divide equally between them, where there is no agreement to the contrary. It shall be the duty of the grand jury to inquire into and ascertain if there exist any pool, trust or combination within their respective counties.

Approved May 6, 1890.

Published May 14, 1890.

CASE CONSTRUING STATUTE.

Beechley v. Mulville et al.

102 Ia., 602.

70 N. W. Rep., 107.

Statute construed.

McClain's "Code of Iowa," section 5454, declares that members of a combination "to regulate or fix the price of oil, lumber, coal, grain, flour, provisions or any other commodity or article whatever * * * shall be deemed to be guilty of a conspiracy to defraud."

Statement.

Several insurance companies and many agents agreed with each other to fix the price on risks in X. Plaintiff broke the agreement and was discharged by the companies he represented. The combination having caused his discharge, he sues it for damages.

Opinion.

By way of dictum it was held that insurance is a commodity and therefore a combination to fix prices of insurance comes within the statute.

The companies had a right to discharge plaintiff, as their contracts with him were at will, and expressly stated that they could at any time end the agency without giving cause.

Damages refused.

KANSAS.

STATUTES.

LAWS OF 1887, CHAP. 175.

TO PROHIBIT POOLING BY GRAIN AND STOCK DEALERS.

AN ACT to prohibit grain dealers, partnerships, companies, corporations or associations from combining or entering into any agreement or contract to pool or fix the price to be paid for grain, hogs, cattle, or stock of any kind whatever, and to provide punishment for violations of the same.

Be it enacted by the Legislature of the State of Kansas,

§ 1. That it shall be unlawful for any grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association, to enter into any agreement, contract or combination with any other grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association, for the pooling of prices of different and competing dealers and buyers, or to divide between them the aggregate or net proceeds of the earnings of such dealers and buyers, or any portion thereof, or for fixing the price which any grain dealer or dealers, partnerships, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association, shall pay for grain, hogs, cattle or stock of any kind or nature whatever; and in case of any agreement, contract or combination for such pooling of prices of different and competing dealers and buyers, or to divide between them the aggregate or net proceeds of the earnings of such dealers and buyers, or any portion thereof, or for fixing the price which any grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association, shall pay for grain, hogs, cattle, or stock of any kind or nature whatever, each day of its continuance shall be deemed a separate offense.

§ 2. That in case any grain dealer or dealers, partnership, company, corporation or association of grain dealers, or any person or persons, partnership, company, corporation or association subject to the provisions of this act, shall do or cause to be done, or permit to be done, any act, matter or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter or thing in this act required to be done, such grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association, shall be liable to the person or persons injured thereby, to the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case; and in any such action brought for the recovery of damages the court before whom the same shall be pending may compel any grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any person or persons, partnership, company, corporation or association subject to the provisions of this act, or any director, officer, receiver, trustee, agent, employe, or clerk of them, or either of them, defendant in such suit, to attend, appear and testify in such case, and may compel the production of the books and papers of such grain dealer or grain dealers, partnership, company, corporation or association of grain dealers or any other person or persons, partnership, company, corporation or association party to such suit. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person in the trial of any criminal proceeding.

§ 3. That any grain dealer or grain dealers, partnership, company, or corporation or association of grain dealers, or any other person or persons, partnership, company, corporation, or association subject to the provisions of this act, or any director, officer, or any receiver, trustee, clerk, or lessee or agent, or person acting for or employed by them, or either of them, who alone or with any other partnership, company, corporation, association, person or party, shall willfully do or cause to be done, or shall willfully suffer or permit to be

done any act, matter or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter or thing in this act required to be done, or shall cause or willfully suffer or permit any act, matter or thing so directed or required by this act to be done, not to be so done, or shall aid or abet such omission or failure, or shall be guilty of any infraction of this act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall upon conviction thereof be fined in any sum not exceeding one thousand dollars, or imprisonment in the jail of the county not exceeding six months, or both, in the discretion of the court; and shall moreover be liable to the suit of the party injured or damaged.

§ 4. This act shall take effect and be in force from and after its publication in the official paper.

Approved March 5, 1887.

Published in the official state paper March 17, 1887.

GENERAL STATUTES 1889.

AN ACT to declare unlawful trusts and combinations in restraint of trade and products, and to provide penalties therefor.

Be it enacted by the Legislature of the State of Kansas,

§ 359. **Trusts.**—That all arrangements, contracts, agreements, trusts or combinations between persons or corporations made with a view or which tend to prevent full and free competition in the importation, transportation or sale of articles imported into this state, or in the product, manufacture or sale of articles of domestic growth or product of domestic raw material or for the loan or use of money, or to fix attorneys or doctors' fees, and all arrangements, contracts, agreements, trusts or combinations between persons or corporations designed or which tend to advance, reduce or control the price or the cost to the producer or to the consumer of any such products or articles, or to control the cost or rate of insurance, or which tend to advance or control the rate of interest for the loan or use of money to the borrower, or any other services, are hereby declared to be against public policy, unlawful and void.

§ 360. **Corporations.**—It shall not be lawful for any corporation to issue or to own trust certificates, other than the regular and lawfully authorized stock thereof, or for any corporation, agent, officer or employes, or the directors or stockholders of any corporation, to enter into any combination,

contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit and fix the price or lessen the production and sale of any article of commerce, use, or consumption, or to prevent, restrict or diminish the manufacture or output of any such article.

§ 361. That all persons entering into any such arrangement, contract, agreement, trust, or combination, or who shall, after the passage of this act, attempt to carry out or act under any such arrangement, contract, agreement, trust or combination described in sections one or two of this act, either on his own account or as agent or attorney for another, or as an officer, agent or stockholder in any corporation, or as a trustee, committee, or in any capacity whatever, shall be guilty of a misdemeanor, and on conviction thereof shall be subject to a fine of not less than one hundred dollars and not more than one thousand dollars, and to imprisonment not less than thirty days and not more than six months, or to both such fine and imprisonment, in the discretion of the court.

§ 362. **Persons injured.**—That any person or corporation injured or damaged by any such arrangement, contract, agreement, trust or combination described in sections one or two of this act, may sue for and recover in any court of competent jurisdiction in this state, of any person or corporation, the full consideration or sum paid by him for any goods, wares, merchandise and articles included in or advanced or controlled in price by said combination, or the full amount of money so borrowed.

§ 363. **Action; defense.**—That when an action at law or suit in equity shall be commenced in any court of this state, it shall be lawful in the defense thereof to plead in bar or in abatement that the plaintiff or any other person interested in the prosecution of the case is a member or agent of an unlawful combination as described in sections one or two of this act, or that the cause of action grows out of such combination, or out of some business or transaction thereof.

§ 364. **Violation.**—That the purchase, sale or manufacture of any goods, wares, merchandise or other commodities of this state of any person or corporation who has entered into

any such arrangements, contracts, agreements, trusts or combinations in any other state or territory, as described in sections one or two of this act, or the purchase, sale or manufacture of any such articles by any agent or attorney for such person, or as an agent, officer or stockbroker of any such corporation, as a trustee, committee, or in any capacity whatever, shall constitute a violation of this act, and shall subject the offender to the aforesaid liabilities and penalties.

§ 365. County attorney.—It shall be the duty of the county attorneys to diligently prosecute any and all persons violating any of the provisions of this act in their respective counties. If any county attorney shall fail, neglect or refuse to faithfully perform any duty imposed upon him by this act, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars, and be imprisoned in the county jail not less than ten nor more than ninety days; and such conviction shall operate as a forfeiture of his office, and the court before whom such conviction may be had shall order and adjudge such forfeiture of office, in addition to the fine imposed as herein provided. That whenever the county attorney shall be unable or shall neglect or refuse to enforce provisions of this act in his county, or for any reason whatever the provisions of this act shall not be enforced in any county, it shall be the duty of the attorney-general to enforce the same in such county, and for that purpose he may appoint as many assistants as he shall see fit, and he and his assistants shall be authorized to sign, verify and file all such complaints, opinions, petitions and papers, as the county attorney is authorized to sign, verify, or file, and to do and perform any act that the county attorney might lawfully do or perform; and for such services he or his assistants shall receive the same fee that the county attorney would be entitled to for like services, to be taxed and collected in the same manner.

§ 366. Sheriffs, duty of.—It shall be the duty of all sheriffs, deputy-sheriffs, constables, mayors, marshals, police judges and police officers of any city or town, having notice or knowledge of any violation of the provisions of this act, to notify the county attorney of the fact of such violation, and to furnish him the names of any witness within his knowledge by whom such violation can be proven. If any such officer

shall fail to comply with the provisions of this section he shall upon conviction, be fined in any sum not less than one hundred dollars nor more than five hundred dollars; and such conviction shall be a forfeiture of the office held by such person, and the court before whom such conviction is had shall, in addition to the imposition of the fine aforesaid, order and adjudge the forfeiture of his said office.

§ 367. **District courts, duty of.**—It shall be the duty of the district courts to instruct the grand juries especially as to the provisions of this act.

All laws or parts of laws in conflict with the provisions of this act are hereby repealed. This act shall take effect and be enforced from and after its publication in the official state paper.

Approved March 2, 1889. Published March 9, 1899.

[Laws of 1889, Chapter 257.]

LAWS OF 1897, CHAP. 265.

PROHIBITING TRUSTS.

AN ACT defining and prohibiting trusts, providing procedure to enforce the provisions of this act, and providing penalties for violations of the provisions of this act.

Be it enacted by the Legislature of the State of Kansas,

§ 1. A trust is a combination of capital, skill, or acts, by two or more persons, firms, corporations, or association of persons, or either two or more of them, for either, any or all of the following purposes: *First.*—To create or carry out restrictions in trade or commerce or aids to commerce, or to carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this state. *Second.*—To increase or reduce the price of merchandise, produce or commodities, or to control the cost or rates of insurance. *Third.*—To prevent competition in the manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or to prevent competition in aids to commerce. *Fourth.*—To fix any standard or figure, whereby its price to the public shall be, in any manner, controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this state. *Fifth.*—To make or enter into, or execute or carry out, any contract, obligation or agreement

of any kind or description by which they shall bind or have to bind themselves not to sell, manufacture, dispose of or transport any article or commodity, or article of trade, use, merchandise, commerce or consumption below a common standard figure or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graded figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others, to preclude a free and unrestricted competition among themselves or others in transportation, sale or manufacture of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the manufacture, sale or transportation of any such article or commodity, that its price may in any manner be affected. And any such combinations are hereby declared to be against public policy, unlawful and void.

§ 2. All persons, companies, or corporations, within this state are hereby denied the right to form or to be in any manner interested, either directly or indirectly, as principal, agent, representative, consignee or otherwise in any trust as defined in section one of this act.

§ 3. Any corporation, holding a charter under the laws of the state of Kansas which shall violate any of the provisions of this act shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine. And any stockholder, director, officer, agent, representative or consignee of any such corporations shall be subject to the penalties herein prescribed.

§ 4. For a violation of any of the provisions of this act by any corporation, or any of its officers or agents mentioned herein, it shall be the duty of the attorney-general of the state, or county attorney of any county in which said violation may occur, or either of them, upon his own motion, to institute an action in any court in this state having jurisdiction thereof, for the forfeiture of the charter, rights and franchise of such corporation, and the dissolution of its corporate existence.

§ 5. Every person, company or corporation within or without this state, their officers, agents, representatives or consignees, violating any of the provisions of this act, within this state, are hereby denied the right, and are hereby prohibited from doing any business within this state, and all

persons, companies and corporations, their officers, agents, representatives and consignees within this state are hereby denied the right to handle the goods of, or in any manner deal with, directly or indirectly, any such person, company or corporation, their officers, agents, representatives or consignees, and it shall be the duty of the attorney-general, and the county attorney of any county in the state where any violation of this act be committed, or either of them, to enforce the provisions of this section by injunction or other proceeding; and all persons, companies and corporations, their officers, agents, representatives or consignees, violating any of the provisions of this section, either directly or indirectly, or of abetting or aiding either directly or indirectly in any violation of any provisions of this section, shall be deemed guilty of a misdemeanor and shall be fined, not less than one hundred dollars nor more than one thousand dollars, and confined in jail not less than thirty days, nor more than six months, and shall forfeit not less than one hundred dollars for each and every day such violation may continue, which may be recovered in the name of the state of Kansas in any court of competent jurisdiction.

§ 6. Each and every person, company or corporation, their officers, agents, representatives or consignees, who, either directly or indirectly, violate any of the provisions of this act shall be deemed guilty of a misdemeanor and on conviction thereof shall be subject to a fine of not less than one hundred dollars nor more than one thousand dollars, and shall be imprisoned not less than thirty days nor more than six months, and in addition thereto for each and every day thereafter that such violation shall be committed or continued, forfeit and pay the sum of one hundred dollars which may be recovered in the name of the state of Kansas, in any county where the offense is committed or where either of the offenders reside, and it shall be the duty of the attorney-general of the state, or the county attorney of any county in the state, in which said violation shall occur, or either of them, to prosecute and enforce the provisions of this act.

§ 7. Any contract or agreement in violation of any of the provisions of this act, shall be absolutely void and not enforceable in any of the courts of this state, and when any civil action shall be commenced in any court of this state, it shall be lawful to plead in the defense thereof, that the plaintiff or any other person interested in the prosecution of the

case is at the time or has within one year next preceding the date of the commencement of any such action, been guilty either as principal, agent, representative, or consignee, directly or indirectly, of a violation of any of the provisions of this act, or that the cause of action grows out of any business transaction in violation of this act.

§ 8. That any person, firm, company or corporation that may be damaged by any such agreement, trusts or combinations described in sections one and two of this act, may sue for and recover in any court of competent jurisdiction in this state, of any person, company, or corporation, operating such trust or combination, such damages as they have sustained, together with a reasonable attorney fee.

§ 9. It shall be the duty of the attorney-general of the state, and the county attorneys in their respective counties to diligently prosecute any and all persons violating any of the provisions of this act, and it shall be the duty of all state and county officials having notice and knowledge of any violation of the provisions of this act, to notify the county attorney of their respective counties, and the attorney-general of the state, of the fact of such violation and to furnish them with the names of any witnesses by whom such violations can be proved; if any such officer or officers shall fail to comply with the provisions of this section he shall upon conviction, be fined in any sum not less than one hundred dollars nor more than one thousand dollars, and such conviction shall be a forfeiture of the office held by such person, and the court before whom such conviction is had, shall in addition to the imposition of the fine aforesaid, order and adjudge the forfeiture of his said office.

§ 10. The several district courts of this state, and the judges thereof shall have jurisdiction, and it shall be their duty, upon good cause shown and upon written application of the county attorney or the attorney-general, to cause to be issued by the clerk of said court, subpoenas for such witnesses as may be named in the application of a county attorney or the attorney-general, and to cause the same to be served by the sheriff of the county where such subpoena is issued; and such witnesses shall be compelled to appear before such court, or judge, at the time and place set forth in the subpoena, and shall be compelled to testify as to any knowledge they may have of the violations of any of the pro-

visions of this act. And any witness who fails or refuses to attend and testify shall be punished as for contempt, as provided by law. Any person subpoenaed and examined shall not be liable to criminal prosecution for any violation of this act about which he may testify. Neither shall the evidence of any such witness be used against him in any criminal proceeding. The evidence of all witnesses so subpoenaed shall be taken down by the reporter of said court and shall be transcribed and placed in the hands of the county attorney or the attorney-general, and he shall, in the proper courts, at once prosecute such violator or violators of this act as the testimony so taken shall disclose. Witnesses subpoenaed as provided for in this section shall be compelled to attend from any county in the state.

§ 11. Nothing in this chapter shall be held or construed to affect any action or prosecution which is now pending under the provisions of any law now in existence in this state.

§ 12. This act shall take effect and be in force from and after its publication in the official state paper.

Approved March 8, 1897.

Published in official state paper March 12, 1897.

LAWS OF 1899, CHAP. 293.

CERTAIN COMBINATIONS PROHIBITED.

AN ACT to prohibit combination in restraint of trade, declaring such combinations unlawful, and prescribing penalties for the violation of this act.

Be it enacted by the Legislature of the State of Kansas:

§ 1. If any person, company or corporation doing business in Kansas shall make any agreement, expressed or implied, or by any understanding or combination with any person, company or corporation within or without the state, by which any shipper of seeds, grains, hay or live stock is defrauded out of any portion of the net weight of any consignment of grain, seeds, hay, or live stock, all such agreements or combinations are hereby declared to be in restraint of trade, and any such person, company or corporation shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in the sum of not less than one hundred dollars and not exceeding one thousand dollars for each offense.

§ 2. Every person, servant, agent or employee of any firm

or corporation doing business within the state of Kansas that shall conspire or combine with any other persons, firm or corporation within or without the state for the purpose of monopolizing any line of business, or shall conspire or combine for the purpose of preventing the producer of grain, seeds or live stock or hay, or the local buyer thereof, from shipping or marketing the same without the agency of any third person, firm or corporation, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in a sum not less than one thousand dollars and not to exceed five thousand dollars for each offense.

§ 3. Any person who shall, as agent or employee of any person, firm or corporation, enter into an agreement, expressed or implied, by which it is stipulated that grain, seeds or hay shall not be shipped by the producer or local buyer unless accompanied with warehouse receipts, or that the same shall in any manner be under the control of any warehouseman or agent as a condition precedent to the marketing of said grain, all such agreements shall be deemed, and are hereby declared, unlawful, and in restraint of trade, and the person entering into such agreement or combination shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum not less than one thousand dollars and not more than five thousand dollars, or by imprisonment in the county jail not less than ninety days and not to exceed one year, or by both such fine and imprisonment, at the discretion of the court.

§ 4. The several district courts and the supreme court of the state of Kansas are hereby vested with jurisdiction to prevent and restrain violators of this act, and it shall be the duty of the attorney-general to enforce the provisions of this act, and such proceedings may be instituted by petition, setting forth the cause of complaint, praying relief, verifying said petition by affidavit, and the court shall grant temporary restraining orders enjoining or prohibiting such violation till the final hearing of the case; said restraining order shall be granted without bond.

§ 5. Any person, firm or corporation that shall be injured in business or property by any other person, firm or corporation by reason of anything declared unlawful or in restraint of trade by this act shall have a right of action against the person, firm or corporation violating the provi-

sions of this act for threefold damages, including costs and reasonable attorney's fees.

§ 6. This act shall take effect and be in force from and after its publication in the official state paper.

Approved March 4, 1899.

Published in official state paper April 4, 1899.

CASE CONSTRUING STATUTE.

The State of Kansas v. Wm. C. Phipps et al.

50 Kans., 609.

January, 1898.

Statute construed.

The Kansas anti-trust law of 1889, provides that a combination to control the cost of insurance shall be illegal, and that any person connected with it, either on his own account or as agent, shall be guilty of a misdemeanor.

Statement.

Defendants were agents of a combination of insurance companies to keep up the premiums on insurance. Being arrested, they claimed that, inasmuch as the companies they represented were out of the state, they were engaged in interstate commerce and were, therefore, not governed by state laws.

Opinion.

Held that insurance is not interstate commerce when conducted within the state by companies organized without the state.

Defendants were each fined \$100 and costs.

KENTUCKY.

CONSTITUTIONAL PROVISION.

§ 198. It shall be the duty of the General Assembly from time to time, as necessity may require, to enact such laws as may be necessary to prevent all trusts, pools, combinations or other organizations, from combining to depreciate below its real value any article, or to enhance the cost of any article above its real value.

[Adopted, September 28, 1891.]

STATUTE.

KENTUCKY STATUTES, CHAP. 101.

POOLS—TRUSTS—CONSPIRACIES.

§ 3915. **Defined and prohibited.**—That if any corporation under the laws of Kentucky, or under the laws of any other state or country, for transacting or conducting any kind of business in this state, or any partnership, company, firm or individual, or other association of persons, shall create, establish, organize or enter into, or become a member of, or a party to, or in any way interested in any pool, trust, combine, agreement, confederation or understanding with any other corporation, partnership, individual or person, or association of persons, for the purpose of regulating or controlling or fixing the price of any merchandise, manufactured articles or property of any kind, or shall enter into, become a member of, or party to, or in any way interested in any pool, agreement, contract, understanding, combination or confederation, having for its object the fixing, or in any way limiting the amount or quantity of any article of property, commodity or merchandise to be produced or manufactured, mined, bought or sold, shall be deemed guilty of the crime of conspiracy, and punished therefor as provided in the subsequent sections of this act.

§ 3916. **Trust certificates; when sale of unlawful.**—It shall not be lawful for any corporation to issue or to own, have or sell any trust certificates or stocks, or for any corporation's agent, officer or employe, agent or director, or

any corporation to enter into, either verbally or in writing, any combination, contract, agreement or understanding with any person or persons, corporation or corporations, or with any director, agent or officer thereof, the purpose or effect of which combination, contract, agreement or understanding would be to place the management, control or any part of the business of such combination or association, of the manufactured product thereof, in the hands or under the control, in the whole or in part, of any trustee or trustees, or agents, or any person whatever, with the intent, or to have the effect to limit, fix, establish or change the price of the production or sale of any article of property or of commerce, or to prevent, restrict, or in any way diminish the manufacture or output of any such article or property.

§ 3917. Penalties imposed on corporations and officers.—If any corporation, company, firm, partnership or person, or association of persons, shall, by court of competent jurisdiction, be found guilty of any violation of any of the provisions of this act, such guilty party shall be punished by a fine of not less than five hundred dollars, and not more than five thousand dollars. Any president, manager, director or other officer or agent, or receiver of any corporation, company, firm, partnership or any corporation, company, firm or association, or member of any corporation, firm or association, or any member of any company, firm or other association, or any individual found, by a court of competent jurisdiction, guilty of any violation of this act shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars, or may be imprisoned in the county jail not less than six months nor more than twelve months, or may be both so fined and imprisoned in the discretion of the court or jury trying the case.

§ 3918. Contract in violation of law void.—Any contract or agreement or understanding in violation of the provisions of the preceding sections of this act shall be null and void; and any purchasers of property or article, or of any commodity, from any individual, firm, company or corporation transacting business contrary to the preceding sections of this act, shall not be liable for the price or payment of such article or commodity or property, and may plead and rely on this act as a complete defense to any suit for such price or payment.

§ 3919. **Charter of corporation forfeited upon conviction.**—If any corporation created or organized by or under the laws of this state shall be indicted and convicted for any violation of any of the provisions of this act, such indictment, trial and conviction in any court of competent jurisdiction shall have the effect to forfeit the charter of such corporation without any further proceedings on the subject of the forfeiture of its charter; but any corporation whose charter is so forfeited shall have the right of appeal as is provided in other cases, and the filing of the bond as is required by law shall suspend the judgment of forfeiture until same is passed upon by the court to which the case is appealed.

§ 3920. **Judges to charge grand jury concerning.**—It shall be the duty of the circuit judges, and other judges of similar jurisdiction in this state, to give the provisions of this act in charge to the grand juries at each term of their courts.

§ 3921. **Appeals; how regulated.**—The provisions of the code of practice regulating appeals in other cases shall apply to appeals under this act.

[Passed May 20, 1890.]

CASE CONSTRUING STATUTE.

Brewster v. Miller et al.

41 S. W. Rep., 301.

June 4, 1897.

Statement.

Defendants are undertakers, members of the "Funeral Directors' Association" of Louisville. Said association fixes certain prices in the business, and provides that no member shall be employed by, or sell articles to, any person owing a member of the association. Plaintiff wished defendants to bury his wife. Claiming that plaintiff owed a member, they all refused. Plaintiff sues for damages.

Opinion.

This being a civil suit, the court refuses to say whether or not defendants would be liable in a criminal action.

One has no right of action against a merchant who refuses to sell him goods, therefore defendants were justified in refusing to contract with plaintiff.

Damages refused.

COMMON-LAW DECISION.

*Anderson v. Jett, etc.**89 Ky., 375.**December 12, 1889.***Statement.**

Defendant and plaintiff owned two boats which were rivals in trade. To avoid competition an agreement was entered into that the net income from the boats should be divided between the owners; and that if one should go out of business he should give the other notice and should not engage in the business again within a year. Defendant did go out of business and has now within a year commenced again. Plaintiff brings suit on the contract.

Opinion.

Competition is the life of trade, and a contract in restraint of trade, regardless of its actual result, is against public policy and is void.

Plaintiff cannot recover.

LOUISIANA.

STATUTES.

LAWS OF 1890, ACT 86.

AN ACT to protect trade and commerce against unlawful restraints and monopolies and to provide penalties for the violation of this act.

§ 1. *Be it enacted by the General Assembly of the State of Louisiana,* That every contract, combination in the form of trust, or conspiracy, in restraint of trade or commerce or to fix or limit the amount or quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in this State is hereby declared illegal.

§ 2. *Be it further enacted, etc.,* That every person who shall make any such contract, or engage in any such combination, or conspiracy, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both of said punishments, in the discretion of the court.

§ 3. *Be it further enacted, etc.,* That every person who shall monopolize or attempt to monopolize, or combine, or conspire with any other person or persons, to monopolize any part of the trade or commerce within the limits of this State, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments in the discretion of the court.

§ 4. *Be it further enacted, etc.,* That this act shall take effect from and after its passage and promulgation.

Approved July 5, 1890.

LAWS OF 1892, ACT 90.

AN ACT to prevent trusts or combinations intended to restrain trade or to control the market value of merchandise, produce or commodities and to provide for penalties and punishment of persons, corporations, firms and associations of persons connected with them, and to promote free competition in the state of Louisiana.

§ 1. *Be it enacted by the General Assembly of the state of Louisiana;* That after the passage of this act it shall

be unlawful for any individual, firm, company, corporation or association to enter into, continue or maintain any combination, agreement or arrangement of any kind, expressed or implied, with any other individual, firm, company, association or corporation for any of the following purposes: First; to create or carry out restrictions in trade. Second; to limit or reduce the production, or increase or reduce the price of merchandise, produce or commodities. Third; to prevent competition in manufacture, making, transportation, sale or purchase of merchandise, produce or commodities. Fourth; to fix at any standard or figure, whereby its price shall be in any manner controlled or established, any article of merchandise, produce, commodity or commerce intended for consumption in this state. Fifth; to make or enter into or execute or carry out any contract, obligation or agreement of any kind or description by which they shall bind or have bound themselves not to sell, dispose of, or transport any article or commodity or article of trade, use, merchandise, commerce, or consumption below a common standard figure, or by which they shall agree in any manner to keep the price of such article, at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves, or others, in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine, or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its price might in any manner be affected.

§ 2. *Be it further enacted, etc.*, That any corporation holding a charter under the laws of the state of Louisiana, which shall be convicted of a violation of the provisions of this act shall thereby forfeit its rights and franchises, and its corporate existence shall cease and determine, and it shall be the duty of the attorney-general of his own motion and without leave or orders of any court or judge, to institute an action in the name of the state of Louisiana for the forfeiture of such rights and franchises and the dissolution of such corporate existence.

§ 3. *Be it further enacted, etc.*, That every foreign corporation, or any corporation organized under or pursuant to the laws of any state, who shall be convicted of a violation of the provisions of this act is hereby denied the right and

prohibited from doing any business within this state, and it shall be the duty of the attorney-general to enforce this provision by injunction or other proceedings in the name of the state of Louisiana.

§ 4. *Be it further enacted, etc.*, That any violation of either or all the provisions of this act shall be and is hereby declared a conspiracy against trade, and any person who may be or may become engaged in any such conspiracy or take part therein, or aid or advise in its commission, or who shall as principal, manager, director or agent, knowingly carry out any of the stipulations, purposes, prices, rates, or orders thereunder or in pursuance thereof, shall be punished by fine not less than one hundred dollars nor more than one thousand dollars, and by imprisonment in the penitentiary not less than six months nor more than one year or by either such fine and imprisonment in the discretion of the court. It shall be the duty of the district attorneys in their respective jurisdictions and the attorney-general to enforce this provision and any district attorney of any parish securing a conviction under this provision shall be entitled to such fee or salary as by law he is allowed for such prosecution.

§ 5. *Be it further enacted, etc.*, That in any indictment for an offense named in this act it is sufficient to state the purposes or effects of the trust or combination and that the accused was a member of, acted with or in pursuance of it, without giving its name or description, or how, when or where it was erected, *Provided*, That no contract or agreement or arrangement which does not include, or which cannot be held to include a stipulation between the parties to share in the profits of any such contract, agreement or arrangement, or which contract, agreement or arrangement does not provide for or does not contemplate a profit or pool to be divided between the parties to such contract, agreement or arrangement, shall be held or construed to be in violation of the provision of this act.

§ 6. *Be it further enacted, etc.*, That in prosecutions under this act, it shall not be necessary to prove who constitute all the members belonging to the trust or combination.

§ 7. *Be it further enacted, etc.*, That any contract or agreement in violation of the provisions of this act, shall be absolutely void.

§ 8. *Be it further enacted, etc.*, That the provisions of this act shall not apply to agricultural products or live stock

while in the hands of the producer or raiser; nor be so construed as to affect any combination or confederation of laborers for the purpose of procuring an increase of their wages or redress of grievances.

§ 9. *Be it further enacted, etc.*, That this act shall take effect from and after its passage and that all laws and parts of laws conflicting with same are hereby repealed.

Approved July 7, 1892.

LAWS OF 1894, ACT 176.

AN ACT to declare it illegal for any corporation, or corporations, firms or individuals to issue certificates to be known as rebate certificates or any evidence of indebtedness, the contract upon which said certificates are based being to control the business of the party or parties thereto.

§ 1. *Be it enacted by the general assembly of the state of Louisiana;* It shall be illegal for any corporation or corporations, firms or individuals to issue certificates to be known as rebate certificates or any evidence of indebtedness, the contract upon which said certificates are based, being to control the business of the party or parties thereto.

§ 2. *Be it further enacted, etc.*, That it shall be and is hereby declared illegal to impose as a condition that said certificates or evidences of indebtedness shall be binding only in event said original party to whom the same were issued, shall make all purchases from the firm or firms, corporation or corporations, individual or individuals, issuing same or connected in any manner with the firm or firms, corporations or individuals issuing same.

§ 3. *Be it further enacted, etc.*, That said firm or firms, corporation or corporations, cannot urge as a defence to any certificates issued, that their liabilities thereon are based upon the exclusive trade of the party to the contract.

Approved July 12, 1894.

COMMON-LAW DECISIONS.

The Texas and Pacific Ry. Co. et al. v. the Southern Pacific Ry. Co.

41 La. Ann., 970.

December, 1889.

Statement.

Two systems of railroads, one controlled by Jay Gould, and the other by Collis P. Huntington, were competitors in carrying freight between certain points. The companies made an

agreement whereby the income from business between these points should all be pooled. According to this arrangement defendant has about half a million dollars which is due plaintiff. Defendant claims that the contract was void, and refuses to pay. Plaintiff brings suit.

Opinion.

Railroads are *quasi* public agencies, and they have no right to make contracts which tend to injure the public. A contract to pool the income from competing systems is an injury to the public, and it is therefore void.

The court refuses relief in the following words:

“On ascertaining the building is infested with the disease of illegality, the judge simply refuses to enter its portals, and retires without incurring contact with any of its inmates, and without attempting to examine into, or to rectify, any rights or wrongs which may exist between the inmates of the polluted household. He leaves them quietly where they have placed themselves, and he turns a deaf ear to any equities which one of the parties may invoke against the other.”

John Trisconi v. J. M. Winship et al.

43 La. Ann., 45.

January, 1891.

Statement.

Plaintiff was a stockholder in the Bienville Oil Works. The directors allowed the American Oil Trust to get control of two-thirds of the stock of the Bienville Oil Works. The corporation was dissolved, and, the debts having been paid, nothing was left. Plaintiff brings a suit, to recover his damages against the directors of his own corporation and those persons connected with the American Oil Trust who were engaged in the scheme.

Opinion.

“The action of the majority in the instant case being lawful, as done with legal sanction and authority, this court is powerless to inquire into and determine its expediency or the sufficiency of the motives which prompted and dictated it without transforming itself into the corporation and acting as its board of administrators, which it surely cannot do.”

Plaintiff cannot recover.

MAINE.
STATUTE.

LAWS OF 1889, PAGE 235.

AN ACT to prevent such formation of trusts, combination of business firms, incorporated and unincorporated companies, or association of persons or stockholders, as may be contrary to public policy.

Be in enacted by the Senate and House of Representatives in Legislature assembled, as follows:

§ 1. It shall be unlawful for any firm or incorporated company, or any number of firms or incorporated companies, or any unincorporated company, or association of persons or stockholders, organized for the purpose of manufacturing, producing, refining, or mining any article or product which enters into general use and consumption by the people, to form or organize any trust, or to enter into any combination of firms, incorporated or unincorporated companies, or association of stockholders, or to delegate to any one or more board or boards of trustees or directors the power to conduct and direct the business of the whole number of firms, companies or associations which may have, or which may propose to form a trust, combination or association inconsistent with the provisions of this section and contrary to public policy.

§ 2. No certificate of stock, or other evidence of interest, in any trust, combination, or association, as named in section one of this act, shall have legal recognition in any court in this state, and any deed to real estate given by any person, firm, or corporation, for the purpose of becoming interested in such trust, combination or association, or any mortgage given by the latter to the seller, as well as all certificates growing out of such transaction, shall be void.

§ 3. Any incorporated company now operating under the laws of this state, and which at the date of the passage of this act, may be interested in any trust, combination or association, named in section one of this act, or any firm, incorporated or unincorporated company, or association of persons or

stockholders, who shall enter into or become interested in such trust, combination or association, after the passage of this act, shall be deemed guilty of a misdemeanor, and be subject to a fine of not less than five nor more than ten thousand dollars: *Provided*, That nothing in this section shall be so construed as to apply to such incorporated companies as shall, within ninety days from the date of the passage of this act, withdraw from and sever all connections with such trust, combination or association.

§ 4. It shall be the duty of the secretary of state, as soon as may be after the passage of this act, to forward to the president, secretary or treasurer, of each incorporated company organized for the purpose of manufacturing, producing, refining or mining any article or product which enters into general use and consumption by the people, and doing business within this state, a copy of this act, and also a letter of inquiry as to whether said corporation has merged all or any part of its business or interests in or with any trust, combination or association of persons or stockholders as named in section one of this act, and to require an answer, under oath, of the president, secretary, treasurer, or directors of said company, a form of affidavit, together with questions to be answered, shall be prescribed by the secretary of state, and forwarded with said letter, and on neglect or refusal to make answers under oath to such questions for the term of ninety days from the date of this act, the secretary of state shall notify the attorney-general, whose duty it shall be forthwith to file an information in the nature of a writ of quo warranto, with the supreme judicial court, against said corporation, and the court may, upon hearing and proof of such neglect or refusal, decree the dissolution of said corporation, and its corporate rights and powers shall be terminated.

Approved March 7, 1889.

MASSACHUSETTS.

RESOLUTION.

ACTS AND RESOLUTIONS OF 1892, PAGE 589.

RESOLUTION against the monopoly of mining and transporting of anthracite coal.

Resolved, That, whereas a combination has been formed which has secured a substantial monopoly of mining and transporting anthracite coal, so that our people for this necessity, essential to their life and prosperity, are placed at the mercy of a few individuals who have already indicated their purpose by a large and unusual increase in the price of fuel, we therefore request our Senators and Representatives in Congress to make all reasonable efforts to secure the passage of laws effectually to prevent such combinations, destroy such monopolies and put the supply of fuel as nearly as may be beyond the reach of private speculation. The Secretary of the Commonwealth is requested to transmit forthwith a copy of this resolution to each of the Senators and Representatives.

COMMON-LAW DECISION.

Gloucester Isinglass and Glue Co. v. Russia Cement Co.

154 Mass., 92.

June 25, 1891.

Statement.

Plaintiff and defendant were competing manufacturers of fish glue, made of fish-skins, which are valuable for no other purpose. Plaintiff and defendant were the only manufacturers of this article. They made a contract whereby they should not compete with each other in the purchase of fish-skins, but agreed that they should pay a certain price for them and that each one should have his part, no matter under whose contract they were purchased. The glue was to be sold by both at the same price. After several years the defendant made contracts with nearly all the producers

of fish-skins for their purchase until the year 1900. Then he refused to give plaintiff his share, saying that the contract was illegal, it being in restraint of trade. Plaintiff brings a bill in equity for specific performance of the contract.

Opinion.

Fish glue is not a necessary of life, and the skins to be purchased under the contract were worthless for anything besides glue. The contract was not against public policy. Even a court of equity will enforce it.

Defendant must specifically carry out the contract.

MICHIGAN.

CONSTITUTIONAL PROVISION.

ARTICLE XIX—A.

§ 2. No railroad corporation shall consolidate its stock, property, or franchises, with any other railroad corporation owning a parallel or competing line; and in no case shall any consolidation take place except upon public notice given at least sixty days to all stockholders, in such manner as shall be provided by law.

[Adopted, 1870.]

STATUTES.

LAWS OF 1889, ACT 225.

AN ACT declaring certain contracts, agreements, understandings, and combinations unlawful, and to provide punishment for those who shall enter into the same or do any act in performance thereof.

§ 1. That all contracts, agreements, understandings and combinations made, entered into, or knowingly assented to, by and between any parties capable of making a contract or agreement which would be valid at law or in equity, the purpose or object or intent of which shall be to limit, control, or in any manner to restrict or regulate the amount of production or the quantity of any article or commodity to be raised or produced by mining, manufacture, agriculture or any other branch of business or labor, or to enhance, control or regulate the market price thereof, or in any manner to prevent or restrict free competition in the production or sale of any such article or commodity, shall be utterly illegal and void, and every such contract, agreement, understanding and combination shall constitute a criminal conspiracy. And every person who, for himself personally, or as a member or in the name of a partnership, or as a member, agent, or officer of a corporation or of any association for business purposes of any kind, who shall enter into or knowingly consent to any

such void and illegal contract, agreement, understanding or combination, shall be deemed a party to such conspiracy. And all parties so offending shall, on conviction thereof, be punished by fine of not less than fifty dollars, nor more than three hundred dollars, or by imprisonment in the county jail not more than six months or by both such fine and imprisonment, at the discretion of the court. And the prosecution for offenses under this section may be instituted and the trial had in any county where any of the conspirators became parties to such conspiracy, or in which any of the conspirators shall reside. *Provided, however,* That this section shall in no manner invalidate or affect contracts for what is known and recognized at common law and in equity as contracts for the "Good will of a Trade or Business;" but that such contracts shall be left to stand upon the same terms and within the same limitations recognized at common law and in equity.

§ 2. Every contract, agreement, understanding, and combination declared void and illegal by the first section of this act shall be equally void and illegal within this state, whether made and entered into within or without this state.

§ 3. The carrying into effect, in whole or in part, of any such illegal contract, agreement, understanding or combination as mentioned in the first section of this act and every act which shall be done for that purpose by any of the parties or through their agency or the agency of any one of them, shall constitute a misdemeanor, and on conviction the offenders shall be punished by imprisonment in the state prison not more than one year, or in the county jail not more than six months, or by fine not less than one hundred nor more than five hundred dollars, or by both such fine and imprisonment in the discretion of the court.

§ 4. Any corporation now or hereafter organized under the laws of this state, which shall enter into any contract, agreement, understanding or combination declared illegal and criminal by the first section of this act, or shall do any act towards or for the purpose of carrying the same into effect in whole or in part, and who shall not within thirty days from the time when this act shall take effect, withdraw its assent thereto and repudiate the same and file in the office of the secretary of state such refusal and repudiation under its corporate seal, shall forfeit its charter and all its rights and franchises thereunder.

§ 5. It shall be the duty of the attorney-general upon his own relation, or upon the relation of any private person, whenever he shall have good reasons to believe that the same can be established by proofs, to file an information in the nature of a quo warranto against any corporation offending against any of the provisions of this act; and thereupon the same proceedings shall be had as provided by chapter 298 of Howell's Annotated Statutes, relating to proceedings of information in the nature of quo warranto, against corporations offending against any of the provisions of the act or acts creating, altering or renewing such corporations, and in other cases.

§ 6. The provisions of this act shall not apply to agricultural products or live stock while in the hands of the producer or raiser, nor to the services of laborers or artisans who are formed into societies or organizations for the benefit and protection of their members.

§ 7. It shall be the duty of the secretary of state to cause this act to be published for four successive weeks in some daily paper in each of the cities of Lansing, Detroit, Grand Rapids and Marquette, commencing within ten days after this act shall take effect, and he shall also within the same time cause to be mailed to the corporations, whose articles of association are on file in his office, a printed copy of this act, with a notice calling special attention thereto.

Approved July 1, 1889.

LAWS OF 1899, ACT 49.

AN ACT to prevent trusts, monopolies and combinations of capital, skill or arts, to create or carry out restriction in trade or commerce; to limit or reduce the production, or increase or reduce the price, of merchandise or any commodity; to prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity; to fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption.

The People of the State of Michigan enact;

§ 1. That a trust is a combination of capital, skill or arts by two or more persons, firms, partnerships, corporations or associations of persons, or of any two or more of them, for either, any or all of the following purposes:

1. To create or carry out restrictions in trade or commerce;

2. To limit or reduce the production, or increase or reduce the price of, merchandise or any commodity;

3. To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity;

4. To fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption in this State;

5. It shall hereafter be unlawful for two or more persons, firms, partnerships, corporations or associations of persons, or of any two or more of them, to make or enter into or execute or carry out any contracts, obligations or agreements of any kind or description, by which they shall bind or have bound themselves not to sell, dispose of or transport any article or any commodity or any article of trade, use, merchandise, commerce or consumption below a common standard figure or fixed value, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article, commodity or transportation between them or themselves and others, so as to directly or indirectly preclude a free and unrestricted competition among themselves, or any purchasers or consumers, in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or directly or indirectly unite any interests that they may have connected with the sale or transportation of any such article or commodity, that its price might in any manner be affected. Every such trust as is defined herein is declared to be unlawful, against public policy and void.

§ 2. For a violation of any of the provisions of this act by any corporation or association mentioned herein, it shall be the duty of the Attorney General, or the prosecuting attorney of the proper county, to institute proper suits or quo warranto proceedings in the court of competent jurisdiction in any of the county seats in the State where such corporation or association exists or does business, or may have a domicile. And when such suit is instituted by the Attorney General in quo warranto, he may also begin any such suit in the supreme court of the State, or the circuit court of Ingham,

Kent or Wayne counties, for the forfeiture of its charter rights, franchises or privileges and powers exercised by such corporation or association, and for the dissolution of the same under the general statutes of the State.

§ 3. Every foreign corporation, as well as any foreign association, exercising any of the powers, franchises or functions of a corporation in this State, violating any of the provisions of this act, is hereby denied the right and prohibited from doing any business in this State, and it shall be the duty of the Attorney General to enforce this provision by bringing proper proceedings in quo warranto in the supreme court, or the circuit court of the county in which defendant resides or does business, or other proper proceedings by injunction or otherwise. The Secretary of State shall be authorized to revoke the certificate of any such corporation or association, heretofore authorized by him to do business in this State.)

§ 4. Any violation of either or all of the provisions of this act shall be and is hereby declared a conspiracy against trade, and any person who may become engaged in any such conspiracy or take part therein, or aid or advise in its commission, or who shall as principal, manager, director, agent, servant or employer, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, or furnish any information to assist in carrying out such purposes, or orders thereunder or in pursuance thereof, shall be punished by a fine of not less than fifty dollars nor more than five thousand dollars, or be imprisoned not less than six months nor more than one year, or by both such fine and imprisonment. Each day's violation of this provision shall constitute a separate offense. |

§ 5. In any indictment for any offense named in this act, it is sufficient to state the purpose or effects of the trust or combination, and that the accused is a member of, acted with or in pursuance of it, or aided or assisted in carrying out its purposes, without giving its name or description, or how, when and where it was created.

§ 6. In prosecutions under this act, it shall be sufficient to prove that a trust or combination, as defined herein, exists, and that the defendant belonged to it, or acted for or in connection with it, without proving all the members belonging to it, or proving or producing any article of agreement, or any written instrument on which it may have been based; or

that it was evidenced by any written instrument at all. The character of the trust or combination alleged may be established by proof of its general reputation as such.

§ 7. Each and every firm, person, partnership, corporation or association of persons, who shall in any manner violate any of the provisions of this act, shall for each and every day that such violations shall be committed or continued, after due notice given by the Attorney General or any prosecuting attorney, forfeit and pay the sum of fifty dollars, which may be recovered in the name of the State, in any county where the offense is committed, or where either of the offenders reside. And it shall be the duty of the Attorney General, or the prosecuting attorney of any county on the order of the Attorney General, to prosecute for the recovery of the same. When the action is prosecuted by the Attorney General against a corporation or association of persons, he may begin the action in the circuit court of the county in which defendant resides or does business.

§ 8. That any contract or agreement in violation of the provisions of this act shall be absolutely void and not enforceable either in law or equity.

§ 9. That the provisions hereof shall be held cumulative of each other and of all other laws in any way affecting them now in force in this State.

§ 10. It shall not be lawful for any person, partnership, association or corporation, or any agent thereof, to issue or to own trust certificates, or for any person, partnership, association or corporation, agent, officer or employe, or the directors or stockholders of any corporation, to enter into any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article, and any person, partnership, association or corporation that shall enter into any such combination, contract or agreement for the purpose aforesaid shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be

punished by a fine not less than fifty dollars, nor more than one thousand dollars.

§ 11. In addition to the criminal and civil penalties herein provided, any person who shall be injured in his business or property by any other person or corporation or association or partnership, by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any court having jurisdiction thereof in the county where the defendant resides or is found, or any agent resides or is found, or where service may be obtained, without respect to the amount in controversy, and to recover two-fold the damages by him sustained, and the costs of suit. Whenever it shall appear to the court before which any proceedings under this act may be pending, that the ends of justice require that other parties shall be brought before the court, the court may cause them to be made parties defendant and summoned, whether they reside in the county where such action is pending, or not.

§ 12. The word "person" or "persons" whenever used in this act, shall be deemed to include corporations, partnerships and associations existing under or authorized by the laws of the State of Michigan, or any other State, or any foreign country.

§ 13. All acts or parts of acts contravening the provisions of this act are hereby repealed.

[Took effect, September 22, 1899.]

COMMON-LAW DECISIONS.

David M. Richardson v. Christian H. Buhl and Russell A. Alger.

77 Mich., 632.

November, 1889.

Statement.

The Diamond Match Company was organized in 1880 for the purpose of uniting in one corporation all the match manufacturers in the United States and Canada. In furtherance of this object an important contract was entered into between plaintiff and defendants. Now the court is called upon to construe this contract. The legality of it is not questioned by either party, but the court of its own accord considers it.

Opinion.

"All combinations among persons or corporations for the purpose of raising or controlling the prices of merchandise,

or any of the necessaries of life, are monopolies, and intolerable, and ought to receive the condemnation of all courts. In my judgment, not only is the enterprise in which the Diamond Match Company is engaged an unlawful one, but the contract in question in this case, being made to further its objects and purposes, is void upon the ground that it is against public policy."

The court refuses to construe the contract or in any way aid the enterprise.

Daniel Lovejoy and E. W. Lovejoy v. Jacob Michels.

88 Mich., 15.

October 16, 1891.

Statement.

Plaintiffs sold machine knives to the defendant without an agreement as to the price. These knives were under the control of an association, which kept the price at which they could be purchased in the market at a figure which was unreasonable. The question arises whether defendant must pay the fair price for these knives or the market price made by this association.

Opinion.

Held that such an association was unlawful; that the market price fixed by it would be given no weight in a court, and that all plaintiffs can recover is the fair price for the knives.

MINNESOTA.

STATUTES.

STATUTES OF MINNESOTA, 1891.

§ 6092. **Conspiracy.**—If two or more persons conspire, * * * to commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice, or of the due administration of the laws, each of them is guilty of a misdemeanor.

[Passed in 1885.]

LAWS OF 1891, CHAP. 99.

AN ACT to prohibit pools and trusts in the State of Minnesota.

Be it enacted by the legislature of the State of Minnesota,

§ 1. If any corporation organized under the laws of this state or any other state or country for transacting or conducting any kind of business in this state or any partnership or individual shall create, enter into, become member of or a party to any pool, trust, agreement, combination or confederation with any other corporation, partnership or individual to regulate or fix the price of oil, lumber, coal, grain, flour, provisions or any other commodity or article to be manufactured, mined, produced or sold, in this state, shall be deemed guilty of a conspiracy to defraud, and be subject to indictment and punishment, as provided in the next section.

§ 2.¹ Any person or corporation found guilty of a violation of this act shall be punished by a fine of not less than one hundred (100) dollars nor to exceed five thousand (5,000) dollars, and be imprisoned in the state prison for not less than one year nor more than ten years: *Provided, however,* That this act shall not affect nor shall the same apply to any offense committed before the passage hereof; but any persons having violated the provisions of said section previous to the passage of this act, shall be prosecuted and

¹ Section 2 is given as amended by an act of April 8, 1893.

punished in the manner and according to the provisions of the statutes in force at the time of the commission of said offense.

§ 3. Upon the trial of an indictment against a corporation or a copartnership for a violation of the first section of this act, all officers and agents of such corporation or copartnership shall be competent witnesses against the defendant on trial, and such officers and agents may be compelled to testify against such defendant and produce all books and papers, in his custody or under his control pertinent to the issue in such trial, and shall not be excused from answering any such question or from producing any books and papers because the same might tend to criminate such witness; but nothing which such witness shall testify to and no books or papers produced by him shall in any manner be used against him in any suit, civil or criminal, to which he is a party.

§ 4. All acts and parts of acts in conflict with this act be and the same are hereby repealed.

§ 5. This act shall take effect and be in force from and after its passage.

Approved April 20, 1891.

LAWS OF 1899, CHAP. 359.

AN ACT to prevent the organization of trusts and to provide in certain cases for the forfeiture of the charter of corporations organized under the laws of this State, and to prevent corporations, trusts or combinations under certain circumstances from doing business or enforcing contracts in respect thereto, under the laws of this State.

Be it enacted by the Legislature of the State of Minnesota:

§ 1. Any contract, agreement, arrangement, or conspiracy, or any combination in the form of a trust or otherwise, hereafter entered into which is in restraint of trade or commerce within this State or in restraint of trade or commerce between any of the people of this State and any of the people of any other State or country, or which limits or tends to limit or control the supply of any article, commodity or utility, or the articles which enter into the manufacture of any article or [of] utility, or which regulates, limits or controls or raises or tends to regulate, limit, control or raise the market price of any article, commodity or utility, or tends to limit or regulate the production of any such article, commodity or utility, or in any manner destroys, limits or interferes with open and

free competition in either the production, purchase or sale of any commodity, article of utility is hereby prohibited and declared to be unlawful.

That when any corporation heretofore or hereafter created, organized or existing under the laws of this State, whether general or special, hereafter unites in any manner with any other corporation wheresoever created, or with any individual, whereby such corporation surrenders or transfers, by sale or otherwise, in whole or in part, its franchise, rights or privileges or the control or management of its business to any other corporation or individual, or whereby the business or the management or control of the business of such corporation is limited, changed or in any manner affected, and the purpose or effect of such union or combination is to limit, control or destroy competition in the manufacture or sale of any article or commodity, or is to limit or control the production of any article or commodity, or is to control or fix the price or market value of any article or commodity, or the price or market value of the material entering into the production of any article or commodity or in case the purpose or effect of such union or combination is to control or monopolize in any manner the trade or commerce, or any part thereof, of this State, or of the several States, such union, combination, agreement, arrangement or contract is hereby prohibited and declared to be unlawful.

§ 2. Every person who shall either directly or indirectly make any such contract, agreement or arrangement, or enter into any such combination, conspiracy or trust as defined in section one (1) of this act, shall be guilty of a felony and, on conviction thereof, shall be punished by a fine of not less than five hundred dollars (\$500), nor more than five thousand dollars (\$5,000), or by imprisonment in the state's prison for not less than three (3) years nor more than five (5) years.

§ 3. Any corporation heretofore or hereafter created, organized or existing under the laws of this State which shall hereafter either directly or indirectly make any contract, agreement or arrangement, or enter into any combination, conspiracy or trust as defined in section (1) of this act, shall, in addition to the penalty prescribed in section two (2) of this act, forfeit its charter, rights and franchises, and it shall thereafter be unlawful for such corporation to engage in business, either as a corporation or as a part of any corporation, trust or monopoly, except as to the final disposition of its property under the laws of this State.

Any corporation organized under the laws of any other state, territory or country, which is now located or which may hereafter be located within this State, and engages in the manufacture, production or sale of any article therein which shall either directly or indirectly make any contract, agreement or arrangement or enter into any combination, conspiracy or trust as defined in section one (1) of this act, shall, in addition to the penalty prescribed in section two (2) of this act, be prohibited from doing any further business in this State except as to the final disposition of its property under the laws of this State.

§ 4. Any contract by any person, partnership, association or corporation, whether domestic or foreign, made in conducting business contrary to the provisions of section one (1) of this act, shall not be enforced in any court of this State in favor of such persons, partnership, association or corporation.

§ 5. Any person who shall enter into any correspondence, negotiations or agreement in this State, or who shall, being a resident of this State, go into another state, territory or country for the purpose of entering into any negotiations or agreement which tend to the formation of any contract or combination forbidden by this act, shall be guilty of a felony, and be subject to all the penalties of this act.

§ 6. That for the purpose of carrying out the provisions of this act any citizen of this State may, and it is hereby declared to be the duty of the attorney general, to institute, in the name of the State, proceedings in any court of competent jurisdiction against any person, partnership, association or corporation who may be guilty of violating any of the provisions of section one (1) of this act, for the purpose of imposing the penalties imposed by this act or securing the enforcement of section three (3) hereof: *Provided*, That when such proceedings are instituted by any one other than the attorney general, the State shall not be in any manner liable for the costs or for any of the expenses of such proceedings: *And provided further*, That when the attorney general deems it necessary, he is hereby authorized to employ counsel to assist in the prosecution of any action brought under the provisions of this act.

§ 7. The word person as used in this act shall be construed to include any corporation or association formed or existing under any law of this State or any other state or country.

§ 8. This act shall take effect and be in force from and after its passage.

Approved April 21, 1899.

COMMON-LAW DECISIONS.

Cornelius G. Kolff v. St. Paul Fuel Exchange et al.

48 Minn., 215.

January 25, 1892.

Statement.

The defendants are a corporation and its directors. It was formed, as stated in its articles of incorporation, for the business of "buying, selling and dealing in all kinds of coal and wood and to otherwise use and dispose of the same and to lease and purchase such land and buildings as may be necessary for such business, and to buy, sell, and deal in all kinds of fuel, and to do any and all things that may legally be done to promote the interest of this corporation and its stockholders." A by-law was made by the company that if any stockholder should sell fuel below the prices fixed by the exchange he should pay a fine of \$200, or be denied all privileges of the exchange. Plaintiff has sold fuel for less than the price fixed by the corporation, and it is about to enforce the aforementioned by-law against him; he prays for an injunction.

Opinion.

There is nothing in the charter of defendant corporation which gives it a right to in any way manage the business of its stockholders. The by-law is, therefore, *ultra vires* and void.

An injunction is granted.

Bohn Manufacturing Co. v. W. G. Hollis et al.

54 Minn., 223.

July 20, 1893.

Statement.

A large number of retail lumber dealers formed an association whereby they agreed that they would not deal with any manufacturer or wholesale dealer who should sell lumber directly to consumers, at any point where a member of the association was carrying on a retail yard. They further provided in their by-laws that, whenever any wholesale dealer or manufacturer made any such sale, their secretary should notify all the members of the fact. Plaintiff having made such a sale, the secretary threatened to send notice of the fact to all the members of the association. Plaintiff seeks to have him enjoined.

Opinion.

We are in an age of associations formed for mutual protection, and many of these are for the public interest. They must not be declared by the courts to be illegal unless there is a principle of law which they have violated. "What one man may lawfully do singly, two or more may lawfully agree to do jointly. The number who unite to do the act cannot change its character from lawful to unlawful."

Injunction refused.

MISSISSIPPI.

CONSTITUTIONAL PROVISION.

§ 198. The legislature shall enact laws to prevent all trusts, combinations, contracts, and agreements inimical to the public welfare.

[Adopted, November 1, 1890.]

STATUTE.

ANNOTATED CODE, CHAP. 140.

TRUSTS AND COMBINES.

4437. Definition of term; criminal conspiracy.—A trust and combine is a combination, contract, understanding, or agreement, express or implied, between two or more persons, corporations, or firms or associations of persons, or between one or more of either with one or more of the others—

- (a) In restraint of trade;
 - (b) To limit, increase, or reduce the price of a commodity;
 - (c) To limit, increase, or reduce the production or output of a commodity;
 - (d) Intended to hinder competition in the production, importation, manufacture, transportation, sale, or purchase of a commodity;
 - (e) To engross or forestall a commodity;
 - (f) To issue, own, or hold the certificates of stock of any trust or combine;
 - (g) To place the control, to any extent, of business or of the products or earnings thereof, in the power of trustees, by whatever name called;
 - (h) By which any other person than themselves, their proper officers, agents, and employes shall, or shall have the power to dictate or control the management of business; or
 - (i) To unite or pool interests in the importation, manufacture, production, transportation, or price of a commodity;
- And is inimical to the public welfare, unlawful, and a criminal conspiracy. But this shall not apply to the associa-

tions of those engaged in husbandry in their dealings with commodities in the hands of the producer, nor to the societies of artisans, employes, and laborers formed for the benefit and protection of their members.

4438. Contracts void.—Every contract or agreement to enter into or pursue any trust and combine, and every contract or agreement made by another with any trust and combine, or with any member of a trust and combine, for any purpose relative to the business of such trust and combine, is void, and cannot be enforced in any court.

4439. Corporations forfeit their charters.—Every corporation which shall enter into, be concerned in, or share the profit or loss of any trust and combine, shall forfeit its charter and franchise, and, if a foreign corporation, shall forfeit its right to do business in this state.

4440. Actions against for damages.—Any person injured or damaged by a trust and combine, or by its effect, direct or indirect, may recover double the amount paid by him for any commodity or service whose price or cost was affected by the trust and combine, besides all consequential damages; and he may maintain his action therefor against one or more of the parties to the trust and combine, their attorneys, officers, agents, and employes, and that whether or not all the parties to the trust and combine be known, or whether or not the trust and combine were made or shall exist in this state.

4441. To defraud in public contracts.—If any person, corporation, firm, or association of persons shall combine with any other person, corporation, firm, or association of persons, or if either of them combine with one or more of the other to prevent, by pooling, any or either of said persons, corporations, firms, or associations of persons from separately or individually bidding for the performance of a public work for the state, or any county, municipality, or levee board thereof; or if any person, corporation, firm, or association of persons shall prevent, by persuasion or reward, any other person, corporation, firm, or association of persons, or any one or more of them, from bidding for the performance of such public work, they, and each of them, shall be guilty of a misdemeanor, and shall be fined not less than twenty-five dollars nor more than one thousand dollars.

4442. Moneys not collectible.—All sums of money to be paid on any contract on behalf of the state, or any county,

municipality, or levee board thereof, when the provisions of the last section have been violated, shall not be collectible, nor shall the same be paid by any officer or board having the payment thereof.

[Passed, February 22, 1890.]

CASE CONSTRUING STATUTE.

American Fire Insurance Co. et al. v. State.

22 So. Rep., 99.

May 24, 1897.

The only point decided in this case was that the indictment under which plaintiffs had been convicted was defective; but the court held by way of *dicta* that an agreement between several fire insurance companies to delegate to an association the power to prescribe premium rates, and to abide by such rates, is a trust and combine within section 4437, Mississippi Code 1892, where it says:

“A trust and combine is a combination * * * (g) to place the control, to any extent, of business, or of the products or earnings thereof, in the power of trustees, by whatever name called.”

COMMON-LAW DECISION.

Greenville Compress and Warehouse Co. v. Compress and Warehouse Co.

70 Miss., 669.

March, 1893.

Statement.

Plaintiff and defendant were corporations engaged in the same business. Their directors entered into a contract to consolidate the two corporations into one new corporation. The question arose whether the contract was binding.

Opinion.

Held that inasmuch as there was nothing in the charters of the corporations giving them this power, the contract was *ultra vires* and void.

MISSOURI.

STATUTES.

LAWS OF 1891, PAGE 186.

POOLS, TRUSTS, AND CONSPIRACIES ; UNLAWFUL COMBINATIONS.

AN ACT providing for the punishment of pools, trusts and conspiracies, to control prices, and as to evidence and prosecution in such cases.

Be it enacted by the General Assembly of the State of Missouri as follows,

§ 1.¹ Any corporation organized under the laws of this or any other state or country for transacting or conducting any kind of business in this state, or any partnership or individual or other association of persons whatsoever, who shall create, enter into, become a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual or any other person or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, or to maintain said price when so regulated or fixed, or shall enter into, become a member of or a party to any pool, agreement, contract, combination or confederation to fix or limit the amount or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, shall be deemed and adjudged guilty of a conspiracy to defraud, and be subject to penalties as provided in this act: *And provided, That*

¹ Section 1 is given as amended by Laws of 1895, page 237; Laws of 1897, page 208; and Laws of 1899, page 314.

if such insurance companies or their agents or the board of fire underwriters doing business in any city of this state, shall combine in any city of this state, either directly or indirectly, or agree or attempt to agree, directly or indirectly, to fix or regulate the price of premium to be paid for insuring property located within or outside of such city against loss or damage by fire, lightning or storm, such company so violating the provisions of this act, either by itself, its agents, or by any such board of underwriters, shall be taken and deemed to have forfeited its right to do business in this state, and shall become liable to all the penalties and forfeitures provided for by the provisions of this act.

§ 1a.¹ That from and after the passage of this act, all arrangements, contracts, agreements or combinations between persons or corporations, or between persons or any association of persons and corporations, designed or made with a view to lessen, or which tend to lessen full and free competition in the importation, manufacture or sale of any article, product or commodity in this state, and all arrangements, combinations, contracts or agreements, whereby, or under the terms of which it is proposed, stipulated, provided, agreed or understood that any person, association of persons or corporations doing business in this state, shall deal in, sell or offer for sale in this state, any particular or specified article, product or commodity, and shall not during the continuance or existence of any such arrangement, combination, contract or agreement, deal in, sell or offer for sale in this state, any competing article, product or commodity, are hereby declared to be against public policy, unlawful and void; and any person, association of persons or corporations becoming a party to any such arrangement, contract, agreement or combination shall be deemed and adjudged guilty of a conspiracy to defraud, and subject to the penalties provided for in the act of which this act is amendatory.

§ 2. It shall not be lawful for any corporation to issue or to own trust certificates, or for any corporation, agent, officer or employe, or the directors or stockholders of any corporation, to enter into any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement shall be

¹ Section 1a was added by Laws of 1899, page 208.

to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article.

§ 3.¹ Any corporation or company, individual, firm or association violating any of the provisions of this act, shall forfeit not less than five dollars nor more than one hundred dollars for each day it shall continue to do so, to be recovered by an action in the name of the state, at the relation of the attorney-general, circuit or prosecuting attorney—moneys thus recovered to go into the county school fund of the county in which the cause accrues, and in the city of St. Louis into the school fund of said city.

§ 4. Any contract or agreement in violation of any provision of the preceding sections of this act shall be absolutely void.

§ 5. Any purchaser of any article or commodity from any individual, company or corporation transacting business contrary to any provision of the preceding sections of this act shall not be liable for the price or payment of such article or commodity, and may plead this act as a defense to any suit for such price or payment.

§ 6.² Any corporation created or organized by or under the laws of this state, which shall violate any provisions of the preceding sections of this act shall thereby forfeit its corporate rights and franchises, and its corporate existence shall, upon proper proof being made thereof in any court of competent jurisdiction in this state, be by the court declared forfeited, void and of non-effect, and shall thereupon cease and determine; and any corporation created or organized by or under the laws of any other state or country, which shall violate any provisions of the preceding sections of this act, shall thereby forfeit its right and privilege thereafter to do any business in this state, and upon proper proof being made thereof in any court of competent jurisdiction in this state, its rights and privileges to do business in this state shall be declared forfeited; and in all proceedings to have such forfeiture declared, proof that any person who has been acting

¹Section 3 is given as amended by Laws of 1895, page 237.

²Section 6 is given as amended by Laws of 1895, page 237.

as the agent of such foreign corporation in transacting its business in this state has been, while acting as such agent, and in the name, behalf or interest of such corporation, violating any provision of the preceding sections of this act, shall be received as prima facie proof of the act of the corporation itself; and it shall be the duty of the clerk of said court to certify the decree thereof to the secretary of state, and if it be an insurance company, also to the superintendent of the insurance department, who shall take notice and be governed thereby as to the corporate powers and rights of said corporation.

§ 6a.¹ That whenever the corporate rights and franchises of any corporation organized under the laws of this state have been declared forfeited by the judgment of a court of competent jurisdiction for any violation of the provisions of this act, or of the act of which this act is amendatory, and whenever the right and privilege of any corporation organized under the laws of any other state or country to do business in this state has been declared forfeited by the judgment of a court of competent jurisdiction for any violation of the provisions of this act or of the act of which this act is amendatory, it shall hereafter be unlawful for any person, association of persons or corporations to deal in, sell or offer for sale in this state any article, product or commodity made, produced or manufactured, in whole or in part, by any corporation whose rights, franchises or privileges have been so declared to be forfeited; and the foregoing provisions of this section are hereby made applicable in all respects to the successor or assigns of any corporation whose rights, franchises or privileges have been so forfeited. Any person violating the provisions of this section is hereby declared to be guilty of a felony, and upon conviction, shall be punished by imprisonment in the penitentiary for a term not exceeding three years, or by imprisonment in the county jail for a term not exceeding one year, or by a fine not less than one hundred dollars nor more than one thousand dollars, or by both such fine and jail imprisonment: *Provided*, That no statement made by any person in any affidavit made under the provisions of sections seven and eight of the act of which this act is amendatory shall be competent as evidence against such person in any criminal prosecutions brought under this section.

¹ Section 6a was added by Laws of 1897, page 208.

§ 7.¹ It shall be the duty of the secretary of state, on or about the first day of July of each year, to address to the president, secretary or treasurer of each incorporated company doing business in this state, a letter of inquiry as to whether the said corporation has all or any part of its business or interest in or with any trust, combination or association of persons or stockholders, as named in the preceding provisions of this act, and to require an answer, under oath of the president, secretary or treasurer or any director of said company. A form of affidavit shall be enclosed in said letter of inquiry, as follows:

AFFIDAVIT.

STATE OF MISSOURI, *County of* ———, ss:

I ———, do solemnly swear that I am the ——— (president, secretary, [treasurer] or director) of the corporation known and styled ———, duly incorporated under the laws of ———, on the ——— day of ———, 18—, and now transacting or conducting business in the state of Missouri, and that I am duly authorized to represent said corporation in the making of this affidavit, and I do further solemnly swear that the said ———, known and styled as aforesaid, has not, since the ——— day of ——— (naming the day upon which this act takes effect) created, entered into or become a member of or a party to, and was not, on the ——— day ———, nor at any day since that date, and is not now a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual, or any other person or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm; and that it has not entered into or become a member of or a party to any pool, trust, agreement, contract, combination or confederation to fix or limit the amount or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage

¹ Section 7 is given as amended by Laws of 1895, page 237, and Laws of 1897, page 208.

by fire, lightning or storm; and that it has not issued and does not own any trust certificates and for any corporation, agent, officer or employe, or for the directors or stockholders of any corporation, has not entered into and is not now in any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which said combination, contract or agreement would be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any article; and that it has not made or entered into any arrangement, contract or agreement with any person, association of persons or corporations designed to lessen, or which tends to lessen, full and free competition in the importation, manufacture or sale of any article, product or commodity in this state, or under the terms of which it is proposed, stipulated, provided, agreed or understood that any particular or specified article, product or commodity shall be dealt in, sold or offered for sale in this state to the exclusion, in whole or in part, of any competing article, product or commodity.

 [President, secretary, treasurer or director.]

Subscribed and sworn to before me, a _____, within and for the county of _____, this _____ day of _____, 18_____.

[SEAL.]

And on refusal to make oath in answer to said inquiry, or on failure to do so within thirty days from the mailing thereof, the secretary of state shall certify said fact to the prosecuting attorney of the county (the circuit attorney in the city of St. Louis) wherein said corporation is located, and it shall be the duty of such prosecuting or circuit attorney, at the earliest practicable moment, in the name of the state, and at the relation of said prosecuting or circuit attorney, to proceed against such corporation for the recovery of the money forfeit provided for in this act, and also for the forfeiture of its charter or certificate of incorporation, or its right and privilege to do business in this state.

§ 8. It shall be the duty of the secretary of state, at any time, upon satisfactory evidence that any company or association of persons duly incorporated under the laws of this or any other state, doing business in this state, has entered into any trust, combination or association, in violation of the preceding sections of this act, to demand that it shall make the affidavit as above set forth in this act as to the conduct of its business. In case of failure of compliance on the part of the corporation, then the same procedure shall ensue as is provided in section seven of this act: *Provided*, That no corporation, firm, association or individual shall be subject to any criminal prosecution by reason of anything truthfully disclosed by the affidavit required by this act, or truthfully disclosed in any testimony elicited in the execution thereof.

§ 9.¹ It shall be the duty of the attorney-general, the circuit attorney of the city of St. Louis, and the prosecuting attorney of each county, respectively, to enforce the provisions of this act. The attorney-general, the circuit or prosecuting attorneys shall institute and conduct all suits begun in the circuit courts, and upon appeal, the attorney-general shall prosecute said suits in the supreme court and courts of appeals. As compensation for his services in this behalf the attorney-general shall be entitled to his actual expenses incurred in the prosecution of such suits, to be paid by the defendant or defendants when judgment is rendered for the state. The circuit and prosecuting attorneys shall receive for their compensation one-fourth of the penalty collected.

§ 10.² In all suits instituted under this act to forfeit the charter of corporations, or to forfeit the right of a corporation to do business in this state, where a judgment of forfeiture is obtained and the cause is not appealed to the supreme court or courts of appeals, the circuit court rendering such judgment shall allow the circuit or prosecuting attorney a fee of not less than twenty-five dollars nor more than five hundred dollars, to be paid out of the assets of said corporation; and when the attorney-general takes part in said prosecution, he shall be entitled to his actual expense, to be paid in like manner.

§ 11. It is hereby made the duty of all county officers in the state to furnish to the secretary of state any information

¹ Section 9 is given as amended by Laws of 1895, page 237.

² Section 10 is given as amended by Laws of 1895, page 237.

which he may request of them, to enable him the more fully to execute the duties imposed upon him by this act, and for such services the said county officers shall be paid by their respective counties, upon allowance by the county court, such fees as would accrue for like services for the county.

§ 12. Chapter one hundred twenty-eight, Revised Statutes 1889, entitled "Pools and trusts," is hereby repealed.

LAWS OF 1899, PAGE 316.

POOLS, TRUSTS AND CONSPIRACIES: PREVENTING AND RESTRAINING OPERATIONS OF SAME.

AN ACT to prevent and restrain the continuance and operation of trusts and monopolies, and to provide procedure therefor.

Be it enacted by the General Assembly of the State of Missouri, as follows:

§ 1. Every pool, trust, agreement, combination, confederation or understanding, conspiracy or combination entered into, or created, or organized by any corporation organized under the laws of this or any other state, or any partnership or individual or other association of persons whatsoever with any other corporation, partnership, individual or any other person or association of persons to regulate, control or fix the price of any article or articles of manufacture, mechanism, merchandise, commodity, convenience or repair, or any product of mining of any kind or class, or any article or thing of any class or kind bought and sold, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, or to maintain said price or prices when so regulated, determined or fixed, and all agreements, combinations, confederations or conspiracies or pools made, created, entered into or organized by any corporation, partnership, individual or association of individuals to fix the amount or limit the quantity of any article or thing whatsoever, or of any article of manufacture, mechanism, commodity, convenience or repair, or any product of any class or kind of mining, are hereby declared illegal. If any two or more persons or corporations who are engaged in buying or selling any article of commerce, manufacture, mechanism, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, shall enter into any pool, trust, agreement, combination, confederation, association or

understanding to control or limit the trade in any such article or thing; or to limit competition in such trade, by refusing to buy from or sell to any other person or corporation any such article or thing aforesaid, for the reason that such other person or corporation is not a member of or party to such pool, trust, combination, confederation, association or understanding; or shall boycott or threaten any person or corporation for buying from or selling to any other person or corporation who is not a member of or a party to such pool, trust, agreement, combination, confederation, association or understanding any such article or thing aforesaid, it shall be a violation of this act.

§ 2. The several circuit courts of this state are hereby invested with jurisdiction to prevent and restrain any corporation, partnership, individual or association of individuals from entering into any combinations, pools, agreements, in the form of trusts, confederation, conspiracy or understanding declared illegal by this act or any other law of this state relative to pools, trusts, conspiracies and unlawful combinations. And it shall be the duty of the attorney-general and of the prosecuting attorneys, when so directed by the attorney-general, to institute proceedings in equity to prevent and restrain all violations of this act and of any other law concerning pools, trusts and conspiracies and unlawful combinations. Such proceedings may be by way of petition, setting forth the case and praying that such violation be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed as soon as may be to the hearing and determination of the case; and pending such petition and before final decree the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

§ 3. Whenever it shall appear to the court before which any proceeding under this act may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the circuit in which the court is held or not; and subpoenas and summonses may be in proceedings under this act served by the sheriff of any county in any place in this state, and the same shall be valid.

§ 4. Any person injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act may sue there-

for in any circuit court of this state in which the defendant or defendants, or any one of them reside, or have any officer, agent, office or representative, or in which any such defendant or any agent, officer or representative may be found, without regard to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

§ 5. It is hereby expressly declared to be the intent of this act not to repeal any former act or part thereof on the subject of pools, trusts, conspiracies and unlawful combinations, except the same be in direct and irreconcilable conflict herewith. And it is hereby declared to be only the expressed purpose of this act to provide an additional remedy for the control and restraint of pools, trusts and conspiracies in restraint of trade and unlawful combination.

Approved May 10, 1899.

LAWS OF 1899, PAGE 318.

POOLS, TRUSTS AND CONSPIRACIES: PROVIDING FOR TAKING TESTIMONY.

AN ACT to provide for taking testimony in proceedings against pools, monopolies in commodities, trusts, conspiracies, and confederations in restraint of trade, and to provide for procuring the attendance before authorized officers and courts in Missouri of officers, agents, directors, and employes of alleged trusts, monopolies in commodities, pools and combinations in order that their testimony may be taken.

Be it enacted by the General Assembly of the State of Missouri as follows:

§ 1. Whenever any proceeding shall be commenced in any court of competent jurisdiction in this state by the attorney-general against any corporation or corporations, individual or individuals or associations of individuals, or joint stock associations or co-partnership, under the law against the formation and maintenance of pools, trusts of any kind, monopolies in commodities, combinations or organizations in restraint of trade to dissolve the same or to restrain their formation or maintenance in this state, then in such case, if the attorney-general desires to take the testimony of any officer, director, agent or employe of any corporation or joint stock association proceeded against, or in case of a co-partnership, any member of said partnership or any employe thereof, in any court in which said action may be pending or

before any person duly authorized by any court to take testimony in any such action; and individual or individuals, whose testimony is desired, are without the jurisdiction of the courts of this state, or reside without the state of Missouri, then, in such case, the attorney-general shall file in said court in term time, or in vacation, or with any person duly authorized to take the testimony in such case, a statement, in writing, setting forth the name or names of the persons or individuals whose testimony he desires to take and the time when, and the place in the state where he desires the said persons to appear; and, thereupon, the court in which, or one of the judges thereof, or the person before whom testimony is being taken, shall issue immediately a notice, in writing, directed to the attorney or attorneys of record in said cause, or any agent, officer or employe of any corporation, joint stock association or co-partnership which are parties to said action, notifying said attorneys of record, or officer, agent or employe, that the testimony of the person or persons named in the application of the attorney-general is desired, and requiring said attorney or attorneys of record, or said officer, agent or employe, to whom said notice is delivered or upon whom the same is served, to have said officer, agent, employe or representative of said co-partnership or agent thereof whose evidence it is desired to take at the place named in the application of the attorney-general and at the time fixed in said application, then and there to testify: *Provided, however,* That the said application shall always allow, in fixing said time, the same number of days for travel to reach the designated point in Missouri that would be now allowed by law in case of taking depositions: *Provided, also,* In addition to the above named time, six days shall be allowed for the attorney or attorneys of record, or the agent, officer or employe on whom notice is served, to notify the person or persons whose testimony is to be taken. Service of said notice and the return thereon, in writing, may be made by any one authorized by law to serve a subpoena.

§ 2. Whenever any attorney or attorneys of record, or any agent, officer or employe of any such corporation, joint stock association or co-partnership, shall be notified, as above provided, to request any officer, agent, director or employe to attend before any court or before any person authorized to take the testimony in said proceeding, and the person or persons whose testimony is requested, as above provided,

shall fail to appear and testify and produce whatever books, papers and documents they may be ordered to produce by the court, or the officer authorized to take said evidence, then it shall be the duty of the court, upon the motion of the attorney-general, to strike out the answer, motion, reply, demurrer or other pleading then or thereafter filed in said action or proceeding by said corporation, joint stock association or co-partnership, whose officer, agent, director or employe has neglected or failed to attend and to testify and produce all books, papers and documents he or they shall have been ordered to produce in said action by the court or person authorized to take said testimony; and said court shall proceed to render judgment by default against said corporation, joint stock association or co-partnership.

§ 3. *And it is further provided,* That in case any officer, agent, employe, director, or representative of any corporation, joint stock association or co-partnership in such proceeding as hereinbefore mentioned, who shall reside or be found within this state, shall be subpoenaed to appear and testify or to produce papers, books and documents, and shall fail, neglect or refuse to do so, then the answer, motion, demurrer or other pleading then or thereafter filed by said corporation, joint stock association or co-partnership in any such proceeding shall, on motion of the attorney-general be stricken out and judgment in said cause rendered against said corporation, joint stock association or co-partnership.

§ 4. There being no adequate and speedy method now provided for the obtaining of testimony in this class of proceedings, constitutes an emergency within the meaning of the constitution; therefore, this act shall take effect and be in force from and after its passage and approval.

Approved May 4, 1899.

LAWS OF 1899, PAGE 320.

POOLS, TRUSTS AND CONSPIRACIES: TESTIMONY, HOW SECURED.

AN ACT to enable the attorney-general to secure testimony in relation to pools, trusts and conspiracies, and the procedure to be followed in so doing.

Be it enacted by the General Assembly of the State of Missouri, as follows:

§ 1. For the purpose of determining whether an action or proceeding should be commenced against any pool, trust,

conspiracy or combination in restraint of trade, the attorney-general may examine and procure the testimony of witnesses in the matter herein prescribed.

§ 2. Procedure for securing testimony.—Whenever the attorney-general deems it necessary or proper before beginning any action or proceeding against any pool, trust, conspiracy or combination made, arranged, agreed upon or entered into whereby a monopoly in the manufacture, production or sale in this state of any article or commodity is or may be sought to be created, established or maintained, or whereby competition in this state in the supply or price of any article or commodity is or may be restrained or prevented, then in such case the attorney-general may present to any justice of the supreme court an application, in writing, for an order directing such persons, as the attorney-general may require, to appear before a justice of the supreme court or any examiner designated in said order and answer such relevant and material questions as may be put to them concerning any alleged illegal contract, arrangement, agreement or combination in violation of the laws of this state against pools, trusts, agreements, combinations and conspiracies in restraint of trade, or to regulate, fix or maintain the price of any commodity or to create a monopoly therein, if it appears to the satisfaction of the justice of the supreme court to whom the application for the order is made that such an order is necessary or expedient, then such order shall be granted. Such order shall be granted without notice, unless notice is required to be given by the justice of the supreme court to whom the application is made, in which event an order to show cause why such application should not be granted shall be made containing such preliminary injunction or stay as may appear to said justice to be proper or expedient, and shall specify the time when and the place where the witnesses are required to appear, and such examination shall be held in the city of Jefferson. The justice of the supreme court or the examiner may adjourn such examination from time to time and witnesses must attend accordingly.

§ 3. Order for examination.—The order for such examination must be signed by the justice making it; and the service of a copy thereof, with an endorsement by the attorney-general signed by him, to the effect that the person named therein is required to appear and be examined at the time

and place and before the justice or referee specified in such endorsement, shall be sufficient notice for the attendance of witnesses. Such endorsement may contain a clause requiring such person to produce on such examination all books, papers and documents in his possession or under his control to the subject of such examination: *Provided, however,* That the production of books and papers for inspection shall always be subject to the order of the supreme justice who has ordered such examination, and either party may, by a petition, in writing, ask that the said justice pass on the question as to whether or not said books and papers should be produced and examined and introduced in evidence. The order to appear as a witness may be served and return of service made in the same manner and by the same officer by whom a subpoena may now be served.

§ 4. Testimony of witnesses.—The testimony of each witness must be subscribed by him, and all testimony taken by such justice or examiner appointed must be certified and delivered by such justice or examiner to the attorney-general at the close of the examination. The justice or examiner shall cause said testimony to be taken down by a competent stenographer. The testimony given by a witness in a proceeding or examination under this act shall not be given against him in any criminal action or proceeding, nor shall any criminal action or proceeding be brought against such witness on account of any testimony so given by him.

§ 5. Power of examiner.—An examiner appointed under this act shall have his power and authority specified in the order appointing him. And he shall have all the ordinary power and authority of an examiner appointed by the supreme court, in addition to what special duties may be devolved on him by the order of appointment.

§ 6. Power to punish for contempt.—If any witness or witnesses be properly served, as herein provided, with notice to appear and testify, and they fail to obey said notice, or appearing, refuse to testify, the attorney-general may file a statement, in writing, with the supreme court justice setting out such facts, and said justice may, if he deems it proper, issue a citation to said parties, causing them to forthwith appear and show cause why he or they should not be fined or imprisoned, or both, for contempt. And in such contempt proceedings the justice of the supreme court shall

have full power to either fine or imprison, or both, as a punishment for either failing to appear and testify, or appearing, failing to testify, or to produce books and papers when so ordered to do.

§ 7. **Costs, how paid.**—The supreme court justice may make such order concerning the taxation and payment of costs in these proceedings against either the state of Missouri or the person examined, or any corporation, co-partnership, joint stock company, or combination of persons interested in or connected in any way with the subject of such examination. Costs taxed shall be collected in the ordinary way costs are now collected in the supreme court, and an itemized statement thereof shall be filed with the clerk of the supreme court, to whom all costs must be paid.

§ 8. There being no adequate means for the state of Missouri through its attorney-general to procure testimony relating to pools, monopolies in commodities, trusts, agreements and combinations in restraint of trade, an emergency exists within the meaning of the constitution, and therefore, this act shall take effect from and after its passage and approval.

Approved May 4, 1899.

LAWS OF 1899, PAGE 129.

CORPORATIONS: FOREIGN.

AN ACT to regulate the transaction of business in this state by corporations not organized and incorporated under the laws of this state.

Be it enacted by the General Assembly of the State of Missouri, as follows:

§ 1. No corporation organized or incorporated under the laws of any other state shall do business in this state if such company if organized in this state would organize under article 8 of chapter 42 of the Revised Statutes, or acts amendatory thereof, without first procuring a license therefor, which license shall be granted by the secretary of state.

§ 2. In order to procure such license it shall be necessary for the corporation applying therefor to file with the secretary of state a copy of its articles of association and charter granted by the state or territory under which it is organized, and if it shall appear that such company or cor-

poration could not organize under the laws of this state, license shall be refused: *Provided*, That this act shall not be construed so as to permit any corporation violating the anti-trust laws of this state to have license to transact business.

§ 3. There shall be paid to the state treasury a fee of \$10 by each company procuring license for the issuance thereof.

§ 4. It shall be the duty of the attorney-general to enforce the provisions of this act.

Approved May 23, 1899.

CASES CONSTRUING STATUTES.

*State ex rel. Crow, Attorney-General v. Etna Insurance Co. et al.
Same v. American Cent. Insurance Co.*

51 S. W. Rep., 413.

December 13, 1898.

Opinion.

Section one of the anti-trust act of 1897, providing that any corporation doing business in Missouri which shall become a member of any combination to regulate the premium to be paid for insuring property shall be guilty of a conspiracy to defraud and subject to penalties prescribed, provided that companies may regulate the price of insurance in cities which now have or may hereafter acquire 100,000 inhabitants, does not violate section three, article four of the state constitution, which provides that the general assembly shall not pass any local or special law granting to any corporation any special privilege, because the proviso excepts fire insurance companies in all cities of that class, and applies alike to all fire insurance companies doing business therein.

National Lead Co. v. S. E. Grote Paint-Store Co.

(Pamphlet.) St. Louis Court of Appeals, May 2, 1899.

Statement.

In 1891 there existed the National Lead Trust composed of corporations manufacturing between 50 and 75 per cent of all the white lead produced in the United States. Fearing the state and national anti-trust laws the plaintiff corporation was chartered under the laws of New Jersey to have a capital of \$30,000,000, and power, "to purchase, acquire, hold, sell, exchange or otherwise dispose of all such stocks, bonds,

securities, and obligations of other companies or corporations as may be necessary or convenient for any or all the purposes of said company." As soon as plaintiff corporation was formed it purchased the property of the members of the National Lead Trust and paid therefor in its stocks.

From plaintiff's St. Louis branch, defendant purchased lead to the value of \$1,791.23. For this plaintiff sued, and was met by the defense that plaintiff corporation was a combination in restraint of trade within the meaning of sections 1 and 2 of the Missouri trust act of 1891; and this being so, by section 5 of said act, defendant is not liable for the price of the goods. In the lower court evidence as to the organization of the National Lead Company was excluded as immaterial; and an appeal was taken to this court.

Opinion.

"If * * * the preceding trust was an unlawful combination * * * it must follow that the plaintiff corporation is equally amenable" to the trust acts, "if, as the record shows the fact to be, it actually engaged through the same methods and for identical objects in a similar business to that of the former trust, unless there is something in the mere fact of the plaintiff's corporate character which exempts it from the application of the law prohibiting combinations * * * to restrain trade. * * * The legislature referred to the corporation in its true essence as an association of persons. * * * Hence it must follow that if the stockholders and governing officers of the plaintiff corporation combined with each other to violate any of the provisions of the section under review through the instrumentality of their corporate entity, then the corporation composed by them was a party to such illegal combination. * * * A combination which is illegal under the anti-trust law, can not be operated under the cloak of a corporation by its constituent members or governing bodies."

New trial granted.

State ex rel. Crow, Attorney-General v. Firemen's Fund Insurance Co. et al.

52 S. W. Rep., 595.

June 30, 1899.

Statute construed.

"Any corporation * * * conducting any kind of business in this state which shall * * * enter into * * * any * * * combination * * * to regulate or fix the

* * * premium to be paid for insuring property * * * shall be * * * guilty of a misdemeanor." The act provides that a corporation violating the law shall forfeit its right to do business in the state; that proof that an agent in the state of a foreign corporation has violated the act shall be *prima facie* proof that the company has; that the prosecuting attorney shall receive from \$25 to \$500 for his services. (L. 1891, p. 186 and amendments.)

Statement.

Defendants are 73 insurance companies whose agents formed a club and hired a secretary to whom all the policies were sent. They were by him examined, and, unless the premiums were according to W. J. Fetter's book of rates, they were returned; and unless they were then changed to correspond with the rate book certain penalties were inflicted by the club. Proceedings were instituted to forfeit the right of these companies to do business in the state on the ground that they had violated the trust law.

Opinion.

The arrangement constituted a combination to fix rates within the meaning of the trust law. The parts of the trust law involved in the decision of this case are constitutional. Whether the sections of the law making guilt of agents *prima facie* proof of the guilt of the companies, and whether in these cases the attorney shall receive an extra fee, are constitutional, is not discussed, for these sections are not invoked in this case. If they were unconstitutional, the result would be the same.

The 73 defendant insurance companies are ousted of all rights, privileges and franchises conferred by the laws of Missouri, and of their certificates to do business under the insurance laws of the state, and compelled to pay the costs of this proceeding.

MONTANA.

CONSTITUTIONAL PROVISION.

ARTICLE XV.

§ 20. No incorporation, stock company, person or association of persons in the state of Montana, shall directly, or indirectly, combine or form what is known as a trust, or make any contract with any person, or persons, corporations, or stock company, foreign or domestic, through their stockholders, trustees, or in any manner whatever, for the purpose of fixing the price, or regulating the production of any article of commerce, or of the product of the soil, for consumption by the people. The legislative assembly shall pass laws for the enforcement thereof by adequate penalties to the extent, if necessary for that purpose, of the forfeiture of their property and franchises, and in case of foreign corporations prohibiting them from carrying on business in the state.

[Adopted, August 17, 1889.]

STATUTE.

PENAL CODE.

CONSPIRACY.

§ 321. Every person, corporation, stock company or association of persons in this state who directly or indirectly, combine or form what is known as a trust, or make any contract with any person or persons, corporations or stock companies, foreign or domestic, through their stockholders, directors, officers, or in any manner whatever, for the purpose of fixing the price or regulating the production of any article of commerce, or the product of the soil for consumption by the people, or to create or carry out any restriction in trade, to limit productions, or increase or reduce the price of merchandise or commodities, or to prevent competition in merchandise or commodities, or to fix a standard or figure whereby the price of any article of merchandise, commerce or produce,

intended for sale, use or consumption, will be in any way controlled, or to create a monopoly of the manufacture, sale or transportation of any such article, or to enter into an obligation by which they shall bind others or themselves not to manufacture, sell, or transport any such article below a common standard or figure, or by which they agree to keep such article or transportation at a fixed or graduated figure, or by which they settle the price of such article so as to preclude unrestricted competition, is punishable by imprisonment in the state prison not exceeding five years, or by fine not exceeding ten thousand dollars, or both. Every corporation violating the provisions of this section, forfeits to the state all its property and franchises, and in case of a foreign corporation it is prohibited from carrying on business in the state.

§ 325. The provisions of this chapter do not apply to any arrangement, agreement or combination between laborers made with the object of lessening the number of hours of labor or increasing wages, nor to persons engaged in horticulture or agriculture, with a view of enhancing the price of their products.

NEBRASKA.

STATUTES.

LAWS OF 1897, CHAP. 79.

AN ACT to define trusts and conspiracies against trade and business, declaring the same unlawful and void, and providing means for the suppression of the same, and remedies for persons injured thereby, and to provide punishment for violations of this act, and to repeal chapter ninety-one a (91a), entitled "Trusts," of the Compiled Statutes of Nebraska for the year 1895.

Be it enacted by the Legislature of the State of Nebraska:

§ 1. That a trust is a combination of capital, skill or acts by any person or persons to fix the price of any article or commodity of trade, use or merchandise, with the intent to prevent others from conducting or carrying on the same business or selling or trafficking in the same article, use or merchandise, or a combination of capital, skill or acts by two or more persons or by two or more of them for either, any or all of the following purposes: 1. To create or carry out restrictions in trade. 2. To limit or reduce the production or increase or reduce the price of merchandise or commodities. 3. To prevent competition in insurance, either life, fire, accident or any other kind, or in manufacture, making, constructing, transportation, sale or purchase of merchandise, produce or commodities. 4. To fix at any standard or figure, whereby its price to the public shall be in any manner controlled or established upon any article of merchandise, produce or manufacture of any kind intended for sale, use or consumption in this state; to establish any pretended agency whereby the sale of any such article, commodity, merchandise or product shall be covered up, concealed or made to appear to be for the original vendor, for a like purpose or purposes, and to enable such original vendor, producer or manufacturer to control the wholesale or retail price of any such article of merchandise, produce or commodity after the title to the same shall have passed from such vendor or manufacturer. 5. To

make or enter into, carry on or carry out any contract, obligation or agreement of any kind or description by which they shall bind, or have heretofore bound themselves not to sell, dispose of, traffic in or transport any article of merchandise, or commodity, or article of trade, product, use, merchandise, consumption or commerce, below a common standard figure, card or list price, or by which they shall agree in any manner to keep the price of such article, product, commodity or transportation, at a fixed or graduated figure or price, or by which they shall in any manner establish or settle the price of any article of merchandise, commodity, or of insurance, fire, life or accident, or transportation between them or between themselves and others, or with the intent to preclude, or the tendency of which is to prevent or preclude a free and unrestricted competition among themselves or others or the people generally in the production, sale, traffic or transportation of any such article of merchandise, product or commodity or conducting a like business or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale, production or transportation of any such article of merchandise, product or commodity or the carrying on of any such business, that its price might in any manner be affected thereby.

§ 2. That any and all acts by any person or persons, carrying on, creating, or attempting to create, either directly or indirectly, a trust as defined in section one (1) of this act, are hereby declared to be a conspiracy against trade and business and unlawful, and any person who may be or may become engaged in any such conspiracy, or take part therein, or aid or advise, in its commission, or who shall as principal, manager, director, agent, servant or employe, or in any other capacity knowingly aid or advise, or attempt to carry out, or carry out any of the stipulations, purposes, prices, rates, orders thereunder, or in pursuance thereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars, nor more than five thousand dollars.

§ 3. That any corporation organized under the laws of this state which violates any of the provisions of this act shall thereby forfeit its charter and franchise, and its corporate existence shall thereupon cease and determine. And for a violation of any of the provisions of this act by any

corporation it shall be the duty of the attorney-general of the state, or county attorney, within his county upon his own motion, to institute suit or quo warranto proceedings in any county in this state in which such corporation was organized or is engaged in transacting business for the forfeiture of its charter rights and franchise and the dissolution of its corporate existence. There shall be taxed against the defendant as part of the cost in any such suit or proceedings, upon the forfeiture of its charter and franchise as provided herein, a fee for the services rendered by the county attorney a sum not less than one hundred dollars (\$100.00), and not more than five hundred dollars (\$500.00), to be fixed by the court rendering the judgment.

§ 4. Every foreign corporation or person not a resident of this state, violating any of the provisions of this act, is hereby denied the right and prohibited from doing any business within this state; and it shall be the duty of the attorney-general and each county attorney within his county, to enforce this provision by injunction, or other proper proceedings, in any county in which such foreign corporation or non-resident person does business, in the name of the state on his relation. And for services rendered by the county attorney, in any such suit or proceedings, the court rendering judgment shall allow a reasonable sum to be taxed against the defendant as part of the costs, in case judgment is rendered against the defendant. For the purpose of obtaining service upon any foreign corporation or non-resident person in any suit or proceedings brought as provided in this act, it shall be sufficient to serve a summons upon any person in any county within the state who may be the agent of said foreign corporation or non-resident person, for the purpose of soliciting business or transacting or doing business for said corporation or non-resident person, at the time when summons is issued upon petition filed against said corporation, or non-resident person, or when summons is served on such agent.

§ 5. In any indictment or information for any offense named in this act it shall be sufficient to state the purposes and effects of the trust or combination in a general way, and that the accused was a member of, aided or advised, or acted with or in pursuance of such trust or combination, without giving its name or description, or how, where or when it was created.

§ 6. In prosecutions under this act it shall be sufficient to prove that a trust or combination, as defined herein or under the common law, exists, and that the defendant belonged to it or acted for or in connection with it, or aided or advised such trust or combination, or attempted to, or did fully carry out any of the stipulations, purposes, prices, rates or orders of any person connected therewith, and it shall not be necessary to make any proof of all the members belonging to such trust, combination or conspiracy, or to prove or produce any article of agreement or any written instrument on which it may have been based, or when, where or how such trust, combination or conspiracy was formed, or that it was evidenced by any written instrument, or came into existence by any agreement of any kind or character, whether in parol or writing.

§ 7. Prosecutions may be brought by any person in the name of the state of Nebraska against any person or persons violating any of the provisions of this act, and it shall be the duty of all county attorneys in their respective counties, to prosecute all criminal suits on behalf of the state arising under the provisions of this act, and there shall be taxed by the court upon conviction of the defendant or defendants, a fee for the county attorney of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) as services for trying said suit, and same shall be taxed as part of the costs against the defendant or defendants.

§ 8. That any contract or agreement in violation of the provisions of this act shall be absolutely void and not enforceable either in law or equity.

§ 9. Nothing herein contained shall be construed to prevent any assemblies or associations of laboring men from passing and adopting such regulations as they may think proper, in reference to wages and the compensation of labor, and such assemblies and associations shall retain, and there is hereby reserved to them all the rights and privileges now accorded to them by law, anything herein contained to the contrary notwithstanding.

§ 10. Any purchaser of any article, commodity, matter or thing purchased or contracted for within or without this state from any person, firm, corporation or association of persons, or of two or more of them, transacting business contrary to any provision of the preceding sections of this act, shall not be liable for the price or payment of such article, commodity,

matter or thing, and may plead this act as a defense to any suit for such price or payment.

§ 11. Any person who shall be injured in his business, employment or property by any other person, firm, association or corporation by reason of anything forbidden or declared to be unlawful by this act, may have his right of action and sue therefor in any court of competent jurisdiction, and he shall recover the damages by him sustained, and the costs of suit together with a reasonable attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

§ 12. In any action brought under any of the provisions of this act the court before whom the same shall be pending may compel any person or persons, partnership, company, association or corporation so proceeded against, or any of the members of any such partnership or corporation, or any director, officer, receiver, trustee, agent, employe or clerk of them, or either of them, to attend, appear and testify in such suit or proceeding, and may compel the production of the books and papers of any such person, persons, partnership, company, association or corporation party to any such proceeding.

No person shall be excused from attending and testifying, or producing books and papers, in any prosecution under this act, for the reason that the testimony, documentary or otherwise, required of him may tend to criminate him, or subject him to a penalty or forfeiture, but no person shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, in any prosecution under the provisions of this act: *Provided*, That no person so testifying shall be exempt from prosecution for perjury committed in so testifying.

§ 13. That the word "person" or "persons" wherever used in this act shall be deemed to include firm, firms, corporation, corporations, partnerships, copartnerships and associations existing under, permitted or authorized by the laws of the United States, this state or any other state, or the laws of any foreign country or territory of the United States.

§ 14. That chapter ninety-one a (91a), entitled "Trusts," of the Compiled Statutes of Nebraska for the year 1895, be and the same is hereby repealed.

LAWS OF 1897, CHAPTER 80.

AN ACT to prohibit combinations among grain elevator men and to prohibit any person, company, partnership, association or corporation engaged in the business of grain dealing or owning or operating any grain elevator, or in the buying, selling, handling, consigning or transporting grain from entering into any understanding, contract, agreement or combination with any other person, company, partnership, association or corporation to form, enter into, maintain or contribute to any trust, pool, combination or association of whatever name, having for any of its objects the prevention of competition among buyers, sellers or dealers in grain not members of, or not doing business through such trust, pool, combination or association, by means of preventing such persons from finding a market for their grain and by intimidating and preventing purchasers and exporters from buying from any person, not a member of and not doing business through such trust, pool, combination or association; and to provide a penalty for the violations of this act.

Be it enacted by the Legislature of the State of Nebraska:

§ 1. That it shall be unlawful for any person, partnership, company, association or corporation engaged in the business of grain dealing or owning or operating any grain elevator, or in buying, selling, handling, consigning, shipping or transporting grain, to enter into any understanding, contract, agreement or combination with any other person, company, partnership, association or corporation, whether within or without this state engaged in a like business, to form, enter into or maintain or contribute money or anything of value to any trust, pool, combination or association of persons, partnerships, companies, associations or corporations of whatever name, which has for any of its objects the prevention of competition among buyers, sellers or dealers in grain, or which by any of its acts, or the acts of any of its officers, members, agents or employees hinders or prevents or tends to hinder or prevent the fullest competition in the purchase, sale or dealing in grain by any person, partnership, company, association or corporation outside of, or not a member of, or not doing business by or through such trust, pool, combination or association, or any of its members, officers, agents or employes; or which has for one of its objects the prevention of competition by requiring or compelling its members not to deal with shippers or dealers in grain not members of such trust, pool, combination or association; or which requires its members to refuse to sell, purchase or consign any grain, to any person, company, partnership or corporation which purchases or receives consignments of

grain from any person, company or corporation not a member of such trust, pool, combination or association, or not doing business through the same or any of its members; or which has for any of its objects the prevention of any person, company, partnership, association or corporation not shipping grain through grain elevators, whether owned or operated by members of such trust, pool, combination or association, or not, from finding purchasers for their grain by boycotting or threatening to boycott such purchasers.

§ 2. That in any case, any person, company, partnership, association, corporation, trust, pool or combination of whatever name shall do, cause to be done, or permit to be done, any act, matter or thing in this act prohibited or declared to be unlawful, such person, partnership, company, association, corporation, trust, pool or combination shall be liable to the person, partnership, company, association or corporation injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable attorney fee to be fixed by the court in every case of recovery to be taxed as part of the costs in the case; and the property of any person who may be a member of or interested in any such trust, pool, combination or association, violating the provisions of this act shall be liable for the full amount of such judgment and may be levied upon and sold to satisfy the same.

§ 3. Any person, partnership, company, association or corporation subject to the provisions of this act, or any trust, combination, pool or association, or any director, officer, receiver, trustee, employe, agent or person, acting for or employed by them, or either of them, who shall violate any of the provisions of section 1 of this act shall be declared to be guilty of a felony, and shall upon conviction thereof be fined in any sum not less than one thousand dollars and not exceeding two thousand dollars, and any person, officer, member, agent or employe of any trust, combination, pool or association violating the provisions of section 1 of this act, may in addition to the foregoing fine, be sentenced by the court to a period not exceeding six months to be served in the penitentiary of the state. That half of the fine so imposed shall go to the person or persons who furnish information and evidence on which a conviction shall be founded.

§ 4. Any person who may be aggrieved or injured by section 1 of this act may prosecute the violator in a crim-

inal action by his own attorney, without the intervention of the county attorney, and in case of conviction the court shall allow a reasonable attorney fee to be taxed as costs in the case.

LAWS OF 1897, CHAP. 81.

AN ACT to prevent combinations between fire insurance companies and providing penalties therefor.

Be it enacted by the Legislature of the State of Nebraska:

§ 1. Any combination or agreement made or entered into by or between two or more fire insurance companies insuring property against casualties from the elements, transacting business within this state, or between the officers, agents, or employes of any such companies, relating to the rates to be charged for insurance, the amount of commissions to be allowed agents for procuring insurance, or the manner of transacting the business of fire insurance within this state, is hereby declared to be unlawful, and any such company, officer, or agent violating this provision shall be guilty of a misdemeanor and on conviction thereof, in any court having jurisdiction, shall pay a penalty of not less than one hundred dollars nor more than five hundred dollars for each offense, to be recovered for the use of the permanent school fund in the name of the state.

§ 2. The auditor of the state is hereby authorized to summons, and bring before him for examination under oath, any officer or employee of any fire insurance company transacting business within this state suspected of violating any of the provisions of this act; and on complaint in writing made to him by two or more residents of this state charging any such company under oath upon their knowledge or belief with violating the provisions of this act, said auditor shall summons and cause to be brought before him for examination under oath any officer or employee of said company; and if upon such examination, and the examination of any other witness or witnesses that may be produced and examined, the auditor shall determine that said company is guilty of a violation of any of the provisions of this act or if any officer shall fail to appear, or submit to an examination, after being duly summoned, he shall forthwith issue an order revoking the authority of such company to transact business within this state, and such company shall not thereafter be permitted to transact the business of fire insurance in this state at any time within one year from the time of such revocation.

§ 3. Either party may appeal from any decision of the auditor made in pursuance to this act to the district court of the county wherein such decision was made, within twenty days from the time of the rendition of such decision, by serving a written notice of such appeal on the opposite party and on the auditor of state, and filing with the clerk of said court a good and sufficient bond for the payment of all costs made on appeal in case the decision shall be affirmed. On such appeal the district court shall try the case *de novo* as equitable causes are tried on such evidence as may be produced by either party and may reverse, modify, or affirm the decision or order of the auditor.

§ 4. The statements and declarations made or testified to by any such officer or agent in the investigation before the auditor or upon the hearing and trial before the district court as provided for in sections 2 and 3 of this act, shall not be used against any person making the same in any criminal prosecution against him.

CASE CONSTRUING STATUTE.

Mollyneaux v. Wittenberg et al.

39 Neb., 547.

March 6, 1894.

Statute construed.

"It shall be unlawful for any person * * * engaged in the manufacture or sale of any article of commerce or consumption * * * or dealing in any natural product to enter into any contract * * * with any other person * * * engaged in the manufacturing, selling or dealing in the same * * * whereby a common price shall be fixed for any such product or whereby the manufacture or sale thereof shall be limited or the amount * * * of such product to be sold or manufactured shall be determined or whereby any one or more of the combining or contracting parties shall suspend or cease the sale or manufacture of such products." (Laws of 1889, Chap. 69.)

Statement.

Plaintiff sold defendant a village lot, providing in the deed that said lot should not be used for hotel purposes for two years. Defendant within two years used the lot for hotel purposes. Plaintiff brings suit for damages. Defendant

claims that the restriction was in violation of the foregoing statute, and was therefore void.

Opinion.

“The act applies to persons ‘engaged in the manufacture or sale of any article of commerce or consumption, or dealers in any natural product,’ and prohibits them from entering into contracts, agreements, etc. The contract in this case, not to use the premises for hotel purposes is clearly not covered by the terms or meaning” of the statute above mentioned.

Plaintiff can recover damages.

NEW JERSEY.

COMMON-LAW DECISIONS.

John P. Stockton, Attorney-General of New Jersey, at the Relation
of John R. Miller et al. v. The American Tobacco Co. et al.

55 N. J. Eq., 352.

February, 1897.

Statement.

Five companies of New York, North Carolina and Virginia, were at one time, independently of each other, manufacturing and selling paper cigarettes. In 1889, under the laws of New Jersey they formed the American Tobacco Company, and its capital stock was to be \$25,000,000. The five companies above mentioned turned their property over to this corporation and received its stock in payment therefor. The American Tobacco Company did no business in New Jersey except to sell its cigarettes there through jobbers under agreement that the jobbers should sell cigarettes for no other manufacturer. By this means the American Tobacco Company has monopolized ninety-five per cent of the paper cigarette business of the United States. Plaintiff seeks to enjoin the American Tobacco Company from doing business in a manner to restrict trade.

Opinion.

If the corporation was not legally formed, the proper remedy is not in equity, but at law to declare its charter void. If the corporation was legally formed, it has the same right to do business as an individual, and clearly an individual has the right to make any contract the defendant has made.

The bill is dismissed.

Trenton Potteries Co. v. Richard C. Oliphant et al.

56 N. J. Eq., 680.

March 19, 1898.

43 At. Rep., 723.

July 7, 1899.

Statement.

Plaintiff, it is alleged, is a corporation formed for the purpose of buying enough of the manufactories of sanitary ware to control the market in this article. To this end it pur-

chased a manufactory in which defendants were interested, and made a contract with defendants whereby they agreed to manufacture no pottery ware anywhere in the United States except in Nevada and Arizona for fifty years. They are now breaking this contract and plaintiff brings a bill in equity to have them enjoined.

Opinion of the Court of Chancery.

The prayer for the enforcement of this contract is a request that equity shall aid in carrying into effect a scheme which, in all its parts, tended to secure to the complainant company such an undue control of the market of a necessary of life as is against public policy, and the request should not be granted.

Opinion of Court of Errors and Appeals.

As the legislature had given corporations power to acquire the property and control of other corporations, and this carried with it the right to make contracts reasonably required to protect the purchaser in the enjoyment of the business purchased, the legislature had settled the question of public policy, and the court had to decide only whether the restraint was reasonably required to protect the purchaser. Held that a reasonable restraint would extend only to the territory covered by the seller's business; that in such territory the contract would be specifically enforced, but that as to the rest of the territory covered by the contract no relief would be granted.

As to the state of New Jersey the injunction will be granted, but as it is not proved that defendants' business which was sold extended into the rest of the territory covered by the contract, as to that, it will be refused.

NEW MEXICO.

STATUTE.

COMPILED LAWS.

TRUSTS, POOLS AND COMBINATIONS.

§ 1292. Every contract or combination between individuals, associations or corporations, having for its object or which shall operate to restrict trade or commerce or control the quantity, price or exchange of any article of manufacture or product of the soil or mine, is hereby declared to be illegal.

Every person, whether as individual or agent or officer or stockholder of any corporation or association, who shall make any such contract or engage in any such combination, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding one thousand dollars nor less than one hundred dollars, and by imprisonment at hard labor not exceeding one year, or until such fine has been paid.

§ 1293. Every person who shall monopolize or attempt to monopolize, or combine or conspire with any other person or persons to monopolize any part of the trade or commerce of this territory, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding one thousand dollars or by imprisonment not exceeding one year, or by both said punishments in the discretion of the court.

§ 1294. All contracts and agreements in violation of sections one thousand two hundred and ninety-two and one thousand two hundred and ninety-three shall be void, and any purchaser of any commodity from any individual, corporation or association transacting business in violation of this act shall not be liable for the payment for such commodity.

§ 1294a. This act shall take effect from and after its passage and publication three times in the "Daily New Mexican."

[Passed in 1891.]

NEW YORK.

STATUTES.

PENAL CODE.

CONSPIRACY.

§ 168. **Conspiracy defined.**—If two or more persons conspire, either * * *

6. To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice, or of the due administration of the laws;

Each of them is guilty of a misdemeanor.

LAWS OF 1897, CHAP. 384.

§ 7. **Combinations abolished.**—No domestic stock corporation and no foreign corporation doing business in this state shall combine with any other corporation or person for the creation of a monopoly or the unlawful restraint of trade or for the prevention of competition in any necessary of life.

LAWS OF 1899, CHAP. 690.

AN ACT to prevent monopolies in articles or commodities of common use, and to prohibit restraints of trade and commerce, providing penalties for violations of the provisions of this act, and procedure to enable the attorney-general to secure testimony in relation thereto.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Every contract, agreement, arrangement or combination whereby a monopoly in the manufacture, production or sale in this state of any article or commodity of common use is or may be created, established or maintained, or whereby competition in this state in the supply or price of any such article or commodity is or may be restrained or prevented, or whereby for the purpose of creating, establishing or maintaining a monopoly within this state of the

manufacture, production or sale of any such article or commodity, the free pursuit in this state of any lawful business, trade or occupation is or may be restricted or prevented, is hereby declared to be against public policy, illegal and void.

§ 2. Every person or corporation, or any officer or agent thereof, who shall make or attempt to make or enter into any such contract, agreement, arrangement or combination, or who within this state shall do any act pursuant thereto, or in, toward or for the consummation thereof, wherever the same may have been made, is guilty of a misdemeanor, and on conviction thereof shall, if a natural person, be punished by a fine not exceeding five thousand dollars, or by imprisonment for not longer than one year, or by both such fine and imprisonment; and if a corporation, by a fine of not exceeding five thousand dollars.

§ 3. The attorney-general may bring an action in the name and in behalf of the people of the state against any person, trustee, director, manager or other officer or agent of a corporation, or against a corporation, foreign or domestic, to restrain and prevent the doing in this state of any act herein declared to be illegal, or any act, in, toward or for the making or consummation of any contract, agreement, arrangement or combination herein prohibited, wherever the same may have been made.

§ 4. Whenever the attorney-general has determined to commence an action or proceeding under this chapter, he may present to any justice of the supreme court, before beginning such action or proceeding under this chapter, an application in writing, for an order directing the persons mentioned in the application to appear before a justice of the supreme court, or a referee designated in such order, and answer such questions as may be put to them or to any of them, and produce such papers, documents and books concerning any alleged illegal contract, arrangement, agreement or combination in violation of this chapter; and it shall be the duty of the justice of the supreme court, to whom such application for the order is made, to grant such application. The application for such order made by the attorney-general may simply show, upon his information and belief that the testimony of such person or persons is material and necessary. The provisions of article one, of title three, of chapter nine of the code of civil procedure, relating to the application for

an order for the examination of witnesses before the commencement of an action and the method of proceeding on such examinations shall not apply except as herein prescribed. The order shall be granted by the justice of the supreme court to whom the application has been made, with such preliminary injunction or stay as may appear to such justice to be proper and expedient, and shall specify the time when and place where the witnesses are required to appear, and such examination shall be held either in the city of Albany, or in the judicial district in which the witness resides, or in which the principal office, within this state, of the corporation affected, is located. The justice or referee may adjourn such examination from time to time and witnesses must attend accordingly. The testimony of each witness must be subscribed by him, and all must be filed in the office of the clerk of the county in which such order for examination is filed.

§ 5. The order for such examination must be signed by the justice making it, and the service of a copy thereof, with an endorsement by the attorney-general, signed by him, to the effect that the person named therein is required to appear and be examined at the time and place, and before the justice or referee specified in such endorsement, shall be sufficient notice for the attendance of witnesses. Such endorsement may contain a clause requiring such person to produce on such examination all books, papers and documents in his possession, or under his control, relating to the subject of such examination. The order shall be served upon the person named in the indorsement aforesaid, by showing him the original order, and delivering to and leaving with him, at the same time, a copy thereof indorsed as above provided, and by paying or tendering to him the fee allowed by law to witnesses subpoenaed to attend trials of civil actions in a court of record in this state.

§ 6. No person shall be excused from answering any questions that may be put to him, or from producing any books, papers or documents, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him, but no person shall be prosecuted in any criminal action or proceedings, or subjected to any penalty or forfeiture, for or on account of any transaction, matter or thing concerning which he may testify, or produce evidence,

documentary or otherwise, before said justice or referee appointed in the order for his examination, or in obedience to the subpoena of the court, or referee acting under such order, or either of them or in any such case or proceeding.

§ 7. A referee appointed as provided in this act possesses all the powers and is subject to all the duties of a referee appointed under section ten hundred and eighteen of the code of civil procedure, so far as practicable, and may punish for contempt a witness duly served as prescribed in this act for non-attendance or refusal to be sworn or to testify, or to produce books, papers and documents according to the direction of the indorsement aforesaid, in the same manner, and to the same extent as a referee appointed to hear, try and determine an issue of fact or of law.

§ 8. Chapter three hundred and eighty-three of the laws of eighteen hundred and ninety-seven is hereby repealed.

§ 9. This act shall take effect immediately.

[Became a law May 25, 1899, with the approval of the governor.]

CASES CONSTRUING STATUTES.

The People of the State of New York v. Carson J. Sheldon et al.

139 N. Y., 251.

October 3, 1893.

Statute construed.

“If two or more persons conspire, either to commit any act injurious to the public health, or to public morals, or to trade or commerce, * * * each of them is guilty of a misdemeanor.” (New York Penal Code, sec. 168.)

Statement.

Defendants agreed to sell no coal except at prices fixed by a majority of them. They are prosecuted for conspiracy.

Opinion.

“The trial judge charged the jury: If the defendants entered into the organization agreement for the purpose of controlling the price of coal and managing the business of the sale of coal, so as to prevent competition in price between the members of the exchange, the agreement was illegal, and if you find that this was their intent, and that the price of coal was raised in pursuance of the agreement to effect its object, the crime of conspiracy is established.” This was a correct charge.

Defendants were convicted.

Harvey F. Drake et. al. v. Steverin Siebold.*81 Hun., 178.**October, 1894.***Statement.**

Nearly all the coal dealers in Rochester, N. Y., were members of a combination known as The Rochester Coal Exchange, which from time to time issued schedules of prices at which coal should be sold by all of its members. The parties to this action were members of this association. A contract was entered into between plaintiffs and defendant whereby plaintiffs were to supply the defendant with large quantities of coal at stated times, the price of which was to be the schedule price set by the said association at the time the coal was delivered. Defendant received part of the coal, and then refused to take any more, and plaintiffs bring this suit to recover damages for the breach of contract.

Opinion.

The object of the coal exchange was to prevent competition in the sale of a prime necessary. The combination between the dealers, followed by overt acts, was a conspiracy within the meaning of the statute, which provides that when two or more persons conspire "to commit any act injurious * * * to trade or commerce," they are guilty of a misdemeanor. (Penal Code, sec. 168, subd. 6.) The object of the association was illegal, and the contract on which this action is based was in furtherance of that object and is void.

The plaintiffs can not recover.

The National Harrow Co. v. E. Bement & Sons.*21 N. Y. App. Div., 290.**October, 1897.***Statute construed.**

"No domestic stock corporation and no foreign corporation doing business in this state shall combine with any other corporation or person for the creation of a monopoly or the unlawful restraint of trade, or for the prevention of competition in any necessary of life." (L. 1892, ch. 688, amended by L. 1897, ch. 384.)

Statement.

Plaintiff corporation was organized ostensibly to manufacture and deal in harrows. Its stock was issued for patents assigned to it. It manufactured no harrows itself, but

obtained eighty-five patents and made contracts with those from whom they were purchased to continue manufacturing the harrows under licenses, the corporation reserving the right to fix the prices at which the harrows should be sold. Defendant, who held a license to make harrows, broke the contract, and this suit is to enforce it. Defendant claims that the sale of its patent and the receiving back a license is void because it was with a view to giving the plaintiff a monopoly.

Opinion.

“The section is a disjunctive one and prohibits corporations from combining to accomplish three things: (1) ‘Creation of a monopoly;’ (2) ‘the unlawful restraint of trade;’ and (3) ‘the prevention of competition in any necessary of life.’” It follows that the contract in question falls within the terms of this statute, and is void.

Plaintiff can not recover.

In the Matter of the Application of the Attorney-General for an Order for the Examination of Witnesses under the Provisions of Chapter 383 of the Laws of 1897.

The Attorney-General, appellant; Robert M. Olyphant, respondent.

21 *Misc. Rep.*, 101.

July, 1897.

22 *App. Div.*, 285.

November, 1897.

155 *N. Y.*, 441.

April, 1898.

Statement.

An order was granted by Judge Chester, commanding Robert M. Olyphant and others to appear before a referee and testify concerning an alleged trust. A motion in the Supreme Court to vacate the order was granted. The attorney-general appealed to the Appellate Division of the Supreme Court, and was there defeated. He then carried the case to the Court of Appeals, and was again defeated.

Statute construed.

Chapter 383, of the Laws of 1897, makes combinations in restraint of trade criminal; and to enforce the law provides as follows:

“Whenever the attorney-general deems it necessary or proper to procure testimony before beginning any action or proceeding under this chapter, he may present to any justice

of the Supreme Court an application in writing for an order directing such persons as the attorney-general may require to appear before a justice of the Supreme Court, or a referee designated in such order, and answer such relevant and material questions as may be put to them, concerning any alleged illegal contract * * * in violation of this chapter. * * * The testimony given by a witness in a proceeding or examination under this act shall not be given in evidence against him in any criminal action or proceeding, nor shall any criminal action or proceeding be brought against such witness on account of the testimony so given by him, nor shall any person be excused from answering any questions that may be put to him on the ground that it may tend to convict him of a violation of the provisions of this act.

Opinion of Supreme Court.

1. The administrative, judicial and executive departments must be kept distinct. One man can not perform duties under two of these departments. For a judge to order witnesses to give testimony solely to aid the attorney-general is to do an administrative act. The law giving such power is unconstitutional.

2. "An attempt has apparently been made in the statute in question to give immunity to the witnesses." The language of the statute "comes far short * * * from giving absolute immunity to the witness from prosecution." Hence, this law conflicts with our constitution where it says: "No person * * * shall be compelled in any criminal case to be a witness against himself." Therefore it is void.

3. The order summoning witnesses must be set aside.

Opinion of the Appellate Division.

1. In granting the order to call witnesses the judge has to determine whether it is necessary. Therefore, the act is judicial, and the law granting the power is constitutional.

2. The application of the attorney-general did not state facts enough. The order was rightly vacated.

Opinion of the Court of Appeals.

A case like this is not appealable to this court; therefore the questions involved will not be determined.

John G. Walsh and G. Wells Walsh v. John Dwight et al.

40 N. Y. App. Div., 513.

May, 1899.

Statute construed.

Every contract or combination in the form of trust or otherwise, made after the passage of this act, whereby competition in the state of New York in the supply or price of any article or commodity of common use in the said state for the support of life and health may be restrained or prevented, for the purpose of advancing prices, is hereby declared illegal. (Chap. 716, Laws 1893.)

Statement.

Defendants are manufacturers of Dwight's Cow Brand Saleratus and Soda. They agreed with jobbers and dealers to give them a discount on prices if they would not sell any saleratus for less than the price fixed on Dwight's Cow Brand. Plaintiffs, rival manufacturers of saleratus, by this scheme lost much trade, as they claim, \$50,000 worth; to recover damages this action is brought.

Opinion.

Ingraham, Judge, speaking for the court says: "This act did not have the effect of preventing a manufacturer from fixing the price at which his article should be sold, or from making an agreement with these persons who acted as the jobbers or retailers of his manufactured articles that they should deal exclusively in his merchandise, or would not sell the merchandise of other persons at a less price than that for which his product was sold. The act was evidently intended to prevent manufacturers or dealers in any article or commodity of common use from combining together to advance the price of such article or commodity by which the supply or price of the same would be restricted or regulated."

Plaintiffs can not recover.

COMMON-LAW DECISIONS.

Diamond Match Co. v. Roeber.

106 N. Y., 473.

1887.

Statement.

A contract existed between plaintiff and defendant, whereby for a sufficient consideration defendant agreed not to engage in the manufacture or sale of matches, except as

employee of plaintiff, for ninety-nine years, except in the state of Nevada and territory of Montana. Defendant has now engaged in the manufacture of matches in New Jersey and sale of them in New York not in behalf of plaintiff; and this suit is brought to have him enjoined from breaking his contract.

Opinion.

Judge Andrews delivering the opinion of the court said: "The covenant in the present case is partial and not general. It is practically unlimited as to time, but this, under the authorities, is not an objection, if the contract is otherwise good. It is limited as to space since it excepts the state of Nevada and the territory of Montana from its operation, and therefore is a partial and not a general restraint. * * * We are of opinion that the covenant, being supported by a good consideration, and constituting a partial and not a general restraint, and being in view of the circumstances disclosed, reasonable, is valid."

Injunction is granted.

John L. Leslie v. Jacob Lorillard et al.

110 N. Y., 519.

October, 1888.

Statement.

Plaintiff is a stockholder in the Old Dominion Steamship Company of Delaware. This company was running steamships between the port of New York and certain ports in Virginia. It agreed to pay Lorillard and a company which he controlled a certain sum of money if they would not run any ships to compete with it. Plaintiff brings suit to have this contract set aside and to prevent defendants from recovering money due on the contract.

Opinion.

It is not always that a contract to prevent competition is against public policy. It is sometimes a benefit to the public to keep competition from becoming too strong. In the present case the contract does not restrain competition to an extent to make it illegal.

The contract is held valid.

John Good v. William S. Daland et al.

121 N. Y., 1.

April 15, 1890.

Statement.

A large number of corporations were members of the United States Cordage Manufacturers' Association of New York. The members of this association authorized defendant Daland to make a contract with plaintiff, whereby plaintiff agreed to allow the members of the association, and them only, to use all the patents he had or should obtain on machinery for their business, and each of the members of the association was to pay plaintiff a certain per cent of what it received for the goods it sold. This suit is brought to recover money due under this agreement from a member of the association.

Opinion.

The articles being patented, plaintiff could do whatever he pleased in regard to them. He could decline to make them himself, and keep others from making them, if he chose, without any regard to the interests of the public. He has not done more than that, at most, in this case.

The contract is held valid.

The People of the State of New York v. The North River Sugar Refining Co.

121 N. Y., 582.

June 24, 1890.

Statement.

The stockholders of defendant and many other sugar refining companies handed their stock over to a common board of trustees and received in return trust certificates. Said board managed the business of all the companies, and profits were distributed *pro rata* to the holders of trust certificates.

Plaintiff brings suit to take away defendant's charter.

The company claims that the acts of its stockholders can not be imputed to the company, but if they can be, they are legal.

Opinion of Circuit Court.

Barrett, J.: "According to the act of 1848, the signers of the original certificate of incorporation and their successors 'are a body politic and corporate.' Who are the successors of

these original signers? The shareholders of course. The entire body of shareholders thus constitute the corporation. * * * It is really an association of persons, and the word corporation, is but a collective name for the corporators or members. * * * And so the acts of the collective body are the acts of the corporation, and, if unlawful, will work a forfeiture." The acts are unlawful for two reasons:

1. They constitute the corporation a partner and a corporation is not allowed by law to enter into partnership.

2. "Any combination, the tendency of which is to prevent competition in its broad and general sense and to control, and thus at will enhance prices to the detriment of the public, is a legal monopoly," and is against public interest. "Benefit to the country at large, form the objects for which the corporations are created, constitute the consideration, and in most cases the sole consideration of the grant" of corporate power. It, therefore, follows logically, that when these objects are perverted, when the country suffers injury instead of receiving benefit, the state because of such misuser, may withdraw the privileges and resume its franchises. * * * Fortunately the law is able to protect itself against abuses of the privileges which it grants, and, while further legislation * * * may be suitable to check and punish exceptional wrongs, yet there is existing * * * 'plain law and plain sense' enough to deal with corporate abuses like the present."

Opinion of General Term of Supreme Court.

The acts of the stockholders were in this case the acts of the corporation. "The defendant had disabled itself from exercising its functions and employing its franchise as it was intended it should by the act under which it was incorporated, and had, by the action which was taken, placed itself in complete subordination to another and different organization to be used for an unlawful purpose, detrimental and injurious to the public; * * * it had become a party to a combination, in part, at least, designed to create a monopoly, and exact from the public prices which could not otherwise be obtained. This was a subversion of the object for which the company was created, and it authorized the attorney-general to maintain and prosecute this action to vacate and annul its charter.

Opinion of Court of Appeals.

FINCH, J.: "The abstract idea of a corporation, the legal entity, the impalpable and intangible creation of human thought is itself a fiction, and has been appropriately described as a figure of speech. It serves very well to designate in our minds the collective action and agency of many individuals as permitted by the law; and the substantial inquiry always is what in a given case has been the collective action and agency. As between the corporation and those with whom it deals the matter of its exercise usually is material, but as between it and the state, the substantial inquiry is only what that collective action and agency has done, what it has, in fact, accomplished, what is seen to be its effective work, what has been its conduct. It ought not to be otherwise. The state gave the franchise, the charter, not to the impalpable, intangible and almost nebulous fiction of our thought, but to the corporators, the individuals, the acting and living men to be used by them, to redound to their benefit, to strengthen their hands and add energy to their capital. If it is taken away, it is taken from them as individuals and corporators, and the legal fiction disappears. The benefit is theirs, the punishment is theirs, and both must attend and depend upon their conduct; and when they all act, collectively, as an aggregate body, without the least exception, and so acting reach results and accomplish purposes clearly corporate in their character and affecting the vitality, the independence, the utility, of the corporation itself, we can not hesitate to conclude that there has been corporate conduct which the state may review, and not be defeated by the assumed innocence of a convenient fiction."

In this state corporations must remain single as they were created, or all form into one corporation as provided by statute. There can be no partnership of separate and independent corporations. The foregoing combination indirectly forms such partnership, and is, therefore, illegal.

Judgment of dissolution granted.

Strait et al. v. National Harrow Co. et al.

18 N. Y. Supp., 224.

January, 1891.

Statement.

Defendant corporation made contracts with nearly all the manufacturers of spring-tooth harrows and owners of patents

on them in the United States, whereby defendant corporation was to acquire all rights to their patents, and receive promises that they would not for fifty years be interested in the manufacture of any harrow except by license of defendant, and they were to receive in payment stock of defendant corporation. It was to license each manufacturer to continue making the same harrows that it was making at the time of the contract. Defendant corporation was to have the sole power to fix the schedule of prices at which harrows should be sold. Plaintiffs agreed to turn in their business and take stock in the same way the others did; but now, very little having been done under the contract, plaintiffs seek to have it set aside as void, because against public policy.

Opinion.

The contract provides for a monopoly of the spring-tooth harrow business long after the patents have expired. It is unnecessary to consider what would be the law if the monopoly were to last only during the life of the patents. The agreement is for restraint of trade in an article of common use and it should not be upheld. While the contract is not wholly performed, the parties may withdraw and the courts will aid them. Plaintiffs should be granted relief.

De Witt Wire Cloth Co. v. New Jersey Wire Cloth Co.

9 Ry. and Corp. L. J., 314.

February, 1891.

Statement.

Three corporations and two partnerships, engaged in the manufacture and sale of wire cloth, entered into an agreement to regulate the price of that article. They agreed not to sell at a lower price than that fixed by the association.

Opinion.

The court of common pleas in the city of New York held this contract illegal, and refused to aid the parties in anyway when they had trouble among themselves over the contract.

Sylvanus Judd v. Dennis Harrington.

139 N. Y., 105.

October, 1893.

Statement.

Certain parties who were brokers and dealers in sheep and lambs executed an agreement, by its terms organizing an association for the purpose "of guarding and protecting their

business interests from loss by unreasonable competition," by which they agreed to pool their commissions, except such as should be agreed to be paid to a certain butchers' association. The association so formed entered into an agreement with the butchers' association whereby the brokers were to sell only to the butchers, and the butchers to buy only of the brokers belonging to their respective associations.

Opinion.

In an action brought by plaintiff as treasurer of the brokers' association against one of its members to recover damages stipulated therein for a breach of the agreement, it was held that the two agreements were to be taken and considered together; that they were intended to control the market, fix the price and destroy competition, and were therefore void. The public might be prejudiced; but whether they were so in fact was not material.

Ernest St. George Lough et al. v. A. Emilius Outerbridge et al.

148 N. Y., 271.

October, 1894.

Statement.

Defendant's regular charge for carrying freight from New York to Barbadoes island was forty cents per barrel; but during the week in which El Callao, a rival boat, was loading, defendant offered to carry freight for twenty-five cents per barrel, provided the shipper would agree to send all his freight that week by its line. Plaintiff demanded that defendant carry his freight for twenty-five cents a barrel during said week, but would not agree to ship all his goods on defendant's boat. Defendant refused to carry at twenty-five cents, and plaintiff brings suit to compel him, on the ground that defendant's condition need not be complied with because it tends to create an illegal monopoly.

Opinion.

Forty cents a barrel was a fair price, and a common carrier has a right to exact a fair price. If a carrier offers to carry freight for less than a fair price upon certain conditions, in order to be entitled to the lower rate the shipper must comply with the required conditions. The means employed by the defendant are lawful; and one has a right to use all lawful means to secure custom for himself.

Order refused.

The People of the State of New York v. The Milk Exchange.*145 N. Y., 267.**March, 1895.***Statement.**

About ninety dealers in milk and cream in New York City formed defendant corporation. This corporation gave the directors power to fix the prices to be paid by these dealers for milk and cream; the members were not to pay any other price than that fixed by the board. The people bring this suit to have the corporation dissolved, on the ground that it has formed an unlawful combination and conspiracy in restraint of trade.

Opinion.

That a combination to effect such a purpose is inimical to the interests of the public, and that all contracts designed to effect such an end are contrary to public policy, and therefore, illegal, is too well settled by adjudicated cases to be questioned at this day.

Order of dissolution granted.

NORTH CAROLINA.
CONSTITUTIONAL PROVISION.

Article I.

§ 31. Perpetuities and monopolies are contrary to the genius of a free State, and ought not to be allowed.

STATUTES.

LAWS OF 1889, CHAP. 374.

AN ACT to prohibit trusts in the State of North Carolina, and to provide for the punishment of persons connected with them.

The General Assembly of North Carolina do enact:

§ 1. That all combinations and trusts as defined by this act are unlawful, and dangerous to the liberty of the people, and are hereby forbidden to be formed or carried on in this state.

§ 2. That a trust is an arrangement, understanding or agreement, either private or public, entered into by two or more persons or corporations for the purposes of increasing or reducing the price of the shares of stock of any company or corporation, or of any class of products, materials or manufactured articles, beyond the price that would be fixed by the natural demand for or the supply of such shares, products, materials or manufactured articles; and any attempt to carry out such purpose shall be evidence that such arrangement, understanding or agreement exists.

§ 3. That any persons, company or corporation who shall form, or attempt to form, a trust in this state, or the agent or representative of any trust in any state or county, who shall attempt to carry on operations in this state, shall be guilty of a misdemeanor, and upon conviction may be fined not more than \$10,000 or may be imprisoned not more than ten years for each offense.

§ 4. That any person, company or corporation who enter into an arrangement, understanding or agreement not to

mine, manufacture, buy, sell or transport more than a certain specific amount of any goods, products or commodities within a specified time, will have violated section three of this act and will be liable to indictment therefor; and any person, company or corporation who give bond or make a forfeit of any kind not to break such arrangement, understanding or agreement shall be guilty of a misdemeanor, and on conviction thereof shall be fined or imprisoned, or both, in the discretion of the court.

§ 5. That any merchant, broker, manufacturer or dealers in raw materials of any kind, or the agent of such persons, who shall sell any particular class of goods, raw materials or manufactured articles for less than actual cost, for the purpose of breaking down competitors, shall be guilty of a misdemeanor, and upon conviction may be fined or imprisoned, or both, in the discretion of the court: *Provided*, That nothing contained in this act shall operate or be construed so as to forbid or prevent any person or persons who desire and intend to purchase any article or commodity for his or their own use or consumption, from combining or otherwise lawfully acting so as to protect or help themselves from imposition in the cost or purchase price of such articles or commodities as they or either of them may design or intend to use or consume.

§ 6. That this act shall be in full force and effect from and after the first day of May of the year one thousand eight hundred and eighty-nine.

Ratified the 11th day of March, A. D. 1889.

LAWS OF 1899, CHAP. 666.

POOLS, TRUSTS AND CONSPIRACIES UNLAWFUL COMBINATIONS.

AN ACT providing for the punishment of pools, trusts and conspiracies, and as to evidence and prosecution in such cases.

The General Assembly of North Carolina do enact:

§ 1. Any corporation organized under the laws of this or any other state or country for transacting or conducting any kind of business in this state, or any partnership or individual or other association of persons whatsoever, who shall create, enter into, become a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual

or any other person or association of persons, to regulate or fix the price of any article of merchandise or commodity, or shall enter into, become a member of or a party to, any pool, agreement, contract, combination or confederation to fix or limit the amount or quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in this state shall be deemed and adjudged guilty of a conspiracy to defraud, and be subject to penalties as provided in this act.

§ 2. It shall not be lawful for any corporation to issue or to own trust certificates, or for any corporation, agent, officer or employee, or the directors or stockholders of any corporation to enter into any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof in the hands of any trustee or trustees, with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article: *Provided*, That nothing herein contained shall affect the present investments of charitable or educational institutions.

§ 3. Any corporation or company, individual, firm or association violating any of the provisions of this act shall forfeit one hundred dollars for each day it shall continue to do so, to be recovered by an action in the name of the state, at the relation of the solicitor, moneys thus recovered to go into the revenue fund of the county in which the cause accrues.

§ 4. Any contract or agreement in violation of any provision of the preceding sections of this act shall be absolutely void.

§ 5. Any corporation created or organized by or under the laws of this state, which shall violate any provision of the preceding sections of this act shall thereby forfeit its corporate rights and franchises, and its corporate existence shall, upon proper proof being made thereof in any court of competent jurisdiction in this state, be by the court declared forfeited, void and of non-effect, and shall thereupon cease

and determine; and it shall be the duty of the clerk of said court to certify the decree thereof to the secretary of state, who shall take notice and be governed thereby as to the corporate papers of said corporation.

§ 6. This act shall not apply to agricultural products while in the hands of the producer, nor to the lumber interests of the state, neither shall it prevent cotton or woolen mills from regulating the amount of their output or selling the same through an agent.

§ 7. In any indictment or information for any offense named in this act it shall be sufficient to state the purposes and effects of the trust or combination and that the accused was a member of, acted with or in pursuance of it, without giving its name or description or how or where it was created.

§ 8. In proceedings under this act it shall be sufficient to prove that a trust or combination as herein defined exists and that the defendant belonged to it or acted for or in connection with it, without proving all members belonging to it or producing or proving any articles of agreement or any written instrument on which it may have been based, or that it was evidenced by any written instrument at all, and a preponderance of evidence shall be sufficient to authorize a verdict and judgment for the state.

§ 9. In all suits instituted under this act to forfeit charters or corporations, where a judgment of forfeiture is obtained and the cause is not appealed to the supreme court, the superior court rendering such judgment shall allow the solicitor or prosecuting attorney prosecuting the suit a fee of not less than one hundred dollars nor more than five hundred dollars, to be paid out of the assets of said corporation: *Provided*, That in case such cause is appealed to the supreme court and the payment of forfeiture affirmed, the attorney-general shall be entitled to one-half of the fee so allowed by the superior court for his services in prosecuting said cause in the appellate court.

§ 10. That this act shall not apply to any wholesale or retail merchant or jobber doing business in this state who is not a party to or interested in a trust nor the agent of a trust, nor shall it apply to any fishing, trucking or canning industry in this state, nor to any persons, firms or corporation engaged therein. But no person or firm shall be deemed to

be the agent of a trust because of the sale of trust manufactured goods or products when the said person or firm buys said goods or products and sells the same as his or its own property.

§ 11. That all laws in conflict with the provisions of this act are hereby repealed.

§ 12. That this act shall be in force from and after its ratification.

Ratified the 8th day of March, A. D. 1899.

NORTH DAKOTA.

CONSTITUTIONAL PROVISION.

ARTICLE 7.

§ 146. Any combination between individuals, corporations, associations or either, having for its object or effect the controlling of the price of any product of the soil or any article of manufacture or commerce, or the cost of exchange or transportation, is prohibited and hereby declared unlawful and against public policy; and any and all franchises heretofore granted or extended, or that may hereafter be granted or extended in this state, whenever the owner or owners thereof violate this article shall be deemed annulled and become void.

[Adopted, Oct. 1, 1889.]

STATUTES.

REVISED CODES, CHAP. 51.

TRUSTS, POOLS AND COMBINATIONS REGARDING GRAIN AND STOCK.

§ 7480. **Combinations among dealers in produce.**— Every person who is a dealer in, or buyer of grain, hogs, cattle or stock, of any kind, and who enters into any contract, agreement, understanding or combination with any other person, not his partner, who is a like dealer or buyer, either:

1. For the pooling of the price of grain, hogs, cattle or stock, of any kind, between himself and such other person, or others; or,
2. For the division between them of the aggregate or net proceeds of the earnings or profits of such dealers or buyers or any portion thereof; or,
3. For fixing or establishing the price which such dealers or buyers shall pay or offer for grain, hogs, cattle or stock of any kind,

Is guilty of a misdemeanor.

§ 7481. **Combinations to fix prices.**—Every person who creates, enters into or becomes a member of or party to any pool, trust, combination or confederation, or makes or enters into any contract, agreement or understanding therefor, with another person, either:

1. To limit or fix the price of any commodity, article or merchandise; or,

2. To limit or fix the amount or quantity of any commodity, article or merchandise to be manufactured, mined, produced or sold in this state,

Is guilty of misdemeanor.

§ 7482. **Punishment.**—Every corporation whether organized under the laws of this or any other state or country, and doing business in this state, and every partnership or association of individuals so doing business, which shall violate any of the provisions of the last two sections, is guilty of a misdemeanor, and upon conviction thereof, is punishable by a fine of not less than one and not exceeding twenty per centum of the capital stock of such corporation or of the amount invested in such company, firm or association.

§ 7483. **Violations by corporate officers.**—Every person who, as president, manager, director, stockholder, receiver or agent, or other person of any corporation, on behalf of such corporation as is mentioned in the last section, or as a member of any partnership or association of individuals; violates any of the provisions of this chapter, is guilty of a misdemeanor.

§ 4784. **No privilege from testifying.**—No person not a defendant on trial shall be excused or claim any immunity from testifying, or producing his records, contracts, books or papers, or the records, contracts books or papers in his possession or under his control belonging to any other person, partnership, corporation or association, upon the trial of a prosecution for the violation of any of the provisions of this chapter, but such testimony or evidence shall not be used against the person so testifying or producing records, contracts, books or papers upon a prosecution for violating any of the provisions of this chapter.

Adopted in 1890.

LAWS OF 1897, CHAP. 141.

UNLAWFUL IN CERTAIN CASES.

AN ACT to declare unlawful and void all arrangements, contracts, agreements, trusts, or combinations made with a view to lessen, or which tend to lessen, free competition in the importation or sale of articles imported into this state, or in the manufacture or sale of articles of domestic growth or of domestic raw material, to declare unlawful and void all arrangements, contracts, agreements, trusts or combinations between persons or corporations designed or which tend to advance, reduce or control the price of such product or article to producer or consumer of any such product or article; to provide for forfeiture of the charter and franchise of any corporation, organized under the laws of this state, violating any of the provisions of this act; to prohibit every foreign corporation violating any of the provisions of this act from doing business in this state; to require the attorney-general of this state to institute legal proceedings against any such corporations violating the provisions of this act; and to enforce the penalties prescribed; to prescribe penalties for any violation of this act; to authorize any person or corporation damaged by any such trust, agreement or combination, to sue for the recovery of such damage, and for other purposes.

Be it enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Trusts and combinations unlawful in certain cases.—That all arrangements, contracts, agreements, trusts or combinations between persons or corporations made with a view to lessen, or which tend to lessen, full and free competition in the importation or sale of articles imported into this state, or in the manufacture or sale of articles of domestic growth, or of domestic raw material, and all arrangements, contracts, agreements, trusts or combinations between persons or corporations designed, or which tend to advance, reduce or control the price or the cost to the producer or to the consumer of any such product or articles are hereby declared to be against public policy, unlawful and void.

§ 2. Forfeit charter.—That any corporation chartered under the laws of this state, which shall violate any of the provisions of this act, shall thereby forfeit its charter and its franchise, and its corporate existence shall thereupon cease and determine. Every foreign corporation which shall violate any of the provisions of this act, is hereby denied the right to do, and is prohibited from doing business in this state. It is hereby made the duty of the attorney-general of this state to enforce this provision by due process of law.

§ 3. **Conspiracy against trade.**—That any violation of the provisions of this act shall be deemed and is hereby declared to be destructive of full and free competition and a conspiracy against trade, and any person or persons who may engage in any such conspiracy or who shall, as principal, manager, director or agent, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, or orders made in furtherance of such conspiracy, shall, on conviction, be punished by a fine of not less than one hundred dollars or more than five thousand dollars, and by imprisonment in the penitentiary not less than one year or not more than ten years; or, in the judgment of the court, by either such fine or such imprisonment.

§ 4. **May sue for damages.**—That any person or persons, or corporation that may be injured or damaged by any such arrangement, contract, agreement, trust or combination, described in section 1 of this act, may sue for and recover in any court of competent jurisdiction in this state, or any person, persons or corporations operating such trusts or combinations, the full consideration or sum paid by him or them for any goods, wares, merchandise, or articles, the sale of which is controlled by any such combination or trust.

§ 5. **Judges shall instruct grand juries.**—That it shall be the duty of the judges of the district courts of this state specially to instruct the grand juries as to the provisions of this act.

Approved March 9, 1897.

OHIO.

STATUTE.

LAWS OF 1898, PAGE 143.

AN ACT to define trust and to provide for criminal penalties and civil damages, and punishment of corporations, persons, firms and associations, or persons connected with them, and to promote free competition in commerce and all classes of business in the state.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,*

That a trust is a combination of capital, skill or acts by two or more persons, firms, partnerships, corporations or associations of persons, or of any two or more of them for either, any or all of the following purposes:

1. To create or carry out restrictions in trade or commerce.
2. To limit or reduce the production, or increase, or reduce the price of merchandise or any commodity.
3. To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity.
4. To fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption in this state.
5. To make or enter into or execute or carry out any contracts, obligations or agreements of any kind or description, by which they shall bind or have bound themselves not to sell, dispose of or transport any article or any commodity or any article of trade, use, merchandise, commerce or consumption below a common standard figure or fixed value, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article, commodity or transportation between them or themselves and others, so as to directly or

indirectly preclude a free and unrestricted competition among themselves, or any purchasers or consumers in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or directly or indirectly unite any interests that they may have connected with the sale or transportation of any such article or commodity, that its price might in any manner be affected. Every such trust as is defined herein is declared to be unlawful, against public policy and void.

§ 2. For a violation of any of the provisions of this act by any corporation or association mentioned herein, it shall be the duty of the attorney-general, or the prosecuting attorney of the proper county, to institute proper suits or quo warranto proceedings in the court of competent jurisdiction in any of the county seats in the state where such corporation or association exists or does business, or may have a domicile. And when such suit is instituted by the attorney-general in quo warranto, he may also begin any such suit in the supreme court of the state, or the circuit court of Franklin county, for the forfeiture of its charter rights, franchises or privileges and powers exercised by such corporation or association, and for the dissolution of the same under the general statutes of the state.

§ 3. Every foreign corporation, as well as any foreign association, exercising any of the powers, franchises or functions of a corporation in this state, violating any of the provisions of this act, is hereby denied the right and prohibited from doing any business in this state, and it shall be the duty of the attorney-general to enforce this provision by bringing proper proceedings in quo warranto in the supreme court, or the circuit court of the county in which defendant resides or does business, or other proper proceedings by injunction or otherwise. The secretary of state shall be authorized to revoke the certificate of any such corporation or association heretofore authorized by him to do business in this state.

§ 4. Any violation of either or all of the provisions of this act shall be and is hereby declared a conspiracy against trade, and any person who may become engaged in any such conspiracy or take part therein, or aid or advise in its commission, or who shall as principal, manager, director, agent, servant or employer, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, or

furnish any information to assist in carrying out such purposes, or orders thereunder or in pursuance thereof, shall be punished by a fine of not less than fifty (\$50) dollars nor more than five thousand (\$5,000) dollars, or be imprisoned not less than six months nor more than one year, or by both such fine and imprisonment. Each day's violation of this provision shall constitute a separate offense.

§ 5. In any indictment for any offense named in this act, it is sufficient to state the purpose or effects of the trust or combination. And that the accused is a member of, acted with or in pursuance of it, or aided or assisted in carrying out its purposes, without giving its name or description, or how, when and where it was created.

§ 6. In prosecutions under this act, it shall be sufficient to prove that a trust or combination, as defined herein, exists, and that the defendant belonged to it, or acted for or in connection with it, without proving all the members belonging to it, or proving or producing any article of agreement, or any written instrument on which it may have been based; or that it was evidenced by any written instrument at all. The character of the trust or combination alleged may be established by proof of its general reputation as such.

§ 7. Each and every firm, person, partnership, corporation or association of persons, who shall in any manner violate any of the provisions of this act, shall for each and every day that such violations shall be committed or continued, after due notice given by the attorney-general or any prosecuting attorney, forfeit and pay the sum of fifty (\$50) dollars, which may be recovered in the name of the state, in any county where the offense is committed, or where either of the offenders reside; and it shall be the duty of the attorney-general, or the prosecuting attorney of any county on the order of the attorney-general, to prosecute for the recovery of same. When the action is prosecuted by the attorney-general against a corporation or association of persons, he may begin the action in the circuit court of the county in which defendant resides or does business.

§ 8. That any contract or agreement in violation of the provisions of this act, shall be absolutely void and not enforceable either in law or equity.

§ 9. That the provisions hereof shall be held cumulative of each other and of all other laws in any way affecting them now in this state.

§ 10. It shall not be lawful for any person, partnership, association or corporation, or any agent thereof, to issue or to own trust certificates, or for any person, partnership, association or corporation, agent, officer or employee, or the directors or stockholders of any corporation, to enter into any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article, and any person, partnership, association or corporation that shall enter into any such combination, contract or agreement for the purpose aforesaid shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not less than fifty dollars, nor more than one thousand dollars.

§ 11. In addition to the criminal and civil penalties herein provided, any person who shall be injured in his business or property by any other person or corporation or association or partnership, by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any court having jurisdiction thereof in the county where the defendant resides or is found, or any agent resides or is found, or where service may be obtained, without respect to the amount in controversy, and to recover two-fold the damages by him sustained, and the costs of suit. Whenever it shall appear to the court before which any proceedings under this act may be pending, that the ends of justice require that other parties shall be brought before the court, the court may cause them to be made parties defendant and summoned, whether they reside in the county where such action is pending, or not.

§ 12. The word "person" or "persons," whenever used in this act, shall be deemed to include corporations, partnerships and associations existing under or authorized by the state of Ohio, or any other state, or any foreign country.

§ 13. This act shall take effect and be in force from and after the first day of July, 1898.

[Passed April 19, 1898.]

COMMON-LAW DECISIONS.

The Central Ohio Salt Co. v. Stephen H. Guthrie.

35 O. St., 666.

January, 1880.

Statement.

About thirty salt dealers and manufacturers in the Muskingum and Hocking valleys formed themselves into the Central Ohio Salt Company. The members were to continue their business as before except that the sale and price of salt was to be controlled by the company. Defendant has violated the contract of association and suit is brought against him for damages. He defends on the ground that the contract was illegal.

Opinion.

“That all contracts in partial restraint of trade are not void as against public policy is too well settled to be gainsaid; while, on the other hand, it is as fully established, as a general rule, that contracts in general restraint of trade are against public policy and, therefore, absolutely void. Upon the authorities, however, the line between such as are void and those that are binding, is not very clearly defined.

“Public policy, unquestionably, favors competition in trade, to the end that its commodities may be afforded to the consumer as cheaply as possible, and is opposed to monopolies, which tend to advance market prices to the injury of the general public.

“We think the contract before us should not be enforced.”

Plaintiff can not recover.

Emery et al. v. The Ohio Candle Co.

47 O. St., 320.

January, 1890.

Statement.

In 1880 an unincorporated company was formed to continue six years, called The Candle Manufacturers' Association which included the manufacturers of ninety-five per cent of the star candles east of the western boundary of Utah. The members were required to pay into the treasury of the association two and a half cents a pound on all candles sold by them within that territory. But neither was bound to operate his factory; and whether he did or did not he received his proportion of the pool which was based on his former business. Under this agreement a sum of

\$2,151.17 is due plaintiff, and this suit is brought to recover it.

Opinion.

"We are of the opinion that the suit can not be maintained, for the reason that the objects of the association were contrary to public policy, and in no way to be aided by the courts."

Plaintiff can not recover.

State ex rel. v. Standard Oil Co.

49 O. St., 137.

March 2, 1892.

Statement.

Defendant is an Ohio corporation. Its stockholders and the stockholders of many other oil companies transferred their stock to a board of seven trustees, and received in return trust certificates. The state brings suit for the forfeiture of defendant's charter and other relief.

The defenses are:

1. The illegal acts are not the corporation's but the stockholders'.
2. The statute of limitations has run.

Opinion.

Where all, or a majority of the stockholders composing a corporation do an act which is designed to affect the property and business of the company, and which, because of their controlling number, does affect the property and business of the company, in the same manner as if it had been a formal resolution of its board of directors, the act should be regarded as the act of the corporation.

The act in this case was *ultra vires*, and against public policy, and would have been ground for the forfeiture of the defendant's charter if the action had been commenced in time, but, as it has been over five years since the act was committed, the statute of limitations prevents forfeiture now. But other relief was prayed, and this will be granted.

A decree is granted "ousting the defendant from the right to make the agreement set forth in the petition and of the power to perform the same."

OKLAHOMA.

STATUTE.

STATUTES OF OKLAHOMA, CHAP. 83.

TRUSTS.

AN ACT to prevent combinations in restraint of trade.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

§ 1. If any individual, firm, partnership or any association of persons whatsoever, shall create, enter into, become a member of, or a party to, any pool, trust, agreement, combination or understanding with any other individual, firm, partnership or association of persons whatsoever, to regulate or fix the price of, or to prevent or restrict, the competition in the sale of provisions, feed, fuel, lumber, or other building materials, articles of merchandise or other commodity [they], shall be deemed guilty of [a] misdemeanor and upon conviction thereof, shall be fined not less than fifty, nor more than five hundred dollars.

§ 2. It shall not be lawful for any corporation organized under the laws of this territory, or organized under the laws of any other territory or state, and doing business in this territory, to enter into any combination, contract, trust, pool or agreement with any other corporation or corporations, or with any individual firm, partnership or association of persons, whatever, for the purpose of regulating or fixing the price of, or preventing or restricting competition, in the sale of provisions, feed, fuel, lumber, or other building materials, articles of merchandise, or other commodity, including the fixing of the rate of interest. [Any] president, manager, director, agent, receiver or other officer of any such corporation, violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than fifty nor more than five hundred dollars, for the first offense, and upon a second conviction shall be fined a sum equal to twice the amount of the first fine, and such corporation shall forfeit its corporate right and franchise, and its corporate existence, in this territory, shall thereupon cease and determine.

§ 3. Any person purchasing provisions, feed, material, articles of merchandise, or any commodity from any individual, firm, partnership or corporation, transacting business in violation of the provisions of this act, such person so purchasing shall not be liable for the price or payment of any such article or commodity and may plead this act, as a defense in any suit for price or payment. In any civil action brought under the provisions of this section the court before whom such suit shall be pending may compel the plaintiff to testify, but if the plaintiff be a corporation then the court may compel any officer, agent, or employee of such corporation to attend, appear, and testify, or compel the production of any contract, or papers in evidence in such civil action: *Provided*, The evidence so obtained shall not be used in any criminal prosecution against the person so testifying except in a criminal prosecution for perjury committed in giving such testimony.

§ 4. Any person who shall have purchased from any individual, firm, partnership or corporation, doing business in violation of the provisions of this act, any provisions, feed, fuel, lumber or other building material, articles of merchandise, or other commodity, and paid for the same, may maintain a civil action to recover the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable attorney's fee to be fixed by the court, which attorney's fee shall be taxed and collected as part of the costs in such case. In any civil action brought under the provisions of this section the court before whom such suit be pending may compel the defendant to testify, but if the defendant be a corporation, then the court may compel any officer, agent or employe of such corporation to attend, appear and testify or compel the production of any contract or paper as evidence in such civil action: *Provided*, The evidence so obtained shall not be used in any criminal action against the person so testifying except in a criminal prosecution for perjury committed in giving such testimony.

§ 5. It shall be the duty of the prosecuting attorneys in their respective counties, to enforce the foregoing provisions of this act, and any prosecuting attorney securing a conviction under the provisions of this act, shall be entitled in addition to such fee or salary as by law he is allowed for such prosecution, to one-fifth of the fine received.

[Took effect December 25, 1890.]

PENNSYLVANIA.

COMMON-LAW DECISIONS.

The Morris Run Coal Co. v. The Barclay Coal Co.

68 Penn. St., 173.

January, 1871.

Statement.

Five Pennsylvania coal corporations, of which plaintiff and defendant are two, controlled bituminous coal. They agreed that sales should be regulated and prices fixed by a committee. If one company should sell more than its share, it should divide the proceeds with the other four. Defendant sold more than its share and plaintiff seeks to compel it to divide the profits.

Opinion.

The contract was in restraint of trade to such an extent that it was against public policy, and hence is void.

Plaintiff can not recover.

Nester et al. v. Continental Brewing Co. et al.

161 Penn., 473.

May 14, 1894.

Statement.

A very large number of brewers in Philadelphia and Camden formed an association which was to control the price at which the members were to sell beer. Plaintiffs and defendants were members of this association which was known as the Enterprise Brewing Company, Limited. Growing out of this transaction is a debt due plaintiffs from the association of about \$17,000. An accounting is prayed.

Opinion.

The agreement sought to be enforced creates a combination in restraint of trade tending to destroy competition and to create a monopoly in an article of daily consumption. It is not even contended that the agreement was necessary to protect the partners' interests. The natural tendency of such contracts is to injure public interests and they are, therefore, void.

Relief is denied.

RHODE ISLAND.

COMMON-LAW DECISION.

Oakdale Manufacturing Co. et al. v. Sebastian Garst.

18 R. I., 484.

February 27, 1894.

Statement.

Three oleomargarine companies formed a corporation, the Oakdale Manufacturing Company, to which each gave all its business, promised not to be in any way connected with any other manufactory of oleomargarine for five years, and received stock in the new company as payment. Defendant, one of the promisers, has now commenced manufacturing oleomargarine, and this action is brought to enjoin him. The defense is that the contract being an unreasonable restraint of trade is void.

Opinion.

If a contract in restraint of trade is reasonable it is valid, otherwise, void. Inasmuch as in this case the Oakdale Manufacturing Company expected to do a large export business it can not be said that an absolute restraint of five years was unreasonable. The contract is valid.

Defendant is enjoined.

SOUTH CAROLINA.
CONSTITUTIONAL PROVISION.

ARTICLE IX.

§ 13. The General Assembly shall enact laws to prevent all trusts, combinations, contracts and agreements against the public welfare; and to prevent abuses, unjust discriminations and extortion in all charges of transporting and transmitting companies; and shall pass laws for the supervision and regulation of such companies by commission or otherwise, and shall provide adequate penalties, to the extent, if necessary for that purpose, of forfeiture of their franchises.

[Adopted, December 4, 1895.]

STATUTES.

LAWS OF 1897, NUMBER 265.

AN ACT to prohibit trusts and combinations and to provide penalties.

§ 1. *Be it enacted by the General Assembly of the State of South Carolina*, That from and after the passage of this act, all arrangements, contracts, agreements, trusts or combinations between two or more persons as individuals, firms or corporations, made with a view to lessen, or which tends to lessen, full and free competition in the importation or sale of articles imported into this State, or in the manufacture or sale of articles of domestic growth or of domestic raw material, and all arrangements, contracts, agreements, trusts or combinations between persons or corporations designed or which tend to advance, reduce or control the price or the cost to the producer or to the consumer of any such product or article, are hereby declared to be against public policy, unlawful and void.

§ 2. Whenever complaint is made upon sufficient affidavit or affidavits showing a *prima facie* case of violation of the provisions of the first section of this Act by any corporation,

domestic or foreign, it shall be the duty of the Attorney-General to begin an action against such domestic corporation to forfeit its charter, and in case such violation shall be established the court shall adjudge the charter of such corporation to be forfeited, and such corporation shall be dissolved, and its charter shall cease and determine; and in the case of such showing as to a foreign corporation an action shall be begun by the Attorney-General in said court against such corporation to determine the truth of such charge; and in case such charge shall be considered established, the effect of the judgment of the court shall be to deny to such corporation the recognition of its corporate existence in any court of law or equity in this State. But nothing in this section shall be construed to affect any right of action then existing against such corporation.

§ 3. Any violation of the provision of this Act shall be deemed, and is hereby declared to be, destructive of full and free competition and a conspiracy against trade, and any person or persons who may engage in any such conspiracy, or who shall, as principal, manager, director or agent, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates or orders made in furtherance of such conspiracy, shall on conviction be punished by a fine of not less than one hundred dollars or more than five thousand dollars, and by imprisonment in the penitentiary not less than six months or more than ten years, or in the judgment of the court, by either such fine or such imprisonment.

§ 4. That any person or persons or corporation that may be injured or damaged by any such arrangement, contract, agreement, trust or combination described in section one of this Act may sue for and recover, in any court of competent jurisdiction in this State, of any person, persons or corporation operating such trust or combination, the full consideration or sum paid by him or them for any goods, wares, merchandise or articles the sale of which is controlled by such combination or trust.

§ 5. That any and all persons may be compelled to testify in any action or prosecution under this Act: *Provided*, That such testimony shall not be used in any other action or prosecution against such witness or witnesses and such witness or witnesses shall forever be exempt from any prosecution for the act or acts concerning which he or they testify.

§ 6. Nothing contained in this Act shall be taken or construed to apply to any person or persons acting in the discharge of official duties under the laws of this State.

§ 7. All Acts in conflict with this Act be, and the same are hereby, repealed.

Approved the 25th day of February, A. D. 1897.

LAWS OF 1899, NUMBER 39.

AN ACT to prevent fire insurance companies, associations or partnerships doing business in this State, or the agents of said companies or partnerships, from entering into combination to make or control rates for fire insurance on property in this State, and providing punishment for violation of this act.

§ 1. *Be it enacted by the General Assembly of the State of South Carolina,* That it shall be unlawful for any fire insurance company, association or partnership doing a fire insurance business in this State, to enter into any compact or combination with other fire insurance companies, associations or partnerships, or to require or allow their agents to enter into any compact or combination with other insurance agents, companies, associations or partnerships, for the purpose of governing or controlling the rates charged for fire insurance on any property in this State: *Provided,* That nothing herein shall prohibit one or more of such companies from employing a common agent or agents to supervise and advise of defective structures or suggest improvements to lessen fire hazard.

§ 2. That all fire insurance companies, associations or partnerships doing a fire insurance business in this State shall cause to be filed on the first day of March, 1900, and in each year thereafter, with the Comptroller-General of this State, the affidavit of some officer or agent of said company, association or partnership, who resides in this State, setting forth the fact that the company of which he is an officer or agent has not in the twelve months previous to the date of the said affidavit entered into any trust, combination or association for the purpose of preventing competition in insurance rates in this State. The said affidavit shall be made before some officer of this State authorized to administer oaths; and any false statement made in said affidavit shall be deemed perjury, and punished by a fine of not less than one hundred

dollars nor more than one thousand dollars, and by confinement in the penitentiary for one year, or, in the discretion of the court, by confinement in jail for a period of not less than thirty days nor more than twelve months: *Provided, further,* That any attempt to evade this Act by agreeing upon any one person or number of persons for the purpose of making rates for all such insurance companies, associations or partnerships, or by buying rate books made by any person or persons, shall be deemed a violation of this Act, and shall be punished as herein provided.

§ 3. The Comptroller-General or other official to whom said companies, association or partnership are annually required to report to in this State, shall forthwith revoke and recall the license or authority of such company or companies, association or associations, partnership or partnerships, to do or to transact business in this State for any violation of this Act; and no renewal of authority shall be granted to it for three years after such official revocation. Notice of such revocation to be duly published for one consecutive week in three or more daily papers published in this State, and for a violation of any of the provisions of this Act by any such company or companies, association or associations, partnership or partnerships, they shall on conviction thereof pay a fine of not less than five hundred dollars.

§ 4. It shall be the duty of the Attorney-General, or the Solicitor upon his request, to cause the provisions of this Act to be enforced.

§ 5. It shall also be the duty of the Controller-General, or other official now charged or to be charged with the enforcement of the insurance laws of this State, to require every fire insurance company, association or partnership doing a fire insurance business within this State, to file with the annual statement made to him, a statement duly sworn to by the manager or president of such company, association or partnership, legally admitted in this State, that it has not in the year intervening between the issue of its last license and that applied for, violated the conditions of this Act.

§ 6. This Act shall be in force from the first day of March, 1900, and all Acts or parts of Acts inconsistent therewith are hereby repealed.

Approved the 7th day of March, A. D. 1899

SOUTH DAKOTA.

CONSTITUTIONAL PROVISION.

ARTICLE 17.

§ 20.¹ Monopolies and trusts shall never be allowed in this state and no incorporated company, co-partnership or association of persons in this state shall directly or indirectly combine or make any contract with any incorporated company, foreign or domestic; through their stockholders or trustees or assigns of such stockholders or with any co-partnership or association of persons, or in any manner whatever to fix the prices, limit the production or regulate the transportation of any product or commodity so as to prevent competition in such prices, production or transportation or to establish excessive prices therefor.

The legislature shall pass laws for the enforcement of this section by adequate penalties and in the case of incorporated companies, if necessary for that purpose may, as a penalty, declare a forfeiture of their franchises.

STATUTES.

LAWS OF 1890, CHAP. 154.

UNLAWFUL TRUSTS AND COMBINATIONS.

AN ACT, to declare certain combinations, agreements, or trusts unlawful, and to restrain and punish the same.

Be it enacted by the Legislature of the State of South Dakota:

§ 1. **Defining which trusts are unlawful.**—That any combination, agreement or trusts, made, entered into or formed between persons, co-partnerships, or corporations in this state, or by or between any persons co-partnerships or corporations within this state with any person, co-partnership or corporation without this state, with the intent and

¹This section was added to the constitution in 1896 by popular vote of 36,763 to 9,136.

which shall in any manner tend to prevent a free, fair and full competition in the production, and manufacture or sale of any article or commodity of domestic growth, use or manufacture, or that tends to advance the price to the user or consumer of any article or commodity of domestic growth, use, production or manufacture beyond the reasonable cost of the production or manufacture thereof, or that tends to advance the price to the user, purchaser or consumer of farm machinery, implements, tools, supplies, and lumber, wood and coal, imported into this state from any other state, territory or country, beyond the reasonable cost of production and sale or manufacture and sale of the same, or which tends to and does induce and accomplish a sale of wheat, corn, oats, barley, flax, cattle, sheep, hogs, or other farm or agricultural products for less than such farm or agricultural products are really worth at the time of sale, or for a less price than such farm or agricultural products would sell for in open market if such combination, agreement or trust did not exist, or tends to, or shall increase, enhance or maintain rates of interest on loans of money, for forbearance of payment of any sum of money, or debt, or to prevent a fair competition for a low rate of interest on loans, or for the forbearance of the payment of any debt or obligation, is hereby declared to be against public policy and unlawful and void, and any person or persons who shall be a party to any such unlawful combination; agreement or trust, or who shall in any way assist, aid or abet any such combination, agreement or trust, either as principal, agent, attorney, employee or otherwise, shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by a fine not exceeding one thousand dollars or imprisonment in the state's prison not exceeding three years, or both such fine and imprisonment at the discretion of the court.

§ 2. Unlawful sale of articles or goods.—Any person or persons who shall agree and undertake, as agent, to sell, and shall sell in this state, any of the articles, commodities, products or machinery, implements, tools, supplies or goods, wares and merchandise, mentioned in section one of this act, for a non-resident manufacturer of, or wholesale dealer in such articles, commodities, products, machinery, implements, tools, supplies or goods, wares and merchandise, while at the same time such non-resident, manufacturer or wholesale

dealer, refuses to sell at wholesale or manufacturer's prices, such farm implements, tools or supplies, as are furnished to such agent for sale in this state, to responsible and reputable wholesale or retail dealers in this state shall be deemed to have unlawfully combined and agreed within the meaning of section one of this act, with such non-resident manufacturer or wholesale dealer, with intent to prevent a full, free and fair competition in the sale in this state, of any such farm machinery, implements, tools or supplies furnished to such agent as aforesaid, and refuse to be sold to wholesale or retail dealers in this state as aforesaid, and with intent to advance the price to the user and purchaser and consumer beyond the reasonable cost of manufacture and sale, as production and sale of such farm machinery, farm tools, farm implements and supplies refused to be sold as aforesaid to dealers in this state as aforesaid, and such agent or agents upon conviction thereof shall be punished by a fine of not more than one thousand dollars or imprisonment in state's prison not more than five years, or both such fine and imprisonment at the discretion of the court.

§ 3. Non-resident corporations; liability of.—Any non-resident corporation, co-partnership or company, or person, who shall ship or bring into this state for sale any of the commodities, products, or goods, wares or merchandise, machinery, tools or implements mentioned in section one of this act, to be sold only and exclusively by an agent or agents, or person or persons selected, appointed and controlled in the sale of such goods by such non-resident corporations, co-partnership, company or person, in violation of the spirit, intent and purpose of this act, may be restrained by an order of injunction from any court of competent jurisdiction in this state from selling or disposing of any such commodities, products, goods, wares or merchandise, machinery, tools or implements, or having the same sold in this state until the defendant in such order offer the same for sale, or to be sold, on like and regular terms, and without restrictions except price and terms of payment, to reputable and responsible wholesale or retail dealers of this state, without regard to location, who may desire to purchase the same or any portion thereof, for sale again. The order of injunction mentioned in this section may be issued upon affidavits which shall show to the satisfaction of the court or judge thereof to

whom application is made that the person or persons, or co-partnership or corporation named as defendant in the application and affidavit for an order of injunction has violated some provision of this act. The order of injunction issued upon such affidavits may be served in the manner now provided by law for the service of such orders and in the absence of the defendant therein, or his agent or attorney, such order of injunction may be served on any or all persons in this state having in possession and for sale, or in his possession for the use, or subject to the order or direction of the defendant or defendants in such proceeding, any of the several articles or commodities or goods, wares and merchandise mentioned in section one of this act, the sale of which is restrained by this order. On the final hearing by the court if the application for injunction be sustained by the court, the court shall be rendered (render) judgment against the defendant in such proceeding, and in favor of the plaintiff therein, for all the costs incurred by the plaintiff therein, including such attorney's fee allowed by the court therein. Any judge of a Circuit Court or of the Supreme Court may in like manner enjoin and restrain any manufacturing or wholesale or retail business, being conducted or carried on in violation of any of the provisions or spirit and intent of this act from continuing such manufacturing or wholesale or retail business in this state, and all final restraining orders may be perpetual or for such period, and upon such terms and conditions as the court or judge thereof shall determine. All laws, rules and regulations now in force relating to applications for and granting orders of injunction in this state shall apply to proceedings under the provision of this act, so far as the same are not different from, or in conflict with the provisions of this act.

§ 4. Duty of state's attorney.—It is hereby made the special duty of each and every state's attorney of each and every county in this state, who shall have good reason to believe that any of the provisions of section one of this act are being violated by any person or persons in his county, or upon affidavit of two or more reputable persons made and delivered to him, showing or stating affirmatively that any person or persons in his county have violated any of the provisions of section one of this act, to make complaint and cause the arrest of such person or persons and to prosecute him or

them diligently to conviction, if proved to be guilty, and also at the request of any citizen of his county, and for good cause shown, apply for an injunctive or restraining order as provided in this act: *Provided*, That the provisions of this section shall not be construed to prevent any person from making complaint to any court of competent jurisdiction for any violation of the provisions of this act, and in such case the court shall issue a warrant and proceed the same as though the state's attorneys had made the complaint, and the (court) may also permit any attorney whom the complainant may employ to appear and prosecute such action at any stage of the proceedings therein, and such attorney's fee in any such case, shall be deemed part of the costs of prosecution as mentioned in section one of this act.

¹*And provided further*, That any person, or persons, who may suffer damage by reason of the operation of any such pool, trust or combination defined in section one of this act, or any pool, trust or combination formed without, but holding property within the state, may maintain an action therefor, and may recover the amount of damage sustained; and any person or persons who in good faith may have contributed any funds, or property, as a donation or otherwise, for location, building, or carrying on of any milling, or manufacturing, or other industry in this state, or any stockholder in any corporation or company formed for the purpose of carrying on and operating any such industry which milling, manufacturing or other industry may thereafter become the property of, or controlled by any such pool, trust or combination, without the consent of such person or stockholder, may maintain an action and recover against such pool, trust or combination, or individuals composing the same, judgment for the amount so contributed or invested in stock as the case may be, and the property, including the plant and all buildings, machinery and other property so owned or controlled by such trusts or combinations shall be liable to attachment and execution in such action, and may be sold to satisfy any judgment recovered therein; and the court in which such case is pending may appoint a receiver to take charge of such property and receive all rents, issues and profits therefrom, in addition to such other powers as are now conferred by law

¹The part of section four which follows the star was added by chapter 171 of the laws of 1893.

upon receivers, and immediately after the sale of such property and confirmation thereof by the court, the purchaser shall be let into possession of such property; and in case of a surplus after satisfying such judgment or judgments, the same shall be paid over to the clerk of the court in which such action is pending, and shall be liable thereafter to the same extent as the property sold was liable, and if such surplus shall remain in the hands of said clerk, and no proceedings instituted to recover the same, or any portion thereof, for three years thereafter, the same, or such portion thereof, then remaining in the hands of said clerk, shall be paid over to the county treasurer of the county where such property shall be held or located and be credited to the school fund of the district or township in which such property is held or located, and shall be paid out by such county treasurer in like manner as other funds belonging to such district or township.

§ 5. The duty of secretary of state.—It shall be the duty of the secretary of this state on the application of persons for a charter to establish any corporation, to require two applicants therefor to make oath or affirmation that such corporation is not being formed for the purpose of enabling several corporations to avoid the provisions of this act, and if such oath or affirmation is not satisfactory the secretary is authorized to withhold such charter.

Approved March 7, 1890.

LAWS OF 1897, CHAP. 94.

MONOPOLIES AND TRUSTS.

RELATING TO MONOPOLIES AND TRUSTS.

AN ACT to enforce section twenty of article seventeen of the constitution of the State of South Dakota.

Be it enacted by the Legislature of the State of South Dakota:

§ 1. Monopolies and trusts defined.—That within the meaning of this act a trust or a monopoly is a combination of capital, skill, or acts of two or more persons, firms, corporations or associations of persons; first, to create or carry out restrictions in trade; second, to limit the production or to increase or reduce the price of commodities; third, to prevent competition in the manufacture, transportation, sale or purchase of merchandise, produce or commodities; fourth, to fix any standard or figure whereby the price to the public shall be in any manner established or controlled. *Provided*, That

nothing in this act shall be construed so as to include labor organizations.

§ 2. **Unlawful to prevent competition.**—That it shall be unlawful for any incorporated company, co-partnership or association of persons in this state directly or otherwise to fix prices, limit the production or regulate the transportation of any product or commodity so as to obstruct or delay or prevent competition in such production or transportation or limit transportation of commodities or to fix prices therefor.

§ 3. **Unlawful to combine.**—That it shall be unlawful for any incorporated company, co-partnership or association of persons in any other state to directly or otherwise combine or make any contract with any incorporated company, co-partnership, association of person or persons in this state to combine or make any contract to fix prices, limit the production or (of) commodity or regulate the transportation directly or otherwise of any product or commodity so as to obstruct or prevent competition or limit transportation or to fix prices therefor.

§ 4. **Violation-penalty.**—Any person or persons, officer or servants of any company, co-partnership or association of persons convicted of violating any provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof for the first offense shall be fined not less than one thousand dollars, nor more than five thousand dollars, and upon conviction for the second offense not less than five thousand dollars nor more than ten thousand dollars.

§ 5. **Fines, to whom paid.**—All fines recovered under this act shall be paid, one half to the person or persons aggrieved and the other half shall be paid into the county treasury of the county in which the conviction may be made to the credit of the general county fund of said county.

§ 6. **Duty of state's attorney.**—It shall be the special duty of the state's attorney of each county in this state upon the affidavit of any person or persons aggrieved showing that any person or persons have violated any provisions of this act to make complaint and cause the arrest of such person or persons and to prosecute him or them to conviction if proved to be guilty and it shall be the duty of the attorney-general of the state upon the request of any state's attorney for any county to aid in the prosecution of actions under this act.

§ 7. **Repeal.**—That all acts or parts of acts in conflict with this act are hereby repealed.

Approved March 1, 1897.

TENNESSEE.

CONSTITUTIONAL PROVISION.

ARTICLE I.

§ 22. Perpetuities and monopolies are contrary to the genius of a free state, and shall not be allowed.

[Adopted, February 23, 1870.]

STATUTES.

SHANNON'S CODE SUPPLEMENT, PAGE 280.

Conspiracies and formations of trusts prohibited.

§ 1. That it shall not be lawful for any person or persons, or associations of persons, or any corporation in this state, or doing business in this state, to form, or agree to, or to conspire to form, any trust, pool, or corner, or combination, or any other arrangement or device, in or about any article of legitimate traffic, the production or manufacture or sale of such article, that may injuriously affect, and for the purpose of injuriously affecting, the legitimate trade and commerce of the county, or to limit the supply or production of said articles, whereby the price of such produce or manufactured articles, or other articles of legitimate trade, may be unduly depressed and put down, or unduly raised or increased, for the purpose of speculation, either by pooling or purchasing said articles for the purpose of withdrawing them from market to destroy legitimate competition, or to create a monopoly or corner in the same, or to produce an undue demand for the same, and that [thus] to unduly raise the price of said articles, or by throwing the same on the market, when so accumulated or purchased, for the purpose of creating an undue depression in the price of such article, and by such means to destroy or limit legitimate competition in the production, manufacture, or sale of such articles, as [or] by any other device or arrangement for such purpose. All such agreements, trusts, pools, corners, and combinations are hereby prohibited; *Provided*, Nothing herein contained

shall be construed to prevent or interfere with parties engaged in legitimate trade and speculation.

§ 2. That any person or persons or corporation violating the first section of this act, for the first offense, shall, on conviction, pay a fine of not less than two hundred and fifty dollars, and, for the second offense, a fine of not less than five hundred dollars; and the attorney-general, for each conviction, shall have a taxed fee of fifty dollars, and shall have, in addition, fifty per cent of the money actually received on such fine, and he shall prosecute all such cases *ex officio*, without any other prosecutor; and the courts shall give this act in charge and the grand jury shall have full inquisitorial power in such cases.

§ 3. That no contract made by any person or persons or incorporations, whereby to carry out, or agree to carry out, any of the agreements or combinations enumerated in, and prohibited in, the foregoing act, shall be enforced in any of the courts of this state, whether the same be made by citizens of this or any other state.

§ 4. That any corporation created or incorporated by or under the laws of this state, which violates any provisions of this act, shall, thereby, forfeit its corporate rights and franchises, and its corporate existence shall, thereupon, cease and determine; and it shall be the duty of the attorneys-general of the state, of their own motion, and without leave or order of any court or judge, to institute an action in behalf of the people, and in the name of the state, for the forfeiture of such rights and franchises, and the dissolution of such corporate existence; or any citizen of the state may institute such suit by proceedings in a court of chancery, in the name of the state, and said corporations may be enjoined from violations of this act pending such proceedings, provided such citizen may not begin such proceedings without giving security for cost in such cases.

Approved April 6, 1889.

SHANNON'S CODE SUPPLEMENT, PAGE 218.

Combinations in restraint of trade, production, manufacture, or sale prohibited:

§ 1. That all trusts, pools, contracts, arrangements or combinations now existing or hereafter made with a view or which tend to prevent full and free competition in the production,

manufacture, or sale of any article of domestic growth, production, or manufacture; or in the importation or sale of any article of domestic growth, production, or manufacture; or in the importation or sale of any article grown, produced, or manufactured in any other state or country; or which are designated or tend to fix, regulate, limit, or reduce the price of any article of growth, production, or manufacture; or which are designed or tend in any way to create a monopoly, are hereby declared to be unlawful, against public policy, and void.

§ 2. That all persons entering into or continuing with any trust, pool, contract, arrangement, agreement, or combination, either in his own account, or as agent or attorney for another company or as an officer, agent, or stockholder of any corporation, or in any capacity whatever, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by a fine of not less than five hundred dollars (\$500) nor more (than) five thousand dollars (\$5,000), and imprisoned in the penitentiary not less than one (1) year nor more than five (5) years.

§ 3. That all persons and corporations and the officers and the stockholders of all corporations that shall become or continue to be members of, or in any way connected with, or concerned in any such trust, contract, agreement or combination, shall be jointly and severally liable to pay all the debts, obligations and liabilities of each and every person and corporation that may become or continue a member thereof, connected therewith, or concerned therein, as fully as if all were partners in the creation of such debts, obligations and liabilities.

§ 4. That if any corporation organized under the laws this state, or any officer or stockholder thereof, as such, shall become or continue to be a member of any such trust, pool, contract, agreement, arrangement, or combination, its charter shall become and be hereby forfeited; and it shall be the duty of the attorney-general of the county where the same is located or having its principal office, to bring suit against such corporation in the circuit court of such county, to have its said charter declared forfeited for that reason, and to wind up the same under the order of such courts.

§ 5. That when action at law or suit in equity shall be commenced in any court of this state, it shall be lawful, in the defense thereof, to plead in bar or in abatement of the action that the plaintiff or any other person or corporation inter-

ested in the prosecution of the action is a member or connected with, and the cause of action grows out of, some business or transaction with such trust, pool, contract, agreement, arrangement, or combination, as described in the first section of this act.

§ 6. That any person or corporation injured or damaged by any such trust, pool, contract, agreement, arrangement, or combination may sue and recover fines in any court of competent jurisdiction, double the amount of damages suffered by such person or corporation.

§ 7. That upon the trial of any civil action against any corporation, person, or copartnership for a violation of any section of this act, all officers, stockholders, and agents of such corporation, person, or copartnership shall be competent witnesses against the defendant, as such, on trial; and such officers, stockholders, and agents may be compelled to testify against such defendant, and produce all books and papers in their custody or control pertinent to the issues in such action at or before the time of trial, and shall not be excused from producing any books or papers because the same might tend to criminate such witnesses; but nothing which such witness shall testify to, and no books or papers produced by him, shall in any manner be used against him in any criminal action to which he is a party.

§ 8. That all acts and part of acts of the general assembly of the state of Tennessee in conflict with this act be, and the same are hereby, repealed.

Approved March 30, 1891.

LAWS OF 1897, CHAP. 93.

AN ACT to prohibit conspiracies or agreements to limit the output of coal in this State, or to raise the price of coal to the consumer, or to any intermediate dealer.

§ 1. *Be it enacted by the General Assembly of the State of Tennessee,* That any person who, directly or indirectly, enters into a conspiracy or agreement with intent to limit the output of coal in this State for the purpose of raising the price of coal to the consumer, or to any intermediate dealer, shall be guilty of a misdemeanor, and, upon conviction, fined not less than one thousand dollars.

§ 2. *Be it further enacted,* That all laws and parts of laws inconsistent with this Act, be and the same are hereby repealed.

§ 3. *Be it further enacted*, That this Act take effect from and after its passage, the public welfare requiring it.

Passed April 10, 1897.

Approved April 30, 1897.

LAWS OF 1897, CHAP 94.

AN ACT to declare unlawful and void all arrangements and contracts, agreements, trusts or combinations made with a view to lessen or which tend to lessen free competition in the importation or sale of articles imported into this State; or in the manufacture or sale of articles of domestic growth or of domestic raw material; to declare unlawful and void all arrangements, contracts, agreements, trusts or combinations between persons or corporations designed, or which tend to advance, reduce or control the price of such product or articles to producer or consumer of any such product or article; to provide for forfeiture of the charter and franchise of any corporation, organized under the laws of this State, violating any of the provisions of this Act; to prohibit every foreign corporation violating any of the provisions of this Act from doing business in this State; to require the Attorney-General of this State to institute legal proceedings against any such corporations violating the provisions of this Act, and to enforce the penalties prescribed; to prescribe penalties for any violation of this Act; to authorize any person or corporation damaged by any such trust, agreement or combination, to sue for the recovery of such damages, and for other purposes.

§ 1. *Be it enacted by the General Assembly of the State of Tennessee, and it is hereby enacted by the authority of the same*, That from and after the passage of this Act, all arrangements, contracts, agreements, trusts or combinations between persons or corporations made with a view to lessen, or which tend to lessen, full and free competition in the importation or sale of articles imported into this State, or in the manufacture or sale of articles of domestic growth or of domestic raw material, and all arrangements, contracts, agreements, trusts or combinations between persons or corporations designed, or which tend, to advance, reduce or control the price or the cost to the producer or to the consumer of any such product or article, are hereby declared to be against public policy, unlawful and void.

§ 2. *Be it further enacted*, That any corporation chartered under the laws of the State which shall violate any of the provisions of this Act, shall thereby forfeit its charter and its franchise, and its corporate existence shall thereupon cease

and determine. Every foreign corporation, which shall violate any of the provisions of this Act, is hereby denied the right to do, and is prohibited from doing, business in this State. It is hereby made the duty of the Attorney-General of this State to enforce the provisions by due process of law.

§ 3. *Be it further enacted*, That any violation of the provisions of this Act shall be deemed, and is hereby declared to be, destructive of full and free competition and a conspiracy against trade, and any person or persons who may engage in any such conspiracy, or who shall, as principal, manager, director or agent, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, or orders made in furtherance of such conspiracy, shall, upon conviction, be punished by a fine of not less than one hundred dollars or more than five thousand dollars, and by imprisonment in the penitentiary not less than one year nor more than ten years; or in the judgment of the court, by either such fine or imprisonment.

§ 4. *Be it further enacted*, That the provisions of this Act shall not apply to agricultural products or live stock while in the possession of the producer or raiser.

§ 5. *Be it further enacted*, That any person or persons or corporation that may be injured or damaged by any such arrangement, contract, agreement, trust or combination, described in Section 1 of this Act, may sue for, and recover, in any court of competent jurisdiction in this State, of any person or persons or corporation operating such trust or combination, the full consideration or sum paid by him or them for any goods, wares, merchandise, or articles, the sale of which is controlled by such combination or trust.

§ 6. *Be it further enacted*, That it shall be the duty of the Judge of the Circuit and Criminal Courts of this State especially to instruct grand juries as to the provisions of this Act.

§ 7. *Be it further enacted*, That all laws and parts of laws in conflict with the provisions of this Act be and the same are hereby repealed.

§ 8. *Be it further enacted*, That this Act take effect from and after its passage, the public welfare requiring it.

Passed April 5, 1897.

Approved April 30, 1897.

CASE CONSTRUING STATUTES.

Bailey et al. v. Association of Master Plumbers of City of Memphis.

52 S. W. Rep., 853.

August 15, 1899.

Statement.

The association is a corporation organized by a majority of the plumbers in the city of Memphis, Tenn. A by-law was passed whereby each member was required to report in open meeting each week what work he had been doing, and if such work was done in competition with any other member, the member having done the work was to pay the association a fixed sum, according to a schedule agreed upon. Suit is brought to recover \$444 from members under this by-law.

Opinion of Supreme Court.

“By-laws with such capabilities * * * are clearly obnoxious to the common law, as well as violative of our statutes, which forbid and declare unlawful, null and void ‘all trusts, pools, contracts, arrangements, or combinations’ * * * that have a tendency to destroy or prevent ‘full and free competition in the production, manufacture or sale of any article of legitimate trade’ or that may in any manner ‘injuriously affect the legitimate trade and commerce of the country.’ Whether these by-laws be regarded as a contract, an arrangement, a combination or a trust, one or all,—and we think they partake of the nature of all of them,—there can be no reasonable doubt that they were intended and well calculated to prevent full and free competition in the purchase and sale of articles of legitimate traffic, to influence the prices thereof, and thereby to injuriously affect trade and commerce within the territory contemplated.”

No recovery is allowed.

COMMON-LAW DECISION.

Mallory v. Hanaur Oil Works.

86 Tenn., 598.

April, 1888.

Statement.

The Hanaur Oil Works, a corporation, entered into a contract with three other corporations whereby their business of manufacturing cotton-seed oil should all be put into the

hands of a committee composed of representatives from each of the four corporations. Under this agreement the property of the four corporations was surrendered to the committee, and was managed by them for two years. Now the Hanaur Oil Company wishes to withdraw from the association, and brings this suit to recover possession of its property, claiming that the contract was void.

Opinion.

The contract was for a partnership, and corporations cannot enter into partnership; therefore, the contract was *ultra vires* and void.

The Hanaur Oil Works can obtain possession of its property.

TEXAS.

CONSTITUTIONAL PROVISIONS.

ARTICLE I.

§ 26. Perpetuities and monopolies are contrary to the genius of a free government and shall never be allowed.

ARTICLE X.

§ 5. No railroad or other corporation, or the lessees, purchasers or managers of any railroad corporation, shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of or in any way control any railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line.

§ 6. No railroad company organized under the laws of this state shall consolidate by private or judicial sale or otherwise with any railroad company organized under the laws of any other state or of the United States.

[Adopted, November 24, 1875.]

STATUTES.

LAWS OF 1895, CHAP. 83.

TRUSTS.

AN ACT to define trusts, provide for penalties and punishment of corporations, persons, firms and associations of persons connected with them, and to promote free competition in the state of Texas, and to repeal all laws and parts of laws in conflict with this act.

§ 1. *Be it enacted by the legislature of the state of Texas,* That an act entitled "An act to define trusts and to provide for penalties and punishment of corporations, persons, firms and associations of persons connected with them, and to promote free competition in the state of Texas," approved March

thirty, eighteen hundred and eighty-nine, be so amended as to hereafter read as follows:

§ 1. That a trust is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or either two or more of them, for either, any or all of the following purposes:

1. To create or carry out restrictions in trade or commerce or aids to commerce, or to create or carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this state.

2. To increase or reduce the price of merchandise, produce or commodities.

3. To prevent competition in manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or to prevent competition in aids to commerce.

4. To fix at any standard or figure, whereby its price to the public shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this state.

5. To make or enter into or execute or carry out any contract, obligation or agreement of any kind or description by which they shall bind or have bound themselves not to sell, dispose of or transport any article or commodity, or article of trade, use, merchandise, commerce or consumption below a common standard figure, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graded figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its price might in any manner be affected.

§ 2. That any corporation holding a charter under the laws of the state of Texas which shall violate any of the provisions of this act shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine.

§ 3. For a violation of any of the provisions of this act by any corporation mentioned herein, it shall be the duty of the attorney-general or district or county attorney, or either of

them, upon his own motion and without leave or order of any court or judge, to institute suit or quo warranto proceedings in Travis county, at Austin, or at the county seat of any county in the state where such corporation exists, does business or may have a domicile, for the forfeiture of its charter rights and franchise and the dissolution of its corporate existence.

§ 4. Every foreign corporation violating any of the provisions of this act is hereby denied the right and prohibited from doing any business within this state, and it shall be the duty of the attorney-general to enforce this provision by injunction or other proper proceedings in the district court of Travis county, in the name of the state of Texas.

§ 5. That the provisions of chapter forty-eight, general laws of this state, approved July nine, eighteen hundred and seventy-nine, to prescribe the remedy and regulate the proceedings by quo warranto, et cetera, shall, except in so far as they may conflict herewith, govern and control the proceedings when instituted to forfeit any charter under this act.

§ 6. If any person shall be or may become engaged in any combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or of either two or more of them, for either, any or all of the following purposes:

1. To create or carry out restrictions in trade or commerce or aids to commerce, or to create or carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this state.

2. To increase or reduce the price of merchandise, produce or commodities.

3. To prevent competition in manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or to prevent competition in aids to commerce.

4. To fix at any standard or figure whereby its price to the public shall be in any manner controlled or established any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this state.

5. To make or enter into or execute or carry out any contract, obligation or agreement of any kind or description, by which they shall bind or have bound themselves not to sell, dispose of, or transport any article or commodity, or article of trade, use, merchandise, commerce or consumption below a

common standard figure, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves and others in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its price may in any manner be affected, or aid or advise in the creation or carrying out of any such combination, or who shall as principal, manager, director, agent, servant or employe, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, directions, conditions or orders of such combinations shall be punished by fine of not less than fifty nor more than five thousand dollars, and by imprisonment in the penitentiary not less than one nor more than ten years, or by either such fine or imprisonment. Each day during a violation of this provision shall constitute a separate offense.

§ 7. In any indictment for an offense named in this act it is sufficient to state the effects or purposes of the trust or combination, and that the accused was a member of, acted with or in pursuance of it, without giving its name or description, or how, when or where it was created.

§ 8. In prosecutions under this act it shall be sufficient to prove that a trust or combination as defined herein exists and that the defendant belonged to it or acted for or in connection with it, without proving all the members belonging to it or proving or producing any article of agreement or any written instrument on which it may have been based, or that it was evidenced by any written instrument at all. The character of the trust or combination alleged may be established by proof of its general reputation as such.

§ 9. Persons out of the state may commit and be liable to indictment and conviction for committing any of the offenses enumerated in this act, which do not in their commission necessarily require a personal presence in this state, the object being to reach and punish all persons offending against its provisions, whether within or without the state.

§ 10.¹ Each and every firm, person, corporation or association of persons, who shall in any manner violate any of the provisions of this chapter shall forfeit not less than two hundred dollars nor more than five thousand dollars for every such offense, and each day each firm, person, corporation or association of persons shall continue to do so shall be a separate offense; the penalty in such case may be recovered in the name of the state of Texas in any county where the offense is committed or where either of the offenders reside, or in Travis county, and it shall be the duty of the attorney-general or the district or county attorney to prosecute for and recover the same.

§ 11. That any contract or agreement in violation of the provisions of this act shall be absolutely void and not enforceable either in law or equity.

§ 12. That the provisions hereof shall be held cumulative of each other and of all other laws in any way affecting them now in force in this state: *Provided*, This act shall not be held to apply to live-stock and agricultural products in the hands of the producer or raiser, nor shall it be understood or construed to prevent the organization of laborers for the purpose of maintaining any standard of wages.

§ 13. That nothing in this act shall be held or construed to affect or destroy any rights which may have accrued, or to affect the right of the state to recover penalties, or to affect the right of the state to forfeit charters of domestic corporations and prohibit foreign corporations from doing business in this state, or affect the right of the state to maintain prosecutions for violations thereof under any law of this state relating to trusts, for acts heretofore done.

§ 14. Any court, officer or tribunal having jurisdiction of the offense defined in this act, or any district or county attorney or grand jury may subpoena persons and compel their attendance as witnesses to testify as to the violation of any of the provisions of the foregoing sections. Any person so summoned and examined shall not be liable to prosecution for any violation of said sections about which he may testify fully and without reservation.

§ 15. All laws or parts of laws in conflict with this act are hereby repealed.

¹Section 10 is given as amended by chapter 172 of the Laws of 1899.

§ 16. Whereas, the people of this state are without an adequate remedy against trusts, therefore an emergency and imperative public necessity exists requiring that the constitutional rule which requires that all bills shall be read on three several days be suspended, and it is so enacted.

Approved April 30, 1895.

LAWS OF 1899, CHAP. 146.

ANTI-TRUST LAW.

AN ACT to prohibit pools, trusts, monopolies and conspiracies to control business and prices of articles; to prevent the formation or operation of pools, trusts, monopolies and combinations of charters of corporations that violate the terms of this act, and to authorize the institution of prosecutions and suits therefor.

Be it enacted by the Legislature of the State of Texas:

§ 1. Any corporation organized under the laws of this or any other State or country, and transacting or conducting any kind of business in this State, or any partnership, or individual, or other association of persons whatsoever, who shall create, enter into, become a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual or any other person or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, or to maintain said price when so regulated or fixed, or shall enter into, become a member of or a party to any pool, agreement, combination, contract, association or confederation to fix or limit the amount or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any other kind of policy issued by any corporation, partnership, individual, or association of persons aforesaid, shall be deemed and adjudged guilty of a conspiracy to defraud, and to be subject to the penalties as provided by this act.

§ 2. A "monopoly" is any union or combination or consolidation or affiliation of capital, credit, property, assets, trade, custom, skill or acts, or of any other valuable thing or possession, by or between persons, firms or corporations, or association of persons, firms or corporations, whereby any one of the purposes or objects mentioned in this act is accomplished or sought to be accomplished, or whereby any one or more of said purposes are promoted or attempted to be executed or carried out, or whereby the several results described herein are reasonably calculated to be produced; and a "monopoly," as thus defined and contemplated, includes not merely such combinations by and between two or more persons, firms or corporations acting for themselves, but is especially defined and intended to include all aggregations, amalgamations, affiliations, consolidations or incorporations of capital, skill, credit, assets, property, custom, trade, or other valuable thing or possession, whether effected by the ordinary methods of partnership or by actual union under the legal form of a corporation or an incorporated body resulting from the union of one or more distinct firms or corporations, or by the purchase, acquisition or control of shares or certificates of stock or bonds, or other corporate property or franchises, and all corporations or partnerships that have been or may be created by the consolidation or amalgamation of the separate capital, stock, bonds, assets, credit, properties, custom, trade or corporate or firm belongings of two or more firms or corporations or companies are especially declared to constitute monopolies within the meaning of this act, if so created or entered into for any one or more of the purposes named in this act; and a "monopoly," as defined in this section, is hereby declared to be unlawful and against public policy, and any and all persons, firms, corporations or association of persons engaged therein shall be deemed and adjudged guilty of a conspiracy to defraud, and shall be subject to the penalties prescribed in this act.

§ 3. If any person, persons, company, partnership, association or corporation, engaged in the manufacture of any article of commerce or consumption from the raw material produced or mined in this State, shall, with the intent or purpose of driving out competition, or for the purpose of financially injuring competitors, sell at less than the cost of manufacture, or give away their manufactured products, for the purpose of driving out competition or financially injuring

competitors engaged in the manufacture and refining of raw material in this State, said person, persons, company, partnership, association or corporation resorting to this method of securing a monopoly in the manufacture, refining and sale of the finished product produced or mined in this State, shall be deemed guilty of a conspiracy to form or secure a trust or monopoly in restraint of trade, and on conviction shall be subject to the penalties of this act.

§ 4. If any person, persons, company, partnership, association, corporation or agent engaged in the manufacture or sale of any article of commerce or consumption produced, manufactured or mined in this State or elsewhere, shall, with the intent or purpose of driving out competition, or for the purpose of financially injuring competitors, sell within this State at less than cost of manufacture or production, or sell in such a way, or give away within this State, their products for the purpose of driving out competition or financially injuring competitors engaged in similar business, said person, persons, company, partnership, association, corporation or agent resorting to this method of securing a monopoly within this State in such business, shall be deemed guilty of a conspiracy to form or secure a trust or monopoly in restraint of trade, and on conviction thereof shall be subject to the penalties of this act.

§ 5. Any person, partnership, firm or association, or any representative or agent thereof, or any corporation or company, or any officer, representative or agent thereof, violating any of the provisions of this act shall forfeit not less than two hundred dollars nor more than five thousand dollars for every such offense, and each day such person, corporation, partnership or association shall continue to do so shall be a separate offense, the penalties in such cases to be recovered by an action in the name of the State, at the relation of the Attorney-General or the district or county attorney; the moneys thus collected to go into the State treasury, and to become a part of the general fund, except as hereinafter provided.

§ 6. If any two or more persons or corporations who are engaged in buying or selling any article of commerce, manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining or any article or thing whatsoever, shall enter into any pool, trust, agreement, combination, confederation, association or understanding to control

or limit the trade in any such article or thing; or to limit competition in such trade by refusing to buy from or sell to any other person or corporation any such article or thing aforesaid, for the reason that such other person or corporation is not a member of or a party to such pool, trust, agreement, combination, confederation, association or understanding; or shall boycott or threaten any person or corporation for buying from or selling to any other person or corporation who is not a member of or a party to such pool, trust, agreement, combination, confederation, association or understanding any such article or thing aforesaid, it shall be a violation of this act; and any person, firm, corporation or association of persons committing such violation shall be deemed and adjudged guilty of a conspiracy to defraud, and shall be subject to the penalties prescribed in this act.

§ 7. Any corporation created or organized by or under the laws of this State, which shall violate any of the provisions of the preceding sections of this act, shall thereby forfeit its corporate rights and franchises; and its corporate existence shall, upon proper proof being made thereof in any court of competent jurisdiction in the State, be by the court declared forfeited, void and of non-effect, and shall thereupon cease and determine; and any corporation created or organized by or under the law of any other State or country, which shall violate any of the provisions of the preceding sections of this act shall thereby forfeit its right and privilege thereafter to do any business in this State, and upon proper proof being made thereof in any court of competent jurisdiction in the State, its rights and privileges to do business in this State shall be declared forfeited; and in all proceedings to have such forfeiture declared, proof that any person who has been acting as agent of such foreign corporation in transacting its business in this State, has been, while acting as such agent, and in the name, behalf, or interest of such foreign corporation, violating any provisions of the preceding sections of this act, shall be received as prima facie proof of the act of the corporation itself; and it shall be the duty of the clerk of said court to certify the decree thereof to the Secretary of State, and if it be an insurance company, to the Commissioner of Insurance, Statistics and History of the State, who shall take notice and be governed thereby as to the corporate powers and rights of said corporation.

§ 8. It shall be the duty of the Secretary of State, on or about the first day of July of each year, and at such other

times as he shall deem necessary, to address to the president, secretary or treasurer of each incorporated company doing business in this State a letter of inquiry as to whether the said corporation has all or any part of its business or interest in or with any trust, combination or association of persons or stockholders, as named in the preceding provisions of this act, and to require an answer under oath of the president, secretary or treasurer, or any director of said company. A form of affidavit shall be enclosed in said letter of inquiry, as follows:

AFFIDAVIT.

STATE OF TEXAS, *County of* ———.

I, ———, do solemnly swear that I am the ——— (president, secretary, treasurer or director) of the corporation known and styled ———, duly incorporated under the laws of ———, on the ——— day of ———, 19——, and now transacting or conducting business in the State of Texas, and that I am duly authorized to represent said corporation in making this affidavit, and I do further solemnly swear that the said ———, known and styled as aforesaid, has not since the ——— day of ——— (naming the day upon which this act takes effect), created, entered into or become a member of or a party to, and was not, on the ——— day of ———, nor at any day since that date, and is not now a member of or a party to any pool, trust, agreement, combination, confederation or understanding, with any other corporation, partnership, individual, or any other person, or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any other kind of policy issued by the parties aforesaid; and that it has not entered into or become a member of, or a party to, any pool, trust, agreement, contract, combination or federation, to fix or limit the amount of supply or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, or any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any other kind of policy issued by the parties

aforesaid; and that it has not issued, and does not own any trust certificates for any corporation, agent, officer or employe, or for the directors or stockholders of any corporation, has not entered into, and is not now in any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholders, or directors thereof, the purpose and effect of which said combination, contract or agreement would be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price, or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict, or diminish the manufacture or output of any such article; that it has not entered into any conspiracy, defined in the preceding sections of this act, to form or secure a trust or monopoly in restraint of trade; that it has not been since January 31, A. D. 1900, and is not now a monopoly by reason of any conduct on its part which would constitute it a monopoly under the provisions of Sections 2, 3, 4, 5, 6, 10 and 11, of this act, and is not the owner or lessee of a patent to any machinery intended, used or designed for manufacturing any raw material or preparing the same for market by any wrapping, baling or other process, and while leasing, renting or operating the same refuses or fails to put the same on the market for sale; that it has not issued, and does not own any trust certificates, and has not, for any corporation or any agent, officer or employe thereof, or for the directors or stockholders thereof, entered into, and is not now in any combination, contract or agreement with any person or persons, corporation or corporations, or with the stockholders, directors or any officer, agent or employe of any corporation or corporations, the purpose and effect of which combination, contract or agreement would be a conspiracy to defraud, as defined in Section 1 of this act, or to create a monopoly, as defined in Sections 2, 3, 4, 5, 6, 10 and 11 of this act.

 [President, Secretary, Treasurer or Director.]

Subscribed and sworn to before me, a _____ within
 and for the county of _____, this _____ day of _____,
 19—.

[SEAL.] _____

And on refusal to make oath, in answer to said inquiry, or on failure to do so within thirty days from the mailing thereof, such failure shall be prima facie proof that such incorporated company is transacting business in the State of Texas, and has violated the provisions of this act, every day after the expiration of thirty days from the mailing of said letter of inquiry, the Secretary of State shall certify to the prosecuting attorney of the district or county wherein said corporation is located, and it shall be the duty of such prosecuting attorney, at his earliest practicable moment, in the name of the State, and at the relation of said prosecuting attorney, to proceed against such corporation, if a domestic corporation, for the recovery of the money forfeit provided for in this act, and also for the forfeiture of its charter or certificate of incorporation. If a foreign corporation, to proceed against such corporation for the recovery of the money forfeit provided for in this act, and to forfeit its right to do business in this State: *And provided*, That whatever money, bonds or other securities may be on deposit in this State shall remain subject to the decision of said court to secure whatever penalties or costs may be adjudged against said corporation or individual. *It is provided, however*, That all parties making the affidavit provided for in this section shall be exempt from criminal prosecution for any violation of law that may be disclosed by such affidavit. *It is further provided*, That the Secretary of State shall, from time to time, when he may have reason to believe that individuals or partnerships are doing business in this State in violation of this act, address the letter of inquiry herein provided for to such individuals or partnerships and require of them the same answers under oath prescribed in this section for the officers of corporations, the affidavit to which must be made by the individual addressed, or some member of the partnership addressed; the form of affidavit herein prescribed, with such changes as may be necessary to make it applicable to individuals and partnerships shall be inclosed in said letter of inquiry.

§ 9. It shall be the duty of the Attorney-General and the prosecuting attorney of each district or county, respectively, to enforce the provisions of this act. The Attorney-General and the prosecuting attorney shall institute and conduct all suits begun in the district courts, and upon appeal the

Attorney-General shall prosecute said suits in the courts of Civil Appeals and Supreme Court. The prosecuting attorney shall receive for his compensation one-fourth of the penalty collected; *Provided*, The fees allowed the prosecuting attorney representing the State, provided for in this section, shall be over and above the fees allowed him by the general fee bill now in force.

§ 10. All actions authorized and brought under this act shall have precedence on motion of the prosecuting attorney or Attorney-General of all other business, civil and criminal, except criminal cases where the defendants are in jail.

§ 11. Each corporation, co-partnership, firm or individual who may be the owner or lessee of a patent to any machinery intended, used or designed for manufacturing any raw materials or preparing the same for market by any wrapping, baling or other process, who shall lease, rent or operate the same in their own name and refuse or fail to put the same on the market for sale, shall be adjudged a monopoly, and be subject to all the pains and penalties provided in this act.

§ 12. The sale, delivery or disposition of any of the articles, commodities or things hereinbefore mentioned by any individual, company or corporation transacting business contrary to the provisions of this act, within this State or elsewhere, is hereby declared to be unlawful and contrary to public policy, and the purchaser of any article or commodity from any such offending individual, company or corporation shall not be liable for the price or payment thereof, and may plead this act as a defense to any suit for the price or payment, whether the purchase was made directly from the individual, company or corporation so unlawfully transacting business, or indirectly from one who acted for such individual, company or corporation as agent, representative, solicitor or canvasser: *And provided further*, That where any money or other thing of value is paid to such individual, company or corporation so unlawfully transacting business, its agent, representative, solicitor or canvasser, the person so paying the same may recover back the amount of the money or the value of the thing so paid.

§ 13. The following corporations, co-partnerships, firms or individuals are also adjudged a monopoly, and subject to all the pains and penalties provided in this act:

Every corporation, co-partnership, firm or individual which may gather items of news or press dispatches for sale to news-

papers and which shall refuse to sell said items of news or press dispatches to more than one newspaper to a stated number of inhabitants in any city, town or subdivision of the State of Texas, or within a certain radius of territory. Every association of newspapers formed for the purpose of exchanging items of news and press dispatches which may require of its members under pain of forfeiting their membership, that they do not sell to or exchange with newspapers not members of said association any items of news or press dispatches.

§ 14. The provisions of the foregoing sections, and the pains and penalties provided for for violations of this act shall be held and construed to be cumulative to all laws now in force in this State. *And provided*, That the provisions of this act shall not exempt from punishment or forfeiture any person, firm, association of persons or corporation, who may have violated or offended against any law now in existence that may be or may be construed to be repealed by this act or in conflict herewith. *And provided further*, That nothing in this act shall be deemed or construed to affect any suits or prosecutions now pending or hereafter to be instituted upon any cause of action, forfeiture or penalty accruing or to accrue prior to the date of the taking effect of this act, but all such rights to maintain, institute or prosecute all such causes of action are hereby reserved to the State, in the same manner and with the same effect as if this law had not been passed: *Provided further*, That this act shall take effect from and after January 31, A. D. 1900.

§ 15. The near approach of the end of the session, and the fact that we now have no adequate anti-trust law upon the statutes, and the importance of such legislation, create an emergency and imperative public necessity that the constitutional rule requiring bills to be read on three several days be suspended, and it is so enacted.

Approved May 25, 1899.

CASES CONSTRUING STATUTES.

Queen Insurance Co. et al. v. State ex rel. Attorney-General.

24 S. W. Rep., 397.

December 14, 1893.

Statute construed.

Texas Laws of 1889, chapter 117, declares a trust to be a combination of capital, skill or acts to create or carry out

restrictions in trade or to fix or increase the price of commodities. It states the punishment for violating the act; but it does not expressly say that a trust shall be unlawful.

Statement.

Fifty-seven insurance companies formed a combination to fix uniform rates of insurance and agents' commissions throughout the state. Suit was brought to restrain this combination. The lower court said the anti-trust law is void because it does not expressly prohibit trusts; but it held the combination illegal at common law, and therefore granted the injunction.

The combination appealed.

Opinion.

The statute shows that the legislature intended to make trusts unlawful, hence, it is not void. The fact that it does not expressly say trusts shall be unlawful is immaterial.

The legislature used the term "restrictions in trade" in a narrow sense, meaning restriction in traffic, and it does not include insurance; neither does the term "commodities" cover insurance; therefore this combination is not a violation of the statute.

The public is not so interested in insurance as to make a combination among insurance companies illegal at common law.

The injunction is dissolved.

Anheuser-Busch Brewing Association v. Houck et al.

27 S. W. Rep., 692, and 30 S. W. Rep., 869. June 13, 1894.

Statute construed.

Texas Laws of 1889, chapter 117, forbids combinations to prevent competition in the purchase, sale or transportation of merchandise.

Statement.

All the wholesale beer dealers in El Paso, Tex., enter into an agreement whereby all the business is to be managed by one board of managers, and the profits divided among the members.

Plaintiff agrees to supply the combination, and no one else in El Paso, with keg beer. Plaintiff supplies the beer for a time but refuses to supply more. Suit is brought to recover pay for the beer supplied. The combination seeks to avoid

payment for the beer already supplied, and to recover damages because more beer is not furnished.

Opinion.

The combination is in violation of the anti-trust law; and plaintiff's agreeing to sell beer to no one else in El Paso shows that the contract between the plaintiff and the combination is intended to aid the illegal object of the combination, and is, therefore, void.

Plaintiff recovers nothing for the beer.

The combination recovers nothing for the breach of contract.

Texas and Pacific Coal Co. v. Lawson.

89 Texas, 394.

March 26, 1896.

Statement.

The coal company, which was operating the coal mining business upon its large tract of land and having many employees residing thereon, made a contract with Lawson, leasing him for five years premises on which to carry on the business of selling liquor. It agreed to lease to no other person for the same purpose and to permit no one else to carry on said business upon its land; also to issue time checks to its employees, which checks were to be redeemed weekly when taken up by Lawson. The company was to receive as rent two-thirds of the profits of the saloon business. A question arises as to whether or not the contract is legal.

Opinion.

"The statute ignores the common-law distinction between restrictions which are reasonable and those which are not, and commodities which are of prime necessity and those which are not." The contract provided that the parties should associate both their capital and acts to prevent competition in the trade of retailing spirituous liquors. Under the statute, the contract is void.

Welch et al., v. Phelps and Bigelow Windmill Co.

36 S. W. Rep., 71.

June 8, 1896.

Statement.

Plaintiff and defendant entered into an agreement whereby plaintiff was to sell windmills for defendant, for a certain price, in a certain territory, and to sell no other windmills.

Defendant was to allow no one else to sell windmills in that territory, to have title to the windmills while in plaintiff's possession and to ship mills to plaintiff as he needed them. Was this contract within the trust law?

Opinion.

The statute was to prohibit two or more persons from combining their skill or their capital or their acts. The defendant here owned all these windmills, so there was no union of "capital, skill or acts." "It was not the purpose of the statute to interpose any obstacle to a principal's contracting with his agent with reference either to the terms or the subject-matter of the agency."

The contract is legal.

Hathaway v. The State.

36 Texas Cr. Rep., 261.

June 26, 1896.

Statement.

Plaintiff was an agent of the Waters-Pierce Oil Company, and this company was connected with the Standard Oil Trust; but there was no proof that plaintiff knew of this combination. He was convicted of the crime of conspiracy against trade, and fined \$50. He appeals.

Opinion.

The anti-trust law has been held constitutional by the Supreme Court in several cases, therefore, it will now be assumed that it is constitutional; but to convict one under this law it must be proved that he had knowledge of the conspiracy when he aided it.

The judgment of conviction is reversed.

Texas Brewing Co. v. Templeman et al.

38 S. W. Rep., 27.

December 3, 1896.

Statement.

The Texas Brewing Company agreed to sell beer to W. N. Norwood & Co. and to furnish a delivery wagon and a storage vault, the last two to remain the property of the brewing company. In turn W. N. Norwood & Co. agreed to furnish a place for the vault, to pay for the beer sold them in thirty days from shipment, and to handle no other beer than that of the Texas Brewing Company. The Texas Brewing Company brings this suit to recover a balance due it for the beer sold.

Opinion.

The contract is to carry out restrictions in trade, and to prevent competition in the sale of commodities, and is a trust contract.

Plaintiff can not recover the balance due for the beer.

Fuqua et al. v. Pabst Brewing Co.

38 S. W. Rep., 29.

December 14, 1896.

Statement.

The Pabst Brewing Company, of Wisconsin, and Kingsbury, of Texas, agreed that said company should sell beer in Amarillo, Tex., only to Kingsbury; and that Kingsbury should buy beer only of said company. Kingsbury owes \$1,164.48 for beer furnished him under this agreement. The company brings suit to collect it. Illegality of the contract is pleaded in defense.

Opinion.

Shipping an article into the state and selling it in the original package is interstate commerce. Therefore, a contract for only that can not be affected by the state anti-trust law. However, in the case at bar there is this legal part plus an illegal part; namely, that Kingsbury is to buy beer of no one but the Pabst Brewing Company, and that said company is to sell beer to no one in Amarillo except Kingsbury. In this contract some of the stipulations "being lawful and the others unlawful, the taint of illegality affects and destroys the whole."

Plaintiff can not recover.

Waters-Pierce Oil Co. v. State.

44 S. W. Rep., 936.

March 9, 1898.

Statute construed.

The Texas Laws of 1895, chapter 83, makes all trusts and combinations in restraint of trade criminal. It provides, however, that the act shall not be held to apply to live stock and agricultural products in the hands of the producer or raiser, nor shall it be understood or construed to prevent the organization of laborers for the purpose of maintaining any standard of wages.

The act provides that every foreign corporation violating this law shall be prohibited from doing business in the state.

Statement.

Plaintiff, a foreign corporation, had been given permission to do business in Texas for ten years. While doing business under this permit it violated the anti-trust law by making contracts with various dealers in oils whereby they agreed to buy and sell plaintiff's oils exclusively, and not to sell any oil to a person buying of another corporation, and for this reason the court enjoined it from doing any more business in the state, except interstate commerce. Plaintiff appeals claiming the law is unconstitutional on two grounds:

1. It deprives the owner of his property without due process of law.

2. It discriminates between persons without cause, and therefore falls within the prohibition of the fourteenth amendment where it says: "Nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Opinion.

1. To prohibit combinations in restraint of trade, is within the police power of the state, and the fourteenth amendment is not meant to limit the proper exercise of this power.

2. The welfare of the state was in danger from combinations in restraint of trade; but certain classes of such combinations were not endangering the public welfare, and it was constitutional for such to be exempted from the operation of the law.

The injunction stands prohibiting plaintiff from doing business, other than interstate commerce, in the state of Texas.

Wiggins v. Bisso.

47 S. W. Rep., 637.

October 31, 1898.

Statement.

Wiggins and Bisso entered into partnership for the purpose of forming a combination with the St. Louis Brewing Association to increase the price of beer and to prevent competition in the transportation and sale of beer. Wiggins received all the profits of the partnership to the amount of \$7,980, and refuses to pay Bisso his share. Bisso sues for an accounting.

Opinion.

The court can not give an accounting without investigating unlawful acts of the parties, and this it will not do. It will leave the parties where it found them.

The accounting is denied.

San Antonio Gas Co. v. State.

*54 S. W. Rep., 239. Circuit Court of Appeals of Texas.
November 1, 1899.*

Statement.

All the electric railways, electric light and gas companies in San Antonio, Tex., agreed to charge certain car fare, and not to compete with each other and to consolidate after they had obtained from the city an extension of all their franchises until 1940. The franchises were extended, and other acts done pursuant to the agreement. The State brought an action against the San Antonio Gas Company, a party to the said agreement, to forfeit its charter. Judgment for the State in the lower court, and plaintiff appeals.

Opinion on appeal.

A trust is defined in the statutes as "a combination of capital, skill, or acts by two or more persons, firms or corporations" for purposes enumerated, one being "to increase or reduce the price of merchandise, produce or commodities." "If the combination was made, and its object was in restraint of trade and to create a monopoly, the statute denounces it no matter if the immediate result of the combination may be the temporary reduction of prices. To fix, by combination, a rate lower than one that has prevailed, carries with it the power and ability to establish higher ones, and the object of the statute is to free business and commerce from being controlled by combinations. * * * The law does not look to the results." It is settled that the trust legislation is constitutional; and a conspiracy was formed within its terms; therefore, the lower court did right in forfeiting the charter.

UTAH.

CONSTITUTIONAL PROVISION.

ARTICLE 12.

§ 20. Any combination by individuals, corporations, or associations, having for its object or effect the controlling of the price of any products of the soil, or of any article of manufacture or commerce, or the cost of exchange or transportation, is prohibited, and hereby declared unlawful, and against public policy. The legislature shall pass laws for the enforcement of this section by adequate penalties, and in case of incorporated companies, if necessary for that purpose, it may declare a forfeiture of their franchise.

[Adopted, May 8, 1895.]

STATUTE.

REVISED STATUTES OF 1898, TITLE 54.

POOLS AND TRUSTS.

§ 1752. **Unlawful combination.**—Any combination by persons having for its object or effect the controlling of the prices of any professional services, any products of the soil, any article of manufacture or commerce, or the cost of exchange or transportation, is prohibited and declared unlawful.

§ 1753 *id.* **Members guilty of conspiracy to defraud.**—Any person or association of persons who shall create, enter into, become a member of, or a party to, any pool, trust, agreement, combination, confederation, or understanding with any other person or persons, to regulate or fix the price of any article of merchandise or commodity; or shall enter into, become a member of, or a party to, any pool, trust, agreement, contract, combination, or confederation to fix or limit the amount or quantity of any article, commodity, or merchandise to be manufactured, mined, produced, or sold in this state, shall be deemed and adjudged guilty of a conspiracy to defraud, and be subject to punishment as hereinafter provided.

§ 1754. **Trusts declared unlawful.**—It shall not be lawful for any corporation to issue or to own trust certificates; or for any corporation, agent, officer, or employe, or the direct-

ors or stockholders of any corporation to enter into any combination, contract, or agreement with any person or persons, the purpose or effect of which combination, contract, or agreement shall be to place the management or control of said combination or combinations, or the manufactured product thereof, in the hand of any trustee or trustees, with the intent to limit or fix the price, or lessen the production and sale of any article of commerce, use, or consumption, or to prevent, restrict, or diminish the manufacture or output of any such article, or to monopolize any part of the trade or commerce within this state.

§ 1755. **Penalties, firms and corporations.**—If a corporation, a company, a firm, or association, shall be found guilty of a violation of any provision of this title, it shall be punished by a fine in any sum not less than one hundred dollars nor more than two thousand dollars for the first offense; and for the second offense not less than five hundred dollars nor more than five thousand dollars; and for the third offense, not less than five thousand dollars nor more than ten thousand dollars; and for every subsequent offense shall be liable to a fine of fifteen thousand dollars.

§ 1756 *id.* **Individuals.**—Any president, manager, director, or other officer, agent, or receiver of any corporation, company, firm or association, or any member of any company, firm, or association, or any individual found guilty of a violation of any provision of this title, may be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by confinement in the county jail not more than one year, or by both, in the discretion of the court before which such conviction may have been had.

§ 1757. **Unlawful contracts void.**—Any contract or agreement in violation of any provision of this title shall be absolutely void.

§ 1758. **Corporate franchise forfeited.**—Any corporation organized or existing under the laws of this state which shall violate any provision of this title shall thereby forfeit its corporate rights and franchises, and its corporate existence shall thereupon cease and determine.

§ 1759 *id.* **Notice to corporation.**—It shall be the duty of the secretary of state, upon satisfactory evidence that any corporation or association of persons, incorporated or operating under the laws of this state, has entered into any

trust, combination or association, as mentioned in the preceding provisions of this title to give notice to such corporation that unless it withdraws from and severs all business connections with said trusts, combination, or association, its corporate right and franchise will be revoked at the expiration of thirty days from the date of such notice.

§ 1760 *id.* **Attorney-general to bring action, when.**—At the expiration of thirty days, if such withdrawal or severance be not theretofore made, the secretary of state shall cause a certified statement of the facts to be filed in the office of the attorney-general of the state, who shall commence, or direct any county attorney in the state to commence, an action, in any district court of the state of competent jurisdiction, to forfeit and revoke the corporate rights and franchises of such corporation. On the final decision of the same, should the defendant be found guilty of a violation of any of the provisions of this title, the court shall render judgment that the charter, corporate rights, and franchises of such corporation be revoked and the secretary of state shall thereupon make publication of such revocation in four newspapers in general circulation in four of the largest cities of the state.

§ 1761. **Guilty person liable for treble damages.**—In case any person or persons, shall do, cause to be done, or permit to be done, any act, matter, or thing in this title prohibited or declared to be unlawful, such person or persons shall be liable to the person or persons injured thereby for treble the amount of damages sustained in consequence of any such violation.

§ 1762. **“Person” includes “corporation.”**—The words “person,” or “persons,” wherever used in this title shall be deemed to include corporations, companies, and associations, existing under or authorized by the laws of either the United States, or any of the territories, any state or any foreign country.

WASHINGTON.

CONSTITUTIONAL PROVISION.

ARTICLE 12.

§ 22. Monopolies and trusts shall never be allowed in this state, and no incorporated company, copartnership, or association of persons in this state shall directly or indirectly combine or make any contract with any other incorporated company, foreign or domestic, through their stockholders, or the trustees, or assignees of such stockholders, or with any copartnership or association of persons, or in any manner whatever, for the purpose of fixing the price or limiting the production or regulating the transportation of any product or commodity. The legislature shall pass laws for the enforcement of this section by adequate penalties, and in case of incorporated companies, if necessary for that purpose, may declare a forfeiture of their franchise.

[Adopted, 1889.]

WISCONSIN.

STATUTES.

LAWS OF 1893, CHAP. 219.

AN ACT to protect trade and commerce against unlawful trusts and monopolies.

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

§ 1. Every contract or combination, in the nature of a trust or conspiracy in restraint of trade or commerce, is hereby declared illegal.

§ 2. Every person who shall monopolize, or attempt to monopolize, or combine, or conspire with any other person or persons to monopolize any part of the trade or commerce in this state, shall be deemed guilty of violating the provisions of this act, and upon conviction thereof shall forfeit for each such violation not less than fifty dollars, nor more than three thousand dollars, together with the cost of prosecuting such forfeiture; such forfeiture and costs to be collected as is now provided by statute for the collection of forfeitures.

§ 3. Jurisdiction is hereby conferred on the several circuit courts of this state to prevent and restrain, by injunction or otherwise, any violations of the provisions of this act; and it shall be the duty of the several district attorneys of the several counties in this state, upon the advice of the attorney-general, who may appear as counsel in such case, to institute such actions or proceedings as the attorney-general may or shall deem necessary to prevent or restrain any violation of this act. Such proceedings shall be by way of information or complaint, as in ordinary actions, setting forth the case and grounds for the interference of the court, and praying that such violations, whether continuing or intended, shall be enjoined or otherwise prohibited. When the parties complained of or informed against shall have been duly notified of and cited to answer such information or complaint, the court shall proceed as soon as may be, in accordance with its rules and practice, to the hearing and determination of the

case; and pending such information or complaint, and before final judgment, the court may at any time, upon proper notice, make such temporary restraining order, injunction or prohibition as shall be just in the premises.

§ 4. Whenever it shall appear to the court before which any examination under section three, of this act, may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned in such manner as the court shall direct.

§ 5. Any person transacting or doing business within this state, who shall be injured in his business or property by any other person or corporation, by reason of anything forbidden or declared to be unlawful by this act, may recover the damages by him sustained, and costs of suit.

§ 6. The examination of any party, or in case a corporation be the party, the examination of the president, secretary or other proper officer or general managing agent of such corporation, or any person acting for another or acting for such corporation or partnership, otherwise than as a witness on a trial, may be taken by deposition at the instance of the state of Wisconsin, in any action or proceeding under this act, at any time after the commencement thereof and before final judgment. Such deposition shall be taken before a judge at chambers on a previous notice to such party and any other adverse party, or their respective attorneys, of at least five days, or it may be taken without the state, upon commission, in the manner provided for taking other depositions. The attendance of the party to be examined may be compelled upon subpoena, without payment of witness fees, and such examination shall be subject to the same rules as that of any other witness; but he shall not be compelled to disclose anything not relevant to the controversy. If such examination shall be taken before issue joined, the notice of taking the same shall be accompanied by the affidavit of the district attorney, the attorney-general, or some other party, stating the general nature and object of the action, that discovery is sought to enable the party to plead the points upon which such discovery is desired, and such examination shall be limited to discovery of the facts relevant to the points so stated, unless the court, or the presiding judge thereof, on motion and one day's notice, shall, before the examination is begun, by order further limit the subjects to which such examination shall extend; but such examination shall not

preclude the right to another examination after issue joined upon all the issues in the cause, and the party examining shall in all cases be allowed to examine upon all interrogatories. Such examination shall not be compelled in any other county than that in which the party to be examined resides; *Provided*, That whenever plaintiff or defendant is a nonresident of the state, his deposition may be taken, under the provisions of this section, in the county in which the action is pending, if he can be personally served with notice and subpoena in such county. In any examination under the provisions of this section, the judge or commissioner before whom the same is had, shall have power and authority to compel the party examined to answer all questions relevant to the issues involved, and shall upon the application of the attorney-general compel the production by the party examined of all books, papers and records relevant and pertinent to the issues, and may enforce such orders, and the production of such books, papers and records, by contempt proceedings.

§ 7. If any defendant, or his agent, lawfully required to appear and testify, as provided in this act, either within or without the state, shall neglect or refuse to do so, he may be punished as for contempt, and the pleading of such defendant may, in the discretion of the court, be stricken out, and judgment given against him according to the prayer of the complaint of the state.

§ 8. The word "person" or "persons," wherever used in this act, shall be deemed to include corporations, partnerships, individuals and associations existing under or authorized by the laws of the United States, the laws of any of the territories, the laws of this or any other state, or the laws of any foreign country.

§ 9. This act shall not be construed to affect, or in any manner refer to or interfere with labor unions, or any other associations of laborers organized for the purpose of promoting the welfare of labor, nor shall it interfere with or suppress associations or organizations intended to legitimately promote the interests of trade, commerce or manufacturing in this state.

§ 10. All acts and parts of acts inconsistent with this act are hereby repealed.

§ 11. This act shall take effect and be in force from and after its passage and publication.

Approved April 17, 1893.

LAWS OF 1897, CHAP. 356.

AN ACT to prevent the combinations of fire insurance companies.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows,

§ 1. No fire, fire and marine, or marine and inland insurance company or association, its agent or representatives doing business in this state, shall, either directly or indirectly, enter into any contract, agreement, combination or compact with any other such company or companies or its or their agents or representatives for the purpose of establishing and maintaining a fixed schedule or schedule of rates; *Provided, however,* That in cities and villages it shall be lawful for the local board of underwriters incorporated under the statutes of this state, and in case of the non-existence of such local board therein, then and in that event it shall be lawful for an association of the local agents in such city or village, to, from time to time, establish and maintain rates therein, and for them and such companies represented by them to enter into any lawful contract or agreement to so establish and maintain rates so made; *Provided, however,* That all such schedules of rates shall at all reasonable times be open to the inspection of the assured. It is hereby made the duty of the commissioner of insurance of this state to enforce compliance to the provisions of this section, and it shall be his duty to revoke the license of each and every such insurance company violating the provisions of this section and to report such violation to the attorney-general of the state for prosecution, and each and every such company violating the provisions of this section shall be subject to a penalty of five hundred (\$500) dollars for each and every violation of the same.

§ 2. This act shall take effect and be in force from and after its passage and publication.

Approved April 27, 1897.

LAWS OF 1897, CHAP. 357.

AN ACT to prevent corporations organized under the laws of this state from entering into any combination, conspiracy, trust, agreement or contract, intended to operate in restraint of any lawful trade or commerce carried on in this state.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

§ 1. Corporations organized under the laws of this state are prohibited from entering into any combination, conspiracy, trust, pool, agreement or contract, intended to restrain

or prevent competition in the supply or price of any article or commodity in general use in this state, or constituting a subject of trade or commerce therein, or to control the price of any such article or commodity, to regulate or fix the price thereof, to limit or fix the amount or quantity thereof to be manufactured, mined, produced or sold in this state, or to fix any standard or figure by which its price to the public shall be in any manner controlled or established.

§ 2. Whenever the attorney-general of this state shall be notified, or shall have reason to believe that any corporation organized under the laws of this state has violated any provision of section 1, of this act, it shall be his duty forthwith to address to any such corporation, or to any director or officer thereof, such inquiries as he may deem necessary, for the purpose of determining whether or not such corporation has violated any provision of section 1, of this act, and it shall be the duty of such corporation, director or officer thereof, so addressed, to promptly and fully answer in writing, under oath, such inquiries, and in case such corporation, or director or officer thereof, shall fail or neglect so to do within sixty days from the receipt of such inquiries, unless such time is extended in writing by the attorney-general, it shall be the duty of the attorney-general to proceed against such corporation as hereinafter provided.

§ 3. In case of the forfeiture or neglect of any corporation organized under the laws of this state, or of any director or officer of such corporation, to answer such inquiries as hereinbefore provided, such failure or neglect is hereby declared to be a forfeiture of the charter of such corporation, and it is hereby made the duty of the attorney-general, on leave granted by the supreme court of this state, upon cause shown, to bring an action for the purpose of vacating the charter and annulling the existence of such corporation.

§ 4. No person shall be excused from answering any of the inquiries herein provided for, nor excused from attending and testifying, nor from producing any books, papers, contracts, agreements or documents, in obedience to a subpoena issued by any lawful authority in any case or proceeding, based upon or growing out of any alleged violation of any of the provisions of this chapter, or of any law of this state in regard to trusts, monopolies or illegal combi-

nations, on the ground of or for the reason that the answer, testimony, evidence, documentary or otherwise, required of him, may tend to criminate him, or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may answer, testify or produce evidence; documentary or otherwise, in obedience to any request under this chapter, or any subpoena, or either of them, in any case or proceeding, except that the charter of any corporation may be vacated and its corporate existence annulled, as hereinbefore provided; and except further, that no person testifying in any case or proceeding aforesaid, shall be exempt from prosecution and punishment for perjury committed in so testifying.

§ 5. This act shall take effect and be in force from and after its passage and publication.

Approved April 27, 1897.

COMMON-LAW DECISIONS.

National Distilling Co. v. Cream City Importing Co.

86 Wis., 352.

August, 1893.

Statement.

Defendant bought goods of plaintiff, who brings this suit to recover the price. Defendant pleads that plaintiff is a member of a combination formed to control all the liquors manufactured in the United States, and that the price of the purchased goods was affected by such combination; that, therefore, the contract for the purchase of the goods was void and plaintiff has no cause of action.

Opinion.

Assuming the plea to be true it is no defense, for the contract between plaintiff and defendant was perfectly legal and in no way in restraint of trade. Any contract between plaintiff and a trust combination is only collateral to the contract between plaintiff and defendant and could not affect its validity.

Plaintiff can recover.

Milwaukee Masons and Builders' Association v. Niezerowski.

95 Wis., 129.

January, 1897.

Statement.

About six-sevenths of the mason contractors of Milwaukee, Wis., belonged to plaintiff association, which passed a private by-law that all bids for work by its members should be first made to the association and that six per cent should be added to the lowest bid and that the lowest bidder should give his note for this six per cent to the association; but if the bids were for repairs and building over, the one who did the original job should be awarded the work and all the others should bid over him to make the builder suppose there was competition. Defendant gave his note for the said six per cent, and it is now sued upon. He pleads illegality of consideration.

Opinion.

The six per cent scheme was in restraint of trade to so great an extent as to make it against public policy and illegal.

No recovery can be had upon the note.

ENGLAND.

COMMON-LAW DECISIONS.

Mitchel v. Reynolds.

1 P. Wms., 181.

1711.

Statement.

Reynolds assigned a lease of a bakery for five years to Mitchel, and agreed not to enter the bakery business in that parish during the said term; and if he did, to pay fifty pounds as damages. Reynolds did enter the business in that parish within five years, and this suit is brought to recover the fifty pounds. Reynolds claims the contract was void, it being in restraint of trade.

Opinion.

If a promise in restraint of trade is founded upon a good consideration, partial as to territory, and reasonable, it will be enforced, but not so if it is general, not to exercise a trade throughout the Kingdom, because it could be no benefit to either party.

Plaintiff can recover damages.

Mogul Steamship Co. v. McGregor, Gow & Co.

1892, Appeal Cases, 25.

Statement.

The defendants are firms and companies operating steam vessels, during the whole year, some on the Great River of China between Hankow and Shanghai and others between Shanghai and European ports. The plaintiffs send vessels to Hankow during the tea season to share the tea-carrying trade. Defendants combined to prevent plaintiffs and other outsiders from obtaining a share of the trade. The means used were the sending of ships to compete with plaintiffs' ships; the lowering of freights; a rebate to those who dealt exclusively with them; the indemnifying other vessels that would compete with the plaintiffs; and the dismissal of agents who were acting for both plaintiffs and defendants.

Plaintiffs bring this suit to recover the damages they have sustained by reason of this combination.

Opinion.

Lord Halsbury delivered the principal opinion, and in it said:

“I am of opinion * * * that the whole matter comes around to the original proposition, whether a combination to trade, and to offer, in respect of prices discounts and other trade facilities, such terms as will win so large an amount of custom as to render it unprofitable for rival customers to pursue the same trade is unlawful, and I am clearly of opinion that it is not.”

No action lies.

CANADA.

COMMON-LAW DECISION.

The Ontario Salt Co. v. The Merchants' Salt Co.

18 Grant's Ch. (Upper Canada), 540.

1871.

Statement.

Several incorporated companies and individuals, engaged in the manufacture and sale of salt, entered into an agreement, whereby the several parties combined under the name of the "Canadian Salt Association" for the purpose of carrying on the salt business. It was agreed that all salt manufactured by them should be sold through the trustees of the association, and that no salt should be sold otherwise.

Opinion.

The court held that this agreement was not void as contrary to public policy; that it was not *ultra vires* of the incorporated companies, and that it would be enforced by an equity court.

ADDENDUM.

ILLINOIS.

ANTITRUST LAW HELD VOID.

Union Sewer Pipe Company v. Connelly.

U. S. CIRCUIT COURT,
NORTHERN DISTRICT OF ILLINOIS,
January 29, 1900.

Statement.

Plaintiff brings suit on promissory notes given by defendant for balance due on purchases of sewer pipe. Defendant gives notices of three special defenses, all based upon the theory that plaintiff was a combination in restriction of trade, contrary—(1) to the common law; (2) to the so-called Sherman Act; (3) to the statute of Illinois taking effect July 1, 1893.

Opinion.

As to the first special defense: "The fact that one party to a contract is engaged in illegal acts will not, at common law, avail the other party as a defense to the enforcement of a contract in itself legal."

As to the second special defense: The so-called Sherman Act does not affect contracts which "merely indirectly, remotely, incidentally, or collaterally regulate to a greater or lesser degree interstate commerce among the States."

As to the third special defense: The statute of July 1, 1893, provides, in section 9, that "the provisions of this act shall not apply to agricultural products or live stock while in the hands of the producer or raiser."

The statute, by virtue of this clause, contains both class and special legislation, and is in contravention of the fourteenth amendment of the Federal Constitution, which forbids any State to deprive any person of the equal protection of the laws, and also in contravention of section 22 of article 4 of the constitution of Illinois, which says: "In all other cases where a general law can be made applicable no special law shall be enacted."

It is suggested that the said ninth section may be declared void without affecting the validity of the remaining clauses of the act. By such a decision the courts would make the act binding upon those classes of persons which the legislature especially exempted from its provisions. This would be judicial legislation of the most flagrant character. Clause 9 taints the whole act and renders it all void.

Verdict must be given for the plaintiff.

TABULAR DIGEST OF THE STATUTES OF THE UNITED STATES AGAINST TRUSTS AND INDUSTRIAL COMBINATIONS.

STATE.	THE EVIL.				PROCEDURE.								PENALTIES.							STATE.				
	Date and citation.	Things forbidden.	Exceptions.	Grade of crime.	Grand jury.	Prosecuting attorney.	Secretary of state.	Courts.	Witnesses.	Affidavits.	Proof.	Injunction.	Disposition of fines.	Imprisonment.	Individual fines.	Firm and corporation fines.	Contracts unenforceable.	Debts uncollectible.	Damages.		Forfeiture of franchise.	Forfeiture of goods.	Foreign corporations.	
UNITED STATES	1887, 1890, 1894: 24 Stat. at Large, 379; 26 Stat. at Large, 209; 28 Stat. at Large, 570.	Every combination in restraint of trade in the District of Columbia; in the Territories; among the several States, or with foreign countries.		Misdemeanor		Each district attorney, in his district, under direction of the Attorney-General, must institute proceedings in equity to restrain violations of this law.		The circuit courts of the United States have jurisdiction.						Not exceeding one year, and, if the crime concerns imports, not less than three months.	Not exceeding \$5,000 fine, or imprisonment, or both.	Not exceeding \$5,000.			Any person damaged by a violation of this law may recover treble damages, costs of suit, and a reasonable attorney's fee.		Property which is the subject-matter of the conspiracy, in transportation from one State to another, or to a foreign country, shall be forfeited to the United States.		UNITED STATES.	
ALABAMA	1883, Criminal Code, § 4145. Laws of 1896-97, No. 634.	Railroad combinations to control freight business and rates. Combinations of insurance companies to raise rates.	Where the combination is approved by railroad commissioners.												\$50 to \$200	\$50 to \$200			On the occurrence of a loss the companies must pay 125 per cent of it.			ALABAMA.		
ARKANSAS	Laws of 1897, Act 46, and Laws of 1899, Act 41.	All combinations which tend to lessen free competition in importation, production, or sale of goods; or to regulate or fix the prices, or to fix premiums on insurance.		Conspiracy	It must be specially instructed as to the provisions of this law by the judges.	The attorney-general and prosecuting attorney of each county to enforce this law. They receive one-fourth the penalty, and in suits to forfeit franchise, \$25 to \$250, in the discretion of the court.	He must each year demand affidavits of an officer of each corporation that it is not connected with an illegal combination. Failure to comply to be reported to prosecuting attorney.	Actions may be brought in any court of competent jurisdiction.		President, secretary, treasurer, or director must each year make affidavit that his corporation is not connected with an illegal combination. For failure, prosecution to be instituted against corporation.	Foreign corporation's agent having violated law is prima facie proof of corporation's guilt.	One-fourth goes to the prosecuting attorney and the rest to the school fund of the county where the offense is committed.	One to ten years in penitentiary, with or without a fine of \$500 to \$2,000.	Any person who shall engage in the conspiracy, \$200 to \$5,000.	Company must pay 25 per cent more on a policy than it otherwise would have to. \$200 to \$5,000. Each day is a separate offense.			Any person injured may recover of those operating the trust the full price paid for the goods he bought affected by the trust.	The franchise of a corporation is forfeited for violation of this law.		A foreign corporation having violated this law is prohibited from doing business in the State.	ARKANSAS.		
COLORADO	1876, Constitution, Art. 15, § 5.	Consolidating competing railroads.																					COLORADO.	
CONNECTICUT	1813, Constitution, Art. 1, § 1.	None entitled to exclusive public emoluments.																					CONNECTICUT.	
GEORGIA	Laws of 1896, page 68.	Essentially the same as in Arkansas, except that insurance is not expressly mentioned.	This law does not apply to live stock and agricultural products in the hands of the raiser or producer.	Conspiracy against trade.	Must be charged by judges as to this law.	The attorney-general must enforce the act by due process of law.													Person injured may recover price paid for goods.	Guilty corporation forfeits franchise.		Guilty foreign corporation excluded from State.	GEORGIA.	
IDAHO	1889, Constitution, Art. 11, § 18.	Combining companies to limit prices.																					IDAHO.	
ILLINOIS	Laws of 1891, page 206; Laws of 1893, pages 89 and 182; Laws of 1897, page 298.	Any trust, pool, combine, confederation, agreement or understanding for regulating or fixing the prices of goods or to fix or limit the quantity to be made or sold; also owning or issuing trust certificates.	In production of articles of merchandise, the cost of which is mainly made up of wages, combinations shall be lawful when the chief object and effect is to maintain or increase wages. Live stock and agricultural products in hands of raiser or producer.	Misdemeanor	Indictment need state only purposes of trust and that defendant was a member.	The prosecuting attorneys shall enforce this law in their respective jurisdictions. On notice from the secretary of state that a corporation neglects required affidavit, they may at once proceed to forfeit charter and collect fines.	On the 1st of each September, and at any other time, on reasonable evidence that a corporation has entered a trust, he must require of its president, secretary, treasurer, or any director, under oath, a statement as to whether it is connected with a trust.			No corporation, firm, or individual shall be subject to criminal prosecution by reason of anything truthfully disclosed by this law, or in any testimony elicited in the execution thereof.	Each year the officers of each corporation in the State must furnish an affidavit as to whether it is connected with a trust, and for failure to do so its charter may be taken away and \$50 forfeited for each day's neglect.	A preponderance of evidence shall convict. All members of trust need not be shown.	The informer gets one-fifth of the fine and the remainder goes to the county where the case is tried.	Not exceeding one year in county jail.	Member of a firm or officer of a corporation who violates the law, \$200 to \$1,000 fine, or imprisonment, or both. Laws of 1893, page 182, \$2,000-\$5,000.	First offense, \$500 to \$2,000; second offense, \$2,000 to \$5,000; third offense, \$5,000 to \$10,000; subsequent offenses, \$15,000. Laws of 1893, page 182, \$2,000-\$5,000.	Contracts made in violation of the act are void.	A buyer of goods from a trust is not liable for their price.		When a corporation neglects to furnish required affidavit, proceedings may be instituted to forfeit its charter.		On failure to furnish affidavit when requested to do so by the secretary of state, the attorney-general may institute proceedings to prohibit a foreign corporation from doing business within the State. Guilty foreign corporation excluded from State.	ILLINOIS.	
INDIANA	Laws of 1897, Chapter 104.	Essentially the same as Arkansas, except insurance is not expressly mentioned.	The law does not apply to agricultural products nor live stock while in the possession of the producer or raiser.	Conspiracy against trade.	Must be charged by judges as to this law.	The attorney-general shall enforce the act by due process of law.													One damaged can recover the price paid for the goods.	Guilty corporation forfeits franchise.			INDIANA.	
	Laws of 1899, Chapter 148.	Combinations to prevent dealers and manufacturers from selling supplies to dealers, mechanics, and artisans.		Conspiracy against trade.		The prosecuting attorney of any county where the offense is committed must bring action against offender.													Agreements to combine are void.			One injured by illegal combination may recover damages, costs, and attorney's fee.		
IOWA	1890, Code, §§ 5060-5067.	Any trust, pool, combine, confederation, agreement or understanding for regulating or fixing the prices on goods or to fix or limit the quantity to be made or sold; also owning or issuing trust certificates.		Conspiracy to defraud.	They shall inquire whether there is a trust in their respective counties.	County attorneys, in their counties, and the attorney-general shall enforce the law, and receive an extra fee of one-fifth of the fine if they act separately and one-fourth if together.	Having reason to believe that a corporation is connected with a trust, he must notify it to withdraw and that unless it does so its charter will be forfeited.							One-fifth to one-fourth goes to the prosecuting attorneys.	Not exceeding one year in county jail.	\$500 to \$5,000 fine, or imprisonment, or both.	1 to 20 per cent of its capital.	Contracts made in violation of the act are void.	Members of a trust can not collect pay for goods sold.			If a company does not withdraw from trust on thirty days' notice it forfeits its franchise.		IOWA.
KANSAS	Laws of 1887, Chapter 175, and laws of 1889, Chapter 257.	Creating or maintaining a confederation to regulate the price or quantity of goods, fees of attorneys and doctors, or rate of interest. Owning or issuing trust certificates.		Misdemeanor	Must be specially instructed as to the provisions of this law by the judges.	Each county attorney, in his county, must enforce this law. If he fails to do so, the attorney-general must, and the county attorney is guilty of a misdemeanor, fined \$100 to \$500, imprisoned ten to ninety days, and forfeits his office. Executive officers of county, city, or town must inform county attorney of violation of the act upon pain of forfeiture of office and fine of \$100 to \$500.													Defendant may plead in bar that plaintiff is a member of a trust.		One damaged may recover the price paid for the goods or full amount of money borrowed.		KANSAS.	

TABULAR DIGEST OF THE STATUTES OF THE UNITED STATES AGAINST TRUSTS AND INDUSTRIAL COMBINATIONS—Continued.

STATE.	THE EVIL.				PROCEDURE.										PENALTIES.						STATE.		
	Date and citation.	Things forbidden.	Exceptions.	Grade of crime.	Grand jury.	Prosecuting attorney.	Secretary of state.	Courts.	Witnesses.	Affidavits.	Proof.	Injunction.	Disposition of fines.	Imprisonment.	Individual fines.	Firm and corpora-tion fines.	Contracts un-enforceable.	Debts uncol-lectible.	Damages.	Forfeiture of fran-chise.		Forfeiture of goods.	Foreign corpora-tions.
KANSAS—Continued.	Laws of 1897, Chapter 253.	Creating or maintaining a combine (1) to regulate or fix prices of goods, or to fix or limit the quantity to be made or sold, or (2) to fix or limit the premium for fire insur-ances, or (3) to deal in goods owned by a company prohibited from doing business in the State.		Misdemeanor.		Each county attorney, in his county, and the attorney-general, to prosecute all persons violating this law, and all State and county officials having notice of offenses shall notify the prosecuting attorneys and furnish names of witnesses. Any officer failing to perform above acts shall forfeit his office and be fined \$100 to \$1,000.		Circuit courts have jurisdiction.	The circuit courts may, upon good cause, subpoena witnesses named by the county attorney and examine them concerning violations of this act, and such witnesses must answer all questions, but the evidence shall not be used against them in a criminal action.					Thirty days to six months.	\$100 to \$1,000, and forfeits \$100 for each day the violation continues. Fine and imprisonment.	\$100 to \$1,000, and forfeits \$100 for each day the violation continues.	All contracts in violation of this act are void.		All damages sustained and attorney's fee may be recovered from any person connected with the trust.		Guilty domestic corporation forfeits franchise.	Guilty foreign corpora-tion excluded from State.	KANSAS—Continued.
	Laws of 1899, Chapter 253.	Combinations with persons within or without the State; (1) to defraud a shipper of seeds, grain, hay, or live stock out of part of the net weight; (2) to prevent one from selling such articles without the agency of a third person; (3) and to prevent grain being shipped unless controlled by a warehouseman.		Misdemeanor.		The attorney-general must enforce this act.		District and supreme courts have jurisdic-tion to enjoin violation of the act.						(3) Ninety days to one year in county jail.	(1) \$100 to \$1,000; (2) \$1,000 to \$5,000; (3) \$1,000 to \$5,000, with or without im-prisonment for each offense.	(1) \$100 to \$1,000; (2) \$1,000 to \$5,000; (3) \$1,000 to \$5,000 for each offense.		One injured may recover threefold damages, costs, and a reasonable attorney's fee.					
KENTUCKY	1890, Kentucky Stat-utes, Chapter 101.	Essentially the same as (1) in Loui-siana.		Conspiracy.	Specially instructed as to this law by the grand jury.									Six months to one year in county jail.	\$500 to \$5,000 fine, or impris-onment, or both.	\$500 to \$5,000.	Contracts made in violation of the act are void.	Trust can not col-lect price for goods sold.			Guilty domestic cor-poration forfeits franchise.		KENTUCKY.
LOUISIANA	Laws of 1890, Act 89; Laws of 1892, Act 90, and Laws of 1894, Act 173.	(1) Combining to regulate or fix the price or quantity of goods to be sold. Owning or issuing trust cer-tificates. (2) Issuing or receiving cer-tificates is merely declared unlawful.	Agricultural products and live stock in the hands of the producer or raiser and combinations of laborers to increase wages or redress griev-ances.	Misdemeanor.	An indictment need state only the pur-poses of the trust and that defendant was a member.	He must of his own motion enforce forfeitures of fran-chises and enjoin convicted foreign corporations.				In an action all mem-bers of trust need not be shown.	Convicted foreign cor-porations may be en-joined from doing business in the State.			Six to twelve months in the penitentiary.	\$100 to \$1,000 fine, or impris-onment, or both.	\$100 to \$1,000.	Contracts con-trary to this law are void.				Guilty domestic cor-poration forfeits franchise.	Guilty foreign corpora-tion excluded from State, and it may be kept out by injunc-tion.	LOUISIANA.
MAINE	Laws of 1889, Chapter 206.	Combinations of firms or corpora-tions organized to produce articles entering into general use.	The law does not operate upon those that withdraw from trusts within ninety days from passage of the act.	Misdemeanor.		On neglect of corporation to give required affidavit he must bring suit to forfeit its charter.	He must send each corpora-tion a copy of this act and demand an affidavit as to whether it is connected with a trust.	The supreme court may decree disso-lution of a corpora-tion.				As soon as the act passed affidavits were required as to whether corpora-tions were connected with trust. For neglect to give them their charters might be forfeited.				\$5,000 to \$10,000.	Instruments grow-ing out of trust are void.				For neglect to furnish required affidavit a franchise might be forfeited.		MAINE.
MICHIGAN	Laws of 1889, Act 225.	Essentially the same as Kansas, Act of 1897, minus 2 and 3. Making con-tract to combine is one crime and acting under it is another.	Agricultural products and live stock in the hands of the producer or raiser and organizations of laborers for the benefit of their members. The law shall not affect contracts for the good will of a business.	Misdemeanor.		Believing he can establish a case against a corporation, the attorney-general must institute proceedings in the nature of quo warranto.	He shall publish the act in daily papers for four suc-cessive weeks after its passage.							Agreeing to combine, not exceeding six months in county jail. Acting under contract, not exceed-ing one year in prison or six months in jail.	Making contract to com-bine, \$50 to \$300. Acting under contract, \$100 to \$500. Fine or impris-onment, or both.	Making contract, \$50 to \$300. Acting under contract, \$100 to \$500.	Contracts viola-ting law, made in State or out, void.				Guilty domestic cor-poration forfeits franchise, but it is given thirty days after the passage of the act to withdraw from trust.		MICHIGAN.
	Laws of 1899, Act 49.	Combinations (1) to fix the price of transportation or any article of merchandise; (2) to limit or reduce the production of any commodity; (3) to own or issue trust certificates; or (4) to combine to put business in the control of trustees with intent to restrain trade.		Conspiracy against trade, and mis-demeanor.	An indictment need not state the name nor the description of the combination, but only its effects and that accused was a member.	It is the duty of the attorney-general or proper county attorney to institute quo warranto proceed-ings against a corporation violating the act.	If a foreign corporation vio-lates this act, the secre-tary of state may revoke its certificate to do busi-ness in the State.	Circuit and supreme courts have jurisdic-tion.						Six months to one year. Each day's violation is a sepa-rate offense.	\$50 to \$5,000. Violation of (3) and (4), \$50 to \$1,000. The provisions of the act are cumulative of each other.	\$50 to \$5,000. Viola-tion of (3) and (4), \$50 to \$1,000.	All contracts in violation of act are void.		One injured may recover twofold damages and costs.		After a prosecuting attorney notifies the offender he forfeits \$50 each day he re-mains connected with the combina-tion.	A foreign corporation doing business in this State forfeits the right by viola-ting the statute.	
MINNESOTA	Laws of 1891, Chapter 99; Laws of 1899, Chapter 330.	All combinations which tend to lessen free competition in importa-tion, production, or sale of goods.		Felony.		Attorney-general must enforce the act.		Any of competent jurisdiction.		All must testify, but the tes-timony can not be used against the witnesses.				Three to five years.	\$500 to \$5,000, or impris-onment.	\$500 to \$5,000.	Trust can not en-force contracts.				Guilty corpora-tion forfeits its charter.	Guilty foreign corpora-tion prohibited from doing business in the State.	MINNESOTA.
MISSISSIPPI	1890, Annotated Code, Chapter 140.	Combinations (1) to limit, increase, or reduce the price or production of a commodity; (2) to own or issue trust certificates; (3) to place the control of business in the power of trustees; (4) to prevent bids for public works.	The act does not apply to agricul-tural products in the hands of the producer, nor to societies of arti-sans, employees, and laborers formed to benefit their members.	Criminal conspir-acy.											\$25 to \$1,000.	\$25 to \$1,000.	Contracts to com-bine or to fur-ther the object of the combina-tion are void.	When (4) has been violated, money due can not be collected.	Double the amount paid for any article may be recovered from any member of the combination, and all consequential damages.		Every corporation violating this act shall forfeit its char-ter.	A foreign corporation violating this law shall be prohibited from doing business in the State.	MISSISSIPPI.
MISSOURI	Laws of 1891, page 186, amended by Laws of 1895, page 237, amended by Laws of 1897, page 208, and Laws of 1899, page 314; Laws of 1899, pages 129, 316, 318, and 320.	Creating or maintaining a trust, pool, combine, agreement, confeder-ation, or understanding (1) to regu-late or fix prices on goods, or to fix or limit the quantity to be made or sold, or (2) to fix or limit the premium for fire insur-ances; (3) to own or issue trust certificates; (4) to deal in goods owned by a com-pany prohibited from doing busi-ness in the State.	It does not apply to insurance com-panies in cities of 100,000 inhab-itants.	Called a conspir-acy to defraud, to deal in goods of a company barred from the State is a felony.		On neglect to furnish required affidavit he must pro-ceed to forfeit charter and collect fines. Where a charter is forfeited he receives \$25 to \$500 from the corporation. He may at any time require affidavits in the same manner as the secretary of state if he has reasonable proof of violations of this act. He receives one-fourth of the penalties.	He must, about the first of each July, send to the president, secretary, or treasurer of every corpora-tion in the State an in-quiry as to whether it is connected with a trust, and demand answer under oath. Neglect to answer must be certified to prosecuting attorney. All county officers must furnish him information when he requires it.	Any court of compe-tent jurisdiction. The clerk must not-ify the secretary of state when a foreign corpora-tion is adjudged guilty.	All persons may be com-pelled to disclose any in-formation they may pos-sess concerning violations of this law either before or after suit is com-menced, but no person's evidence shall be used against him in a criminal prosecution, neither shall any prosecution be com-menced against him on account of his evidence.		That an agent of a for-eign corporation violated the law is prima facie proof against the corpora-tion.		One-fourth goes to the prosecuting attorney and the remain-der to the school fund.	For dealing in goods of a corporation prohibited from doing business in the State, not exceed-ing three years in penitentiary or one year in county jail.	For each day, \$5 to \$100. For dealing in goods of a corporation prohibited from doing business in the State, \$100 to \$1,000. Fine or imprisonment, or both.	For each day, \$5 to \$100. For dealing in goods of a corpora-tion prohibited from doing business in the State, \$100 to \$1,000.	Contracts made in violation of this law are void.	Purchaser of any article from a violator of this law is not liable for its price.	One damaged by the viola-tion of this law may re-cover threefold damages, costs, and a reasonable attorney's fees.		A domestic corpora-tion forfeits its franchise for viola-tion of this law.	A foreign corporation having violated this law is prohibited from doing business in the State.	MISSOURI.

TABULAR DIGEST OF THE STATUTES OF THE UNITED STATES AGAINST TRUSTS AND INDUSTRIAL COMBINATIONS—Continued.

STATE.	THE EVIL.				PROCEDURE.								PENALTIES.						STATE.				
	Date and citation.	Things forbidden.	Exceptions.	Grade of crime.	Grand jury.	Prosecuting attorney.	Secretary of state.	Courts.	Witnesses.	Affidavits.	Proof.	Injunction.	Disposition of fines.	Imprisonment.	Individual fines.	Firm and corporation fines.	Contracts unenforceable.	Debts uncollectible.		Damages.	Forfeiture of franchise.	Forfeiture of goods.	Foreign corporations.
MONTANA	1895, Penal Code, § 321.	All combinations which tend to lessen free competition in importation, production, or sale of goods.	Combinations of laborers or farmers.											Not exceeding five years in State prison.	Not exceeding \$10,000 fine, or imprisonment, or both.	Not exceeding \$10,000.				Guilty corporation forfeits its franchise.	Property of corporation goes to the State on conviction.	Guilty foreign corporation excluded from State.	MONTANA.
NEBRASKA	Laws of 1897, Chapter 79.	Confederation to regulate prices on goods, or to fix the quantity to be made or sold, or to fix or limit the premium for insurance.	Combinations of laborers to increase wages.	Misdemeanor.	Indictment need state only purposes of trust and that defendant was a member.	He institutes suit to take away the charter of corporations, and enjoin foreign corporations. He receives \$100 to \$500 for each charter forfeited, to be taxed against the company.			All must testify, but the testimony can not be used against the witnesses.		In an action all members of trust need not be shown.	Guilty foreign corporations may be enjoined from doing business in the State.			\$25 to \$5,000.	\$25 to \$5,000.	Contracts contrary to this law are void.	Purchaser not liable to violator for price.	All damages, costs of suit, and reasonable attorney's fee may be recovered.	A domestic corporation forfeits its franchise for violation of this law.	A guilty foreign corporation is excluded from the State.	NEBRASKA.	
	Laws of 1897, Chapter 80.	Combinations to prevent competition among grain dealers.		Felony.									One-half goes to person furnishing evidence. Goes to school fund.	Not exceeding six months in penitentiary.	\$1,000 to \$2,000 fine, or imprisonment, or both.	\$1,000 to \$2,000.			Of any member may be recovered all damages and a reasonable attorney's fee.		Its right to do business may be revoked for one year.		
	Laws of 1897, Chapter 81.	Creating or maintaining a trust, pool, combine, or confederation to fix or limit the premium for fire insurance, or to control agents' commissions.		Misdemeanor.					Members of company may be called by auditor and questioned under oath. If they fail to come, he may revoke its right to do business for one year. Also like first Nebraska act.						Each offense \$100 to \$500.	Each offense, \$100 to \$500.							
NEW MEXICO	1891, Compiled Laws, §§ 1282-1294.	(1) Any combination to control the price or quantity of a product of the soil, mine, or factory. (2) Any attempt to monopolize the trade or commerce of the Territory.		Misdemeanor.									(1) Not exceeding one year or until the fine imposed is paid; (2) not exceeding one year.	(1) \$100 to \$1,000 and imprisonment; (2) not over \$1,000 fine, imprisonment, or both.	(1) \$100 to \$1,000. (2) Not over \$1,000.	Contracts in violation of the act are void.	One violating the act can not recover for goods sold.						NEW MEXICO.
NEW YORK	1881, Penal Code, § 163; Laws of 1897, Chapter 384, § 7; Laws of 1899, Chapter 690.	Combinations creating a monopoly in the production or sale of any commodity of common use, or restraining competition in the supply or price.		Misdemeanor.		The attorney-general may bring suit to enjoin violation of this law. He may get an order from the court and call witnesses before a referee and have their testimony taken before commencing a suit.			Witnesses may be called by attorney-general before commencement of an action, and they must testify to all they know, but can not be prosecuted for any act concerning which they testify.		Violation of this law may be enjoined at the request of the attorney-general.		Not exceeding one year.	Not exceeding \$5,000 fine, or imprisonment, or both.	Not exceeding \$5,000.	All contracts in violation of the act are illegal and void.					The attorney-general may enjoin a foreign corporation from doing acts within the State contrary to this law.		NEW YORK.
NORTH CAROLINA	Laws of 1889, Chapter 374.	Same as in South Carolina; and selling goods less than cost to break down competition.	Combinations of consumers to protect themselves against imposition in the cost of articles for their own use.	Misdemeanor.									Each offense, not exceeding ten years.	Not exceeding \$10,000 fine, or imprisonment, or both, for each offense.	Not exceeding \$10,000 each offense.								NORTH CAROLINA.
	Laws of 1899, Chapter 666.	To own or issue trust certificates; a combination to fix or regulate prices, or to fix or limit the quantity to be produced of any article.	The act does not apply to present investments of charitable institutions, to agricultural products in the hands of the producer, to the lumber interests of the State, to cotton and woolen mills, to fishing, trucking, and canning industry, nor to merchants in the State not interested in a trust.	Conspiracy to defraud.	An indictment need not give name of trustee, or how or where it was created; but it is sufficient if it state the purposes and effects and that accused was a member.	When a charter shall be declared forfeited by a court, it shall allow the prosecuting attorney from \$100 to \$500, but if the case be appealed to the supreme court the attorney-general shall receive one-half. It shall be paid from the assets of the corporation.	Any court of competent jurisdiction.			A preponderance of evidence shall be sufficient to convict.		They go to the State.		\$100 for each day shall be forfeited to the State.	\$100 for each day shall be forfeited to the State.	Any contract in violation of the act is void.				For any violation of the act a domestic corporation forfeits its charter.			
NORTH DAKOTA	Laws of 1897, Chapter 141, and Revised Codes, Chapter 51.	Essentially the same as in South Carolina.		Conspiracy against trade.	Must be charged by judges as to this law.	The attorney-general must enforce this law.	Any court of competent jurisdiction.						One to ten years in penitentiary.	\$100 to \$5,000 fine, or imprisonment, or both.	\$100 to \$5,000.	Contracts to combine are void.		One damaged may recover price paid for goods controlled by the trust.		Guilty domestic corporation forfeits franchise.	Guilty foreign corporation excluded from State.		NORTH DAKOTA.
OHIO	Laws of 1898, page 143.	To own or issue trust certificates; a combination to fix or regulate prices, or to fix or limit the quantity to be produced of any article.		Conspiracy against trade.	Same as in North Carolina, Law of 1899.	If a corporation violates the act, the attorney-general or the prosecuting attorney of the proper county must bring suit to take away charter. The attorney-general may enjoin foreign corporate violators from doing business in the State.	Suit may be brought in the circuit or supreme court.			Character of combination may be established by proof of its reputation.	Foreign corporations may be enjoined from doing business in the State.		Six months to one year. Fine, imprisonment, or both.	\$50 to \$5,000. Where the means used is a trust in its proper sense, \$50 to \$1,000. The penalties are cumulative.	\$50 to \$5,000. When the means used is a trust in its proper sense, \$50 to \$1,000. The penalties are cumulative.	\$50 to \$5,000. When the means used is a trust in its proper sense, \$50 to \$1,000. The penalties are cumulative.	Any contract in violation of the law is void.	Injured party may recover double damages and cost.		After due notice from the attorney-general or prosecuting attorney, \$50 is forfeited for each day's continuance of the violation.	A foreign corporation violating the act may be enjoined from doing business in the State.		OHIO.
OKLAHOMA	1890, Statutes of Oklahoma, Chapter 83.	Essentially the same as in South Carolina.		Misdemeanor.		The prosecuting attorney, in his county, must enforce the act, and receives one-fifth the fines.			All must testify, but the evidence can not be used against them in a criminal trial.				One to ten years.	\$50 to \$500.	\$50 to \$500. Officers for second offense pay double first fine.		One violating this law can not recover for goods sold.	One injured may recover damages, costs, and attorney's fee.	The franchise of a corporation is forfeited for violation of this law.		No court shall recognize the corporate existence of a foreign corporation adjudged guilty.		OKLAHOMA.
SOUTH CAROLINA	Laws of 1897, No. 285; Laws of 1899, Chapter 39.	All combinations which tend (1) to lessen free competition in importation, production, or sale of goods, or to regulate or fix prices; or (2) to fix premiums on insurance.	It does not apply to officers performing official duty under the laws of the State.	Conspiracy against trade.		Upon complaint by affidavit attorney-general must proceed to forfeit the charter of a guilty corporation; (2) attorney-general must enforce it.		(2) The officers to whom insurance companies report must revoke the license of a corporation to do business in the State, and for three years it shall not be renewed.					One to ten years.	\$100 to \$5,000 fine, or imprisonment, or both; (2) not less than \$500.	\$100 to \$5,000; (2) not less than \$500.	Contracts to combine are void.		One damaged may recover price paid for goods controlled by the trust.	Guilty domestic corporation forfeits franchise.			SOUTH CAROLINA.	
SOUTH DAKOTA	Laws of 1890, Chapter 154, amended by Laws of 1893, Chapter 171.	Essentially the same as in South Carolina, plus combinations to increase interest.		Felony.		Each State's attorney, in his county, on reasonable ground must prosecute for violation of this law, and at the request of a citizen in his county apply for an injunction.	Judge of circuit or supreme court may enjoin violations.				Violations of this law may be enjoined.		If agent of guilty non-resident dealer, not exceeding five years; otherwise not exceeding three years.	Not exceeding \$1,000 fine, or imprisonment, or both.	Not exceeding \$1,000.			One may recover all damages. A nonconsenting stockholder may recover price of stock.		An agent selling goods in the State for non-resident wholesale dealer, who refuses to sell to dealers in the State at wholesale price, is deemed guilty; and like Ohio.		SOUTH DAKOTA.	
	Laws of 1897, Chapter 84.	Essentially the same as in South Carolina.	Combinations of laborers to increase wages.	Misdemeanor.		He must, upon the affidavit of a person aggrieved, prosecute a violator of this act.							One-half to persons aggrieved; one-half to the county.	First offense, \$1,000 to \$5,000; second offense, \$5,000 to \$10,000.	First offense, \$1,000 to \$5,000; second offense, \$5,000 to \$10,000.								

TABULAR DIGEST OF THE STATUTES OF THE UNITED STATES AGAINST TRUSTS AND INDUSTRIAL COMBINATIONS—Continued.

STATE.	THE EVIL.				PROCEDURE.								PENALTIES.							STATE.			
	Date and citation.	Things forbidden.	Exceptions.	Grade of crime.	Grand jury.	Prosecuting attorney.	Secretary of state.	Courts.	Witnesses.	Affidavits.	Proof.	Injunction.	Disposition of fines.	Imprisonment.	Individual fines.	Firm and corporation fines.	Contracts unenforceable.	Debts uncollectible.	Damages.		Forfeiture of franchise.	Forfeiture of goods.	Foreign corporations.
TENNESSEE	Laws of 1891, Chapter 218; Laws of 1897, Chapters 93 and 94.	All combinations that tend to prevent free competition in the production, importation, or sale of goods, or to fix or regulate the price.	It does not apply to agricultural products or live stock while in the possession of the producer or raiser.	Concerning coal, misdemeanor; otherwise felony.	They must be instructed by the judges in special reference to this law.	The attorney-general must enforce this law.		Action to forfeit charter should be in the circuit court.	Persons connected with a trust can be compelled to testify and produce books and papers, but such evidence can not be used against the witnesses.					Penitentiary, one to ten years.	To limit output of coal, not less than \$1,000. Other acts \$100 to \$5,000 fine, or imprisonment, or both.	To limit output of coal, not less than \$1,000. Other acts \$100 to \$5,000.	Contracts made by a trust can not be enforced.	If cause of action grows out of trust, that may be pleaded in bar.	Any person injured may recover what he paid for the goods controlled by the trust.	Guilty domestic corporation forfeits franchise.		Guilty foreign corporation excluded from State.	TENNESSEE.
TEXAS	Laws of 1895, Chapter 83. Laws of 1899, Chapter 146.	Like Tennessee, plus combinations to control transportation and to prevent competition by aids to commerce.	Same as in Tennessee, plus labor organizations and sale of good will of a business.	Conspiracy to defraud.	Indictment need state only purposes of trust and that defendant was a member.	He must prosecute to take away charters and recover forfeits of his own motion.	Secretary of state must require affidavits that corporations are not connected with any trust.	Cases under acts have precedence.	Same as in Tennessee.		Need not show all members. Act of agent prima facie proof against principal.	Guilty foreign corporations may be enjoined from doing business in this State.		One to ten years in penitentiary.	Each day is an offense; \$200 to \$5,000 fine, or imprisonment, or both.	\$200 to \$5,000.	Contracts contrary to this law are void.	Price of goods sold can not be collected.		Guilty domestic corporation forfeits franchise.		Guilty foreign corporation excluded from State, and may be kept out by injunction.	TEXAS.
UTAH	1896, Revised Statutes, § 1752-1762.	Combinations to prevent free competition in the production, importation, or sale of goods, transportation or professional services; and issuing or owning trust certificates.		Conspiracy to defraud.		He must notify a corporation connected with a trust to withdraw, and on failure to do so within thirty days, prosecute it to take away its charter.		Any court of competent jurisdiction.					Not exceeding one year in county jail.	\$100 to \$1,000 fine, or imprisonment, or both.	First offense, \$500 to \$5,000; second offense, \$500 to \$5,000; third offense, \$5,000 to \$10,000; subsequent offenses, \$5,000.			Treble damages may be recovered by one injured.	If on notice of thirty days it does not withdraw it forfeits its franchise.			UTAH.	
WASHINGTON	1889, Constitution, Art. 12, § 22.	Combinations to limit prices shall not be allowed.													(1) \$50 to \$3,000 for each offense.	(1) \$50 to \$3,000 for each offense. (2) For each violation, \$500.	Contracts to combine are void.		Any person injured may recover his damages and costs of suit.	A domestic corporation forfeits its franchise for a violation of this law.		Commissioner of insurance to revoke licenses of all guilty insurance companies.	WASHINGTON.
WISCONSIN	Laws of 1893, Chapter 219, amended by laws of 1897, Chapter 357. Laws of 1897, Chapter 356.	All combinations (1) that tend to prevent free competition in the production, importation, or sale of goods, or to fix or regulate the price; (2) that fix fire and marine insurance rates.	Labor unions and combinations to legitimately promote manufacturing and trade. Under (2) in cities and villages a local association may maintain rates.	Conspiracy		Having reason to believe a corporation is violating the act, he may call for affidavit as to whether it is, and for neglect to furnish it proceed to take away its charter. He must bring suits to enjoin violations.		Circuit court may restrain violation.	Persons connected with a trust can be compelled to testify and produce books and papers, but such evidence can not be used against the witnesses.	Attorney-general may require affidavit of a corporation as to whether it is connected with a trust. On neglect to furnish it, the corporation forfeits its charter.												WISCONSIN.	

PART II.

**DIGEST OF CORPORATION LAWS, APPLICABLE TO
LARGE INDUSTRIAL COMBINATIONS.**

**PREPARED BY
FREDERIC J. STIMSON,
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INTRODUCTORY NOTE.

This report deals with the statutory corporation law of the several States and Territories with regard to the following specific matters, viz:

- I. The amount of the authorized capital stock.
- II. The organization tax or license fee.
- III. The precise method of paying in the capital stock, whether cash, property, or no payment necessary.
- IV. The amount of the stockholders' liability for debts of the corporation.
- V. The statutory powers and limitations of corporations.
 - (a) Their power to consolidate with other corporations.
 - (b) Their power to lease or contract with other corporations.
 - (c) Their power to own the stock of other corporations.
 - (d) Limitations on character of business the corporation is permitted to carry on.

Only such laws and enactments as apply to ordinary business corporations organized for pecuniary profit are included. The laws with regard to foreign, municipal, charitable, insurance, and banking corporations, loan associations and trust companies, and public or quasi-public corporations, such as railroads, express, canal, telephone, telegraph, gas, and electric-light companies are not given unless expressly so stated; and the terms "any corporation" and "other corporations" wherever used are to be understood as restricted to the field covered by this report.

This report is complete down to and including all the published laws of 1899.

TABLE OF CITATIONS.

Citations are made from the following codes and compilations in the various States and Territories:

- Alabama*: Code of Alabama, 1896.
Arizona: Revised Statutes of Arizona, 1887.
Arkansas: Sandel and Hill's Digest of the Statutes of Arkansas, 1894.
California: Deering's Annotated Codes and Statutes of California, 1885.
Colorado: Mills's Annotated Statutes of Colorado, 1891.
Connecticut: General Statutes of Connecticut, 1888.
District of Columbia: Compiled Statutes of the District of Columbia, 1894.
Florida: Revised Statutes, 1892.
Georgia: Code of Georgia, 1895.
Idaho: Revised Statutes of Idaho, 1887.
Illinois: Starr and Curtis's Annotated Illinois Statutes, 1896.
Indiana: Indiana Statutes, 1894.
Indian Territory: Indian Territory Statutes, 1899.
Iowa: McClain's Annotated Code of Iowa, 1888.
Kansas: General Statutes of Kansas, 1889.
Kentucky: Kentucky Statutes, 1894.
Louisiana: Revised Laws of Louisiana, 1897.
Maine: Revised Statutes of Maine, 1884.
Maryland: Public General Laws of Maryland, 1888.
Massachusetts: Public Statutes of Massachusetts, 1882.
Michigan: Howell's Annotated Statutes and Supplement, 1890.
Minnesota: Statutes of Minnesota, 1894.
Mississippi: Annotated Code of Mississippi, 1892.
Missouri: Revised Statutes of Missouri, 1889.
Montana: Montana Civil Code, 1895.
Nebraska: Compiled Statutes of Nebraska, 1895.
Nevada: General Statutes of Nevada, 1885.
New Hampshire: Public Statutes of New Hampshire, 1891.
New Mexico: Compiled Laws of New Mexico, 1897.
New York: General Laws of New York, 1896.
North Carolina: Code of North Carolina, 1883.
North Dakota: Revised Code of North Dakota, 1895.
Ohio: Annotated Statutes of Ohio, 1897.
Oklahoma: Statutes of Oklahoma, 1893.
Oregon: Hill's Annotated Laws of Oregon, 1892.
Pennsylvania: Pepper and Lewis Digest of the Laws of Pennsylvania (cited by topics), 1894.

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- Rhode Island*: General Laws of Rhode Island, 1896.
South Carolina: Revised Statutes of South Carolina, 1893.
South Dakota: Annotated South Dakota Statutes, 1899.
Tennessee: Code of Tennessee, 1896.
Texas: Revised Statutes of Texas, 1895.
Utah: Revised Statutes of Utah, 1898.
Vermont: Vermont Statutes, 1894.
Virginia: Code of Virginia, 1887.
Washington: General Statutes of Washington, 1891.
West Virginia: Code of West Virginia, 1891.
Wisconsin: Wisconsin Statutes: Sanborn and Berryman's Annotations, 1898.
Wyoming: Revised Statutes of Wyoming, 1887.

DIGEST OF CORPORATION LAWS.

I.

THE AMOUNT OF THE AUTHORIZED CAPITAL STOCK.

A. THE STATUTORY MINIMUM.

- a. **Five hundred dollars (\$500).**
Vt.: Stat., § 3728.
Va.: Code, § 1148; L. 1890, p. 56.
- b. **One thousand dollars (\$1,000).**
Me.: L. 1891, Ch. 99.
Mass.: Corporations for cooperative trade. P. S., Ch. 106, § 9.
Mich.: Corporations for manufacturing cheese or other products of milk. Stat., § 4161, a, 1.
N. H.: P. S., Ch. 147, § 6.
- c. **Two thousand dollars (\$2,000).**
Del.: L. 1899, Ch. 273, § 7, ¶ 4.
Mo.: R. S., § 2772.
N. J.: L. 1898, Ch. 172, § 2.
- d. **Five thousand dollars (\$5,000).**
La.: L. 1888, p. 27.
Mass.: Except corporations for cooperative trade. (*See a, 2, supra*) P. S., Ch. 106, §§ 8, 9, 11, 13, 14; L. 1899, Ch. 199.
Mich.: Except corporations for manufacturing cheese, etc. (*See a, 2, supra.*) Stat., § 4161, a, 1.
- e. **Ten thousand dollars (\$10,000).**
Minn.: Except manufacturing or mechanical corporations. Stat., §§ 2797, 2806.

B. THE STATUTORY MAXIMUM.

- a. **One hundred thousand dollars (\$100,000).**
Mass.: Corporations for cooperative trade. P. S., Ch. 106, § 9.
- b. **Five hundred thousand dollars (\$500,000).**
Mass.: Except corporations for cooperative trade (*see b, 1 supra*); and except manufacturing and mechanical corporations, unlimited. P. S., Ch. 106, §§ 8, 11, 13, 14; L. 1899, Ch. 199.

- c. **One million dollars (\$1,000,000).**
N. H.: P. S., Ch. 147, § 6.
No. Car.: L. 1899, Ch. 170.
Pa.: Except mechanical, mining, quarrying, or manufacturing corporations. (See b, 4, *infra.*) *Corp.*, § 38; P. L., 1899, p. 189, § 2.
Vt.: Stat., § 3728.
- d. **Five million dollars (\$5,000,000).**
Mich.: Stat., § 4161, a, 1.
Pa.: Mechanical, mining, quarrying, or manufacturing corporations (but may increase subsequently to any amount). *Corp.*, § 38; P. L., 1899, p. 189, § 2.
W. Va.: Code, Ch. 54, § 5.
- e. **Ten million dollars (\$10,000,000).**
Ala.: Civ. Code, § 1259.
Me.: R. S., Ch. 48, § 16; L. 1891, Ch. 99.
Mo.: R. S., § 2772.
- f. **The maximum shall not exceed twenty times the minimum capital.**
Va.: L. 1890, p. 56.
- g. **There is no limitation either on the maximum or minimum amount of capital in the following States and Territories:**
Ariz.; *Ark.;* *Cal.;* *Col.;* *Conn.;* *D. C.;* *Fla.;* *Ga.;* *Ida.;* *Ill.;*
Ind.; *Ind. Terr.;* *Ia.;* *Kan.;* *Ky.;* *Md.;* *Miss.;* *Mont.;* *Neb.;*
Nev.; *N. Mex.;* *N. Y.;* *N. Dak.;* *O.;* *Okla.;* *Ore.;* *Rd. I.;*
S. Car.; *S. Dak.;* *Tenn.;* *Tex.;* *Utah;* *Wash.;* *Wis.;* *Wyo.;*

II.

THE ORGANIZATION TAX OR LICENSE FEE.

(NOTE.—This title does not include annual taxes, nor the nominal clerical fees for the recording or publication of the articles of incorporation—usually fixed at so much per page—which have not been deemed of sufficient importance for tabulation.)

A. THE FEE IS GRADED ACCORDING TO THE AMOUNT OF CAPITAL STOCK.

- 1. Domestic or foreign corporations with capital up to

\$50,000, fee	\$25
Over \$50,000, but not exceeding \$100,000, fee	50
Over \$100,000, but not exceeding \$250,000, fee	75
Over \$250,000, but not exceeding \$500,000, fee	100
Over \$500,000, but not exceeding \$1,000,000, fee	200
Over \$1,000,000, fee	250

Ala.: Civ. Code, §§ 1287, 1321.
- 2. Domestic or foreign corporations with capital up to

\$50,000, fee	\$10.00
For each \$1,000 in excess of \$50,000, fee .....	.15
For each \$1,000 of subsequent increase, fee .....	.15
For each \$1,000 in case of consolidation, fee .....	.15

Col.: L. 1897, p. 157.

3. Corporations which are not limited by their charter to doing business within the State:
- | | |
|--|--------|
| For each \$1,000 of subscribed capital stock up to \$5,000,000, fee..... | \$0.50 |
| For each \$1,000 in excess of \$5,000,000, fee..... | .10 |
| For each \$1,000 of subsequent increase, fee..... | .10 |
- Conn.*: P. L. 1899, p. 1147.
4. On capital stock up to \$2,500, fee..... \$30
- | | |
|---|----|
| Over \$2,500, but not exceeding \$5,000, fee..... | 50 |
| On each \$1,000 in excess of \$5,000, fee..... | 1 |
| Where increase up to \$5,000 franchise shall not be acquired less than..... | 50 |
| On each \$1,000 of increase in excess of \$5,000, fee..... | 1 |
- Ill.*: Stat., Ch. 32, § 62; L. 1899, p. 117.
5. On capital up to \$10,000, fee..... \$25
- | | |
|---|-------|
| For each \$1,000 in excess of \$10,000, fee..... | 1 |
| For each \$1,000 of subsequent increase, fee..... | 1 |
| But in no case shall the fee exceed..... | 2,000 |
- Ia.*: L. 1898, Ch. 40.
6. On first \$100,000 of capital stock, fee..... $\frac{1}{10}$ of 1%
- | | |
|--|----------------------|
| On next \$400,000 or fraction thereof, fee..... | $\frac{1}{10}$ of 1% |
| For each \$1,000,000 or major part thereof, fee..... | \$100 |
| For subsequent increase, fee..... | $\frac{1}{10}$ of 1% |
- Kan.*: L. 1898, Ch. 10, §§ 6, 7.
7. (a) Corporations authorized by special charter:
- | | |
|---|------|
| Where capital stock does not exceed \$5,000, fee.... | \$15 |
| Over \$5,000, but not exceeding \$10,000, fee..... | 25 |
| Over \$10,000, but not exceeding \$50,000, fee..... | 75 |
| Over \$50,000, but not exceeding \$100,000, fee..... | 125 |
| For each \$100,000 or fraction thereof in excess of \$100,000, fee..... | 60 |
- (b) Corporations organized according to general law:
- | | |
|--|------|
| Where capital stock does not exceed \$10,000, fee.. | \$10 |
| Over \$10,000, but not exceeding \$500,000, fee..... | 50 |
| For each \$100,000 in excess of \$500,000, fee..... | 10 |
| For each \$100,000 of increase (but in no case less than \$40), fee..... | 10 |
- Me.*: L. 1893, Chs. 185, 212; L. 1897, Ch. 225.
8. Where capital stock does not exceed \$50,000, fee..... \$50
- | | |
|--|---|
| For each \$10,000 or fraction thereof in excess of \$50,000, fee..... | 5 |
| For each \$10,000 or fraction thereof of subsequent increase, fee..... | 5 |
- Minn.*: Stat., §§ 3391, 3392.
- Except corporations for strictly manufacturing purposes. Stat., § 3393.
- Foreign corporations on same footing as domestic. Stat., § 3425.

ORGANIZATION TAX OR LICENSE FEE.

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Mo.: Constit. Art. 10, §21; R. S., §2493.

Same fees for *foreign* corporations upon the proportion of their capital stock represented by property located and business transacted in the State. L. 1891, pp. 75, 101.

For certificate of incorporation, fee of \$10, L. 1899, p. 130, §3.

No. Dak.: Civ. Code, §2365.

- | | |
|--|--------|
| 9. For capital stock up to \$1,000,000 for each \$1,000, fee. | \$0.50 |
| For capital stock in excess of \$1,000,000 for each \$1,000, fee | .25 |

But in no case shall the fee be less than \$20 or more than \$1,000.

Mont.: L. 1899, Ch. 151, §1.

10. Corporations which are not to carry on business or have their principal office within the State:
- | | |
|---|------|
| Where amount of capital stock or increase does not exceed \$25,000, fee | \$10 |
| Over \$25,000, but not exceeding \$100,000, fee | 25 |
| Over \$100,000, but not exceeding \$500,000, fee | 50 |
| Over \$500,000, but not exceeding \$1,000,000, fee | 100 |
| Over \$1,000,000 | 200 |

N. H.: P. S., Ch. 14, §§ 5, 6; L. 1895, Ch. 18.

11. (a) Domestic or *foreign* corporations for mining, milling, or smelting:
- | | |
|--|------|
| For capital stock not exceeding \$100,000, fee | \$25 |
| For each additional \$100,000 or fraction thereof, fee | 5 |
- (b) Domestic or *foreign* corporations for manufacturing or other industrial purposes:
- | | |
|--|---------|
| For capital stock not exceeding \$10,000, fee | \$10.00 |
| For each additional \$5,000 or fraction thereof, fee | 2.00 |
| For each \$1,000 of subsequent increase or decrease, fee | .25 |

N. Mex.: L. 1899, p. 171, § 1.

- | | |
|---|------|
| 12. <i>Foreign</i> corporations with capital not exceeding \$100,000, fee | \$15 |
| Over \$100,000, but not exceeding \$300,000, fee | 20 |
| Over \$300,000, but not exceeding \$500,000, fee | 25 |
| Over \$500,000, but not exceeding \$1,000,000, fee | 30 |
| Over \$1,000,000, fee | 50 |

Ohio: Stat., § 3269, ¶ 5; L. 1898, p. 228.

- | | |
|--|-----|
| 13. Where capital stock does not exceed \$5,000, fee | \$5 |
| Over \$5,000, but not exceeding \$25,000, fee | 10 |
| Over \$25,000, but not exceeding \$50,000, fee | 15 |
| Over \$50,000, but not exceeding \$100,000, fee | 20 |
| Over \$100,000, but not exceeding \$250,000, fee | 25 |
| Over \$250,000 for each additional \$10,000, fee | 1 |
- Same rate for increase.

So. Car.: L. 1896, No. 45, §§ 9, 10; L. 1899, p. 54.

DIGEST OF CORPORATION LAWS.

14. (a) Domestic corporations:
 Where capital stock does not exceed \$10,000, fee . \$25
 For each additional \$10,000 or fraction thereof, fee 5
- (b) Foreign corporations:
 Where capital stock does not exceed \$100,000, fee. \$25
 Over \$100,000, but less than \$500,000, fee..... 50
 \$500,000, but less than \$1,000,000, fee 100
 Over \$1,000,000, fee 200
Tex.: R. S., Art. 2439.
15. (a) Corporations organized according to general law:
 Where capital stock does not exceed \$5,000, fee .. \$10
 Over \$5,000, but not exceeding \$10,000, fee..... 25
 Over \$10,000, but not exceeding \$50,000, fee..... 50
 Over \$50,000, but not exceeding \$200,000, fee..... 100
 Over \$200,000, but not exceeding \$500,000, fee..... 200
 Over \$500,000, but not exceeding \$1,000,000, fee.. 300
 Over \$1,000,000, fee 500
- (b) Corporations authorized by special act of the legislature:
 Where capital stock does not exceed \$10,000, fee. \$25
 Where capital stock exceeds \$10,000 the fee shall be
 same as for corporations organized according to
 general law, *supra*.
Vt.: Laws 1898, p. 14.
16. (a) Corporations created by general law:
 (b) Corporations created by special charter:
 (c) Foreign corporations:
 Where stock does not exceed \$5,000, fee, (a) \$15; (b)
 \$25; (c) \$5.
 Over \$5,000, but not exceeding \$10,000, fee, (a) \$30;
 (b) \$50; (c) \$10.
 Over \$10,000, but not exceeding \$25,000, fee, (a) \$45;
 (b) \$75; (c) \$15.
 Over \$25,000, but not exceeding \$50,000, fee, (a) \$75;
 (b) \$125; (c) \$25.
 Over \$50,000, but not exceeding \$100,000, fee, (a) \$125;
 (b) \$200; (c) \$40.
 Over \$100,000, but not exceeding \$300,000, fee, (a) \$195;
 (b) \$325; (c) \$65.
 Over \$300,000, but not exceeding \$500,000, fee, (a) \$270;
 (b) \$450; (c) \$90.
 Over \$500,000, but not exceeding \$800,000, fee, (a) \$345;
 (b) \$575; (c) \$115.
 Over \$800,000, but not exceeding \$1,000,000, fee, (a)
 \$450; (b) \$750; (c) \$150.
 Over \$1,000,000, fee, (a) \$600; (b) \$1,000; (c) \$200.
 And same proportionate fee for increase.
Va.: L. 1892, p. 393; L. 1898, p. 678.
17. Where capital stock does not exceed \$25,000, fee.... \$25.00
 For each \$1,000 in excess of \$25,000, fee..... 1.00
 For each \$1,000 of subsequent increase, fee..... .50
Wis.: Stat., § 1772.

18. Where stock of domestic or foreign corporation does not exceed \$5,000, fee..... \$5.00
 Over \$5,000, but not exceeding \$100,000, fee..... 10.00
 Over \$100,000, for each additional \$1,000, fee..... .05
Wyo.: L. 1897, p. 74.

B. THE FEE IS A FIXED PERCENTAGE UPON THE AMOUNT OF CAPITAL STOCK.

1. $\frac{1}{100}$ of 1% (10 cents on each \$1,000).
 And same fee for increase.
Conn.: For corporation limited by its charter to business within the State. P. L., 1899, p. 1147.
Nebr.: Same fee for foreign corporations and for consolidation. L. 1897, Ch. 72.
2. $\frac{1}{100}$ of 1% (15 cents on each \$1,000).
 But in no case less than \$20.
Del.: L. 1899, Ch. 273, § 127.
3. $\frac{1}{10}$ of 1% (20 cents on each \$1,000).
 But in no case less than \$25.
 Same rate for increase but in no case less than..... 20
 Same rate for consolidation upon amount in excess of the combined original capital stocks.
N. J.: L. 1896, Ch. 185, § 114.
4. $\frac{1}{4}$ of 1% (25 cents on each \$1,000).
 For issuing certificate of incorporation \$5. Same rate for increase.
 Same rate for foreign corporation organized for purpose of carrying on business within the State.
 But whole amount shall not exceed \$2,500.
Utah: R. S., § 965.
5. $\frac{1}{10}$ of 1%.
 But in no case less than \$5.
Mass.: But whole fee shall not exceed \$200. P. S., Ch. 106, § 84.
Mich.: Domestic or foreign corporation (same fee in case of consolidation); L. 1893, No. 79; L. 1895, No. 91.
6. $\frac{1}{10}$ of 1%.
 But in no case less than \$10. Same fee for increase.
Ind.: Same fee for consolidation with no deduction on account of fees previously paid. *Ind.*: Stat., § 7631;
Ohio: Stat., § 148; a, 1, 3.
Ky.: Stat., § 4226.
R. I.: But in no case less than \$100; and same fee for increase. G. L., Ch. 29, § 16.
Tenn.: (Also \$3 each to register of deeds and secretary of state. Code, § 2039). L. 1897, Ch. 32.
7. $\frac{1}{4}$ of 1%.
Md.: Same fee for increase. L. 1894, Ch. 114.
N. Y.: Same for foreign corporation computed upon capital stock employed by it within the State for the first year (also \$10 for filing articles. G. L., Ch. 9, § 26).
 L. 1896, Ch. 903, §§ 180, 181.

8. $\frac{1}{2}$ of 1% (\$2 on each \$1,000).
But not less than \$5 or more than \$250. Same fee for increase.
Fla.: L. 1893, Ch. 4169.
9. $\frac{1}{2}$ of 1%.
Same fee for increase.
Pa.: P. L., 1899, p. 189, § 1.
Also corporations created by special act must have such act enrolled and pay therefor.
(a) Iron, coal, manufacturing, mining, warehousing, or oil company, fee of \$200.
(b) Other corporations, fee of \$20. *Taxation*, § 25.

C. THE FEE IS A FIXED SUM INDEPENDENT OF THE AMOUNT OF CAPITAL STOCK.

1. No provision is made for the payment of any fee.
District of Columbia.
2. Fee of \$2.50 for filing articles of incorporation.
Ore.: L., § 2337.
3. Not less than \$3 for filing articles of incorporation.
Miss.: Code, § 2037.
4. Fee of \$5.
Ga.: For recording articles of incorporation. Code, § 5397.
La.: For approval of charter by district attorney. L. 1896, p. 178.
Nev.: G. S., § 1798.
5. Fee of \$5 for filing articles and \$3 for issuing certificate of incorporation.
Ari.: For filing increase or decrease, \$2.50; certificate, \$2.50.
R. S., § 1964.
Cal.: Same fee for each increase or decrease. Pol. Code, § 416.
Ida.: R. S., § 196.
Okla.: Stat., § 2900.
6. Fee of \$10.
Mass.: Foreign corporation only. L. 1884, Ch. 330.
N. J.: Foreign corporation only. L. 1896, Ch. 185, § 114.
So. Dak.: Domestic or foreign corporation. Stat., § 1911.
7. Fee of \$10; also \$4 for certificate of incorporation and 50 cents for recording the same.
W. Va.: Domestic corporations whose principal place of business is within the State (also annual fee of \$10). Code, Ch. 54, § 18. Cf. c. 10 infra.
8. Fee of \$10 for filing articles and \$5 for certificate of incorporation.
Wash.: L. 1897, p. 134.
9. Fee of \$25 for filing articles of incorporation.
Ark.: Also \$10 for amendment. Stat., § 3229.
Ind. Ter.: Stat., § 2212.
Md.: Foreign corporations only. L. 1898, Ch. 270.

No. Car.: Same fee when incorporated by special legislative charter. Code, § 696; L. 1885, Chs. 36, 93.

Utah: Foreign corporations not organized for doing business in this State. R. S., § 965.

10. Fee of \$50.

N. H.: Corporations doing business and having principal office within the State. P. S., Ch. 14, § 5.

W. Va.: Corporations with principal place of business outside the State. Code, Ch. 32, § 87. Cf. c. 7, supra.

III.

THE PRECISE METHOD OF PAYING IN THE CAPITAL STOCK.

A. IN WHAT PAYMENT MAY BE MADE.

a. Payment by means of a note or other obligation of the stockholder would generally be held insufficient.

This is expressly provided in certain of the states, e. g.:

Ida.: R. S., § 7117.

Mass.: P. S., Ch. 106, § 47.

Miss.: Code, § 850.

Mo.: R. S., § 2775.

N. H.: P. S., Ch. 150, § 9.

b. Stock must be paid for in money:

D. C.: Comp. Stat., Ch. 15, § 49.

Ind.: Stat., § 5060 } Full amount of capital stock must be paid
Minn.: Stat., § 3415 } into the treasury.

c. Stock may be paid for by labor done:

Ala.: Constit., Art. 14, § 6; Civil Code, §§ 1142, 1254.

Ark.: Constit., Art. 12, § 8.

Cal.: Constit., Art. 12, § 11; Civil Code, § 359.

Col.: Constit., Art. 15, § 9; Stat., § 618.

Del.: L. 1899, Ch. 273, § 127.

Fla.: Provided description and valuation of same given in the charter. R. S., § 2128.

Ida.: (Or services performed.) Constit., Art. 11, § 9; L. 1899, p. 158.

Ky.: Constit., § 193; Stat., § 568.

La.: Constit., Art. 266.

Mo.: Constit., Art. 12, § 8; R. S., § 2499.

Mont.: Constit., Art. 15, § 10.

No. Dak.: Civ. Code, § 2877.

So. Car.: Constit., Art. 9, § 10; R. S., § 1511; L. 1897, No. 333, § 4.

Tex.: Constit., Art. 12, § 6.

Utah: Constit., Art. 12, § 5.

Va.: (Or services.) Code, § 1148; L. 1890, p. 56.

Wash.: Constit., Art. 8, § 6.

Wis.: Stat., § 1753; L. 1899, Chap. 193.

d. Stock may be paid for in property:**1. In property of a specified kind only:**

- (a) A manufacturing establishment, including the real estate, buildings, machinery, etc., belonging thereto.
R. I.: G. L., Chap. 180, § 8.
- (b) Mining claims. In case of a mining corporation.
Nev.: G. S., § 825.
- (c) Lands within the State.
Mich.: Stat., § 4866.
- (d) Land. In case of mining, boring, or quarrying company. Land or any patent. In case of manufacturing company.
Tenn.: Code, §§ 2335, 2351.
- (e) Property received for the use of the corporation. .
N. Y.: G. L., Ch. 36, § 42.
- (f) Property such as it is proper for the corporation to own.
Md.: G. L., Art. 23, §§ 61, 62.
- (g) Property necessary for the business of the corporation.
N. J.: L. 1896, Ch. 185, §§ 48, 49.
Pa.: *Corp.*, § 43.
Utah: R. S., § 316 (necessary to the pursuit agreed upon).
Vt.: Stat. § 3724.
W. Va.: Code, Ch. 53, § 24 (necessary for the uses and purposes of the corporation).
Wyo.: R. S., § 513.

2. In property generally:

- Ala.:* Constit., Art. 14, § 6; Civ. Code, §§ 1142, 1254.
 - Ark.:* Constit., Art. 12, § 8.
 - Cal.:* Constit., Art. 12, § 11; Civ. Code, § 359.
 - Col.:* Constit., Art. 15, § 9; Stat., §§ 618, 490.
 - Del.:* Constit., Art. 9, § 3; L. 1899, Ch. 273, § 138.
 - Fla.:* R. S., § 2128 (description and valuation must appear in the charter).
 - Ida.:* R. S., § 7117.
 - Ky.:* Constit., § 193; Stat., § 568.
 - La.:* Constit., Art. 266.
 - Mass.:* P. S., Ch. 106, § 48.
 - Mo.:* Constit., Art. 12, § 8; R. S., § 2499.
 - Mont.:* Constit., Art. 15, § 10 (special provision in case of mines).
 - No. Dak.:* Civ. Code, § 2877.
 - So. Car.:* Constit., Art. 9, § 10; R. S., § 1511; L. 1897, No. 333, § 4.
 - Tex.:* Constit., Art. 12, § 6.
 - Wash.:* Constit., Art. 8, § 6.
 - Wis.:* Stat., § 1753; L. 1899, Ch. 193.
- 3. In property; which is defined as including specifically—**
- (a) **Manufactories:**
N. J.: L. 1896, Ch. 185, §§ 48, 49.
Wyo.: R. S., § 513.

- (b) Mines:
N. J.: L. 1896, Ch. 185, §§ 48, 49.
Va.: Code, § 1148; L. 1890, p. 56.
Wyo.: R. S., § 513.
- (c) Mineral rights:
Pa.: *Corp.*, § 43.
Va.: Code, § 1148; L. 1890, p. 56.
- (d) Patents:
Conn.: G. S., § 1947.
Pa.: *Corp.*, § 43.
- (e) Leases, options, rights of way and other easements:
Va.: Code, § 1148; L. 1890, p. 56.

e. Stock may be paid for in some other matter or thing instead of in money.

Me.: R. S., Ch. 4th, § 45.

f. There is no provision as to the medium or method of payment in the following States and Territories, viz:

Ariz.; *Ga.*; *Ill.*; *Ind. Ter.*; *Iowa*; *Kan.*; *Miss.*; *Neb.*; *N. H.*; *N. Mex.*; *No. Car.*; *Ohio*; *Okla.*; *Ore.*; *So. Dak.*

B. THE METHOD OF VALUATION WHERE THE STOCK IS NOT PAID FOR IN MONEY.

a. Where payment is authorized in a medium other than money the same shall be taken at the value thereof.

1. Generally; the basis of value not being otherwise defined:
Pa.: *Corp.*, § 43.
Wash.: G. S., § 1588.
Wyo.: R. S., § 513.
2. At the actual value:
Conn.: Stat., § 1947.
3. At the true money value:
No. Dak.: On penalty of officers being liable for excess valuation. Civ. Code, § 2877.
So. Car.: And approved by the board of corporators. R. S., § 1511; L. 1897, No. 333, § 4.
4. At the fair cash value:
Me.: A bona fide and fair valuation. R. S., Ch. 46, § 45.
Mass.: As sworn to by the president, treasurer, and majority of the directors; and in case of a *foreign* corporation the stockholders participating in the unfair valuation are liable for the debts of the corporation. P. S., Ch. 106, § 48; L. 1897, Ch. 423.
Tenn.: Code, § 2335.
Utah: As verified (except in mining and irrigating companies) by the sworn affidavit of three persons. R. S., § 316.
5. At the reasonable value:
Ala.: Civ. Code, §§ 1142, 1254.
6. At the appraised value:
R. I.: G. L., Ch. 180, § 8.

7. At the valuation mutually agreed upon between the subscriber and the incorporators:
 - Fla.*: And the same must appear in the charter. R. S., § 2128.
 - Md.*: As fixed at a special meeting. G. L., Art. 23, §§ 61, 62.
 - W. Va.*: Code, Ch. 53, § 24.
8. At the market price:
 - Ky.*: Stat., § 568.
9. At the value bona fide determined by the directors:
 - Col.*: Stat., §§ 618, 490.
 - Del.*: And such valuation is conclusive. L. 1899, Ch. 273, § 138.
 - N. J.*: L. 1896, Ch. 185, § 49.
- b. Such medium need not be accepted at the value thereof:
 - Mont.*: Code, § 410. "On mines any arbitrary value may be fixed and such value shall be regarded as the value thereof so as to make stock issued therefor at such arbitrary value full paid stock."

IV.

THE AMOUNT OF THE STOCKHOLDERS' LIABILITY FOR DEBTS OF THE CORPORATION:

- a. Stockholders have no individual liability:
 - Nev.*: Constit., Art. 8, § 3.
- b. There is no provision for any individual liability:
 - Ind. Ter., N. Mex.*: *No. Car.* (except for fraud. Code, § 686).
- c. Stockholders are individually liable for any refund or reduction of the capital stock before the payment of all corporate debts.
 1. With no provision for further liability:
 - Ark.*: To the extent of the refund to them respectively. Stat., § 1348.
 - Conn.*: For all debts of the corporation at the time of reduction. Stat., § 1954.
 2. In addition to other liability:
 - (a) Stockholders' liability is not impaired by any reduction of the capital stock:
 - N. J.*: L. 1896, Ch. 185, § 29.
 - See also: g, 4; h; i.*
 - So. Car.*: L. 1899, No. 38, § 3.
 - Cf. g, 1.*
 - (b) Stockholders are jointly and severally liable to the extent of sums withdrawn and paid to stockholders:
 - Mass.*: P. S., Ch. 106, § 61. Same liability for stockholders of foreign corporations. L. 1896, Ch. 391.
 - See also: d, 2; g, 4; i.*
 - Miss.*: Code, § 852.
 - See also: g, 4.*

- (c) Stockholders are individually liable to the extent of the refund to them respectively:

Me.: R. S., Ch. 46, § 44, 47.

See also: *g*, 4.

Mich.: Stat., § 4161 (c).

See also: *d*, 2.

Minn.: In case of manufacturing corporation. Stat., § 2822.

See also: *g*, 8; *h*; *i*.

Vt.: Stat., § 3726.

See also: *g*, 4.

Wis.: Stat., § 1755 (and those voting for reduction are liable to the extent of the whole amount refunded).

See also: *d*, 2; *g*, 4.

- (d) Stockholders are individually liable for the debts of the corporation at the time of reduction.

Ind.: Stat., § 3430.

See also: *d*, 2; *f*.

Pa.: In case of mechanical, mining, quarrying, or manufacturing companies. *Manufacturing Companies*, § 4.

See also *d*, 2.

R. I.: In case of manufacturing corporations.

G. L., Ch. 180, § 5.

See also *g*, 4; *h*.

- d. Stockholders are individually liable for debts due mechanics and laborers for work performed for the corporation:

1. With no provision for further liability:

Pa.: Iron and steel manufacturing companies for a period of six months only. *Iron Manufacturing Companies*, § 9.

Other corporations except manufacturing, mechanical and mining corporations (to the extent of amount of stock held by each stockholder). *Corp.*, § 68.

2. In addition to other liability:

D. C.: Comp. Stat., Ch. 15, § 58. *See also*: *g*, 4.

Ind.: Manufacturing, mining, and mechanical corporations. Stat., § 5077.

See also: *c*, 2 (d); *f*.

Mass.: For services within six months of demand. P. S., Ch. 106, § 61.

Similar liability of stockholders in *foreign* corporations. L. 1896, Ch. 391.

See also: *c*, 2 (b); *g*, 4; *i*.

Mich.: Stat., § 4161 (c) 8.

See also: *c*, 2 (c).

N. Y.: G. L., Ch. 36, § 55.

See also: *g*, 4; *i*.

No. Dak.: Manufacturing and mining corporations. Civ. Code, § 3157.

See also: g, 4.

Pa.: Manufacturing, mechanical, mining, and quarrying companies, for services within six months and not over \$200 in amount. *Manufacturing Companies*, § 11.

See also: c, 2 (d).

Tenn.: Mining, quarrying, boring, printing, publishing, or manufacturing companies. Code, § 2337.

See also: g, 4.

Wis.: For not more than six months liability (to an amount equal to the amount of stock owned by them). Stat., § 1769.

See also: c, 2 (c); g, 4.

e. Stockholders are individually liable for their proportionate part of the corporate debts:

Cal.: For such proportion of the corporate debts as the amount of their stock bears to the whole of the subscribed stock. Constit., Art., 12, § 3; Civ. Code, § 322.

f. Stockholders are individually liable to the extent of the amount of stock owned by them when the debt was contracted:

Ind.: Stat., § 3451. *See also: c, 2 (d); d, 2.*

Cf. d, 1, Pa.; and *d, 2, Wis.*; *supra*. *Cf. also g, 3, infra.*

g. Stockholders are individually liable to the extent of the amount unpaid of the stock held or subscribed for by them until all the stock is paid in:

1. Stockholders are not otherwise liable.

Ala.: Constit., Art. 14, § 8; Civ. Code, § 2182.

Ariz.: If the charter exempts them (otherwise for their proportionate part of the debts). R. S., §§ 245, 294 ¶ 7.

Fla.: R. S., §§ 2152, 2156.

Ida.: Domestic and *foreign* corporations, except in case of fraud. R. S., § 2609; L., 1899, p. 157ff.

La.: R. L., § 690.

Okla.: Stat., § 930.

Ore.: Constit., Art. 11, § 3.

So. Car.: Constit., Art. 9, § 18. (*Cf. c, 2 (a)*).

So. Dak.: Stat., § 3851.

Tex.: R. S., §§ 671, 686.

Utah: R. S., § 331.

Va.: Code, § 1148.

Wash.: Constit., Art. 12, § 4; G. S., § 1511.

W. Va.: Constit., Art. 11, § 2.

Wyo.: R. S., § 512.

2. There is no provision for any further liability:

Col.: Stat., § 486, 497.

Del.: Or such proportion as will satisfy the debts of the corporation. L. 1899, Ch. 273, § 46.

- D. C.*: Comp. Stat., Ch. 15, § 46.
Ga.: Code, §§ 2350, 3; 1892.
Ill.: Stat., Chap. 32, § 8.
Md.: G. L., Art. 23, § 64.
Mo.: Limited to amount of their stock. Constit., Art. 12, § 9; R. S., § 2517.
Mont.: Civ. Code, § 470.
N. H.: P. S., Ch. 150, § 8.
3. Stockholders are individually liable to the extent of their unpaid subscriptions upon the capital stock, and in addition for an amount equal to the par value of their stock:
Kan.: Constit., Art. 12, § 2; L. 1898, Ch. 10, § 15.
Ky.: Stat., § 547.
Minn.: Constit., Art. 10, § 3; Stat., § 2600.
See also: *c*, 2 (c); *h*; *i*.
Ohio: Constit., Art. 13, § 3; Stat., § 3258.
4. Stockholders are individually liable for their unpaid subscriptions upon the capital stock in addition to other liabilities:
D. C.: Comp. Stat., Ch. 15, § 46.
See also: *d*, 2.
Fla.: R. S., §§ 2152, 2156.
See also: *h*; *i*.
Ia.: Code, § 1632.
See also: *h*; *i*.
Me.: R. S., Ch. 46, §§ 44, 47.
See also: *c*, 2 (c).
Mass.: Domestic or foreign corporations P. S., Ch. 106, § 61; L. 1896, Ch. 891.
See also: *c*, 2 (b); *d*, 2; *h*; *i*.
Miss.: Limited to amount of stock owned by them. Code, § 844.
See also: *c*, 2 (b).
Neb.: Constit., Art. 13, § 4.
See also: *h*.
N. J.: L. 1896, Ch. 185, § 21.
See also: *c*, 2 (a); *h*; *i*.
N. Y.: G. L., Ch. 36, § 54.
See also: *d*, 2; *i*.
No. Dak.: Civ. Code, § 2902.
See also: *d*, 2.
R. I.: Manufacturing corporations. G. L., Ch. 180, § 1.
See also: *c*, 2 (d); *h*.
Tenn.: Code, § 2058.
See also: *d*, 2.
Vt.: Stat., § 3725.
See also: *c*, 2 (c).
Wis.: Stat., § 1756.
See also: *c*, 2 (c); *d*, 2.

h. Stockholders are individually liable for failure of the corporation to obey certain regulations with regard to organization and publicity:

Fla.: On penalty of being liable as members of a partnership. L. 1893, Ch. 4169.

See also: *g*, 4; *i*.

Ia.: Code, § 1618.

See also: *g*, 4; *i*.

Minn.: Stat., § 2796.

See also: *c*, 2 (*c*); *g*, 3; *i*.

Neb.: To the extent of their unpaid subscriptions and in addition to the amount of stock owned by them. Stat., § 139.

See also: *g*, 4.

N. J.: L. 1896, Ch. 185, §§ 92, 94.

See also: *c*, 2 (*a*); *g*, 4; *i*.

R. I.: G. L., Ch. 180, § 13.

See also: *c*, 2 (*d*); *g*, 4.

i. Any liability of the stockholders is expressly contingent upon the failure of the corporation, its dissolution leaving debts unpaid, or the return of an unsatisfied execution against it:

Ari.: R. S., § 245.

Col.: Stat., § 497.

Conn.: G. S., § 1954.

Del.: L. 1899, Ch., 273, § 46.

Fla.: R. S., § 2152.

Ga.: Code, § 1894.

Ill.: Stat., Ch. 32, § 25.

Ia.: Code, § 1634.

Mass.: P. S., Ch. 106, § 62.

Minn.: Stat., §§ 2601, 2796.

Mo.: R. S., § 2517.

Neb.: Stat., § 1839.

N. J.: L., 1896, Ch. 185, § 94.

N. Y.: G. L., Ch. 36, § 55.

Tex.: R. S., § 671.

v.

THE STATUTORY POWERS AND LIMITATIONS OF CORPORATIONS.

A. THEIR POWER TO CONSOLIDATE WITH OTHER CORPORATIONS.

NOTE.—Statutory prohibitions of combinations to promote monopoly, to lessen competition or to regulate prices are not given, as these belong more properly to the Report on Trusts in Part I of this volume.

a. Such power is impliedly recognized:

Ida.: Constit., Art. 11, § 14.

Kan.: L., 1898, Ch. 10, § 8.

Me.: L. 1891, Ch. 84, § 1.

b. Any two or more corporations may consolidate:

Col.: Stat., § 628.

Ind.: Stat., § 3424.

Ky.: Stat., § 555.

Nev.: Domestic corporation may consolidate with a domestic or foreign corporation. G. S., § 1075.

c. Any corporations organized for the same purpose or carrying on a similar business may consolidate:

1. Their business must be carried on in the same vicinity:
Ill.: Not more than two corporations. Stat., Ch. 32, § 65.

Utah: Domestic corporations only. R. S., § 340.

2. Without restriction as to locality:

(a) Any two corporations:

Del.: L. 1899, Ch. 273, § 54.

Md.: G. L., Art. 23, § 39; L. 1892, Ch. 666.

(b) Any two or more corporations:

N. Y.: Domestic corporations only. G. L., Ch. 41, §§ 8, 10, 11.

d. Certain specified kinds or classes of corporations may consolidate:

1. Two or more mining companies holding adjacent mining lands:

Cal.: Civ. Code, § 361.

Mont.: Civ. Code, § 527.

2. Any two corporations organized solely for manufacturing purposes and carrying on the same general business:

Mo.: R. S., §§ 2786, 2788.

3. Mining or manufacturing companies:

(a) Any two:

Ohio: Stat., § 3864.

(b) Any two or more:

Ala.: Civ. Code, §§ 1147, 1150.

4. Any two business and manufacturing companies having the same objects and general business:

La.: L. 1875, p. 18.

e. There is no statutory provision with regard to consolidation in the following States and Territories, viz:

Ariz.; *Ark.;* *Conn.;* *D. C.;* *Fla.;* *Ga.;* *Ind. Ter.;* *Ia.;* *Mass.* (unless by express legislative sanction); *Mich.;* *Minn.;* *Miss.;* *Neb.;* *N. H.;* *N. J.;* *N. Mex.;* *No. Car.;* *No. Dak.;* *Okla.;* *Ore.;* *Pa.;* *R. I.;* *So. Car.;* *So. Dak.;* *Tenn.;* *Tex.;* *Vt.;* *Va.;* *Wash.;* *W. Va.;* *Wis.;* *Wyo.*

B. THEIR POWER TO LEASE OR CONTRACT WITH OTHER CORPORATIONS

a. Such power is impliedly recognized:

Ida.: Constit., Art. 11, § 5.

Me.: L. 1891, Ch. 84, § 1.

b. A corporation has the same power to contract as a private individual:

Ariz.: R. S., § 233, ¶ 6.

- c. Any domestic corporation may sell and convey all its property and franchises to any other domestic corporation of the same character:
Mich.: Stat., § 4904e.
Mont.: Only where lessor corporation is a mining company. L. 1899, p. 105.
- d. A corporation may lease and dispose of its property and franchises to any other corporations engaged in a similar business:
N. Y.: Lessee must be a domestic corporation. G. L., Ch. 36, § 40.
Pa.: Manufacturing corporations only. P. L., 1895, p. 369.
Tenn.: Domestic or *foreign* corporation. Code, § 2043.
- e. Any domestic corporation may lease its property and franchises to any corporation:
N. J.: L. 1899, Ch. 150.
- f. Except in the above-mentioned States (*Ari*; *Ida*; *Me*; *Mich*; *Mont*; *N. J*; *N. Y*; *Pa*; *Tenn*.) there is no statutory provision with regard to such power.

C. THEIR POWER TO OWN THE STOCK OF OTHER CORPORATIONS.

- a. Corporations are expressly prohibited from owning the stock of other corporations:
D. C.: Comp Stat., Ch. 15, § 36.
Va.: Unless specially authorized. Code, § 1070; L. 1890, p. 50.
- b. Corporations have the same power to acquire property as private individuals:
Ariz.: R. S., § 233, ¶ 6.
- c. Any corporation may own the stock of any other corporation:
Conn.: L. 1895, p. 514.
Del.: Domestic or foreign corporations. L. 1899, Ch. 273, § 133.
N. J.: L. 1896, Ch. 185, § 51.
- d. Certain kinds or classes of corporations may own the stock of any corporation:
Ind.: Manufacturing corporations (but, except for water companies, consent of *all* the stockholders of both corporations must first be obtained). Stat., §§ 5087, 5059.
Minn.: Corporations for mining or manufacturing metals. Stat., § 2834.
Mont.: Mining corporations. L., 1899, p. 105.
Pa.: Manufacturing corporations. P. L., 1895, p. 369.
- e. Any corporation may own the stock of certain kinds or classes of corporations:
Kan.: Of mutual fire insurance companies. L. 1897, Ch. 121.
Pa.: Of corporations for manufacturing iron, metals, etc. *Iron Manufacturing Companies*, § 7.

f. A corporation may own the stock of another corporation engaged in a similar business or in a business in some way useful or subsidiary to the first corporation:

1. Generally:

N. Y.: G. L., Ch. 36, §§ 40, 58.

Pa.: Petroleum mining companies. *Petroleum*, § 30.

Wis.: Lumbering companies. *Stat.*, § 1775.

Wyo.: But not otherwise. *R. S.*, § 510.

2. May own stock in a railroad connecting with its plant or adjacent thereto:

Ill.: But in only one railroad connecting the same points. *Stat.*, Ch. 93, § 35.

Ohio: Mining, quarrying, and manufacturing corporations may own such stock. *Stat.*, § 3863.

Tenn.: Mining corporations may own such stock.

Code, § 2339.

W. Va.: Manufacturing corporations may own such stock. *Civ. Code*, Ch. 52, § 4.

3. A mining corporation may own stock in any corporation constructing a tunnel, etc., to facilitate the working of the mine:

Nev.: G. S., § 829.

4. Domestic mining, mechanical, or manufacturing companies may hold stock in any corporation, domestic or foreign, for generating power and light which is used in facilitating the business of such corporation:

Wis.: *Stat.*, § 1775.

5. A manufacturing company may own not more than 10% of stock in a gas company in the same town:

Me.: In a gas or electric light company. *L.* 1895, Ch. 102, § 3.

Mass.: A manufacturing or other corporation. *P. S.*, Ch. 106, § 78.

g. There is no statutory provision with regard to such power in the following States and Territories, viz:

Ala.; Ari.; Ark.; Cal.; Fla.; Ga.; Ida.; Ind. Ter.; Ia.; Ky.; La.; Ind.; Mich.; Miss.; Mo.; Neb.; N. H.; N. Mex.; No. Car.; No. Dak.; Okla.; Ore.; R. I.; So. Car.; So. Dak.; Tex.; Utah; Vt.; Wash.

D. LIMITATIONS ON CHARACTER OF BUSINESS THE CORPORATION IS PERMITTED TO CARRY ON.

NOTE.—Restrictions which apply to railroads, banking, or insurance corporations or other corporations which, as stated in the introductory note, do not fall within the scope of this report, are not included. This section deals merely with the limitations, if any, upon the specific purposes for which an ordinary private or business corporation may be created.

a. There is no statutory limitation upon the character of such business:

Ga.; Ind. Ter.

- b. Any purpose intended for pecuniary profit or gain:
Mo.: R. S., § 2771.
- c. For carrying on an ordinary business:
R. I.: G. L., Ch. 176, § 2.
- d. Any species of trade or business:
Nev.: G. S., § 802.
Wash.: G. S., § 1497.
- e. Mining, manufacturing or other industrial pursuits:
N. Mex.: Comp. L., § 411.
Okla.: Stat., § 930.
- f. Any business designed to aid in the industrial or productive interests of the country:
Wyo.: R. S., § 501.
- g. Any manufacturing or mercantile business or union of the two:
Mich.: Stat., § 4161 (a).
- h. Any kind of manufacturing, agricultural, mining, mechanical or mercantile business:
D. C.: Comp. Stat., Ch. 15, § 36.
- i. Incorporation is authorized for certain specific enumerated purposes only:
Ind.: Stat., § 5051.
Kan.: G. S., §§ 1156-1159.
Md.: G. L., Art. 23, §§ 14-38.
Mont.: Civ. Code, § 319.
Pa.: Corp., §§ 1, 2, 6.
Tenn.: Code, § 2024.
Tex.: R. S., Art. 643.
- j. Any business useful to the public for which a firm or co-partnership may be lawfully formed in this State:
W. Va.: Code, Ch. 54, § 2.
- k. Any purpose for which individuals may lawfully associate:
Cal.: Civ. Code, § 286.
Ida.: R. S., § 2577.
No. Dak.: Civ. Code, § 2356.
Utah: R. S., § 314.
Va.: Any business which may be lawfully conducted by an individual or by a body politic or corporate. Code, § 1145.
- l. For carrying on any lawful business:
Ala.: Civ. Code, § 1251.
Ariz.: R. S., § 232.
Ark.: Stat., § 1326.
Col.: Stat., § 472.
Conn.: Stat., § 1944.
Del.: L. 1899; Ch. 273, § 1.
Fla.: R. S., § 2122.
Ill.: Stat., Ch. 33, § 1.
Ia.: Code, § 1608.
Ky.: Stat., § 538.
La.: R. L., § 863.

l. For carrying on any lawful business—Continued.

Me.: R. S., Ch. 48, § 17.

Mass.: P. S., Ch. 106, § 14.

Minn.: Stat., § 2794.

Miss.: Code, § 832.

Neb.: Stat., § 1826.

N. H.: P. S., Ch. 147, § 1.

N. J.: L. 1896, Ch. 185, § 6.

N. Y.: G. L., Ch. 41, § 2; L. 1896, Ch. 460.

No. Car.: L. 1885, Ch. 19, § 1.

Ohio: Stat., § 3235.

Ore.: L., § 3217.

So. Dak.: Stat., § 3812.

Vt.: Stat., § 3704.

Wis.: Stat., § 1771.

m. For any purpose or purposes whatsoever:

So. Car.: L. 1897, No. 333, § 2.

REPORT
OF THE
INDUSTRIAL COMMISSION
ON
PRISON LABOR.

PREPARED IN CONFORMITY WITH ACT OF CONGRESS APPROVED JUNE 18, 1898.

VOLUME III
OF THE COMMISSION'S REPORTS.

APRIL 25, 1900.—Referred to the Committee on Labor and ordered to be printed.

WASHINGTON:
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1900.

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UNITED STATES INDUSTRIAL COMMISSION,

Washington, D. C., April 25, 1900.

SIR: In pursuance of the act of Congress approved June 18, 1898,
I have the honor to transmit to you the Report of the Industrial
Commission on Prison Labor.

Respectfully,

JAMES H. KYLE, *Chairman.*

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

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INDUSTRIAL COMMISSION.

REPORT ON PRISON LABOR.

To the Senate and House of Representatives, Fifty-sixth Congress:

The Industrial Commission established by act of Congress of June 18, 1898, have the honor to submit this report of the results of our investigations into the employment of the inmates of the penal, reformatory, and eleemosynary institutions of the different States and Territories, and the competition of such labor with free labor.

The sections of the law creating the commission under which we have acted in the preparation of this report are as follows:

"SEC. 2. That it shall be the duty of this commission to investigate questions pertaining to immigration, to labor, to agriculture, and manufacturing, and to business, and to report to Congress and to suggest such legislation as it may deem best on these subjects.

"SEC. 3. That it shall furnish such information and suggest such laws as may be made a basis for uniform legislation by the various States of the Union, in order to harmonize conflicting interests and to be equitable to the laborer, the employer, the producer, and the consumer."

The investigation of the employment of the prison population has extended into all of the States and Territories. The systems under which prisoners are employed and the conditions of such employment prevailing in each State are presented with recommendations for such changes as are considered necessary to improve the conditions and lessen the competition with free labor.

The opinions and recommendations of the various committees, commissions, bureaus, and specialists who have investigated and reported on the subject of prison labor have been consulted and their conclusions in regard to the desirable and undesirable features of the different systems of employment are presented.

From these sources the commission draws certain conclusions. In addition, testimony taken before this commission, and which will mainly appear in a forthcoming volume on Manufactures and General Business, sustains the suggestions for legislation herein made.

It is apparent that the industrial phase of the convict-labor problem can be regulated to the satisfaction of all sections of the country only by uniform legislation on the part of the States. The question is one of national interest, though partly beyond national jurisdiction.

In any report on prison labor it is of the first importance to outline a plan that will, if embodied in the law, enable the prison authorities so to administer the affairs of the institutions that the grievances now existing and complained of may be removed, and a system established which will make the prisons punitive and reformatory, and as nearly self-sustaining as may be without materially infringing upon the rights of free labor or invested capital.

Various schemes have been tried by the States, working independently, to lessen the competition of convict labor with free labor and industry, such as the prohibition of the employment of convicts; prohibition of the sale of convict-made goods; marking of convict-made goods; substitution of industries not carried on in the State; prohibiting the sale of convict-made goods outside the State where manufactured; fixing the price for which convict-made goods may be sold in the market; reduction of hours of labor in prison; the exportation of convict-made goods; diversification of industries carried on in prisons; payment of wages to convicts; prohibition of any contract for convict labor at lower rates per day than the average paid for outside labor of the same kind; employment of convicts upon public improvements that are desirable, but of such a character that they would not have been undertaken with the use of free labor.

These devices have been adopted without regard to conditions prevailing in other States, or in the hope of relieving acute conditions, rather than providing a permanent remedy for an evil that has always been a feature of our Government, and that has developed and expanded with the increase in population and wealth of the country.

That the competition with free labor exists and has been and can be made severe by the use of methods now in vogue is clearly shown by the evidence presented herewith. This is sufficient reason for a change in those methods and the adoption, so far as practicable, of a uniform system whereby the employment of convicts in one State can not act detrimentally on the industrial interests of that or any other State.

In describing the various systems of employing convicts the commission has presented the principal advantages and disadvantages of each. It remains to be determined which of these systems tends best to the reformation of the prisoner and the reduction of the competition of his labor with free labor.

Every interest of society and consideration of discipline, economy, reformation, and health demands that prisoners should be kept employed at productive work. Manufacturers, wage-earners, and all who have given the subject any consideration are practically unanimous in this conclusion.

As all labor competes with other labor, and the labor that an individual may do for himself, or that the State may do for its own use, is in a sense in competition with other labor, the competition of convict labor with free labor can not be entirely eradicated. The only remedy is to be found in the reduction of that competition to the minimum, and this can be accomplished best by a scheme which considers and provides for, first, the punishment and reformation of the criminal; second, the diminution of competition with free labor; and third, the maintenance of the convicts. The weight of the evidence appears to be that the system which most nearly accomplishes the first and second of these conditions, and incidentally the third, is the one that should be adopted.

The objectionable features of convict labor are not to be found in the fact that prisoners are employed, but to the methods of their employment and the fact that the products of their labor are sold in the open market.

In response to the general demand for reformatory laws, the general tendency of prison legislation has been in the direction of reducing the quantity of goods manufactured for sale, and the assumption by the State of the complete control and management of the prison population. This is shown by the following facts, obtained from recent reports of the Department of Labor:

Considering the penitentiaries and prisons of the country, it appears that the total value of the work done and goods produced by the convicts was \$24,271,078.39 in 1885 and \$19,042,472.33 in 1895, a decrease of 21.5 per cent, while the number of convicts increased from 41,877 in 1885 to 54,244 in 1895. In 1885 there were 12 States in which the lease and 15 in which the public-account systems of employment were in use, while in 1895 there were but 7 States in which the lease system was used and 27 in which the public-account system was in use. The lease system is one of the methods of employment in which the State has no control over the quantity or disposition of the products, and but slight control over the discipline and care of the prisoner, while under the public-account system the State has full control of both.

The lease, contract, and piece-price systems of employing convicts are the three methods under which the products of their labor are utilized for the pecuniary benefit of both private individuals and the State. As now conducted the three systems have many features in common. The contract and piece-price systems are used generally where the convicts are to be worked at or immediately adjoining the prison, and the State has control, to some extent at least, by direct supervision over the discipline, hours of work, and the character and quantity of product. The lease system is used, as a rule, where the convicts are employed away from the prison proper or in detached buildings styled prisons, but under the complete control of the lessee, subject to the conditions of the lease and the laws and rules adopted.

for the care of the prisoners. The objections to the lease system are hereinafter presented, and they appear to the commission to be sufficient to warrant the conclusion that it should not be tolerated in any civilized community. In 1898 it was in use in 9 States, but in almost every case the objectionable features of the system had been eradicated, as far as possible, by stringent laws, rules, and inspections, and in all but 2 of the States, Florida and Louisiana, the convicts were also worked under other systems in connection with the lease system. In the States where the system is in vogue the authorities are practically unanimous in its condemnation, and excuse its use by stating that it appears to be the best that can be adopted under the present conditions.

The contract, piece-price, and public-account systems are all objectionable, from an industrial standpoint, chiefly because under them the products of convict labor are sold in the open market and enter into competition with products of free labor.

By reference to the desirable and undesirable features presented for each system, and also to the synopsis showing the present condition of employment and the recommendations of those in charge of convict labor in the different States, it will be seen that the conditions that are beneficial to the prisoner and the interests of free labor do not depend entirely on the system of employment, but largely on the administration of the system; also that certain systems of employment tend more than others to assist in the development of the desirable features of prison life, and that with this end in view the contract and piece-price systems were developed from the lease system. The adoption of the public-account system followed naturally from the use of the contract and piece-price methods.

During the year 1898 the contract system was used in 24 States, the piece-price system in 10 States, and the public-account system in 30 States. Fifteen of the States using the contract system also used the public-account system, and all but 2 of the States using the piece-price system also used the public account system. Therefore, of the various schemes devised for the employment of convicts with the intention of deriving revenue from such work the public-account system is in the most general use.

The growth of the public-account system and decrease in the contract and other systems is indicated by the following information taken from the bulletin of the Department of Labor. This statement has reference only to the penitentiaries and prisons. Since its preparation there have been material changes in some of the States; for instance, in New York, where goods to the value of \$1,999,769.02 were produced under the piece-price system in 1895, the use of that system has been discontinued and the convicts are now engaged, exclusively, in the manufacture of goods for the use of the State and its institutions.

Summary of value of goods produced or work done by systems of work, 1885 and 1895

Systems of work.	Value.	
	1885.	1895.
Public-account system.....	\$2,063,892.18	\$4,888,563.36
Contract system.....	17,071,265.69	8,190,799.70
Piece-price system.....	1,484,230.52	3,795,483.24
Lease system.....	3,651,690.00	2,167,626.03
Total.....	24,271,078.39	19,042,472.33

By this brief table one can note the general changes in values. Under the public-account system there were produced in the United States in 1885 goods to the value of \$2,063,892.18, but under this system in 1895 there were produced goods to the value of \$4,888,563.36, being an increase of more than 100 per cent. This system has become more popular in recent years, hence the increase. Looking at the next line we find that under the contract system there has been a decrease of about 50 per cent, the decrease being from \$17,071,265.69 to \$8,190,799.70. This system (the contract) has become offensive during the past few years, and legislatures have sought to change their plans from that either to the public-account system or to the piece-price system; under the latter the value of goods has increased from \$1,484,230.52 in 1885 to \$3,795,483.24 in 1895, an increase of over 150 per cent. Under the lease system the values show the effect of agitation in the Southern States, where that system more generally prevailed in 1885, for there the value of goods produced or work done decreased from \$3,651,690 to \$2,167,626.03 in 1895, a decrease of 40.6 per cent. But the totals show a great change, the decrease being from \$24,271,078.39 in 1885 to \$19,042,472.33 in 1895, a decrease of 21.5 per cent.

The contract system has been adopted in preference to the lease system, because under it the State has a better supervision and control of the prisoner, and the obnoxious theory that he is worked at manual labor, not for his punishment and reformation, but to produce revenue for the State, is to some extent removed.

The piece-price system was devised, not only to embrace the desirable features of the contract system, but in order that the State might have control of the quantity of the work performed by the convicts and incidentally the quantity to be thrown upon the open market for sale.

The popularity of the public-account system is due to the fact that under it the prison is better adapted to accomplishing the end for which it was designed, i. e., the punishment and reformation of the criminal, and also because the State has complete control of the products of the labor of the criminal.

While the advocates of the contract and piece-price systems maintain that under them as high a degree of reformatory and disciplinary potency can be reached as under the public-account system, the true reason why those systems are adopted is that under them the labor of the convicts has resulted in giving a larger revenue to the State.

The amount of revenue that could be derived has been the controlling factor in the adoption of one of these systems, rather than the assistance that the system would lend to prison discipline and removal of the competition with free labor.

The trend of the legislation in the different States, also the present methods under which convicts are employed and the recommendations of those charged with the responsibility for the conduct of such employment, together with the recommendations of the numerous commissions, committees, bureaus, penologists and others, all point to the fact that the true theory of prison life is that the criminal should, in every respect, be under the absolute control of the State.

The adoption of the public-account system is the first step in the direction of the State having complete control of the prisoner and his labor. The reasons why the system has not been put in general use, to the exclusion of all others, are that under it the products of convict labor are sold in the open market in competition with the products of free labor, and its adoption has almost invariably resulted in financial loss.

In order to obviate these objections laws have been adopted providing that the work of the prisoners should first be directed to the production of articles and supplies for their own support, and the care and maintenance of the buildings in which they are confined. Practically all of the States now have laws to this effect, and in many of them the prisoners are also engaged in manufacturing supplies or producing agricultural products for the use of other institutions.

The two great sources of expense of prisons are the support of the prisoners and the maintenance of their imprisonment. The experience of prison industry has been, that when employed in productive work the convicts earn enough to support themselves, but, with a few exceptions, not enough to pay the cost of imprisonment. The employment of convicts in producing articles for their own support, to that extent, relieves the State from the necessity of entering the open market either as a seller or producer of goods to be used in connection with its convict system.

After a careful consideration of the subject in all of its phases as presented in numerous reports, of the testimony and recommendations that have been submitted, of the present systems of employing convicts, and the conditions that have culminated in the adoption of those systems, the commission feels warranted in arriving at the following conclusions:

First. That provision should be made in the laws of each State for the employment of all prisoners in productive labor.

Second. The State should have absolute control of the care, punishment, reformation, and employment of the prisoners, as well as the disposition of the products of their industry.

Third. The employment of prisoners in productive labor does, of necessity, result in competition of some character with free labor and industry.

Fourth. The employment of prisoners with the intention of producing revenue, either for the State exclusively, or for private individuals or corporations and the State jointly, tends to the greatest competition with free labor.

Fifth. That a system of employing prisoners for the purpose of producing revenue has a tendency to detract from the punitive, reformatory and disciplinary features of the prisons.

Sixth. The employment of prisoners in the production of supplies for the maintenance of State, county, and municipal institutions and the support of the inmates of the same, or in work on the public buildings or roads, tends to the least direct competition with free labor.

Seventh. Of the various systems for employing convicts, those under which private individuals or corporations are interested have resulted in procuring the greatest revenue to the State.

Eighth. No system of employing convicts, however wise in conception and however carefully guarded, can be entirely free from the danger of abuses in management.

Ninth. The most desirable system for employing convicts is one which provides, primarily, for the punishment and reformation of the prisoner and the least competition with free labor, and, secondarily, for the revenue of the State.

Tenth. In order to harmonize the antagonistic interests of the different States it is essential that the industrial operations of all the penal, reformatory, and eleemosynary institutions in each should be under the supervision of a central office.

Eleventh. The adoption of laws embracing the above principles has been retarded by the prevailing industrial, economic, social, and climatic conditions in many of the States. These conditions are so diversified, and the industrial, moral, and educational possibilities of the prison population differ so widely in the several States that the commission is of the opinion that it is impracticable for all of them to adopt a uniform law for the employment of prisoners, that would be identical in all of its provisions. The necessity for uniform legislation is however fully realized; it is the only permanent remedy for the abuses that exist under the systems now prevailing, and for the abatement of competition with free labor.

The commission accordingly submits the following general provisions of law mainly from the New York statute, which are in harmony with the above conclusions, and recommends that all, or such of them as may be possible, shall be embodied in the laws of the different States, with such additional provisions as to management as may be necessary to meet the prevailing social conditions:

PROPOSED PROVISIONS OF LAWS REGULATING EMPLOYMENT OF PRISONERS.

Within ten days after the passage of this act the governor by and with the advice and consent of the senate, shall appoint four persons who shall be commissioners for the purpose of this act, to be called commissioners of prisons, who shall constitute the State commission of prisons; one of the persons so appointed

shall hold his office for one year, one for two years, one for three years, one for four years, as indicated by the governor on making the nominations, and all nominations thereafter, except to fill vacancies, shall be made for four years; said commission shall have power to make and use an official seal and alter the same at pleasure.

It shall be the duty of said commission to visit and inspect all institutions used for the detention of sane adults charged with or convicted of crime, or detained as witnesses or debtors; to aid in securing the just, humane, and economic administration of all said institutions subject to its inspection; to aid in securing the erection of suitable buildings for the accommodation of the inmates of such institutions, and to approve or reject plans for their construction or improvement; to investigate the management of all institutions made subject to the investigation of said commission and the conduct and efficiency of the officers or persons charged with their management; to secure the best sanitary conditions of the buildings and grounds of all such institutions, and to protect and preserve the health of the inmates; to collect statistical information in respect to the property, receipts, and expenditures of said institution, the number and condition of the inmates thereof, and to ascertain and recommend such system of employing said inmates as may, in the opinion of said commission, be for the best interest of the public.

The proper authorities shall provide for and assign to such commission suitably furnished rooms for its office and its place of meeting at the State capital, where it shall hold its meetings as often as once in three months.

The said commission shall annually elect one of its members as the president of the commission, and shall also annually elect a secretary, who shall keep a record of all of its proceedings, and perform such duties as may be required of him by the commission and by law, and he shall receive a salary of \$—— per annum; and said commission may also appoint as employees and assistants of said commission, and of the commissioners, in the performance of their official duties, a clerk at an annual salary of \$——, a general office assistant, at an annual salary of \$——, and remove each and appoint a successor at any time; and the said commission is authorized to make rules and regulations for its meetings and the transaction of its business and also as to the manner in which reports to it shall be made and all matters shall be presented before it.

Said commission or any of said commissioners, or its secretary, if authorized by it, is authorized to visit and inspect any of said institutions subject to its visitations, and may take and hear testimony or proofs in relation to any matter before it or him upon any visit, inspection, or examination made by such commission or member thereof, and the said commission, or any members thereof, shall have full access to persons, grounds, buildings, books and papers relating thereto, and may require from the officers and persons in charge any information it or he may deem necessary in the discharge of its or his duties. Said commission may prepare regulations according to which, and provide blanks and forms upon which, such information shall be furnished in a clear, uniform and prompt manner for the use of said commission. Said commission shall make an annual report to the legislature, or to the governor when the legislature is not in session, in which it shall give the results of its work and such information as it deems proper relating to said institutions, and its opinions and conclusions relating to the same.

The warden of every prison, the superintendent or manager of every penitentiary, and keeper of every jail or other institution used for the detention of sane adults charged with or convicted of crime or detained as witnesses or debtors shall on or before the 1st day of November in each and every year, report to the State commission of prisons the number of male and female persons charged with crime and awaiting trial, the number convicted of crime, the number detained as witnesses, and as debtors, in his custody on the 1st day of October last past,

together with a statistical exhibit of the number of admissions, discharges, and deaths which have occurred within the past year, the nature of the charge, the period of detention or sentence, and such other facts and information as the commission may require.

Any officer, superintendent, or employee of any of said penal institutions who shall refuse to admit said commission or any of said commissioners or its secretary or other authorized agent for the purpose of visitation or inspection, or shall refuse or neglect to furnish the information required by said commission or any member thereof, or its secretary, shall be guilty of a misdemeanor, and subject to a fine of \$100 for each such refusal or neglect. The rights and powers hereby conferred may be enforced by an order of the supreme court. In making investigations as herein empowered said commission or any member thereof is hereby empowered to issue compulsory process for the attendance of witnesses and the production of papers, to administer oaths, and to examine persons under oath and to exercise the same powers as belong to referees appointed by the court.

The said commission shall have the further duty and authority to require the proper officials of the State and the political divisions thereof, and of all public institutions of the State, and political divisions thereof, supported wholly or in part by the State or any political division thereof, to furnish to said commission, annually, estimates for each ensuing year of the amount of labor to be required by each, and of the articles which may be manufactured in penal institutions, required to be purchased for the use of the State or the political divisions or said institutions in their charge or under their management.

All persons sentenced to the prisons, reformatories, penitentiaries, or jails in the State shall be employed for the State, or a political division thereof, or in productive industries for the benefit of the State, or the political divisions thereof, or for the use of public institutions owned or managed and controlled by the State, or the political divisions thereof, which shall be under rules and regulations for the distribution and diversification thereof, to be established by the State commission of prisons.

The labor of the prisoners in the institutions known as State penitentiaries, prisons, or reformatories, after the necessary labor for and manufacture of all needed supplies for said institutions, shall be primarily devoted to the State and the construction and care of the public buildings, roads, and institutions thereof, and the manufacture of supplies for the State and public institutions thereof, and secondly to the public divisions of the State, and public institutions thereof; and the labor of the prisoners in the institutions known as county jails, prisons, workhouses, or reformatories, after the necessary labor for and manufacture of all needed supplies for the same, shall be primarily devoted to the counties, respectively, in which said institutions are located, and the towns, cities and villages therein, and to the construction and care of the public buildings, roads, and institutions thereof, and the manufacture of supplies for the public institutions of the counties, or the political divisions thereof, and secondly to the State and public institutions thereof.

It shall be the duty of the State commission of prisons to distribute among the penal and reformatory institutions under its jurisdiction the labor and industries assigned by the commission to said institutions, due regard being had to the location and convenience of the institutions to the other institutions to be supplied. The commission of prisons shall annually cause to be procured and transmitted to the legislature, with its annual report, a statement showing in detail the amount and quantity of each of the various articles manufactured in the several penal and reformatory institutions under its control and the labor performed by the prisoners therein, and of the disposition thereof.

The officers of the State prisons, reformatories and penitentiaries, county jails, and other penal and reformatory institutions, respectively, are authorized and directed to cause to be manufactured by the prisoners in the institutions such

articles as are needed and used therein, and also such as are required by the State or political divisions thereof, and in the buildings, offices and public institutions owned or managed and controlled by the State, including articles and materials to be used in the erection of the buildings and construction of roads.

All such articles manufactured in the institutions not required for use therein may be furnished to the State, or to any political divisions thereof, or for or to any public institution owned or managed and controlled by the State, or any political division thereof, at and for such prices as shall be fixed and determined as hereinafter provided, upon the requisitions of the proper officials, trustees or managers thereof. No article so manufactured shall be purchased from any other source for the State or public institutions of the State, or the political divisions thereof, unless said State commission of prisons shall certify that the same can not be furnished upon such requisition, and no claim therefor shall be audited or paid without such certificate.

On or before October 1 in each year the proper officials of the State, and the political divisions thereof, and of the institutions of the State, or political divisions thereof, shall report to the said commission of prisons estimates for the ensuing year of the amount of supplies of different kinds required to be purchased by them that can be furnished by the penal and reformatory institutions of the State and the political divisions thereof. The said commission is authorized to make regulations for said reports, to provide for the manner in which requisitions shall be made for supplies, and to provide for the proper diversification of the industries in said institutions.

The State commission of prisons shall fix and determine the prices at which all labor performed, and all articles manufactured and furnished to the State, or the political divisions thereof, or the public institutions thereof, shall be furnished, which prices shall be uniform to all. The prices shall be as near the usual market price for such labor and supplies as possible. The State commission of prisons shall devise and furnish to all such institutions a proper form for such requisitions and the comptroller shall devise and furnish a proper system of accounts to be kept by all such institutions.

The State commission of prisons shall not, nor shall any other authority whatsoever, make any contract by which the labor or time of any prisoner in any State prison, reformatory, penitentiary, or jail in this State, or the product or profit of his work, shall be contracted, let, farmed out, given, or sold to any person, firm, association, or corporation; except that the prisoners in said penal or reformatory institutions may work for and the products of their labor may be disposed of to the State or any political divisions thereof, or for or to any public institution owned or managed and controlled by the State or any political division thereof.

The superintendents, managers, and officials of all penal and reformatory institutions in the State shall, so far as practicable, cause all the prisoners in said institutions who are physically capable thereof to be employed at hard labor for not to exceed eight hours of each day, other than Sundays and public holidays, but such hard labor shall be either for the purpose of production of supplies for said institutions or for the State, or any political division thereof, or for any public institution owned or managed and controlled by the State, or any political division thereof; or for the purpose of industrial training and instruction, or partly for one, and partly for the other of such purposes.

No appointment shall be made in any of the penal, reformatory, or eleemosynary institutions of this State on the grounds of political partisanship; but honesty, capacity, and adaptation shall constitute the rule for appointment, and any violation of this rule shall be sufficient cause for the removal from office of the officer committing such violation.

The said State commission of prisons shall have the further duty and authority to direct the employment of such of the prisoners in the State and county penal and reformatory institutions, as they may deem desirable, in agricultural pursuits

on the State or county lands, and the products of such labor shall be devoted to the support of the inmates of the public institutions of the State and of the counties or the political divisions thereof.

No machine, except machines operated by hand or foot power, shall be used in any of the said institutions in the manufacture of any goods, wares, articles or things that are manufactured elsewhere in the State.

The commission are of opinion that the nearest to a complete remedy for the evils of convict labor competition with the business and labor of the country would be the interdiction of interstate commerce in all goods, minerals, or materials in whole or in part the product of convict labor, supplemented by State legislation on the lines above indicated. But in the absence of such legislation by all the States, and in order to protect such States as do adopt such legislation from the convict labor competition of others, the most practical step would be an act of Congress by which goods, minerals, or materials in whole or in part the product of convict labor, upon their arrival in any State, would become fully subject to its laws.

For, if interstate trade in convict-made goods be not absolutely prohibited, it would be of little use to recommend the foregoing law for enactment by the States were it not supplemented by national legislation which should, if possible, protect the States adopting such improved legislation from other States which may still proceed under the old system. There can be no reason, constitutional or economic, why the markets of one State, which has adopted the noncompetitive theory of convict labor, should be swamped by the product of the competitive convict labor of neighboring States. In fact, a condition of this sort would penalize a State for adopting such improved legislation, as its markets would thereby become more completely the prey of the competitive convict labor of other States which might choose to profit by the situation; but, on the other hand, those States which still retain the money-making theory of conducting their convict labor should not complain at the competition of the other States retaining the same policy. There should, at the least, be national legislation to protect the States from the competition of convict-made goods, so far as they protect their own markets against their own convict-labor competition, even if not interfering with interstate trade in such goods as to such States as themselves seek to profit by it.

The commission are of opinion that it is both constitutional and possible to enact such a law, and that a simple statute which shall merely remove the Federal control of interstate trade in convict-made goods so that they become subject, wherever found, to the general regulation of the State laws, would meet the case. A precedent can be found in the so-called Wilson Act (U. S. 1890, c. 728), applying to intoxicating liquors. We have already a statute forbidding the importation of convict-made goods from foreign countries (U. S. 1890, c. 1244, 51). Nothing remains but to protect the States, so far as they are fairly entitled to such protection as against each other. The commission would therefore recommend the passage by Congress of an act similar

to that of August 8, 1890 (26 Stat. L., 313, c. 728), substituting the words "goods, minerals, or materials wholly or in part the product of convict labor," for the words "all fermented, distilled, or other intoxicating liquors or liquids," etc.

It seems probable that Congress would have power to pass such a statute as to any article of interstate commerce whatever, at its own discretion; certainly it has the power when the traffic in the commodities concerned obviously affects the health, safety, or general welfare of the people, as is the case in both intoxicating liquors and convict-made goods.

It would then be possible for the States to enact laws regulating or even prohibiting the sale of all convict-made goods, requiring bonds, licenses, labels, or other safeguards, which would apply also to the convict-made goods of other States. For an example of such a law, see New York act of 1897 (general labor law), art. 4; also Penal Code, section 384b. Summaries of similar laws in Ohio (which were held unconstitutional in the absence of the Federal legislation above recommended), Indiana, Kentucky, and other States will be found in succeeding pages.

JAMES H. KYLE, *Chairman*.
 BOIES PENROSE,
 JOHN J. GARDNER,
 WILLIAM LORIMER,
 JOHN C. BELL,
 THEOBALD OTJEN,
 LEE MANTLE,
 ANDREW L. HARRIS,
 * ELLISON A. SMYTH,
 JOHN M. FARQUHAR,
 EUGENE D. CONGER,
 THOMAS W. PHILLIPS,
 M. D. RATCHFORD,
 JOHN L. KENNEDY,
 ALBERT CLARKE,

Commissioners.

* For reasons fully stated in conclusion 11 in the report I do not concur in the recommendation fixing 8 hours for the day's work. I agree with Mr. C. J. Harris also in his exception to that portion of the report which recommends the interdiction of prison-made goods.

ELLISON A. SMYTH, *Commissioner*.

Believing that the productive employment of convict labor is beneficial to the convict, to the wage-earner, and to the taxpayer, also that the sale of their products under ordinary business principles is not detrimental to the "life, health, or well-being of the community," I therefore dissent from the recommendation for the interdiction of interstate commerce in convict-made goods. I do not recommend a State law which allows only the use of hand or foot power machines and confines the sale of their goods to State and county alone.

C. J. HARRIS, *Commissioner*.

PREFATORY NOTE.

In conducting this investigation the commission has confined its efforts to a presentation of the industrial and economic phase of the subject, and has not considered the different methods of conducting the institution, such as the congregate or the separate confinement systems, physical and hygienic relations, discipline and instruction, paroling the prisoners on good behavior, or the indefinite sentence plan. While these features are essential to a comprehensive discussion of the subject they do not bear directly upon the primary object for which the commission was appointed.

The discussion that follows has been taken largely from official reports, or is based upon the opinions of those who are thoroughly familiar with the details of this feature of our industrial situation.

The information is presented in several chapters as follows:

A statement of the convict-labor problem and a general discussion of the subject is given in Chapter 1.

A description of the different systems of employing prisoners whereby the profits of their labor is shared by the State with private individuals, and the advantages and disadvantages of such systems is given in Chapter 2.

The systems of employing prisoners for the public benefit exclusively are described, and the advantages and disadvantages of each are given in Chapter 3.

The financial results of the different systems of employing prisoners are presented in Chapter 4.

The systems of employment and conditions existing in the county jails are described in Chapter 5.

A detailed statement of the industries in which prisoners are employed in each State, and the general results of such employment, are given in Chapter 6.

Suggestions for changes in the present system of employing prisoners are given in Chapter 7.

The commission desires to express its appreciation of the services of Mr. William M. Steuart, who has collected and codified the information presented in this report.

The appendix consists of a digest of the convict-labor laws in force in the United States in 1898. Compiled under direction of the Commission by Victor H. Olmsted.

CHAPTER I.

THE CONVICT-LABOR PROBLEM.

One feature of the present industrial condition of the country that demands the consideration of the Industrial Commission, is the employment of the inmates of the various penal, reformatory and eleemosynary institutions of the different States and Territories. The competition of convict labor with free labor and industry has been a subject of more or less active discussion for the past 50 years and has caused a vast amount of legislation. Each State has dealt with it in the way considered best adapted to meet the conditions existing within its own borders, without regard to the rights and interests of the citizens of adjoining States. A sample of such legislation is found in the laws prohibiting the sale of convict-made goods in the State where manufactured, or the importation of such goods.

Prison discipline in its widest significance covers the entire area of criminality as related to the criminal, to society, and the state. A policy that ignores either of these three essential features is manifestly limited in its scope. The remedies applied are often unjust, and cruel and disastrous in their results. A practical illustration of this sort of narrowness is clearly visible in the occult methods of some Governments in unloading their criminals upon some other Government. This class of legislation is reprehensible in the extreme and admits of no apology in the closing hours of the nineteenth century. It invites the contempt and resolute resistance of the civilized world. Every nation should be compelled to take care of its own criminals; this is demanded by the sternest dictates of human propriety and fairness. In the States of our Federal Union there ought to be the strictest uniformity in the laws and their enforcement relative to crime. For one State to enact laws of extreme severity, the sole result of which is to drain off its criminal population into adjoining States, is close akin to an insult to the union of States. It is the duty of every State to enact laws sufficiently severe and then see to it that they are promptly and impartially enforced.

Penal institutions are established and maintained for the protection of society, and it is an anomalous condition of affairs for such institutions to be conducted in a manner that will discriminate against any class, and least of all against its manufacturers and skilled artisans. That this discrimination does exist is attested by the numerous petitions from labor organizations and other associations, as well as from individuals for remedial legislation. That the importance of the subject has been appreciated, is attested by the numerous laws regulating convict labor so as to reduce the competition with free labor. It is apparent, however, that the antagonistic interests of the different States has retarded the enactment of laws that will control the use of convict labor so that it shall not operate prejudicially to the great cause of labor of the entire country irrespective of political subdivisions.

In order to assist in harmonizing these influences, and the enacting of uniform legislation, the commission has taken the testimony of witnesses who are thoroughly conversant with the different methods of employing convicts; has examined numerous State and national reports and called on the officials of a number of the institutions in each State and Territory for information as to the present method of employing prisoners, and for suggestions as to changes in those methods that may be deemed advantageous to the prisoners and to the community.

The number of convict laborers is so very small compared with the masses of honest laborers, that the subject might be regarded as one of easy solution. It is a subject linked in the great chain of circumstances called the "labor question." It is a vast subject because it involves the consideration of the great subject of competition, a subject of vital interest and importance in the sharp struggle of life.

The fact that the labor of convicts may come to some extent in conflict or competition with other labor is unavoidable. All labor competes with other labor, and the labor that an individual may do for himself, or that the State may do for itself, is in a sense in competition with other labor. Their physical, mental and moral well being, as well as the interests of the State, require that convicts should be employed. As the shipment of 1 or 2 per cent of the gold of the country disturbs the money market, so, the underselling in any industry by manufacturers employing convict labor, materially affects the entire market as to the price of the products of that industry. And this is true even if the convict labor represents but 1 or 2 per cent of the total labor employed in the State in that one kind of manufacture.

The objection of the workingman to having his market for labor taken from him, in part at least, by the more cheaply paid or less expensive convict labor, is very natural and proper. It matters not whether the State employs the convicts in manufacturing products and then disposes of them in the markets of the State or nation, or whether it leases its labor to individuals or firms who choose to use it, and who dispose of the products of the convict labor; the result is the same.

In the policy of the State, as to penal institutions, the profit on convict labor should be the last matter considered. First, the safety of the people; second, the reformation of the criminal; and last and incidentally, the profitable application of the labor involved in carrying out the primary objects of all penal legislation. Penal institutions are established and maintained for the protection of society, and society can readily afford to sustain whatever legitimate cost that protection may involve. But when such institutions are converted into huge factories, whose products are thrown upon the market in direct competition with the products of individual enterprises and honest industry, they become an injury to the society they are designed to protect. They impose special disabilities upon certain classes of citizens, and indirectly compel them to support public institutions, the burden of which should rest equitably upon all. The question of self-support should certainly be subsidiary to considerations of public policy. It is an anomalous condition of affairs for a government of the whole people to discriminate against any class and least of all against its manufacturers and skilled artisans.

It is acknowledged that the problem as to the best method of obviating the injurious competition complained of, is not of ready or simple solution; but whatever difficulties may be encountered in accomplishing this end, it should be made the steadfast purpose of the State ultimately to remove the disabilities which the present system thrusts upon many worthy citizens. It should be the aim of all prison legislation to improve and perfect our penal and reformatory system, to impress upon it a character worthy of our civilization, to make it a model for other Nations, and to render it effective in accomplishing the great end of all just prison discipline, the reformation of its subjects and their restoration to civil life as honest and industrious citizens.

A well-ordered and permanent penal system is a powerful agency for reforming the criminal class and for the economical administration of justice and the social improvement of a great population.

The prisons are not institutions run by the State for the purpose of making money, and the attempts to make them so have resulted in a waste of money.

The better idea of the prison is that it is a place of detention, having in view only proper punishment for the criminal, and his reformation. It is universally conceded that one of the most important matters connected with prison discipline is the labor of the convicts. Our penitentiary system started with the beginning of the present century, and it was not long before labor was introduced as an absolute necessity to prevent the deterioration of the prisoners. Labor of the convicts, therefore, has developed with our penal system, and may now be considered as an inseparable part of that system. The labor affects the convict directly, and indirectly affects the labor of persons outside the prison.

THE RELATION OF THE CONVICT TO LABOR.

There ought to be in the laws such comprehension and vigor as to insure the full and continuous employment of the convicts in some useful industry. The greatest success is always found in the most diversified occupations, and the selection of prisoners who have fitness for some one of them for employment in such industry. Whoever asserts that idleness is possible in a prison, without all its train of inevitable evil, contradicts the plain and uniform teaching of experience.

The State owes itself and its citizens the duty of so managing the convicts that they shall not be made worse by association or otherwise in their seclusion, but should use proper effort to reform the criminal and make him a better citizen on his return to freedom.

Labor as a punishment and labor as a duty are two different things. In a prison labor should not be used as a punishment, except in its application to the individual. Regardless of any profit that may be derived from the product of the labor, it is of vast importance that it should be used as an auxiliary in the treatment of individuals. The severest punishment that can be inflicted on a prisoner is to deprive him of labor. The primary objects are the reformation and punishment of the criminal, and not gain or profit to the State that will result from his labor.

Industrial training, either pure and simple, or by engaging convicts in some useful industry, is the only way to make them obedient and tractable while in prison, and industrious and useful members of society when they are released. It is necessary that trades should be taught and practiced in the same manner as they are practiced in the world, that the education and trade training should fit men when they come out to support themselves in the way the world requires, as among the causes of crime the proximate one is very often the lack of ability for self-support.

Persons convicted of felonies (not capital) in the United States are uniformly sentenced to imprisonment with hard labor. The element of hard labor in the sentence is the dictate at once of justice and policy; of justice, because it is right that criminals, who have put the State to more or less expense, should do something toward defraying the public cost of their crimes; of policy, because work is an essential condition of the prisoner's reformation; and reformation, so far as this class of prisoners is concerned, is the great interest of the State.

In many penal institutions labor is the essential element in the reform training of the individual, and through it he becomes accustomed to habits of industry, proficient in the use of tools, and is made to feel that he has ability within himself for the earning of an honest livelihood.

The plan that is used in some institutions of allowing prisoners to look forward to the certainty of being employed upon a better grade of work, as a reward of industry, acquired proficiency, and general good conduct, is certain to lead to results of the greatest benefit to the prisoner, the institution and the State. The prisoner's ambition and interests are aroused, and he is encouraged to pursue a course which should end in his acquiring a useful trade. Society at large is benefited by anything that tends to better the condition of the prisoner in the

way of improving his opportunities of earning an honest livelihood after his release.

The importance of imparting to prisoners the complete knowledge of a trade, as it lies in the minds of those most competent to form and pronounce an opinion, may be inferred from the fact that, with absolute unanimity, prison officers declare it to be their judgment that the reformation of the prisoner would be prompted by giving greater prominence to this object; and they further declare it as their opinion that reformation, genuine and permanent, whatever the first cost of it may be, is in the long run, the cheapest and most profitable, and will prove the greatest ultimate pecuniary gain to the State.

The reformatory principle has undoubtedly passed out of its experimental stage. It is no more a question whether it will be a success. The difference in the manner, appearance and work of the inmates of the institutions where it is practiced is apparent to all. It is based upon two cardinal principles. First, that, for the practical purposes of society, humane laws should deal with crime not to avenge, but to prevent it. Second, that punishment, which is merely vindictive and repressive, defeats its own purpose, and tends to increase the mischief which it would avert. It, therefore, is not to the interest of the prisoner or of society, in so far as it relates to the prisoner personally that he should be deprived of labor. That this privilege of allowing the convict to work for his own improvement can be, and has been abused, can not be denied. The State has a duty to perform, not merely to the convict and his immediate personal relations to society, but to society at large, and is due to the very labor which we have seen is so essential to the prisoner's reformation.

THE EFFECT OF PRISON LABOR ON FREE LABOR AND INDUSTRY.

Prison labor and free labor are precisely one and the same thing; the production of each is the production of labor. The system of applying the labor and the disposition of it by those that have control of it is quite another matter. It is to the methods in which the convict labor is used, its concentration in certain lines of industry that the most strenuous objection is made.

The State takes charge of an individual for the commission of a crime; no other authority has any right to take charge of him. Notwithstanding this fact numerous methods have been developed under the convict systems of the different States whereby the State shirks a large share of its responsibility in regard to the care of its convicts.

Before considering the methods and systems devised for controlling the work of convicts, it is well to compare the relative efficiency of convict and free labor, and the possible effect that the former could have on the latter under any circumstances.

Every convict who does a day's work of any kind which a free laborer might do, competes with that free labor to that extent; in other words, any sort of productive labor in prisons, or any process by which the aggregate of all products in the smallest degree is increased, in or out of prison, must in the nature of things compete with all other producing agencies in that degree. Considered in the abstract the degree of competition between convict and free labor is controlled by the relative productive power in the two agencies. A difference in the productiveness of convict labor and free labor exists in the very nature of things. The retarding influences to convict labor may be enumerated as follows: Imprisonment itself is an obstacle to production. A willing well-paid workman is always more effective, more careful and saving in his work than one working under compulsion. Many convicts are defective in mind or body. Many were never used to work before conviction. Those who have acquired experience and skill go out on the expiration of their sentences, and new ones, without either qualification take their places. So that more or less of them are like apprentices.

The opposition made to the use and sale of prison products is another. These are branded and boycotted, and in many States the owner is required to pay a special expensive license for permission to sell them.

According to a report made by the United States Commissioner of Labor in 1886, it was demonstrated that "the competition arising from the employment of convicts, so far as the whole country is concerned, would not of itself constitute a question worthy of serious consideration. The products of the prisons were then but fifty-four one-hundredths of 1 per cent of the total mechanical products of the country. The whole prison population of those institutions in which productive labor was then carried on was but one in a thousand of the population of the country, and those engaged in convict productive labor but one in three hundred of those engaged in free mechanical labor. The total value of the labor expended by convicts in the State penitentiaries and prisons of like grade at that time did not much exceed \$2,500,000, or a little more than one-tenth of 1 per cent of the total wages paid in the manufacturing industries of the country in 1890. These facts, however, do not invalidate the claim that locally and in certain industries the competition may be serious and of such proportions as to claim the most earnest attention. This has been firmly established by the testimony of workmen, individually and collectively, through their organization; manufacturers, individually and collectively, through association; penologists, commissioners, legislators, both State and Federal, have arrived at this conclusion. The question, therefore, is one of public polity, and the public is entitled to know all the points bearing upon it."

CHAPTER II.

EMPLOYMENT OF PRISONERS FOR THE ADVANTAGE OF THE STATE AND PRIVATE INDIVIDUALS.

Convicts may be employed in productive labor in such a manner that the profits of their labor is shared by the State with private individuals, or they may be so employed that the entire profit of their work is used for the benefit of the State exclusively. The practice of utilizing convict labor for the joint profit and benefit of the State and individuals formerly largely predominated throughout the States, but the realization of the fact that the State should take entire charge of the convicts within its borders, and so utilize their labor that the products thereof shall have no advantage in the market over the products of free labor, except in so far as such products are necessary in the public institutions which are supported and maintained by taxes levied upon the people; combined with the popular demand that the practice should be abandoned, has led to the repeal of the laws authorizing such employment, and the gradual adoption of laws tending to the systems of employing convicts for the benefit of the State exclusively.

The systems under which the product or profit of the prisoners' labor is shared by the State with private individuals have been, and possibly are now, the direct cause of more antagonism on the part of the free industry of the country than employment under any other system. There are three distinct methods for employing convicts under this general system, viz: contract system, piece-price and lease system. These systems have been described as follows:

THE CONTRACT SYSTEM.

Under this system contracts are made with persons, firms or corporations, in accordance with which convicts are employed in manufacturing industries at certain agreed prices for their labor, for fixed periods of time, the prisoners working under the immediate direction of the contractor or his agents, but remaining under the general supervision and control of the prison authorities. The contractors are frequently furnished with the power and even the machinery necessary for carrying on the work, by the penal or reformatory institutions in which the convicts are incarcerated.

THE PIECE-PRICE SYSTEM.

Under this system contracts are made with persons, firms or corporations under which the prison is furnished by them with materials in proper shape for working; the materials thus furnished are converted by the labor of the convicts into finished products which are delivered to the contractors at agreed prices per piece, the work of manufacturing being conducted wholly under the supervision of the prison officials.

THE LEASE SYSTEM.

Under this system convicts are leased to contractors for specified sums, and for fixed periods of time, the lessees usually undertaking to clothe, feed, care for, and maintain proper discipline among the prisoners while they perform such labor as

may have been determined by the terms of the lease. The labor is generally performed outside of the prison walls, and is rarely employed in manufacturing industries, but usually in such industries as mining, or railroad building, or in agricultural pursuits.

The opposition of the free-labor element of the country to the employment of prisoners under either of the three systems described above is due principally to two causes: First, until recently these systems were in more general use than any of the others, and second, under them the competition with free labor is direct, and because of that directness is capable of great severity.

THE CONTRACT SYSTEM.

This is an outgrowth of the lease system, and is in many States worked in connection with the piece-price system. It was formerly in very general use and is still popular in many of the States.

In the Second Annual Report of the Department of Labor for the year 1886 it is stated—

“That under this system more convicts were employed and more goods manufactured than under any other. In its practical working the prison officers, under legal instruction, usually advertise for bids for the employment of the convicts of their respective institutions, the highest responsible bidder securing the contract. The contractor commonly engages to employ a certain number of convicts at a certain price per day, the institution or the State furnishing the power, and sometimes machinery, but rarely tools; the convicts to be employed, as a general thing, within the walls of the prison.

“The advantages of the contract system are great, when pecuniary results are the chief ends sought. Under it the labor returns or income constituted 65 per cent of the running expenses, taking those institutions in the country that were run under the system purely. The contract system secures the constant employment of convicts, as the contractor engages to keep employed the number of prisoners specified in the contract. He can not, as a rule, even stop their labor by paying for their time. The treasury of the State by this practice is the gainer. This system relieves the prison officials of the necessity of being the managers of great manufacturing establishments, a prison warden, under it, being selected for his general administrative qualities and his efficiency and experience in dealing with men. He may or may not be inclined to conduct his institution on the best reformatory principles, and he may or may not be a political appointee, too often he is; though States are more and more recognizing the necessity of keeping men at the head of their great prisons who are adapted to the work assigned them, without regard to party affiliations. Men can be secured to act as wardens more readily than they can be found who make not only efficient wardens but efficient and successful manufacturers, especially if, as manufacturers, they were to be compelled to manage several different industries. In a financial sense simply the contract system is the most profitable of any to the State except the so-called lease system. Prison officers, prison commissioners, and those directly responsible to the State for the conduct of prisons are, as a rule, in favor of the contract system, because it is their ambition, not only from a personal point of view, but from that of patriotism, to have the institutions under their charge as little burden as possible to the treasury, and to make the proceeds of the employment of convicts equal or exceed the running expenses of the institutions involved.

“It is usually claimed by those who believe the contract system is the best that can be adopted, that sufficient reformatory effort can be put forth under it. They claim that the contractors' men, instructors and foremen are as thoroughly responsible to the State as if they were employees of the State. The chief advantages, in brief, however, are the constant employment of the convicts, the best remunerative results, and the avoidance of business risks on the part of the State.”

The contract system will permit of a high degree of reformatory and disciplinary potency in administration, and may be so conducted as to eliminate many of the objectionable features of the competition with free labor, but these principles are not in harmony with the theory of the system, and are enabled rather by restrictive legislation than otherwise. This restraining feature of the laws regulating the contracts of convict labor has brought the system to a good degree

of adaptation and completeness for the purpose of a labor system in prisons. It now has the indorsement of most respectable expert and humane authorities who have practical conversances with prison management.

The character of these legal restrictions on the contract system are clearly indicated by the following quotations from the recommendations made by Mr. Charles F. Peck, commissioner of labor of New York, in his first annual report, submitted in January, 1894:

"It seems to me not impossible to outline such a plan of general prison discipline and management as will, if embodied in the law, enable the superintendent of State prisons to so administer the affairs of that department that the grievances now existing and complained of may be removed and a system established which will make the prisons reformatory and self-sustaining without infringing upon the rights of free labor or of invested capital.

"First. That the superintendent of State prisons be prohibited by law to make or permit any contract with any party or corporation for the labor of convicts in any of the prisons of the State.

"Second. That the superintendent of State prisons shall immediately cause to be published, in the manner now provided by law for contracts for the labor of convicts, notices of proposals for manufacturing to be carried on in the said prisons in such branches of industry as to him seem best adapted to the discipline of the prisons and the remunerative employment of the convicts.

"Third. That such notice of proposals, and all contracts made in pursuance thereof, shall contain the following conditions:

"(a) The party or corporation entering into such contract with the State shall agree to put in such prison, at their own expense, all machinery and appliances necessary for the carrying on of such industry, and to furnish the raw material used in connection therewith.

"(b) Such party or corporation shall also pay such reasonable rent for the use of shops, storeroom, and prison machinery required to carry on such industry as the warden of the prison may consider just and proper.

"(c) Such party or corporation shall pay to the warden of the prison the price agreed upon for the goods manufactured under such contract, said price to be estimated by the piece in the same manner as in similar industries outside the prisons.

"(d) Such firm or corporation shall also agree to pay for, at the stipulated price, all goods manufactured under the terms of the contract, which are made to the standard of perfection agreed upon between the warden and such contracting parties, said contract to specify the maximum number of convicts to be employed thereunder.

"(e) The warden shall agree to conduct the industry specified in such contract with due care and economy; to keep the machinery in proper repair, and return the same to the contracting parties at the expiration of the contract in as good condition as when received, natural wear and unavoidable accidents excepted; to employ necessary instructors and foremen; and to furnish to the contractors, according to the terms of the agreement, the manufactured goods of the grade and standard of workmanship specified.

"(f) That the employment of the convicts shall be under the exclusive control of the proper officers of the prisons.

"(g) No agent or employee of the contracting parties shall be allowed intercourse with the prisoners, or to interfere in any way with their management, except such skilled instructors as may, by permission of the warden, be allowed to assist the foremen and instructors in improving or perfecting the quality of the manufactured goods.

"(h) The contracting parties shall, on or before the 10th day of each month, pay to the warden such sum of money as shall have become due for goods manufactured under the contract during the preceding month.

"Fourth. The maximum number of convicts to be employed in all the State prisons in any industry shall not exceed 10 per cent of the number of free mechanics employed in that identical industry in the State, and in no case shall more than 300 convicts be employed in any one industry or separate branches thereof.

"Fifth. Finally, I recommend that the appointment of all officers under the superintendent of State prisons be nonpartisan and their term of office be made permanent, dependent only upon good conduct and efficiency."

It is contended by the prison authorities of Michigan that they are doing as much for the moral, intellectual and educational care of the prisoners they work

under contract as for those worked on the State account system, and also that the industries carried on under the State account system have met with more opposition from the labor unions than the labor carried on under contract. In commenting on the system, as now conducted in that State, Mr. O. M. Baines, president of the joint prison boards, states that—

“The attitude of this State is that whatever the system of work the convict should never be placed under the control of other than prison officers; and that that system of work should be pursued that is found in fact the best for the State, all things being taken into account. That form of the contract system existing in some of the States where the convict is placed under the dominion of the contractor is deemed objectionable because of this dominion. The treatment of the prisoner should always be, and in this State is, the same under the one system as under the other. Where this is, or can be made, the case the prisons should, of course, adopt the system of work that produces in each case the best financial results to the people.

“The fact that under the contract system the contractor furnishes the machinery, raw materials and working capital, furnishes and pays the superintendents, and is at the expense of selling the product, renders the contract system an advantage to the State in many cases, as the State thereby avoids these expenses and escapes the risks and loss of trade. Government is not so well constituted to look after these things, as affairs now are, as private parties.

“A more certain mode of securing skilled and successful managers of these prison industries is, to let convicts to contractors, who have the skill and experience requisite to succeed. In this way each industry comes under the control of a skilled manager.

“If all the convicts should be employed on a single large industry, superintendents would be fewer. But diversification is desirable.

“Experience is valuable in business. So is steadiness. It is important that no changes be made, save to improve. Successful management must be steady as well as intelligent. As conditions now are, the prisons' management of business on State account is liable to more changes than manufacturing by contractors.

“One aspersion upon contract labor is undeserved. It is said that the contract system is a kind of slavery; and that it makes the convict a kind of slave. Is it any more slavery than when the convict is made to work against his will on State account? If the one is slavery, then the other is also.

“It is also said, in opposition to the contract system, that contractors do not pay as much for the labor of convicts as free laborers command. This too, has no actual bearing on the question of systems; but if it does, the answer is easy. For first, the contractors pay as much as the State can make the convicts earn for the State when they work on State account, and, second, the State gets as much for the labor of the convicts as it is worth under existing conditions when compared with free labor. The Government statistics show that convicts produce only one-third the value per man on an average that free workmen in the same industries produce. When the labor of convicts is let due advertisement is made, and the price is the highest bid. Low as the price is many prison contractors give up their contracts and take their manufacturing out of the prison to be carried on with free labor at the higher wages because they can do better thereby. This has often occurred in the Michigan State prison.”

In most of the States in which the contract system prevails, the hours of work that can be exacted by the contractor are limited, as is also, when possible, the amount of work; the prisoners are amenable only to prison officials for breaches of discipline, and they frequently have the privilege of earning extra wages for their own use and benefit when the day's task is finished. The prisoners are employed within the prison walls and under the supervision of the warden, and he has the authority to stop any abuse of power that may be practiced by the contractors.

The feature of the contract system that commends it most strongly, is the almost uniform financial success that has attended its adoption. Under it the State avoids the expense of machinery, avoids the necessity of supplying working capital, avoids the employment of high-priced superintendents and salesmen, and escapes the risk and losses of trade.

The desirable features of the system have been very tersely stated by Mr. Louis D. Pillsbury, superintendent of the State prisons of New York, in a report pre-

pared by him in response to a resolution of the assembly adopted in March, 1880, and directing him to report all available practical information in his possession, or that may be collected from home or abroad, bearing upon the subject of prison labor, with the purpose of securing a greater variety and diffusion of employment in the prison, and with the intent, without wrong to any branch of mechanical industry, without injury to those in prison, and without harm to the State, of substituting, in part or whole, for the contract system some other good form or kind of labor. Mr. Pillsbury summarizes his conclusion as follows:

"From my own observations, and from all the information I have been enabled to obtain at home or abroad on this important question, I have come to the following conclusions:

"That every prisoner who is able to do so should be required to labor.

"That this labor, for moral as well as for economic reasons, should be productive; all systems of nonproductive labor, merely for punishment, having been abandoned by civilized governments because it is degrading and mischievous in its effects upon prisoners and unjust to the State. Such labor lies at the foundation of every successful system of reformation. Society has a right to demand it as a partial restitution for the depredations of criminals, and for the cost of their arrest, trial, and maintenance in prison.

"That no system of prison labor which human ingenuity has yet been able to devise is free from objections; but that, so long as the people of this State demand that the prisons shall be self-sustaining, the present contract system is to be preferred, because—

"1. It produces the best financial results.

"2. It does not interfere with outside mechanical industries any more than any other system of productive labor that has yet been devised.

"3. It gives to the prisoners some knowledge of a handicraft and enforces habits of industry, without which they are almost sure to return to a criminal career, and with which they are enabled to, and in many instances do, lead honest and useful lives upon their discharge.

"4. It is not injurious to health, as is shown by the small number of hospital patients in our State prisons and by mortality lists that compare favorably with those of communities in general outside of the prisons. Our convicts generally leave prison in better mental and physical health than when received.

"The cost of maintaining the prisons of this State for the last fiscal year was \$422,737.97; in 1876 the cost was \$605,040.53.

* * * * *

"An erroneous impression prevails that the contract system interferes with the discipline of the prisons, at least so far as this State is concerned. In every contract there is a clause providing that the contractor shall have no control over, and shall in no manner interfere with the prison discipline. The State retains absolute control, and the employes of the contractors are required to observe the rules as strictly as the prison officers themselves. No favoritism or rewards for extra work are permitted, nor are prisoners allowed to be overworked, nor are punishments inflicted upon complaints of instructors unless upon proper investigation by the warden or deputy such complaints are ascertained to be well founded. Any serious infraction of the rules by an instructor results in his instant dismissal. There is no more liability to interfere with discipline under this system than there would be under any other requiring an equal number of men in charge of the workshops. The officers and representatives of the contractors alike understand that their tenures of office depend upon a strict observance of prison rules.

"My conclusion is that in eras of prosperity the competition of prison labor is not felt; that during periods of depression it is felt, not because the contractor has an unfair advantage, but simply for the reason that its products add to markets then usually overstocked; and that this would also be the result of any system of productive labor that has yet been, or ever can be, devised. It certainly is the result of the only other practicable system having any reference to profit now in operation in the Northern States with which I am familiar, namely, the public-account system. That is now an experiment at the Elmira reformatory, which, under its present management, undoubtedly produces as much on State account as could be done under contracts to individuals. The only difference is that the State realizes the profit or is subjected to the loss on its products instead of the contractor. But that is a consideration of no real concern, either to the prisoner or to the free laborer, the vital question being how far the market is affected by the products of their labor. But that system applied to our State prisons would be certain to end in loss to the State. It would be next to impossi-

ble to find men to take charge of them combining the qualities of a successful prison manager and the business capacity necessary to manage successfully, not merely a single great industry, but a variety of smaller ones; and if such men could be found, private enterprise would offer them far greater inducements than could be offered to a prison warden. The State of New York had sufficient experience of the system in the losses resulting from its manufacture of iron at Clinton and lime at Sing Sing on State account to warn it against repeating the costly experiment in the future."

In further defense of the contract system, and in answer to a proposition, that the convict labor shall not be lower than the average pay for honest labor similarly employed and that there be a considerable reduction in the hours of convict labor, Mr. Pillsbury stated:

"No contractor would pay as much for convict labor, because it is not worth as much. It is open for competition at all times to the highest bidder, and yet there is a considerable proportion of convict labor unemployed at this moment, because there are no takers, even at the present rates. Contractors do not have the selection of their men, but are obliged to take them as they come, nearly all of them without a knowledge of the trade, and some of them nearly worthless. Compulsory penal labor, without hope of reward or ambition which prompts other labor to the acquisition of knowledge and skill, possesses but little comparative value, and if the price of skilled outside labor were asked for it, it would remain forever unemployed. Besides, the contractor can not shut his prison shop and discharge his men when there is no demand for his goods, as other employers do, but is required to employ his men the year round, or, as sometimes happens, pay their wages when unemployed rather than accumulate stock when there is no demand."

In April, 1877, the legislature of Pennsylvania appointed a joint special committee to investigate the contract convict labor system, as carried on in the penal institutions of the commonwealth, and among other things to report, the effect of contract convict labor on the manufacturing interests of the State. After a full discussion of all the evidence and its bearing on this subject, the committee reported that it was satisfied that contract convict labor has little or no effect, as carried on in this State, on the manufacturing interests of the commonwealth.

The legislature of Connecticut in 1879 passed a resolution establishing a commission to inquire into the feasibility of abolishing the system of contract convict labor in the State prison, and to devise, if possible, a plan by which the prisoners can be kept at regular and fairly remunerative employment in some other way than by contract; to inquire further as to what kind of employment, that can be successfully carried on in the prison, will least conflict with the manufacturing interests of the State. This commission reported in favor of the contract convict labor system as then carried on in Connecticut, in the following language:

"Every avenue of information at home and abroad has been carefully searched; months have been devoted to the inquiry; reports of similar investigations in the United States, Canada, and Europe have been read and considered; the written opinions of men who have made the science of penology a careful study have been obtained; all who have had complaints to make have been heard, and, as a result, the commission have failed to discover any ground for the complaints made against the Connecticut State prison or the contract system. They are satisfied—

"That there are no favored contractors in this State. The complaint of wardens and directors all over the country is: We have great difficulty in finding responsible parties to take our prison labor. Prison contracts can be had at almost any time by responsible parties. Three hundred convicts are now idle, waiting to be contracted for in New Jersey.

"That the price paid for convict labor is not greatly below its value. For while convicts can, and in some cases do, do as much work as a free man, yet as a rule they do not accomplish more than half, while they may, after sufficient practice, do as good work as is done by free labor, yet almost without exception they are entirely ignorant of the work, unskilled in any work, and have no interest in working fast.

"That the profit of contractors as a rule is not larger than the profit of the ordinary manufacturers is proven by figures of actual profit, both with free and convict labor, and by the further fact that as many prison contractors fail as free manufacturers. This is proved by the records of the Connecticut State prison.

The claim that, except in the hat trade, one man who desired to work has been deprived of employment, or that workingmen, except hatters, have had their wages reduced, or that any have been reduced to want or crime, has not been sustained by one item of proof, and it is not believed that any proof exists.

"That, with the exception of the hatting trade, the commission have had nothing to satisfy them that the industries of this State are affected by competition with prison industries or by speculation or corrupt competition between prison contractors of this or any other State.

"That although manufacturers and artisans have had every opportunity to be heard, both before this commission and the joint commission of three States, they have failed to show a single instance where the 'wages of free labor have been minimized or even reduced, except as above, in Connecticut, by the combined power and capital of the State,' or 'by unfair and odious competition with compulsory labor.' That prison-made goods do not as a rule undersell free manufactures. On the contrary, the evidence before the commission is that prison manufactures bring a higher price. This is true of the boots and shoes of Connecticut, Rhode Island, Vermont, and probably other States. John S. Perry, of New Jersey, says he has not in a single instance undersold free manufacture, and the manufacturers of stoves, who at first feared his convict labor, are now satisfied that they can compete with him. This is also the statement of Mr. Bigelow, of the Bay State Shoe and Leather Company.

"That the contract system, while not so strictly reformatory as is desirable, yet inasmuch as it teaches habits of industry, a love of work, and so much of a trade as will enable a released convict to earn an honest livelihood, and also as it insures the State constant employment for its convicts, and fair financial returns, is the best system to follow until a time shall arrive when the present prison buildings can be abandoned for reformatories, and labor shall only be used as an aid to reformation. And in reformatories this system will be decidedly the best until men are found of the dual ability required to be a successful warden and manufacturer. For, while men may be found who will succeed admirably in one position, few men will succeed in both.

"While the commission have set forth their reasons for believing that it is not expedient to abolish the contract system, they are not insensible to the fact that the system has many defects. The remedy for one class of these defects has been shown to be the appointment, by the States, of competent, judicious and honest officers, who shall be, as they are in this State, free from partisan influence, and secured in the tenure of their offices during good behavior. There is also great need of some safeguard restricting the, at present, unlimited power which permits contracts to be made for convict labor without consulting any of the industrial interests of the States."

The bureau of statistics of labor of Massachusetts in a report on convict labor submitted in January, 1897, stated that:

"We are satisfied that in the greatest practical diversity of employment under well-defined contracts, properly and publicly secured, lies the best remedial proposition relative to competition in trades, and the essential reformatory methods the policy of the State demands.

"That with the present policy of prison administration in Massachusetts, the contract system of labor, either by the day or by the piece, is the wisest as a rule, but that the administration should have power to adopt the public account system if for the interest of the State.

"In order that the best possible pecuniary results may be obtained for prison labor, and at the same time the advantages secured in making contracts which accrue from free and open competition in bidding for the labor of convicts, we recommend a law providing that no contract shall be entered into for the use of such labor, by the day or by the piece, except after thorough advertisement in different parts of the State for proposals, publication of notice for proposals to be for at least two months; and further, that no contract shall be executed, except upon the approval of the governor and council."

A commission appointed in conformity with a resolution adopted by the legislature of New Jersey in 1878, reported as follows on the contract system of employing convicts:

"The system of contracting the labor of convicts, though liable to abuse, has been so limited and guarded in New Jersey as to prevent most of the evils complained of with regard to it in other States. The prison, the shops, the prisoners and the contractor and his agents are subject to the rules and discipline of the prison, no infringement of which is tolerated."

Take away the legal restrictions imposed on the contractor and it will be conceded at once that if the foremost object is to exact from the convict financial benefit to the State, and other considerations are to be made subordinate to that, no system could be more effectual than the contract, unless it is the old lease system, which surrenders the convict at once to anyone who will take him and keep him.

The contract system is an outgrowth of the lease system, and since its incipency has been constantly criticised because of its lack of reformatory features; the direct and severe competition with free labor and industry that can be attained by its use, as well as the opportunity it affords for prison officials to shirk their responsibility for the care, discipline, punishment, and reformation of the criminal.

The one feature of the system that commends its use is the financial benefit that it is possible for the State to derive from the work of the convicts under it, and it is contended that this feature alone condemns the whole system, in that the contractors, individuals, would not pay for such results unless the privileges granted in return were such as to allow them discretion in the working of the convict and in the disposal of the product. Having these privileges there is but one way that the contractor can utilize them, and that is for his financial benefit, regardless of the welfare of the State, the convict or of other private industrial enterprises.

The vast majority of the committees, commissions, boards and bureaus that have investigated the contract system have either recommended that it be abolished or constantly modified in the vain attempt to restrict the contractor and to keep the convict, as distinct from his labor, under the control and supervision of State officials.

Aside from whatever diversity of opinion may be held as to the true penal system, or whatever measure may be considered feasible, it must be conceded that the contract system rests upon a pronounced popular disapproval; that it is a bar to any progressive, scientific treatment of the criminal classes; that it imposes a special burden, which should be borne by the whole people, upon a comparatively few industries, and those who subsist by them.

If a broad view is taken of the convict-labor question the system that will commend itself is that which first most effectually protects society, both in its moral and material interests, regardless of any pecuniary profits which may accrue from it; then it is believed the contract system can not be considered.

The material interests of society are not subserved by the contract system. This was emphasized by report made as early as 1867 by a commission formed under the laws of New York to investigate the prisons and reformatories of the United States and Canada. This report refers to the fact that the rates paid by contractors for convict labor range from 30 to 45 cents per day, and that the contractors obtain the labor of 3 convicts where they would get that of 1 citizen, and yet each convict performed, on the average, three-fourths as much work as a citizen laborer. Putting these elements together, the case stands thus: The labor of 12 convicts will cost no more per day than that of 4 citizens; yet the convicts will do 9 days work, while the citizen will do but 4. Thus every dollar paid for convict labor will produce as much as \$2.25 expended on citizen labor. The commission concludes as follows:

“Is it possible that the State can be other than a loser by a system which sells the labor of its convicts at 150 per cent less than the same labor can be obtained elsewhere? Upon the whole, it is our settled conviction that the contract system of convict labor, added to the system of political appointments, which necessarily involves a low grade of official qualification and constant changes in the prison staff, renders migratory, to a great extent, the whole theory of our penitentiary system. Inspection may correct isolated abuses; philanthropy may relieve isolated cases of distress; and religion may effect isolated moral cures; but genuine, radical, comprehensive, systematic improvement is impossible.”

The contract system, as practiced at the time of the above report, had many of the features peculiar to the lease system, and the constant tendency of legislation and the improvements in prison methods have been toward removing those features and improving the system, but the perfect has never been attained, and the tendency appears to be to pass by and beyond the system to something better. This is evinced by the character of the reports and legislation in New York State. Following the report above referred to, and in January, 1871, the State commissioner on prison labor of New York, after hearing a great deal of testimony, concluded that the following propositions were believed to be fairly deducible from, and fully sustained, by the evidence:

"I. The contract system of prison labor is bad and should be abolished.

"II. The industries of a prison, as well as its discipline, ought, ordinarily, to be managed by its head.

"III. The successful management of the industries of a prison requires experience and business tact; qualities that can be acquired only by long practical familiarity with such management.

"IV. It would not be wise to commit the industries of a prison to the management of its head so long as he is not only liable, but sure to be displaced on every transfer of power from one political party to another.

"V. Considering the extent of the industries carried on in our State prisons, and the frequent changes of officers therein, the result of which is that inexperienced persons are for the most part at their head, it would be unwise and unsafe to change the system of labor while the system of government remains what it is at present.

"VI. In order to a safe and successful change of the labor system from contracts to State management, it will be an essential condition precedent that political control be eliminated from the government of our State prisons, and that their administration be placed and kept in the hands of honest and capable men.

"VII. The only process by which our State prisons can be removed from the arena of politics—whereby alone a safe basis can be secured for a change in the labor system—is an amendment of the constitution; and to the attainment of that end the strenuous efforts of all good citizens should be directed.

"VIII. While the products of prison labor are not sufficient to sensibly affect the general markets of the country, there is no doubt that in particular localities these products do come into injurious competition with those of outside labor; and whenever such competition occurs it is the result of the undue pursuit of one or but a few branches of labor in prisons to the exclusion of all others, a result which points to the multiplication and equalization of trades in institutions of this class.

"IX. The opposition of the workingmen of the State is to the contract system alone and not all to industrial labor in prisons; and not only do they not oppose such labor, but they desire that criminals should be reformed as the result of their imprisonment; and they believe that this can be effected only through industrial labor in combination with other suitable agencies and as the result of the acquisition, as far as that may be possible, of trades during their incarceration."

In January, 1884, Charles F. Peck, commissioner of labor of New York, in his first annual report to the legislature, submitted the following conclusions in regard to the unfavorable aspects of the contract system:

"In submitting to your honorable body the recommendations as to the future policy of prison management which seem best adapted to the moral training of the convicts and attended with least injury to existing interests, it is proper that the evils to be avoided and which attach to existing systems should be briefly stated.

"The contract system as at present administered has been found imperfect for the following reasons:

"First. The object of the law is reform for the convicts. The object of the contractor is to make money from his labor without regard to his reform.

"Second. It is destructive of prison discipline necessarily, from the fact that the prisoners are for ten hours a day under the control of the contractor and his agents, who are in no wise responsible for their reformation.

"Third. It renders impossible a diversity of employment suited to the different capacities of the prisoners and the conditions necessary to their moral training.

"Fourth. It is the intention of the law and to the best interests of society that

the terms of the best conducted prisoners be shortened. It is to the interest of the contractor to keep them longer in prison.

"Fifth. It makes impossible any proper classification and separation of the prisoners, but places in daily contact the comparatively innocent with the most hardened and depraved.

"Sixth. The profits of the labor of the convict belong to the State, the laws of which he has transgressed. The contract system gives those profits to parties not representing the State or interested or responsible, except for monetary considerations, which are a constant menace to the discipline of the prison and the reformation of the convict.

"Seventh. Manufacturers engaged in similar industries and employing free labor claim to be injuriously affected in their business by the operations of the contract system.

"Eighth. The mechanical and laboring interests are opposed to the contract system on the ground that it tends to loss of employment and reduction of wages."

In other reports of the State commission of prisons of New York the policy of the State in contracting or farming out the labor of the convicts is spoken of as highly injurious to free labor in that the products of such labor are sold in the open market at a price so low that, while the contractors were thereby enabled to reap large profits, those who were engaged in the manufacture of similar articles by free labor, were unable to compete and pay the wages necessary to a decent subsistence, and that under the contract system the labor of convicts was farmed out for such small prices that the State, in effect, got nothing; while the contractors were enabled to undersell other manufacturers, and thus decrease the wages of free labor, and in some instances destroy industries that were valuable for the general welfare.

"Comparatively few of the concerns engaged in any industry are in a position to compete for the contract for prison labor and, therefore, it is sold out at extremely low rates. For example, at Auburn Prison, the contract for the labor in making women's calico and gingham dresses and wrappers was at the rate of 50 cents per dozen, 30 cents per dozen for waists and skirts, and at like rates for the labor in manufacturing many other articles. At the State Reformatory at Elmira are contracts for the making of heavy overcoats at 40 cents each, and umbrellas at 4 cents each. At Sing Sing are contracts for making shoes at 6½ and 7 cents per pair, and at the Albany Penitentiary shirts were made on contract for 30 cents per dozen. Like low rates for labor prevail at the other prisons and penitentiaries. How much this cheap labor may tend to cause the abuses produced by the so-called "sweat shops" in the great cities, where manufacturers seek to compete with the manufacture of prison contractors suggests itself. At Backwells Island the labor was largely farmed out or contracted out to various firms and companies whose product was thus brought in competition in the market with the product of other manufacturers using free labor only. In order to meet the competition the latter were forced to cut down their prices below cost, or largely reduce the wages of their employees, or, as in some instances, discontinue that branch of industry. The average earnings, per diem, of convicts so contracted out was from 12 to 35 cents per day; but as the State furnishes and keeps in repair the buildings where this farmed-out labor was done, and in most of the industries owned and kept in repair the machinery used in connection with the labor, the real earnings to the State above expenses are much less."

By a provision of the constitution of the State, and, by laws that went into effect January 1, 1897, the contract system of employing convicts was abolished in New York, and the State commission of prisons in commenting on the fact in the annual report for 1898, states as follows:

"The old system of contracting out the labor of convicts to the highest bidder, which was a species of slavery, passed away when the prison labor provision of the constitution and of the law went into effect January 1, 1897, and is already being looked upon as a relic of barbarism that the State did well in superseding by a more enlightened and practical system. But few manufacturers were situated so as to compete in the bidding. Those with large plants, permanent locations, and many employees could not do so. The contracts therefore, were taken by those who were less firmly located and more adapted to speculative ventures, for a mere pittance which gave the State very little income after paying the additional expense caused, and the repairs of the buildings and machinery it furnished.

The presence of contractors and foremen, not officers, was not helpful to discipline. The contractors were able to make the price of articles manufactured so low as to cripple the business of the manufacturers producing similar goods by free labor, or to lessen the wages of their employees. When we consider the fact that under the contract system shoes were being made in the prisons for 6 and 7 cents a pair, laundered shirts for 80 cents a dozen, trousers for 75 cents per dozen pairs, ulster overcoats for 40 cents each, and umbrellas for 4 cents, while large manufactures of brass and of iron and of furniture were also carried on at similar insignificant prices, the result no longer seems strange. It is no wonder that the industries of free labor languished, and the manufacturers and laborers were joining in annual appeals to the legislature to relieve them from a ruinous and unfair competition, by forbidding the manufacture of various classes of goods in the prisons. The State was not getting a fair value for the labor of the prisoners it was compelled to support, and the manufacturers and their employees were suffering by the unfair competition of the labor sold out to the contractors, who made the profit without fear of strikes or the chance of loss.

"Another abuse which developed under the contract system as it was practiced in New York was the passage of laws permitting penitentiaries to contract with other counties than those in which they were located for the care of those convicted of misdemeanors in such counties, and permitting the magistrates to sentence to such penitentiaries, instead of to the jails of their own counties. The penitentiaries were paid at the rate of \$2 or more a week for each prisoner, and also had the labor of the convicts they received. The actual cost of the board was about half the amount received, so that a good profit resulted from the enterprise. This was the first step in turning the penitentiaries into boarding houses. Later, laws were procured in the interests of the penitentiaries, permitting courts of the State to sentence for terms of five years, or less, to the penitentiaries those convicted of felonies. The State thus transferred to the penitentiaries the labor of the felons sentenced for five years or less, and it had to pay to the penitentiaries \$3.10 for the board of each, though there was ample room for all felons in the State prisons which the State was maintaining; and where it could keep prisoners at about half the price paid. But an even greater objection was, that such a law broke down the separation between misdemeanants and felons, putting those guilty of the greater crimes in association with those who, were, perhaps, more unfortunate than criminal.

"Finally, laws were enacted in the interests of the penitentiaries, permitting them to contract for the care and custody of convicts of other States, without regard to the length of sentence. At the end of their term this class of convicts was discharged at the penitentiary door, and the State of New York, and its penitentiary towns in particular, made a dumping ground for criminals of other States and Territories."

In 1895, the State commission of prisons found about 900 convicts from other States, some under sentence for life or long terms of forty years or more, in association with misdemeanants, in the penitentiaries.

While the contract system, as it is now conducted, is radically different from that under which convicts were employed in 1887, still the following quotation from the reports of legislative committees in Ohio and Pennsylvania, made during that year, indicate the adverse feeling that prevailed in those States against the system at that time.

The committee in Ohio, after taking the testimony of many witnesses and duly considering the questions submitted to it, arrived at the following conclusions:

"The contract system interferes in an undue manner with the honest industry of the State. It has been the cause of crippling the business of many of our manufacturers; it has been the cause of driving many of them out of business; it has been the cause of a large percentage of the reductions which have taken place in the wages of our mechanics; it has been the cause of pauperizing a large portion of our laborers and increasing crime in a corresponding degree; it has been no benefit to the State; as a reformatory agency it has been a complete, total, and miserable failure; it has hardened more criminals than any other cause; it has made total wrecks, morally, of thousands and thousands who would have been reclaimed from the paths of vice and crime under a proper system of prison management, but who now have resigned their fate to a life of hopeless degradation; it has not a single commendable feature; its tendency is pernicious in the extreme. In short, it is an insurmountable barrier in the way of the reformation of the unfortunates who are compelled to live and labor under its evil influences; it

enables a class of men to get rich out of the crimes committed by others; it leaves upon the fair escutcheon of the State a relic of the very worse form of human slavery; it is a bone of ceaseless contention between the State and its mechanical and industrial interests; it is abhorred by all and respected by none except those, perhaps, who make profit and gain out of it. It should be tolerated no longer, but abolished at once."

The committee in Pennsylvania reported in substance, as follows:

"On a full examination, a very large field for careful investigation, taking the principle involved in the first and second questions, which raises the inquiry as to the influence exerted or the effects produced by the labor of convicts in prisons, contracted for or sold to the best bidder, and the product of such labor brought into competition in the market with the product of industries of individual voluntary labor, 'or the interests of free labor,' and 'the manufacturing interests of the Commonwealth.' Your committee is of opinion that the principle is injurious to the 'interests of free labor.'

"The contractor of prison labor has many advantages which it is not always easy to estimate in money when the matter of profits is considered. Among them are to be estimated, no rent for buildings, no insurance, no cost for storage, and the want of all competition in the price paid for convict labor, either by the day or other fixed period, and the compulsion under which the convict toils, the time saved by his location near his work, and the supervision of the convict in performing his taskwork. It is true much depends on the trade carried on and the agreement made between the institution and the contractor. There is no doubt that very large profits are made by contractors, or some of them, and it is equally true that very large losses are made by the State in many cases."

The contract system is now practiced in the State of Michigan in conjunction with the State-account system, and is spoken favorably by the prison authorities who contend that as good results, in every respect, are secured by its use as by any other system. Nevertheless in 1884 when the agitation of the question of the employment of convicts was severe, the commissioner of labor of the State, in a report upon penal institutions, stated that the contract system should be abolished, because—

"First. The contractor has no interest in the prisoner, except in his ability to produce. The prisoner is the ward of the State. His employment is a means, not an end, and no contractor with arbitrary rules as to time, etc., should come between the prisoner and the State. The incentive to labor should be shortened terms, care for dependents, and payment of a stipend when discharged.

"These men are required to work an average of 10 hours per day for the year, 8½ hours in midwinter, and 11½ hours in midsummer, and they work diligently. They have not the relief incident to outdoor labor—no rainy days—all their time is employed, except nights and Sundays. Is it not idle to expect reformatory or educational influences to be exerted, except those incident to industry, or to operate upon men who work 10 hours per day? The inmates are tired, the keepers have been with the men all day, and the warden or superintendent has been engrossed with the management of the financial and commercial transactions of the prison.

"Second. The sale of the product should be regulated by the State.

"Third. If there is any profit in his employment it should not go to the contractor. If the contract system is retained the State should own the plant and machinery as well as the shops, and thus open a wider field for competition."

The subject of contracting convict labor is treated in the first annual report of the bureau of labor of Kansas, in which the objectionable competitive feature of the system is spoken of as follows:

"With the rapid multiplication of machinery, a much less degree of skill is required in many branches of industry, and the skilled mechanic, who may have spent years in the mastery of the details of his calling, suddenly finds himself at a disadvantage, even when confronted with the competition of free labor; but when to this is added a mass of labor, fed, housed and clothed by the State and hired en masse for a mere pittance, to compete with him for the means of livelihood, it makes his lot hard indeed. He feels it is an act of injustice on the part of the State; and he finally comes to regard the farming out of convict labor as a blow aimed directly at the class he represents."

The direct and severe competition with free labor and industry that is possible

by the concentration of a large number of convicts on any one industry under the contract system, is conclusively shown by the testimony presented in the fourth biennial report of the Bureau of Labor Statistics of Illinois. While the laws and rules regulating the employment of convicts under the contract system, as now carried on, may have been modified since this report was prepared, still the testimony is so conclusive and direct on this point that it is here given in full.

"One of the oldest, largest, and most prosperous shops in the Joliet Penitentiary is devoted to the manufacture of cooperage, chiefly for the packing of meats and lard, and chiefly for the Chicago market. The firm engaged in this business has had contracts for convicts at Joliet for many years, and now employs there in all 204 men. In addition to this establishment the same firm has contracts and cooper shops in the northern penitentiary of Indiana at Michigan City, where they employ 169 men. The product of these two shops flows for the most part to the Chicago market, though some portion of it reaches the neighboring cities—Milwaukee, Indianapolis, St. Louis, and even Kansas City.

"Through the courtesy of this firm this bureau is placed in possession of a statement of the amount of their business in Chicago for a term of 11 years—1875-1885, both inclusive. This shows the number of each of four kinds of packages manufactured and sold in Chicago for each year, as follows:

Years.	Pork.	Lard.	Lard.	Beef.	Total.
	Barrels.	Tierces.	Kegs.	Tierces.	
1875	107,320	90,227	8,752	1,167	207,466
1876	116,236	89,552	6,956	1,893	214,137
1877	119,213	86,881	5,976	1,249	213,319
1878	127,046	107,416	9,246	1,592	245,300
1879	213,595	188,320	7,120	1,909	410,944
1880	297,367	257,567	12,560	2,706	570,200
1881	301,034	259,648	6,144	8,944	575,770
1882	304,138	294,068	3,310	10,219	611,755
1883	316,751	312,099	5,387	16,311	650,548
1884	363,255	293,055	3,917	19,166	679,387
1885	378,312	342,159	2,311	21,479	745,261
Total	2,645,267	2,321,612	71,679	86,129	5,124,687

"This shows a total of 5,124,687 packages sold in Chicago in 11 years and 745,261 sold last year.

"In order to arrive at some facts upon which to institute a comparison an inquiry has also been made as to the status, past and present, of the manufacture of cooperage by private parties in Chicago. A canvass has accordingly been made among the principal shops, and so far as possible exact figures for a corresponding number of years have been procured from the books of the various firms visited. The records of 26 establishments variously engaged in the manufacture of both so-called 'tight' and 'slack' work were thus obtained. Of these, however, 15 only are and have been for a series of years engaged in the manufacture of provision cooperage of the specific kinds turned out by the prison shops, and upon their statements the following summaries are made:

"First, a tabulation of their annual output for a series of years gives the following results:

Year.	Pork barrels.	Lard tierces.	Lard kegs.	Beef tierces.	Total.
1875	31,000	86,045	2,600	819	120,464
1876	36,870	86,891	2,600	1,700	128,061
1877	39,200	95,600	2,600	6,324	143,724
1878	32,530	98,900	800	5,591	137,821
1879	49,010	133,130	700	5,400	188,240
1880	42,741	121,780	700	4,900	170,121
1881	36,160	121,253	700	4,600	162,713
1882	32,650	133,005	600	4,000	170,255
1883	35,900	122,400	600	.....	158,900
1884	26,750	120,735	400	.....	147,885
1885	34,600	122,562	400	.....	157,562
Total	397,411	1,242,901	12,700	33,394	1,685,746

"Here are 1,685,746 packages given as the aggregate product of fifteen cooper shops in Chicago for a period of 11 years; and 157,563 as the total product for 1885.

"The census returns for 1880 show that the total number of cooper shops in Chicago at that date was 65, and that the number of coopers employed in them was 686. In the spring of 1885, however, an enumeration was made by the Coopers' Assembly of Chicago, which developed the fact that 16 establishments had closed out their business since 1880, and that they had given employment to 235 men. This would leave as the present force 451 men engaged in 49 shops, provided the discharged men did not obtain work in the surviving shops. A more recent canvass by this bureau, however, has developed a total of 56 shops of every kind, employing from two men upward, and an average of twelve employees to each, which would give 672 as the total of working coopers in the busy season, which is from November to April.

"Accepting then 56 shops and 672 men as a fair approximation to the present totals in this industry, the question is what proportion of them are engaged in making the four specific packages used in the meat-packing trade. Of the 26 returns received, 15, or 60 per cent., are so engaged; while an estimate by our canvasser is that not more than 40 per cent. are so engaged. Assuming that 60 per cent is the proper proportion, we arrive at the conclusion that 34 shops employing 403 men are the surviving competitors in Chicago of the prison shops. Of these we have the records of 15, employing 182 men, and producing last year 157,563 provision packages. This would make the entire product of 34 private cooperage establishments in Chicago, employing 403 men on provision work, 354,517 packages. Upon this basis the following comparative table is presented of the relative product of prison and private shops, showing the columns in juxtaposition in order to bring out the contrast between them:

Years.	Number of packages.		
	Made in prison shops.	Made in 15 private shops.	Estimated total product of all private shops in Chicago.
1875.....	207,466	120,464	271,044
1876.....	214,137	128,061	288,137
1877.....	215,319	143,724	323,379
1878.....	245,300	137,821	310,027
1879.....	410,944	188,240	423,540
1880.....	570,200	170,121	382,773
1881.....	575,770	162,713	366,054
1882.....	611,755	170,255	368,074
1883.....	650,548	158,900	357,525
1884.....	679,987	147,885	332,792
1885.....	745,261	157,562	354,515
Total.....	5,124,687	1,685,746	3,792,930

"Last year's product of the prison shops was 745,261 packages, while that of all private shops, upon a liberal and legitimate basis of computation, was 354,515. In other words, out of a total sale and consumption of 1,099,776 packages in Chicago, 67.8 per cent was manufactured in prisons.

"Another marked feature of this table is the great and continued growth of the prison industry throughout the period under consideration. This is not more noticeable, however, than the entire absence of any material increase for the same series of years in the development of the industry outside the prison walls. In brief, the contractors' business has increased in volume 360 per cent during the 11 years, while the increase in private establishments was only 31 per cent in the same time. The present output shows a regular progressive growth from year to year for the whole period; but the private shops feebly fluctuate in volume of product throughout the term, and at the end are practically no stronger than at the beginning.

"The manufacture of cooperage, stimulated as it has been by the enormous meat-packing trade in Chicago, should have itself increased four or five fold during the last decade, and would have done so beyond a doubt if such opportunities for free development had been open as were enjoyed by other branches of manufacture. Instead of that it is now a feebler industry relatively than it was

11 years ago, and instead of enjoying the healthy and prosperous growth for which a notable opportunity was presented, it has barely maintained its existence by a constant and unequal struggle.

"But the proprietor has not been the only nor the greater sufferer in this struggle. Under the natural and inevitable operation of the contract system, prices have continually declined, and the citizen, in his fruitless effort to compete with the contractor, has visited every reduction in price upon the journeyman cooper in the form of a reduction in wages. The consequence has been, as is frequently stated, that Chicago coopers have often been able to earn more upon the streets at any kind of unskilled labor than at the trade they have spent years to acquire.

"Some facts in regard to the average annual earnings of coopers for the term of years under consideration have been procured from the books of employers who have been continually in business for 11 or more years. From nine of these we have been able to obtain an average of the yearly payments made to their operatives for each of 11 years, and the results of the inquiry as to wages are presented in the following tabulation of averages:

Years.	Average annual earnings of provision coopers in Chicago for eleven consecutive years, in nine establishments.								
	1.	2.	3.	4.	5.	6.	7.	8.	9.
1875.....	\$624.00	\$700.00	\$643.00	\$640.00	\$625.00	\$690.00	\$650.00	\$634.00	\$511.00
1876.....	624.00	700.00	624.00	625.00	600.00	689.00	624.00	591.00	501.00
1877.....	593.00	675.00	607.00	607.00	600.00	680.00	598.00	540.00	500.00
1878.....	572.00	675.00	604.00	590.00	540.00	670.00	598.00	500.00	450.00
1879.....	572.00	675.00	579.00	590.00	500.00	680.00	603.00	482.00	450.00
1880.....	525.00	640.00	572.00	575.00	500.00	600.00	572.00	475.00	450.00
1881.....	519.00	490.00	572.00	575.00	500.00	560.00	572.00	475.00	441.00
1882.....	515.00	490.00	564.00	575.00	450.00	550.00	572.00	462.00	411.00
1883.....	513.00	460.00	546.00	575.00	450.00	400.00	546.00	450.00	410.00
1884.....	498.00	400.00	473.00	540.00	420.00	400.00	481.00	400.00	400.00
1885.....	469.00	400.00	468.00	500.00	395.00	400.00	467.00	400.00	390.00
Decline.....	25%	43%	27%	22%	37%	42%	28%	37%	24%

"These 9 establishments are selected from the whole number reporting wages because the data in these instances are full for the 11 years in each case, making a complete serial table for the term. The returns from other shops are more or less fragmentary, although the downward tendency is equally marked in every case.

"The decline is seen to be painfully uniform from year to year in every establishment, the percentage of reduction varying in different shops from 23 to 43 per cent. Another arrangement of the figures will give the annual average for the same shops, by years, and the general average for the term:

Establishments.	Annual average of earnings in nine establishments for each of eleven years.										
	1875.	1876.	1877.	1878.	1879.	1880.	1881.	1882.	1883.	1884.	1885.
1.....	\$624	\$624	\$599	\$572	\$572	\$525	\$519	\$515	\$513	\$488	\$469
2.....	700	700	675	675	675	640	490	490	460	400	400
3.....	648	624	607	604	579	572	572	564	546	473	468
4.....	640	625	600	590	590	575	575	575	573	540	500
5.....	625	600	600	540	500	500	500	450	450	420	395
6.....	690	689	680	670	680	600	590	550	400	400	400
7.....	650	624	598	588	608	572	572	572	546	481	467
8.....	634	591	540	600	482	475	475	462	450	400	400
9.....	511	501	500	450	450	450	441	411	410	400	390
Average.....	613	611	599	577	570	545	523	510	481	445	432

"This shows that a general reduction has taken place in the earnings of coopers in the provision cooperage shops of Chicago from \$613 per annum in 1875 to \$432 per annum in 1885, or an average decline of 30 per cent. Some part of this may certainly be due to other causes than the competition arising from the prison shops, but the uniform belief among those interested is that the greater part of it is directly chargeable to that influence. As confirmatory of their statements we

cite from the pay rolls of three shops in which beer barrels alone are made the average earnings paid that class of coopers for a number of years past:

Years.	Average annual earnings of beer-barrel coopers in 3 shops for a series of years.		
	1.	2.	3.
1876.....	\$682	-----	-----
1877.....	675	-----	-----
1878.....	670	-----	-----
1879.....	662	\$660	-----
1880.....	647	651	-----
1881.....	650	645	-----
1882.....	650	640	\$675
1883.....	630	640	650
1884.....	624	626	625
1885.....	622	626	623
Percentage of decline.....	8.9	5.2	7.7

"Here the decline is not greater than might be expected from general causes, ranging from 5 to 9 per cent.

"Presented in averages by years the earnings of this class of coopers, not affected by convict labor, appears as follows :

Establishments.	Earnings of beer-barrel makers in Chicago for a series of years.									
	1876.	1877.	1878.	1879.	1880.	1881.	1882.	1883.	1884.	1885.
1.....	\$682	\$675	\$670	\$662	\$647	\$650	\$650	\$620	\$624	\$622
2.....	-----	-----	-----	660	651	645	640	640	626	626
3.....	-----	-----	-----	-----	-----	-----	675	650	625	623
Average.....	682	675	670	661	649	647	655	636	625	623

" Thus at the present date the earnings of coopers not injured by prison competition is found to be \$623 per annum, while the earnings of those who are is only \$432, though 10 years ago they were substantially the same. But another line of inquiry has brought out some facts as to the earnings of provision coopers in other cities where the influence of the prison manufacturers is not felt, or only felt in small degree. Among the latter places are Milwaukee, Indianapolis, St. Louis, and Kansas City, and of the former Louisville, Denver, and Eastern cities are examples. From each has been obtained the ruling price paid for making pork barrels, and an average week's work is considered 30 barrels; thus the table presents the prices paid and the possible earnings at different points:

Locality.	Price per piece paid for making pork barrels or lard tierces.	Average weekly earnings of coopers.
Chicago.....	\$0.25	\$7.50
Milwaukee.....	.30	9.00
St. Louis.....	.30	9.00
Kansas City.....	.30	9.00
Indianapolis.....	.33 1/2	10.00
Louisville.....	.35	10.50
Denver.....	.35	10.50
Buffalo.....	.40	12.00
Rochester.....	.40	12.00
Baltimore.....	.40	12.00

" No comment can add to the suggestiveness of these figures, and it only remains to refer to the movement in prices in the Chicago market since the establishment of the penitentiary shops to complete the outline of the case against convict labor in cooperage.

"The following tables of prices for barrels of the specified kinds, for a series of years, is compiled from data furnished by manufacturers who have been in the market for the period named:

Years.	Market prices for eleven years for—			
	Pork barrels.	Lard tierces.	Lard kegs.	Beef tierces.
1875	\$1.80	\$1.55	\$1.10	\$2.00
1876	1.54	1.50	.97	1.88
1877	1.31	1.40	.85	1.80
1878	1.30	1.38	.80	1.72
1879	1.26	1.34	.75	1.65
1880	1.25	1.30	.72	1.52
1881	1.25	1.30	.72	1.52
1882	1.21	1.26	.67	1.48
1883	1.19	1.25	.65	1.45
1884	1.18	1.22	.65	1.45
1885	1.15	1.20	.60	1.40
Percentage of decline	36	23	46	30

"The noticeable feature in this table of prices is the correspondence between the decline in prices and the reduction in wages. This shows a varying percentage of decline in the different kinds of packages equivalent to an average falling off of 33.7 per cent, while the computed reduction of wages for the same period was 30 per cent. Meanwhile the demand for this class of goods has increased, as shown by a former table, from a total consumption in 1875 of 478,510 packages to 1,099,776 packages in 1885.

"It is unnecessary to enlarge upon the significance of these facts and figures in regard to coooperage."

The above facts are commented on in the Second Annual Report of the Department of Labor as follows:

"The simple fact that 67.8 per cent of the provision coooperage used in Chicago is manufactured in prisons, by contractors who pay no rent, no insurance on buildings, and no taxes on realty, and hire men at from 45 to 62½ cents a day, renders every other fact here shown as to the decline of the business in Chicago, the falling off in the market price, the reduction in wages, and the consequent reduction of skilled coopers to the rank of day laborers inevitable without other demonstration.

"If the competition is severe in any industry and in any locality the contract system is, in so far, condemned. The material competition is aggravated by the moral aspect of the case. Workingmen feel aggrieved that contractors should be able to employ labor at a few cents per day, ranging perhaps from 20 to 60 cents for long-term men, and that the contractor, as an individual, should have the advantage, under the patronage of the State, of securing gains to himself. They feel that it is an affront to them, not only as wage receivers, but as contributors to the general wealth through their producing capacity. All manufacturers not identified with prison contracts feel aggrieved that the State should offer individual advantages which they themselves can not secure by any industrial competition, and while it is true, as conclusively shown, that as a whole the convict is not equal in efficiency to the free laborer, yet it is also conclusively shown that this inequality is more than made up by the other advantages secured by the contractor. Penologists take the ground that it is a disadvantage so far as regards reformatory efforts. They demand that all the operations of a prison, whether administrative or manufacturing, should be entirely in the hands of the State's own appointed officers, and they point to many circumstances which serve to confirm this position."

The State assumes control of the convict, and it is not just to the convict or fair to the community that any part of the responsibility should be shared with an irresponsible contractor, or any individual, who is not connected with the State government. It is claimed by the opponents of the system that under it the State, in fact, goes into partnership in an industrial enterprise, in which it seeks for good financial results and shirks its responsibility. The prison ceases to be an institution supported by the State for the betterment and protection of its citizens. The contractor's only desire is to fill his coffers, and while the rules

of the prison, laws, and conditions of the contract indicate that the true features of prison discipline are guarded, from the very nature of the copartnership arrangement they can not be. The contractor must be consulted in all arrangements affecting the work of the convict, and he in time will, to a large extent, control the institution.

It is asserted by people who have charge of prisoners that under the contract system they have been able to get more remuneration for the labor of the prisoners; why that should be so has never been clearly explained, except in a very unsatisfactory manner, viz, that it is owing to the lack of capacity of the people who have charge of the prisons.

The argument that the system renders the institution self-supporting is not a logical or liberal one, and should be given no consideration if the intention is to determine between a right and a wrong system.

B. THE PIECE-PRICE SYSTEM.

This is a modification of the contract system and was developed from that system in order to overcome some of the objectionable features of that method of employment. Under it either the State or the individual may own the plant necessary to the manufacture of a given product. The proposition of the State is, then, to transform anybody's raw material into a specified product for a given price per piece.

The advantages of the system are that the State does not appear in the market, either as a buyer of material or seller of goods. Under it a great variety of industries can be conducted; the contractor's men have no position in the prison, and every effort for reformation is left untrammelled by outside influence; and, if the State owns the necessary plant, as is usually the case, and the bidder is not required to invest his capital in machinery before he can avail himself of the opportunity to bid for prison work, then all outside parties are upon an equal footing and bids will approximate the maximum value of the work.

While these features result in giving the system many advantages over the contract system and do in a large degree satisfy the prison reformer, they do not remove the competition with free labor. This is clearly shown by the conditions under which the system was worked in California. According to the first biennial report of the bureau of labor of that State the piece-price system went into effect January 1, 1882.

The report says: "Prior to that time a few business firms in San Francisco practically controlled the State prison at San Quentin by contracting to furnish its convicts with labor at so much a day. This was seen to be wrong, and by the provisions of the act of 1880 the contract system was done away with, and in its place the following plan of working the convicts was ordered: That the State should supply the labor and motive power to whosoever wished to engage them, and then that the product should be sold at a reasonable rate. This practically made the old contract system as active as it ever was, although masquerading under another name. Instead of contracting to pay so much per diem for convict labor, the firms who now make use of a State institution, contract to pay so much for the product of that labor. It is true that the contract is now called a "proposition" but its effects are practically and precisely the same. The result proves this. The evil complained of under the contract-labor system was, that the firm was paying a low, an exceedingly low, rate of wages and were enabled to have made for them articles at such a price that it would be impossible for any other manufacturer who was not enjoying the benefits of such a contract to produce similar goods at anything approaching a similar price. Under the present system, a few firms contract to take from the prison all that is manufactured there at certain prices, but these prices, like the wages they paid, are so low that

they once more receive their goods at a rate which again enables them to place them on the market at a figure with which no outside firm can compete. What difference does it make then whether these firms contract to pay a certain wage or contract to pay a certain price for the product, when wage and price are both ruinously low? Call it wage per diem, or call it price per piece, the result is precisely the same."

The prison labor reform commission created by the legislature of New York in May, 1886, discarded the piece-price plan in the following conclusions:

"Only a few years since there arose in this State a cry from the ranks of the laborer against the contract system. The result was the abolition of that system 3 years ago. Those who declared against the contract system not only did not object to the piece-price plan, but in some instances commended it. But a careful and painstaking examination of the piece-price plan in practical operation, and where the comparative tests have been fairly applied, shows it to be clearly more oppressive and therefore more offensive to competitive free labor in certain respects than even the contract system. The system of labor known as the piece-price plan has been tested in several prisons, notably in New Jersey. The result shows that, so far from meeting the objections of prison labor competition, which had been the cause of the change there from the contract to the piece-price plan, the latter was found to be a more serious competitor with free labor than the contract system. It was clearly demonstrated that more goods were manufactured and turned loose upon the market per capita than under the contract system, and that the State received less pay for it. Less hours of daylight in winter and the botchwork of beginners or of inferior workmen militated against the State, it is true, but in order to meet the agreement with the employing agent or contractor, a greater amount of work and greater ratio of production was required. The State, becoming the manufacturer by this system, agrees to furnish a given quantity of manufactured goods within a specified time, as well as at a given price, and of necessity such goods must come up to the standard fixed by the party who takes the product. If from any cause—unskillfulness or viciousness entering conspicuously into this estimate—these goods are damaged, or fail to reach the high standard of excellence fixed and passed upon by the contracting agent, they are of course rejected, and the State is the loser. By this system also citizen "instructors" employed by the contracting agent may be placed in charge of the work of convicts. This was one of the objections urged against the contract system proper, as often, if not always and of necessity, interfering with prison discipline. If profit and product were the end and aim chiefly to be desired, there would be no material objection to urge against the piece-price plan as the next best thing to the old contract system, or as the contract system by another name, with certain modifications unfavorable to State profit and the interests of free labor. If, on the other hand, the reformation of convicts is to be fostered and encouraged, the question of profit from convict labor must be sunk out of sight, and the State and its chosen officials must have full control of the task, the hours of labor and the discipline of the convicts, as well as the fixing of a standard of excellence in the manufactured product regulated by such rules, rewards, or punishments as shall be deemed just and necessary to a proper performance of the tasks assigned."

The system is so closely allied to the contract system that the advantages and disadvantages of both should practically be treated as the same, though from a theoretic standpoint, at least, the piece-price system is capable of greater utility in meeting and overcoming the objectionable features of convict labor.

THE LEASE SYSTEM.

This system has but few advocates and but one advantage. Its single advantage is, that it insures a good financial return to the State operating it. According to the Report of the Department of Labor, it is the most remunerative system in vogue, its proceeds constituting 372 per cent, taking all States together that worked under it in 1886, of its running expenses. Under this system the State practically has no care of the convicts: it shirks its entire responsibility beyond the receipt of the money specified to be paid by the lessee.

The system prevails in but few States, and those are almost entirely in the southern section of the country, where it is claimed that the climatic conditions

and class of criminals are such that it is the most practical, if not the best, system that could be adopted. This may be temporarily true, but the disadvantages of the system are so great that the advantages are overshadowed.

Bad as the contract system is, in a reformatory view, even when checked and controlled by the State's appointed agent, it is, nevertheless, far better than the system of absolute leasing. For, while the leasing system is liable to all the abuses of the contract system it is open to some peculiar to itself. The temptation to excessive gain, and to whatever abuses thought conducive to that end, have no restraining tie. The same principle underlies it as that which generated the horrible and disgusting abuses of the old English jail system.

The lessee becomes the agent of the most active competition. Places pecuniary interests in conflict with humanity. Makes possible the infliction of greater punishment than the law and the courts have imposed, renders impracticable the proper care by the State of the health of the prisoners, or their requisite separation according to classes, sexes and conditions. Reduces to a minimum the chances of reformation, and places convict labor, in many instances, in direct competition with the honest labor of the State.

CHAPTER III.

EMPLOYMENT OF PRISONERS FOR PUBLIC BENEFIT EXCLUSIVELY.

The results of prison labor may be devoted to the benefit of the State, or of its institutions, under either of the following methods of employment.

First. By the public-account system, under which the institution carries on the business of manufacturing like a private individual or firm, buying raw materials and converting them into manufactured articles, which are sold in the best available market.

Second. By the employment of prisoners upon public buildings, works and ways.

Third. By the employment of prisoners in the manufacture of goods for consumption in government institutions.

A.—THE PUBLIC-ACCOUNT SYSTEM.

Any industry whether manufacturing, agricultural or mining, in which prisoners are employed and where the products of their labor are to be sold, the cash proceeds being devoted exclusively to the benefit of the State or its political subdivisions, is classed under this general system.

The advantages claimed for this method of employment may be summarized as follows, Whatever profit is made in labor and in sales goes to the State; no individual secures an advantage in the production of goods; the prisoner works with better spirit, because he knows his work is for the State he has offended; the prisoner is entirely under State control; it offers the best opportunities for reformatory efforts; the price of free labor is not affected; the State can regulate the amount of any given product it manufactures; it permits of a diversity of occupations for the convicts; it can be modified in many ways to suit the conditions prevailing in different localities; motive power may or may not be used; the prisoners may be employed with the intention of reformation rather than meeting with financial success.

The system, in some form, is practiced to a greater or less extent in almost all of the States. Its adoption has been recommended in numerous official reports giving the results of close and extended investigations of the convict problem.

In January, 1887, the commissioner of labor of Michigan submitted a very exhaustive report on convict labor, and concluded an elaborate discussion of the whole subject with the recommendation that the contract system, which was in vogue in the State, be abolished, and as a substitute therefor that the convicts be employed upon the State-account plan, without the use of motive-power machinery.

In recommending the State-account system, a special committee, appointed by the legislature of Pennsylvania in 1887, stated that in order to avoid the profit made by contractors to the injury of free labor, it is not only necessary to abolish the contract system, but also to modify the convicts' labor, so that it will not injuriously affect the private enterprise of any class of outside manufacturers.

The committee concluded that this could best be done with a due regard to the burden of taxation, State, county, or city, and the proper support of prison inmates by teaching each prisoner a full trade, avoiding the use of machinery, and disposing of the product of convict labor in the open market, where the best articles command the best price, confining, as far as possible, the industries taught

to those articles that are used in public and penal and charitable institutions supported by taxation. The profit, if any, under this plan would result directly to the benefit of the taxpayer. Diversifying the trades taught, seeking for those that are least injurious to free labor, trying to dispose of the products of these industries where the competition is hardly ascertainable, and the placing on the management of these institutions the duty of careful supervision of the trades taught, and the disposition of their productive labor, so that the closest economy will be the positive effect of their administration, and the necessary reduction of the smallest amount of taxation, are the remedies to be sought, and are both feasible and practicable.

In an extended discussion of the advantages and disadvantages of the various methods under which convicts are employed, the commissioner of labor of Illinois, in his fourth biennial report, makes the following statement concerning the possibilities of the public-account system:

"Some of the characteristics of the public-account system have already been adverted to, but may be briefly restated. This system contemplates the employment of convicts by the warden, and for the State, without the intervention of any other persons or interests. To express more fully the possibilities of the system under its best form of development, it contemplates, first, such employment as will promote in the highest degree that discipline, correction and reformation which will best fit the criminal for restoration to society, and, secondly and incidentally, enable him most effectually to contribute to the cost of his incarceration. For the maintenance of such industries the State furnishes the necessary equipment, and must, of course, buy its material and sell its product in open market. It is manifest that the degree of success which may be attained under this system, both in reformation and in avoiding harmful consequences to outside interests, depends wholly upon the relative importance which is given to the two specified objects.

"If the administration is directed chiefly to the development of the individual tendencies and capacities of the convicts, the varieties of occupation given them will necessarily be great, involving perhaps, corresponding expenditures for equipment and superintendence, and presumably smaller revenues to the State. But this diversifying of occupations will, at the same time, not only constitute a potent reformatory measure, but will also of necessity greatly reduce, if it does not wholly remove, all injurious competition. Thus may the best fruits of the system be realized and the justification of the system itself be established, though possibly the revenues may be somewhat impaired. On the other hand, if it be the disposition of the management to maintain few but extensive shops, and make general use of improved machinery and appliances, the establishment would no doubt be more successful as a manufactory, and might possibly pay dividends upon the capital invested in it; but, aside from the advantage which would flow from the absence of the contractor, it is difficult to see wherein the public-account system, as thus administered, would be any improvement over the contract system. So far as competition is concerned, the State, as a manufacturer and seller, on a large scale, of machine-made products, would not only perpetuate the evils of the contract system, but possibly aggravate them, for the necessity to sell would be just as imperative, while the incentive to realize a good price would be less than that of a contractor with his private capital at stake.

"Thus the success of this system may be said to rest wholly upon the manner of administering it. It may be so readily abused, by an officer willing to defeat the object of which it is established, that, unless the details of its execution be defined within careful limitations, it may prove a remedy worse than the disease."

If the principle to be recognized in the employment of convict labor shall be that such a system be chosen, as shall first tend to promote in the greatest measure the discipline, punishment, and reformation of the convict, the public-account system commends itself more strongly than any we have thus far considered. Under it the State has complete control of the convicts, unawed by obligations or demands of contractor, agent, or instructor.

A legislative committee of New York, in May, 1886, after a careful consideration of all the interests and the responsibilities involved, recommended the adoption of the public-account system in the following terms:

"The choice is made in the discharge of a conscientious duty and after a careful weighing of the subject in detail. This duty was not sought, but rather imposed. It was not accepted without a fair conception of the delicacies and difficulties surrounding it, and its discharge has been in the desire fairly to subserv the highest interests involved. There were, as stated at the outset, but two systems left from which, of necessity, choice must be made for the employment of convict labor in the State. The commission believes that the correct tendency and logic of the times trend in the direction of 'prison-labor reform,' and so believing, it had but one intelligent duty to perform, and that duty was to adopt the only system which opened the way to reforms both needed and demanded."

It is conceded by many who advocated the public-account system, because of its reformatory and disciplinary features, without regard to the financial results, that the best results can be reached by abolishing the use of machinery. This has been done in the Eastern Penitentiary of Pennsylvania, if not elsewhere, and it is proved conclusively that goods made in this way find a market at fair prices.

In discussing this feature of the public-account system, it is stated in the Second Annual Report of the Department of Labor that with such a plan in vogue throughout the United States, or in the majority of the States, there could be no complaint as to the effect of convict labor upon the rates of wages or upon the sales of goods, either in price or in quantity.

"By the adoption of the hand-labor plan the State would be relieved from the necessity of securing manufacturers of skill and experience as wardens. Any man fit to be warden of a prison—and this in itself requires men of the highest qualities—can manage a prison and conduct its industries, if they be carried on under the hand system without the aid of power machinery. The disadvantages which must be placed over against these great advantages that have been enumerated, are, under the broadest consideration, trivial and of no great account. The objection to this plan, which has been proposed by many investigators, and which is now under consideration, involves the abandonment of the idea that prisons must pay. It contemplates the adoption of the principle of securing the maximum reformatory results without regard to the income to the treasury. All other systems contemplate maximum results to the treasury, with as much regard for reformatory results as is possible without interfering with receipts. This objection is the weightiest against the hand-labor idea, because it is recognized by all men that a healthy convict, having offended society and put it to great expense to repair the damages he has done, or to convict and punish him, or to exclude him from society that he may commit no more depredation, should be compelled to earn his support as the ward of the State, although he did not earn his support while not a ward of the State. This objection in regard to expense is one which the American public will probably meet in the heroic manner in which it meets all such problems, that is, in the spirit to do the best for the whole body politic without regard to expense; nor should this objection have much weight, when the facts are considered."

Farming operations under the public-account system have met with good success in many of the States, especially in the South. It eliminates the serious objection to close confinement; reduces competition to a minimum and gives the State full control of the convict.

"The most extensive farming operations by convicts in this country are to be found in North Carolina. It appears by the report of the board of directors that 14,600 acres of land were under the control of the penitentiary, by lease or otherwise, in 1896. The area cultivated in all crops that year was estimated to be 11,800 acres. Nearly 900 convicts were employed on this land. The bulk of the products consisted of cotton and corn. The farming operations were so profitable that in 1896 the penitentiary paid all its expenses. This was the first time, however, in its history of more than a quarter of a century that it was possible to report the full support of the penitentiary from its own resources."

The state of affairs in North Carolina indicates that, even under especially favorable conditions, agricultural employment can not be relied upon to furnish full occupation for convicts; it is available for only part of the year. While, therefore, it may be made exceedingly useful in connection with other forms of work, it can never become wholly a substitute for mechanical or other industrial employment.

OBJECTIONS.

The public-account system embodies in a large measure the true theory of penal administration, and while it is possible by competent and judicial management so to control the labor of convicts under it, as to lead to good results financially for the State, as well as reformatory, disciplinary and educational for the prisoner, the history of the system does not show that these results have uniformly attended its adoption, nor does it appear that its use has removed the objectionable features of competition with free labor.

The reason why the system has failed to meet with all the success presaged by its advocates, have been stated as follows:

The difficulty of securing men efficient as wardens, and at the same time efficient as practical manufacturers and business managers; with the increase in the size of the institution and diversification of the industries this difficulty increases. The impossibility of combining under it the capital, machinery, mechanical skill, business skill, and ability necessary to the successful operation of such an enterprise. The impracticability of finding a ready market for the manufactured products.

The objections to the system as it had been conducted in New York were summarized by the commissioner of labor of that State in 1884 as follows:

"The public-account system, as it has been administered in this State, has been found imperfect in the following particulars:

"First. It was extremely costly.

"Second. It was made a political machine to furnish places for small politicians, rather than an institution to reform the criminals.

"Third. The convicts were employed at labor not adapted to remunerative results, or to any possibility of discipline.

"Fourth. The officers did not attend to their duties.

"Fifth. The large outlay of the funds of the State gave opportunity, in the general disorder and mismanagement, for wholesale extravagance and speculation.

"Sixth. The councils of the administration were divided, and consequently there was no unity of purpose or well-defined responsibility.

"Seventh. The administration was altered periodically, and the officers held position on account of their skill in politics, not prison management.

"Eighth. The control of the prisoners was put in the hands of jealous and scheming incompetents."

In the report for 1898 of the proceedings of the board of control of prisons of Michigan, where both the public-account and contract system are in vogue, it is stated that--

"The only reason why more convicts are not worked on the State account is that the State gets more profit and better results on the whole when the prisoners work on contract. The course taken is wholly based on business reasons, and that course pursued that is in each prison found best for the State. It is believed, however, that all the boards and wardens are of the opinion that conditions may change so that the State-account system may do better than it has done."

"Under this system the same influences that govern business circles outside of the prisons, and tend to prosperity or adversity, obtain in prisons, and influence trade favorably or unfavorably."

The success of the public-account system is dependent not only on the ordinary contingencies that control industrial and mercantile transactions, but is subject to the following which are peculiar to itself: At times the products are a drug on the market, but the convicts must be kept employed, thereby increasing the stock of goods to be disposed of; the sale of the goods is retarded, not only by the indisposition of dealers to have transactions in goods made by convict labor, but by legislation that requires the goods to be branded, or sold outside the limits of the State where manufactured, or not sold at a lower rate than the regular market price; but a small percentage of the convicts have had any practical experience

in mechanical pursuits, and of this small percentage but a few can be classed as skilled mechanics; the necessity for a diversification of industries with no skilled help in any of the branches; the indisposition of the convicts to put forward their best efforts; wardens are seldom good managers of convicts and also good managers of manufacturing enterprises; the wages of a prison warden are but a small temptation to a man who has the ability to meet with success in the business world; public officials become careless of those details which are essential to business success; the temptation to defraud, especially if the tenure of office depends upon the success of political parties.

As a large percentage of the business men during their business careers are obliged to go into bankruptcy, or to make assignments for the benefit of creditors, the opponents of the public-account system claim that men employed for the State under salaries could meet with no better success, especially when in addition to the ordinary difficulties attending a business career they have in addition to combat with those which are peculiar to the system.

The failures and admitted risks of the public-account system cause prison managers to shrink from the great responsibility of establishing it in a prison where large numbers are confined. Beyond a doubt it can be made effective, when but 50 to 300 are employed, but when thousands are to be employed the case is far more difficult.

The public-account system had been in actual practice in Illinois for some years when, in 1872, a legislative committee was appointed to investigate the penitentiary. The report of this committee disclosed a net loss to the State during four years and five months of management of \$314,212.

"The causes which had led to this result are stated categorically as six:

- " 1. Inexperienced and incompetent management.
- " 2. Want of harmony in the management.
- " 3. Depreciation of property and of manufactured articles, experienced alike by all persons engaged in manufacturing during the same period.
- " 4. Want of stability in the plans of management and changes in officers and subordinates.
- " 5. Loose and careless manner during the first two years of purchasing and receiving goods.
- " 6. The payment of large amounts as interest, made necessary by lack of capital and credit."

The committee, therefore, submitted a report to the effect that they were of opinion that the feeding, clothing and guarding of the convicts, without any return for their labor, can be secured for less cost to the State than has resulted from the manufacturing experiment; and that it would be a measure of economy for the State to feed, clothe and guard the convicts by direct appropriation, and leave the labor wholly unemployed, as compared with the results of the experiment in engaging in manufacturing.

Perhaps the chief disadvantages arising under this system are the difficulty of disposing of the products, the impracticability of furnishing constant employment to the convicts, and the competition with free labor and industry.

In regard to the difficulty of disposing of the products of convict labor the commissioner of prisons of New York in his first annual report states:

"The objection generally of the people to such a direct competition of convict labor has made it so difficult to sell the goods known to be the product of prison labor that the goods could not be sold in the market at the same price as the product of other manufacturers; and in order to make sales the price was necessarily reduced, thus producing the same unfair competition and reducing the price of all goods of that class, and causing the same result in the market as the contract system. Further, the difficulty of selling prison-made goods has caused large expense in the sales department. * * * Therefore it would seem to be evident from these results that it is not practicable for the State to manufacture on its own account for sale in the open market."

Under the contract system the contractor has very strong reasons for getting good prices. The prison officer has not the same personal motive, however faithful he may be. The superintendent of the Ohio Reform School has stated :

"That with the same number of boys the State realized \$25,000 more per year from the piece-price plan than from the State account plan. The reason of the gain was the better facilities which the contractors had for getting higher prices for their products. It is important to free manufacturers and to free laborers that prison products shall not sell for low prices in the market in competition with those of other factories. In that form competition might be seriously felt in a dull market by compelling the shading of prices."

It has been shown by numerous investigations that under the public-account system there is a greater competition with the products of free labor, so far as the price of the goods is concerned, than under any other.

In the second annual report of the Department of Labor for the year 1886 it is stated:

"That the competition under the public-account system has been the experience of the past, and this is a reasonable claim, for the officers of the prison manufacturing goods on the State or public account are not obliged to secure a profit on the goods sold, because the State can not fail, and as nothing is paid for labor, the cost of production being almost entirely for material, goods can be sold for small percentage above the cost of material, and yet no great disaster arise to the institution. It is often suggested that this difficulty can be met by providing by law that goods manufactured in a prison conducted on the public-account system shall not be sold in the market for a less price than the market rates for the same kind and quality of goods. This is all very well for a law; but the law can not compel a purchaser to take the goods, and the inevitable result would be, if such goods did not meet a ready sale at market rates for the products of free labor, they would be sold nominally at such rates, subject to discount for cash, for prison officials would not care to pile up goods in the prison warehouses."

While a diversification of industry is essential to the proper employment of convicts, the constant tendency under the public-account system is to a centralization of all the labor on one or a few lines of product. It is only by such practice that success is possible. Few great manufacturers undertake several lines of production. This tendency leads to an overproduction of a given product and the resulting underselling, and the necessity of curtailing the number employed, or the time of employment.

The public-account system was in actual practice in Wisconsin, but finally abandoned, and the contract system substituted. After this action the bureau of labor and industrial statistics of the State submitted a report on the condition of convict labor, in which the following statement in opposition to the public-account system appears:

"I wish also to call the attention of those favoring what is called the State-account system to the strong complaints made by several boot and shoe manufacturers against the competition of the reform school at Waukesha. There the State owns everything, uses inferior machinery, employs nothing but boy labor, and sells whenever and wherever it can. Our State prison was formerly run on that plan, but the resulting evils so stirred up manufacturers that the present contract system was devised to take its place. We now see, even by this superficial glance, that our legislature will have many things to consider in dealing with the question of prison labor; and professional agitators, reformers, and manufacturers who demand the abolishment of the contract system fall far short of their full duty and of statesmanlike conduct when they neglect and refuse to lend their aid toward devising some suitable plan to take the place of that which they propose to destroy."

The charge is frequently made and sustained that the selling price of the convict-made goods controls the market and the system is open to objection on the ground that the State should neither directly nor indirectly enter into competition with the laborer or manufacturer for the purpose of raising revenue to pay the expenses of restraining and confining the criminal classes, and thereby protecting society from danger and contamination, any more than it should engage in competitive business for the purpose of providing revenue to defray the other expenses of the State government.

B.—EMPLOYMENT OF CONVICTS ON PUBLIC BUILDINGS AND WAYS.

This system of employment is advocated on the theory that it completely removes any real or supposed competition in prices; the State receives the full benefit of the labor in the shape of permanent improvements; it requires no skill on the part of the workmen and therefore no time is consumed in instruction, and short-termed prisoners can be worked with advantage; the work is healthful and important, and can be of such a character that it would not otherwise be accomplished.

The system is in very general use, especially in the Southern States, as a means of occupation when other resources fail.

In a report giving the results of an investigation of the methods of employing convicts, contained in the report for 1895-96 of the Bureau of Industrial Statistics of Nebraska, this system is referred to as follows:

"It would be the part of wisdom to direct, so far as possible, the prison labor of the State to such public improvements as are needed and are in no other way provided for. Especially should it be used to improve, so far as possible, the penitentiary building and grounds, so that all accessories to the comfort and moral elevation of the prisoners would be attained. Such public improvements in connection with the city as are necessary to the general welfare of the public and of the State and can not well be afforded under the present financial condition might and should be made by the prison labor, so far as practicable."

The method is warmly advocated by manufacturers and workmen. Of 225 expressed opinions obtained by the Bureau of Labor of Illinois from labor organizations, 104 demanded this form of outdoor unskilled manual labor for convicts.

The First Annual Report of the Commission of Prisons of New York contains the statement that "the boards of county supervisors appear to be in favor of working short-termed convicts on the public roads." The Third Annual Report states that "it can be stated without fear of contradiction that in no other way or manner can the convicts be employed with so little effect on outside labor as in work on the highways, and in no direction can greater improvement be made than in the working of the highways. Where conditions are favorable for such work it has proved very satisfactory." The Fourth Annual Report (1898) states that "it has been fully demonstrated by experience that convicts can be employed on highways and other public works.

"In the vicinity of Sing Sing and Dannemora and Auburn convicts from the State prisons have been engaged in building and improving highways, often several miles from the prison. It is conducive to the health of the convicts and does not come in conflict with free labor.

"The men from the prisons chosen for this labor are of those whose terms have not much longer to run. There is an inducement to them to remain subordinate and not to attempt to escape, which would be an offense that would lengthen their terms by depriving them of rights to commutation already earned by good prison records. No more keepers are required for them in laboring outside the prison walls than when they are employed in prison, and no chaining of convicts is necessary.

"The large number of those sentenced to the county jails upon convictions for misdemeanors can also be employed on the roads of each county.

"As previously stated, this large number is now kept in idleness, with the exception of those in perhaps a dozen counties. The shortness of their terms makes attempts to escape improbable, as such escapes are usually unsuccessful and only result in an additional term for the new offense, a danger which would deter the attempt.

"In St. Lawrence County jail convicts have been so employed with success several miles from the jail under the supervision of the commissioner of highways of the town of Canton, in which the jail is located."

There appears to be a maturing judgment among the officers who deal with convict labor directly in many of the States that construction work in the prisons could be thoroughly well done by convicts with marked economy, and consequent advantage to the State.

Under this system the convicts may be employed either in the direct construction of the building or road, or in the preparation of the materials to be consumed in such construction. These two ways of working under the system have been brought to a high stage of perfection in California and North Carolina. The general superintendent of prisons of Massachusetts investigated the methods of employment in both of these States, and submitted a report in 1898. In substance he states as follows:

"In North Carolina it is said that the problem of providing public highways has given the people more concern than any other subject, and that the question of convict labor is second only to that of the road. The legislature of that State attempted a solution of both problems by adopting what is known as the 'Mecklenburg law,' authorizing the general employment of convicts in road making, or the alternative system of building and keeping in repair the public roads. It was passed to take the place of the old method, under which each able-bodied man was required to give a portion of his time each year in repairing the public highways. The citizen has now the option of giving his labor or of paying money instead of it.

"Roads have been built in North Carolina as cheap as \$800 a mile, and the most expensive of them cost only \$1,800. This, however, is no criterion for other States where it is not possible to guard, shelter, clothe, and feed convicts for 21 cents per day, which is about the average cost in that State."

One of the latest and most comprehensive laws on the subject of employing convicts in road work was enacted a few years ago in California. Its provisions may be summarized as follows:

"The State board of prison directors have control of the rock or stone crushing plant established at Folsom.

"The plant must be operated by convict labor and by the application of the mechanical and water power belonging to the prison. The only free labor authorized in connection with it is such as the board may deem necessary for superintending and guarding the convicts.

"In selling the product, preference must be given to orders received from the bureau of highways.

"The selling price shall be the cost of production, with 10 per cent added, provided that no rock shall be sold for less than 30 cents per ton."

The following quotations from a letter from the warden of the Folsom prison give reliable information concerning the operation of the law:

"We have a rock-crushing plant at this prison; it has been in operation about 18 months. * * * The original act of the legislature, passed 2 years ago, contemplated that we should deliver this rock for road purposes at cost. The idea was to secure good roads at the minimum price, and also to give employment to the convicts. The last legislature amended the law, and fixed the minimum price at 30 cents per ton, loaded on the cars at the prison. This leaves a profit of about 10 cents per ton. Our plant is a large one, operated by water power from our power house. We employ 300 convicts, and turn out about 500 tons of macadam daily. It is the best appointed plant of the kind in the country, and has had the effect of cheapening the building of roads very materially. At Sacramento and Stockton, our nearest distributing points, macadam formerly cost \$1.70 per ton; under the present arrangement we deliver the macadam at Sacramento at 55 cents and at Stockton at 70 cents per ton; this is a clear saving to these municipalities of \$1 per ton. We find this class of work better for convict labor, as it requires no great amount of skill, and is healthful outdoor work.

"While this does not make much money for the prison proper, it saves a large amount to the taxpayers, and it encourages the building of good roads in every direction; this is a direct benefit to the State, as a saving to the taxpayers is a benefit and profit to the State."

In the second annual report of the State commission of prisons in New York, the question of the employment of convict labor in building and improving highways is considered at some length, and the commission expresses the opinion that in this way the prisoners can be made of the greatest service to the State and of lasting benefit to the farming community.

The methods of working convicts on the public roads in North Carolina is described in a recent publication by the Agricultural Department, as follows:

"In all cases these convicts are carefully described and photographed. They are offered certain inducements in the way of reward or shortening of term if

they remain at their posts and faithfully discharge their duties. And with this they are employed on the public road very much as hired labor would be, under the control of a superintendent or foreman, but without any guard, and they are allowed to remain at their homes from Saturday night to Monday morning. This novel experiment has now been in operation for a year, and not a convict has attempted to escape or declined to labor faithfully, and the result has been a decided improvement in public roads.

"An examination of the record of all the counties that are using convict labor on the public roads shows that but few convicts have escaped; that the health of the convicts has been much better when at work on the road than when formerly imprisoned in the jail; that their labor has proved much more efficient than that which can be hired in the country at ordinary prices of from 50 to 75 cents per day; and that, as these figures show, it not only costs less to use the convicts on the public roads than it does to employ hired labor, but that, furthermore, it costs less to maintain these convicts when at work on public roads than when confined in the county jail."

The employment of convicts in the erection of public buildings has met with gratifying results in many instances; they have also been successfully employed in digging canals, reservoirs, and other public works.

In the Second Annual Report of the Department of Labor this method of employing convicts is treated at considerable length, the conclusion being that—

"In transferring prison labor to public works, the State would not compete with the price of artisans' or laborers' work, but with the work itself. The brick and stone masons, the carpenters and painters, the hod carriers and tenders, would not find the price of their labor affected to any material extent, but would find the market for that labor occupied to the extent of the works in process of construction.

"It has been suggested that the State might engage in some work that would not be performed unless by convicts, such as macadamizing the roads of the whole State. This would necessitate one of two things—either the preparation of stone at the prisons, involving the transportation to the prison from the source of supply and from the prison to the place for use, or the mobilization of the convicts at the points not only of supply, but of consumption, involving a heavy expense for guard duty and temporary confinement.

"This proposition is made upon the ground that the Government should not make the question of expense or profit one of any importance, but should seek only to keep convicts at work as the best policy, and yet itself receive some lasting benefit from the necessity it is under of feeding and clothing them. The chances of escape under this system, of course, multiply greatly; and the demoralizing effects upon communities from witnessing large bodies of criminals at work openly are objections which the moral instincts of communities clearly recognize. The chain gang is a necessity under this plan.

"In most States this plan could not be adopted, because the network of roads already built would necessitate the employment of convicts in repairs; therefore, with rare exceptions, there is no feasibility in the plan.

"Wherever convicts have been employed on public works, and this has been largely the case in England, in building docks and breakwaters and works of kindred nature, the expense has been very much greater than it would have been through the employment of free labor. In one instance in this country, where a State is now building a prison by the labor of convicts, the prison will cost the State many times what would have been the expense had it been built by free labor. This is, perhaps, of no particular consequence, as the convicts must be supported in some way. At best the plan offers a mere palliative, shifting the burden from skilled to unskilled labor, and would result in aggravating eventually all the evils which grow out of the employment of convicts; although, if the Federal Government controlled the convicts of the whole country, great works could be projected and carried on by convict labor, but not economically."

The popularity of this method of employment, to a greater extent than any other system of employing convicts, is controlled by climatic conditions, the character of the prisoners, and the sentiment of the community. The general superintendent of prisons of Massachusetts, in a report submitted in 1898, states that "the public sentiment of Massachusetts would not permit the assembling of convicts upon any thoroughfare in this Commonwealth. The expense of properly guarding them in thickly settled communities would be quite out of proportion to any advantage to be derived from their employment in that way. Furthermore,

there would be the same objection on the score of competition with free labor if prisoners were engaged in actual roadmaking as if they were kept fully employed at mechanical work in the prisons. The building of State roads has become an established industry with free labor, and the putting of convicts at that work now would excite a great deal of opposition. It is, however, believed that they might, without reasonable ground for complaint, be engaged in preparing the materials for the construction of such roads."

The chief of the bureau of statistics of labor of Massachusetts, in a report submitted to the legislature in 1879, states that—

"The advocates of this proposition do not, of course, recognize the reformation of the convicts as a matter of any importance, but see that the physical, mental, and even moral welfare of prisoners demands labor of some kind other than the penal labor of the crank, the treadmill, or shot drill. As to the expense account, they say, with reason, the cost of our Massachusetts prisons is nearly \$800,000 per annum, and all their earnings do not amount to \$200,000. They insist upon some system that shall pay this deficit without taxation and without undue competition, and, if this can not be accomplished, tax the balance, but stop the competition.

"In some Southern States convicts are kept at work upon farms, railroads, in mines and quarries, by the lessees; but none, or few, of the prison officials are in favor of this. It does, however, pay the State; for all the State has to do with the matter is to sentence the criminals and receipt for the price of the lease.

"In the present condition of things there seems to be no great obstacle in the way of utilizing prison labor upon goods required for State use, tents for militia, uniforms, prison wants, etc.

"By this means, if practicable, all market competition is removed to the extent of the utilization of convicts upon public works."

In January, 1884, the bureau of labor statistics of New York made its first annual report to the legislature. This report was written by Charles F. Peck, Commissioner of Labor, and dealt entirely with convict labor. The conclusion he reached regarding the employment of convicts on public ways and works was as follows:

"Attached to the plan of employing convicts at public works is, also, not only the competition with unskilled labor exclusively, but the manifest evils of familiarizing the eyes of susceptible youth with the representatives of crime.

"It seems a necessary conclusion, therefore, that the convicts should be employed at various industries conducted within the prison walls until at least they had merited a large share of freedom at outdoor labor by continued good behavior.

"To the objection that skilled labor should not bear the competition exclusively, it must be considered that unskilled labor has to bear a large proportion in any event, as prison duties and such outdoor labor as may be found part of the system would come under that department.

"In distributing the labor of the convicts among the various industries there is ample room for selection in the forms of labor at present carried on in the prisons of the United States."

It is evident that in the Northern States it is impracticable to depend upon this system as a regular method of employing convicts. This is emphasized in a report submitted by the bureau of labor and industrial statistics of Wisconsin in September, 1886, where it is stated that—

"Those who favor breaking stone and road making can not have carefully considered our climate, our methods of making roads, the enormous cost of guarding, feeding, sheltering, and working prisoners here and there throughout our wide domain, and the utter lack of discipline that must of necessity follow such a system, which would simply be a great chain gang competing against the unskilled labor of the State.

"To my mind this is the most cruel and indefensible of all State competition. The skilled artisan can, by reason of his larger earnings, greater power of production, and greater self-supporting ability, stand a reduction in wages or a change in circumstances that forces him into a new trade; but when the man who is unable, by reason of his inferior education and less brilliant natural

endowments, to do anything but rude labor is deprived of that labor, or his scanty earnings are decimated, he indeed must suffer; he has no avenue of escape; and a certain amount of food, warmth, and clothing is as necessary to the rude laborer as to the skilled artisan or the nabob."

The paramount objections to this plan of working convicts are summarized in the Fourth Annual Report of the Bureau of Labor of Illinois as two: First—

"The making of roads, the breaking of stone, or any form of unskilled labor, would not remove competition, but merely shift it from one class to another—from the mechanic to the day laborer, who works harder for less money than anybody. It would be manifestly inconsistent to unload upon the weaker industrial element burdens which are insupportable to the stronger.

"In the matter of public works it is already a grievance, against which national legislation has recently been sought and obtained, that prison-cut stone is permitted to enter into public buildings. If convicts were required to lay it as well as cut it, while there could be no competition in the price, either of material or labor, there would be a decided infringement upon the free laborer's opportunity to work.

"But a more serious objection, if possible, to propositions of this kind, is that they involve the pernicious practice of removing prisoners from prison walls and herding them in camps and stockades about the country, thus neutralizing all efforts at discipline or reformation, and demoralizing the communities in which they are located."

THE EMPLOYMENT OF PRISONERS IN THE MANUFACTURE OF GOODS FOR CONSUMPTION IN GOVERNMENT INSTITUTIONS.

Under this system there must be classed not only the manufacture of furniture and all supplies necessary for the care and maintenance of buildings, but clothing, food, and all supplies essential for the support of the inmates. If necessary to keep the prisoners employed the production of such supplies should not be limited to meeting the necessities of the State penal, reformatory, and eleemosynary institutions, but should be extended to all institutions under the control of the State or any of its political subdivisions.

This method of employing prisoners has been in use, to some extent, since the necessity of furnishing occupation to convicts has been recognized, and is now practiced in all of the States and Territories. With but few exceptions, however, it has not been systematized, and the work of the prisoners has been confined to the care of the building in which they are detained, or to the manufacture of supplies and the production of food for its immediate inmates. Recently the advantages to be derived from extending the system have been realized, and in New York State it has been perfected to the extent that the convicts are employed either in doing the work of the institution in which they are confined or in the manufacture of products for the use of that institution, or for the use of the State or its institutions, or for the use of the political divisions of the State or their institutions, and no products of convict labor are sold in the open market.

In the debate that occurred in the legislature of the State attending the adoption of a law providing for this system of employment it was stated that—

"Clothing is needed for the inmates of the prison, reformatories, and hospitals, for the insane of the State, and the jails of the different counties. That which is needed in the State, county, and municipal institutions should be produced by convict labor. We are about to build new prisons, and why should not the work be largely done by convicts.

"We have purchased large farms of land for the use of our State hospital for the insane, upon which we raise large quantities of food consumed annually by the thousands of inmates of those institutions, and we employ large numbers of men and women to perform labor upon such farms and pay them large sums of money for their services. There should be a farm near each State prison or reformatory, owned and managed by the State, upon which employment could be given to the prisoners in the production of a large portion of their necessary food."

The reports from the institutions in the different States show that the inmates are almost invariably engaged, to some extent, in farming operations, and such work is constantly referred to as the most desirable for the prisoners. By extending and systematizing farm work it would form a material part of a general system of production for State use. The products would be utilized in all of the institutions, and prisoners from all of them that were best adapted to such work could be assigned to the farm.

In the first annual report of the commission of prisons of New York, the advantages of the system are referred to as follows:

"The products of convict labor at Blackwells Island are used entirely by the public institutions of the city. This effects a great saving to the city of New York, which receives the full benefit and value of the labor of its convicts, instead of contracting out their labor at low prices, and then buying the supplies in the market or hiring free labor at much higher prices. The superintendent stated that he has and will have no difficulty in keeping all the convicts of New York County employed in labor for the city and its public institutions. It is necessary to have a central management, so as to meet the necessity for a diversification of industries to meet the demands of the numerous institutions. It is practicable and economical for county poor superintendents, and other county officials, to procure their supplies in this way, for, by so doing, they aid in reducing the tax rates. When they buy of the prisons they pay no more than they do elsewhere, and they are helping to support the prisoners, which they must do any way. No more is used than under the contract system, but it is so regulated that it is not sold out at a low price in competition with free labor, and the taxpayers get the full benefit of it."

The theory of the system meets with the general approval of all who have made a study of the problem of convict labor, and almost uniformly with the approval of those who are in charge of the various penal institutions in the different States. Granting the necessity of keeping convicts employed on productive work, and also the necessity of removing the products of their labor from the open market, their employment in such a manner that the products of their industry shall be consumed by the State is the only remaining alternative. But their employment for the benefit of the institutions in which they are confined, and of its inmates, will not, as a rule, furnish sufficient occupation.

The difficulties attending the formulation and practical working of a system in each State whereby the supplies for all public institutions of every character shall be furnished from a central office, and that office have control of and designate the character and quantity of the supplies to be produced at each penal and reformatory institution, coupled with the fear, and in some cases knowledge, that after such a system had been perfected enough work could not be supplied to keep the convicts fully employed, has deterred legislatures from adopting the system.

The fourth biennial report of the bureau of labor statistics of Illinois presents the following conclusion in regard to this phase of the subject:

"The employment of convicts in the manufacture of supplies for State institutions: This excellent suggestion meets with uniform approval, but only partially covers the case. This again deprives the outer world of the sale of whatever goods the institutions may procure from penitentiaries, but can not affect market prices for those goods, and consequently is harmless in the matter of competition. But the whole amount of such supplies is very small compared with the producing capacities of the prisons of the State. The average annual cost of all the clothing, boots and shoes, bedding, and dry goods used by all the charitable institutions of the State, for ten years prior to 1885, was \$42,878; and for furniture, the average annual expenditure for the same period was \$13,263. The cost of all the clothing, boots and shoes, and bedding for the penitentiary at Joliet in 1884 was \$15,957, and at Chester, \$5,836, or, in round numbers, \$78,000 per annum covers the total cost to the State of the class of supplies it is proposed to manufacture in prisons."

The Department of Labor in its second annual report (1886) came to practically the same conclusion as the Illinois bureau, as is shown by the following quotation:

"If our State governments supported large bodies of troops and the Federal Government had a large standing army the plan might have some force in it, although

in some European countries, where the consumption of goods of the coarser grades, such as shoes and army clothing, camp equipage, harnesses, etc., is very large, the plan has not been made to work very successfully, on account of the objections of army officers to the manufacture in prisons of the goods they require for the equipment of their forces, the objections arising, not only on account of the quality and make of the goods, but on account of the impracticability of massing a force in any way so as to supply goods upon emergencies. The experience of these countries, however, is worth but little in the United States, for the same conditions do not exist. If each State should supply all its wants, so far as the kinds of goods that are usually made in prisons are concerned, the result would be the employment of but a very small fraction of the convicts of the State. In Illinois this amount of employment could have been utilized last year to the extent of less than \$50,000, and this is a fair specimen of the demands of other States. It is urged, however, that the United States Government requires supplies sufficient to warrant the constant, or nearly constant, employment of the convicts of the different States under contracts which might be made by the heads of departments requiring the goods. An examination of these wants shows that the entire expenditures of all the executive departments of the United States Government for furniture, clothing, mail-bags, harnesses, wagons, infantry, cavalry, and artillery equipments, clothing for the Indian service, etc., and for such other things as are now made in the different prisons of the various States, for the fiscal year ending June 30, 1886, amounted to a sum a little less than \$4,000,000, while the total product of the prisons of the country amounted for that year substantially to \$29,000,000. This answers the suggestion completely. If it could be adopted, however, competition in the wages of labor and in the price of goods would be avoided, although the individual concerns now manufacturing the goods used by the Government would lose that much trade, which would also result in the loss of so much labor."

The Commissioner of the Bureau of Labor and Industrial Statistics of Wisconsin, in his biennial report, submitted in September, 1886, commented unfavorably on this system of employing convicts, stating that—

"Another class believes our penal population should be employed in manufacturing the clothing, hosiery, caps, boots, and shoes required by the inmates of our various institutions. For obvious reasons our delinquent and insane, attending no soirees, weddings, funerals, or operas, use but a small amount of clothing, and that of the very plainest character, to make which would not keep 50 persons busy during the year, while we actually have about 2,200 in our asylums, the institute for the deaf and dumb, and the reform school; and they can not be deprived of employment without serious results. Probably those who favor this plan do not understand how the work done by convicts and delinquents in Wisconsin is already varied."

Notwithstanding the fact that working convicts in this manner may not furnish sufficient work for their constant employment, the trend of the best thought on the subject appears to lead to the conclusion that it is the proper method of employment, and also that if the system is properly developed in all of its details, that not only sufficient employment will be found, but employment that will in the end result in greater benefit to the State than can be reached under any other system.

The abrogation of power machinery and the adoption of hand methods is commented on favorably by the directors of penal institutions and others, especially where the intention is the reformation of the criminal rather than the raising of revenue for the State. The adoption of hand methods in the manufacture of supplies for State use would tend to an increase of the amount of labor necessary to produce a given amount of product and be of lasting benefit to the convict. Its adoption is advocated in the third annual report of the commission of prisons of New York, which states that "the commission is of the opinion that nearly all manufactured supplies heretofore purchased by the State institutions in the open market can be produced to advantage by the convict labor in the prison; and that when the use of all power-saving machinery shall have been discontinued the manufacture of these supplies will furnish a reasonable amount of productive labor for the convicts in the prisons."

The warden of the Eastern Penitentiary of Pennsylvania, in commenting on the system of hand work in vogue in that institution, states that—

“Handmade articles, shaped and fashioned with hand tools without the aid of power machinery, is the most intelligent method of employing prisoners for their future benefit, besides giving them that physical exertion necessary to their condition of health.

“We teach trades, not as a punishment, but as an incentive to reform, and to give the idea to the prisoner that an honest life is best secured by industry. Industrial mechanical training, without the aid of any artificial power other than the physical force of the individual, educates both the mental and physical faculties, keeping the mind constantly active in guiding the hand that fashions the article being produced. When the worker has a share of the production of his head and hands he feels an independence and a self-sustaining power within himself that enables him to contemplate his future without fear of being dependent on charity.”

Another objection to the system is that it is impracticable to produce all, or the larger part of the supplies required for the different institutions, because of the great diversity of industries that it would necessitate. But convicts in the different States are now engaged under the contract, piece-price, or public-account systems in manufacturing practically all of the different varieties of supplies required in public institutions. If their labor can be utilized in this manner for the benefit of private individuals it is useless to assert that it can not be so utilized for the benefit of the State.

In order to perfect such a system, it is essential that the industries in all of the prisons and reformatories in each State should be under the direction of a central office. The necessity for such an office is referred to in the second and third annual reports of the commission of prisons of New York, as follows:

“The manufacture of supplies in prisons would be greatly facilitated by the division of State institutions and departments into groups or classes, and the establishment of standard, uniform qualities, kinds, and patterns of supplies for each group. The convicts in the State prisons are now as fully employed during the working hours as under the old contract system. The State will be the gainer, as it will receive the full value of the labor of the convicts and whatever profit there is, instead of substantially losing the value of that labor.”

In the fourth annual report of the same commission it is stated that—

“Prior to 1894 there was but little connection between the many penal institutions in the State, and there was no single body or department having even an advisory power as to all of them. The three State prisons of Sing Sing, Auburn, and Clinton were purely penal institutions for the confinement of those convicted of felonies, under the control of the superintendent of State prisons. The State reformatory, started in 1886 as an experiment in reform methods with those under 30 years of age under first convictions for felony, and which had proved so successful that it was the most populous institution, was under a board of managers, as were each of the two houses of refuge for women, at Hudson and Albion. The penitentiaries, which had grown from county jails into great penal institutions, were not State institutions, but were under the management of the board of supervisors or commissioners of correction and charities in 6 counties in which were situated the 6 largest cities of the State, to wit: Erie, at Buffalo; Monroe, at Rochester; Onondaga, at Syracuse; Albany, at Albany; New York, at Blackwell's Island, and Kings, at Brooklyn.

“That these several institutions, differing in their systems of treatment of prisoners, or in the class of prisoners consigned to them, should be under different management was undoubtedly proper, considering the original purposes of each class of institutions. The houses of refuge for the reformation of women should undoubtedly be under a management different from that of purely penal institutions, for their purpose was, by education and training, to reclaim the fallen. The State reformatory at Elmira was intended for the reclaiming of the younger lawbreakers, who could not be properly classed as hardened or incorrigible criminals. Its system of compulsory education in schools of letters and of trades, accompanied by training in morals and habits that would tend to make good citi-

zens of the untrained youths, naturally required different management from that of the purely penal institutions.

"The penitentiaries were originally intended as enlarged jails for the confinement and punishment of misdemeanants only, under the general policy of the law which left to each county the care and maintenance of those convicted of misdemeanor, who are usually referred to as "jail prisoners," as distinguished from those convicted of felony who were cared for in the State penal institution.

"However, to make a complete system of these parts, and that all might run smoothly together, a supervisory or advisory board with some jurisdiction or power of inspection and recommendation over all classes of penal institutions were naturally required. Such a board or authority did not exist until the adoption of the revised constitution, sections 11 to 15 of article 8 of which created a 'commission of prisons, which should visit and inspect all institutions used for the detention of sane adults charged with or convicted of crime or detained as witnesses or debtors.' The legislature was directed to make provision for such commission and to confer upon it any additional powers not inconsistent with the constitution.

"The legislature of 1895, by chapter 1026 of the laws of that year, provided for the commission, fixed its membership, and defined its powers. Among the duties of the commission it was charged to visit and inspect all institutions used for the detention of sane adults charged with or convicted of crime or detained as witnesses or debtors; to aid in securing the just, humane, and economic administration of such institutions; to aid in securing the erection of suitable buildings for such institutions, and to approve or reject plans for their construction or improvement; to investigate the management of all such institutions, to collect statistical information in respect to them and their management and inmates, and to ascertain and recommend a system of employing the inmates in accordance with the constitution and the public interests, and to make an annual report to the legislature of its proceedings, with such information and opinions as it should deem proper.

"The commission entered upon its duties at once, and in 1895 inspected the institutions and devised a system for the employment of convicts in accord with the revised constitution. The first annual report was presented to the legislature in January, 1896, and by that report the result of the commission's investigation was stated, and it recommended the system of employment of convicts which it had devised, and also several amendments to the laws relating to penal institutions and to crime.

"A board of classification is made a part of the system. The board fixes the price of the articles manufactured in the penal institutions, and to aid in the manufacture has made a division of the State institutions and the departments into groups, and established standard or uniform qualities, kinds, and patterns for each group. The prices fixed are as near the usual market price for the articles as possible, and the board meets monthly at the office of the commission to revise its work or add to it, or hear complaints, if there are any.

"The board of classification commenced its work and called together representatives of all public institutions and departments and made the necessary grouping, and provided for a uniform class of manufacture for each group, and fixed the prices of all articles. An illustrated catalogue was then made up, showing the articles and kind of articles and the prices, similar to the illustrated catalogues of other manufacturers. Copies of this catalogue were placed in the hands of all institutions and departments, so they were informed of what they could and must order of the prison department. It was also placed in the hands of the auditing officers, so they could see at once on the presentation of a bill whether it was for goods that should have been purchased of the prisonment department.

"There had been no classification or grading of convicts in the State prisons. The prison law of 1897 provided for a classification into three grades. The first grade should be composed of those who appeared to be the most susceptible to reform, and they were to be employed in trades' classes and instructive industries without regard to the productiveness of their labor. In the second grade should be those who appeared to be less susceptible to reformatory treatment, and yet not insubordinate or particularly vicious, employed primarily in productive industries with instruction. The third grade, to be composed of the incorrigible, vicious, and insubordinate, was to be kept in confinement or at such labor as practicable. Provision was made for transfers from one grade to another as an inducement to progress. The State superintendent was also authorized to keep the grades separate, and to transfer from one prison to another, to the end that each prison might contain all of one grade, and thus make a first-grade prison and a second and a third grade prison.

“Undoubtedly the plan of having the commission as an advisory board with many necessary powers, and with jurisdiction extending over all the previously disconnected institutions, has resulted in much good and in saving large sums of money to the State. There are no more appeals to the legislature to forbid the manufacture of goods in the prisons, for manufacturers and their employees acquiesce in the system which ends unfair competition and gives to the State the full value of the labor of the convicts it must maintain in reduction of expenses and taxation. The purchasing officials and institutions are relieved from the importunity of local tradesmen and the goods are purchased for their actual value. There is no opportunity for speculation by purchasing agents, and no charges of jobbery or speculation can well be brought against them.”

CHAPTER IV.

FINANCIAL RESULTS.

The concensus of opinion appears to be that no system has been devised for the employment of convicts whereby the labor of the prison population can be made to produce a revenue for the State over and above the expense incident to their support. It is contended that the exceptions to this rule are to be found in the lease and the various forms of the contract system, but the financial success of these methods is by no means uniform. If all conditions are favorable, they may meet with profitable results, but the experience has been that such results can not be relied upon with uniformity for any series of years.

The Second Annual Report of the Department of Labor of the United States on convict labor gives the financial results of the industrial operations at all of the institutions of severe penalties in the different States during the fiscal year ending in 1886. The general summary of all the reports is presented in the following statement:

Recapitulation for the United States by systems.

System of work.	Income.			Expenses.		
	Labor of convicts.	All other sources.	Total.	Running expenses.	All other expenses.	Total.
Public account..	\$545,152.76	\$2,695,237.26	\$3,240,390.02	\$1,688,317.54	\$1,342,808.35	\$3,031,125.89
Contract	1,610,499.64	1,574,751.79	3,185,251.43	2,462,929.57	434,849.19	2,897,778.76
Piece price	197,218.34	841,180.65	1,038,398.99	840,082.82	91,075.04	931,077.86
Lease	311,906.38	97,888.40	409,854.78	63,831.05	32,871.55	116,702.60
Mixed	848,132.38	2,608,213.45	3,456,345.83	2,025,023.04	1,089,831.10	3,114,854.74
Grand total.	3,512,980.50	7,817,271.55	11,330,241.05	7,100,104.62	2,991,435.23	10,091,539.85

"The amounts shown in the above statement as derived from the labor of convicts under the contract, piece-price, and lease systems are the sums paid by the contractors and the lessees. In the public-account system the amounts paid for raw materials are deducted from the amounts received from sales and the remainders considered as representing the income from labor of convicts. This process will not, of course, in all cases give proper results, since goods might be kept in stock beyond the close of a year awaiting a better market or advantage might be taken of low rates for raw material to lay in more than a year's supply, but it was the only process available, and it is believed that even if it fails to express the exact truth for some individual institutions, the general results for all working under the public-account system are correct.

"All institutions running under each of the systems purely have been summarized separately, then a line given to all institutions where various systems exist, as 'mixed system,' and by this division it is found that under the contract system, involving all penal institutions in the United States carrying on its industries under that system, the income from labor constitutes 65 per cent of the running expenses, and 56 per cent of the total expenses of the same institutions. Under the public-account system, the income from labor constitutes 33 per cent of the running expenses, and 18 per cent of the total expenses of the institutions conducted under that system. Under the piece-price system, labor pays 23 per cent of the running expenses, and 21 per cent of the total expenses. Under the lease system, labor constitutes 372 per cent of the running expenses, and 267 per cent of the total expenses; while in those institutions in which two or more systems prevail, labor comprehends 42 per cent of the running expenses and 27 per cent of the total expenses. In this calculation the term 'total expenses' means all

expenses for repairs, construction, etc., beyond purely current running expenses. Under the lease system, the total receipts of the State leasing its prisoners are profits, there being no running expenses beyond the payment of a few salaries. In all the institutions of the country the total labor income is 49 per cent of the running expenses and 85 per cent of the total expenses of all the institutions. Eliminating the facts relating to the lease system, the income from labor is 46 per cent of the running expenses and 32 per cent of the total expenses.

"The total running expenses of the different institutions, as shown by the table, for the year are \$7,100,104.62. The total running expenses of the lease system are shown to be but \$83,831. It should be remembered that this latter sum represents the expense to the States in which the lease system is carried on. It does not, of course, include the expense of maintaining the prisoners themselves, since they are maintained by the lessee. The sum of the total running expenses of all prisons, then, should be increased, in order to get at the total expense of maintaining the prisoners of the country in those institutions where convict labor is utilized. It was impossible, however, to obtain from lessees the expense of maintaining the prisoners leased to them; but from the best possible estimates, based upon positive facts and upon averages relating to the maintenance of prisons under other systems, it is concluded that the total expenses of maintaining the 9,104 leased convicts are about \$1,345,000. The aggregate running expenses of all prisons in all systems should be increased by this sum, giving a total of \$3,445,104.62, or, in round numbers, \$3,500,000. The total institution expenses, as shown by the table, \$10,091,539.85, should be increased to the same extent; so that the total of all expenses of the prisons would be \$11,436,539.85."

The per capita cost per annum and per diem of maintaining convicts under the public-account, piece-price, and contract systems in institutions of severe penalties during the year 1886 is shown in the following comparative statement. The average yearly cost under the public-account system is shown to have been \$232.45; under the piece-price, \$180.18, and under the contract, \$126.47.

System.	Number of convicts.	Running expenses.	Per capita.	
			Yearly.	Daily.
Public-account.....	3,075	\$714,790.93	\$232.45	\$0.637
Piece-price.....	1,892	340,906.74	180.18	.494
Contract.....	15,347	1,940,873.56	126.47	.346
Total and average.....	20,314	2,996,571.23	147.51	.404

The above statements may be accepted as showing, with reasonable accuracy, the general financial results of convict labor as conducted under the different systems during the year 1886.

Since 1886 no extended investigation has been made of the industrial operations of penal institutions of the entire country with the view of securing comparative data as to the financial results.

Realizing the necessity of more recent information on this important phase of the subject, the commission has secured data from institutions in some of the representative States, which are presented in the following statements. These statements are compiled from the report, or data, furnished by the different institutions. These reports were not prepared on uniform lines, but were intended to present particular facts that were desired in each instance. The statements for one State should not be used for the purpose of exact comparison with those for any other State, nor can they, uniformly, be accepted as accurate presentations of the facts they purport to show. With this caution the commission presents the following information relative to the financial results of the convict labor at the institutions named:

ALABAMA.

The majority of the convicts are employed under the lease and public-account system. The financial transaction of the entire system for the two years ending August 31, 1898, are summarized as follows:

EARNINGS AND CREDITS.

Cash on hand, etc., September 1, 1896.....	\$52,924.38
Hire of convicts.....	277,081.24
Proceeds of cotton mill.....	28,778.85
Forfeitures for escapes.....	2,800.00
Sale of brick.....	8,807.82
Rent of land.....	322.00
Interest.....	3,237.97
Sundries.....	4,178.22
Total.....	378,120.48
Net profit.....	189,000.84

DISBURSEMENTS AND DEBITS.

Salaries.....	\$51,797.54	Improvement.....	\$7,431.68
Traveling expenses.....	2,363.14	Live stock.....	2,268.00
Transportation.....	5,257.73	Seed.....	609.59
Express.....	193.41	Arms and ammunition.....	310.05
Freight.....	2,775.11	Postage.....	508.15
Drayage.....	157.08	Tobacco.....	19.62
Telegrams.....	292.26	Escapes and rewards.....	602.07
Sundry expense.....	4,336.40	Cost bills.....	52,457.14
House ware and furniture.....	1,027.13	Real estate.....	319.20
Printing and stationery.....	1,107.37	Cotton.....	404.87
Hospital.....	3,767.73	Rent.....	30.00
Clothing and shoes.....	15,371.82	Religious literature.....	294.89
Provisions.....	25,840.86	Reform school.....	89.28
Feed.....	541.59	Fertilizer.....	4,209.30
Fuel and lights.....	2,770.28	To balance.....	189,000.84
Bedding.....	45.00		
Implements and tools.....	1,930.55		378,120.48

The financial showing for the State cotton mill, which is operated under the public-account system, is given as follows:

Disbursements and debits.

Alabama cotton-mill plant.....	\$78,347.77
Machinery.....	\$32.81
Material.....	212.43
Repairs.....	809.82
Salaries.....	5,845.90
Fuel.....	2,672.33
Oil.....	386.16
Sundry expense.....	1,919.20
Cotton.....	30,294.05
Freight.....	814.46
	42,987.16
	121,334.93
Net profit to balance.....	9,817.16
	\$131,152.09

Earnings and credits.

Alabama cotton-mill plant.....	\$78,347.77
Proceeds sale of cloth, cash—treasury.....	\$27,701.76
Proceeds of the mill on hand unsold.....	25,103.56
	52,804.33
	\$131,152.09
Net profits for 13 months ¹	9,817.16

ARKANSAS.

Convicts are employed under the lease or contract system, also in working farms on the share-crop plan and in raising products for sale and manufacturing under the public-account system.

¹ The mill has been operated about 12 months since it began operations, January 1, 1897, and shows a profit of \$9,817.16, not including any allowance for labor.

The financial statement for the penitentiary for the years 1897 and 1898 is summarized as follows:

RECEIPTS.

State treasury, penitentiary fund	\$236,000.00
Hire of convicts	16,873.15
Inside industries, gate receipts, sales, etc.	48,135.29
Sale of farm products	161,961.47
Total	462,969.91

DISBURSEMENTS.

Clothing and bedding	\$19,278.33
Freight, express, etc	20,843.28
Hospital account	2,371.48
Salaries account	60,626.30
Discharged convict account	1,838.00
Walls and commissary account	30,328.18
Subsistence account	56,262.40
Transportation account	6,591.51
Reward account	1,038.05
Miscellaneous expenses	6,795.66
Paid State treasurer	246,692.79
Refunded on share croppers	10,303.93
Total	462,969.91

The report of the institution states that during the past 5 years there has been no appropriation of money for the maintenance of the penitentiary; also that on January 1, 1897, there was in the State treasury, belonging to the penitentiary, \$35,211.44, and in addition thereto 400 bales of cotton unsold. There is now in the State treasury, belonging to the penitentiary fund, \$46,310.66, and in addition there are at the walls, at the various camps, and in the fields yet to gather, conservatively estimated, 1,500 bales of cotton belonging to the penitentiary. Estimating this cotton and the seed from the same at \$25 per bale, when sold, it will increase our cash balance \$37,500, and the total to \$83,810.66. In this estimate I have not taken into account such of the live stock and agricultural products as will be used by the penitentiary. In addition to the general expense of running the penitentiary, and the amount paid for the increased number of mules, wagons, and agricultural implements, we have paid in excess of the \$12,500 appropriated by the legislature in 1897 for the establishment of the State electric-lighting plant about \$5,000 out of the penitentiary fund, and there has also been established an excelsior plant in the walls at a cost of about \$3,000.

These statements clearly show that the penitentiary has been more than self-sustaining during the past two years.

COLORADO.

In response to a request for data covering the financial operations of the penitentiary, the warden furnished the following statement, under date of June 24, 1899:

"It will be impossible for me to give you any such financial statement as you ask for, as in this State we have never had the contract system. Our work here is most on the farm, besides which we cut considerable stone and burn lime (our prison being situated on stone and lime quarries) and make brick. As to giving actual cash received from the convicts' labor, it would be impossible, as, while the products of our farm go toward the maintenance of the prison, they are not taken into account as a cash receipt. The cash received from our other products; lime, stone, and brick, depends upon the general business situation of the State, more especially as to our lime sales. For instance, in 1887-88 our cash receipts were a little over \$80,000, or, say, \$40,000 per year; but they have steadily decreased since that time, until during the years 1897-98 our receipts from these sources amounted to less than \$10,000 per year.

The support of this institution, over and above the earnings of the prisoners, cost the State about \$90,000 per year; and, with the object of reducing this expense, and making the prison self-supporting, or at least partially so, I have been endeavoring to induce eastern contractors to establish a manufacturing enterprise within our walls, but the contract has not yet been closed."

CONNECTICUT.

With the exception of farm work the convicts are employed almost entirely under the contract system, and the following tables taken from the report of the State prison, show the financial operations of the institution during the years 1896, 1897, and 1898.

EXPENSES.

Accounts.	Year ending Sept. 30—		
	1896.	1897.	1898.
First-grade provisions		\$1,378.59	\$2,372.13
Second and third grade provisions	\$11,646.75	12,322.47	13,568.71
Chapel	632.47	370.51	378.35
Prisoners' tobacco	423.70	406.79	515.46
Amusement	12.50	4.15	60.86
Night school	65.55	27.15	
Live stock		538.21	
Clothing and bedding	3,804.68	5,365.11	1,092.02
Prison furniture	200.47	300.28	181.97
Officers' quarters	256.82	316.84	47.47
Blacksmiths' and tinnerns' tools and supplies	296.97	154.94	70.98
Fuel, light, and water	7,597.84	8,605.99	7,805.75
Electric plant		1,974.37	113.61
Furnishing warden's house	332.78	191.07	470.27
Salaries	27,304.44	31,158.70	36,309.93
Uniforms	34.76	217.65	
Expenses	4,179.11	3,991.15	4,360.69
Permanent improvements and repairs	3,422.70	6,406.37	2,045.49
Prison supplies	1,932.93	1,973.21	3,754.38
Insurance		155.00	235.00
Advertising	43.35	21.55	58.53
Transportation of convicts	24.69	15.00	32.30
Medicine	1,066.21	1,347.33	1,387.15
Gas plant		50.00	
Warden's provisions	5,512.83	5,774.13	8,293.65
West-end appropriation	19,950.66	12,090.57	875.67
Insane-ward appropriation		25,425.67	10,859.38
Engines and boilers		1,470.00	345.00
Office furniture	141.21		
Storehouse and kitchen	7,649.72		
Farm account			1,224.86
Total	96,560.14	122,115.80	96,479.61

RECEIPTS.

Furnishing directors' room		\$250.45	\$2.85
Buildings and land	\$32,713.21	24,845.00	45,877.91
Library	476.74	37.08	196.94
Rent	209.04	209.04	188.20
Fines	52.00	31.00	53.65
Motive power	1,427.54	1,500.00	612.50
Sales	141.32	118.75	169.53
United States Government	1,041.37	1,145.86	1,338.18
Convict labor	40,157.15	42,967.84	43,756.77
Farm	615.25	1,230.29	
Live stock	28.24		160.21
Engines and boilers	562.00		
Gas plant	100.00		
Electric plant	1,000.00		
Night school			11.40
Uniforms			114.56
Printing			36.47
Balance State of Connecticut	18,036.28	49,780.49	3,961.83
Total	96,560.14	122,115.80	96,479.61

ILLINOIS.

Convicts are employed largely under the public-account system. The warden of the penitentiary at Joliet states that during the year 1898 there was a total loss on the business of the different industries of \$69,298.43, and that to this should be added \$50,198.94, the cost of the maintenance of prisoners, making a total of \$119,497.37.

The following statement covers the operations of the penitentiary for the year ending September 30, 1898:

Partition statement of cash received and expended at Illinois State penitentiary during the year ending September 30, 1898.

Items.	Receipts.	Expenses.
Broom department.....	\$251.82	
Chair department.....	36,847.62	\$716.09
Harness department.....	149,356.14	7,572.48
Cooper department.....	20,018.70	2,114.26
Cigar department.....	71.00	884.87
Expense department.....	3,600.93	4,520.96
Piece-price department.....	110,419.94	
Stone department.....	740.03	2,201.83
State shops.....	933.55	3,498.95
Convict money.....	4,882.03	4,419.87
Visitors' fund.....	1,961.10	
Bills receivable.....	132.17	
Library fund.....		494.42
Appropriations.....	149,200.00	
Salaries.....		76,348.36
Board of United States prisoners.....	3,910.16	
Parole and discharge.....		8,994.90
Purchase of material, etc.....		358,337.98
On hand September 30, 1897.....	22,463.64	
On hand September 30, 1898.....		34,793.26
Total.....	504,788.23	504,788.23

INDIANA.

Convicts are employed almost entirely under the contract and piece-price systems. The receipts from the labor and the cost of maintenance at the different institutions for each year from 1893 to 1898, inclusive, is shown in the following statement which was furnished by the secretary of the board of State charities:

Institution.	Year.	Convict labor.	Cost of maintenance.
Indiana State Prison North became Indiana State Prison Apr. 1, 1897.	1893	\$110,036.27	\$99,988.00
	1894	104,879.43	100,000.00
	1895	102,296.10	100,000.00
	1896	91,685.63	100,000.00
	1897	87,965.09	105,162.85
	1898	37,892.73	104,467.49
Indiana State Prison South became Indiana Reformatory Apr. 1, 1897.	1893	63,358.11	69,100.00
	1894	50,860.59	75,000.00
	1895	42,431.42	91,867.07
	1896	45,743.93	85,000.00
	1897	40,468.80	91,889.42
	1898	50,976.01	104,304.43
Indiana Woman's Prison.....	1893	2,302.51	33,093.69
	1894	1,348.64	45,000.00
	1895	933.69	45,000.00
	1896	972.41	40,489.00
	1897	836.25	40,489.91
	1898	846.91	39,531.44

IOWA.

Convicts in the penitentiary at Fort Madison were employed under the contract system, and the following statement, furnished by the warden, shows the financial results of the industries for the two years ending June 30, 1899:

Support from June 30, 1897, to June 30, 1898.....	\$42,161.83	
Salary of officers, etc.....	35,847.37	
		\$78,009.20
Received from convict labor.....		35,934.21
Deficiency.....		42,074.99
Support from June 30, 1898, to June 30, 1899.....	\$42,199.42	
Salaries of officers, etc.....	39,294.29	
		81,493.71
Received from convict labor.....		40,704.07
Deficiency.....		40,789.64

KANSAS.

Most of the convicts at the penitentiary are engaged in mining coal to be sold on public account or consumed in State institutions. A number were engaged in farming and in work on the public roads.

The warden states that during the year ending June 30, 1897, the gross earnings of the institution were \$138,300.87, while the total expenditures were \$150,131.33, and during the year ending June 30, 1898, the gross earnings were \$164,345.05, while the total expenditures were \$148,972.26.

KENTUCKY.

There are two penitentiaries in the State, and the major portion of the convicts at both are worked under the lease or contract system, or in the manufacture of chairs, which are sold to a contractor at a stipulated price. The report of the board of prison commissioners states that—

"It was soon demonstrated that under the contracts as we found them the State was failing to realize enough revenue to defray the expenses of the penitentiary by thousands of dollars per annum, as the following report of the warden, who had charge during that time, will show. For the year ending November 30, 1896, he says it cost him \$109,075.05 to run the penitentiary, and that he had an income from all sources amounting to \$63,450.73, which left a deficit for that year of \$45,624.22. In testifying before a legislative committee, that warden said that he had failed to charge himself with the amount of stock on hand when he took charge, which amounted to \$50,163.39; this amount added to his expense will show that the penitentiary was running at an absolute loss of \$113,614.22 for that year.

"For the year ending November 30, 1897, the warden reports a deficit of only \$16,412.01, but from his own report he had no basis from which to figure, as there was no inventory taken. He estimates that he had at the commencement of that year \$48,393.19, and at the expiration of the year \$82,857.68. But if it is as he reports, that he fell behind \$16,412.01, that, added to the \$113,614.22 (the 1896 operation), will make a total for 2 years of \$130,026.23. The Eddyville Penitentiary (known as the branch penitentiary) expended during those 2 years \$100,000, in round numbers, more than their income, which made the two penitentiaries cost the State \$230,026.23. The present year the Frankfort Penitentiary expended \$30,783 more than the income, while the Eddyville Penitentiary expended \$35,987.35 more than income, which makes a deficit of \$66,770.35 for the year 1898, and which makes a grand total of \$296,796.58 as a deficit in the operation of the two penitentiaries for the past 3 years."

MARYLAND.

With the exception of the comparatively few convicts engaged in the manufacture of supplies for the institution, all of the prisoners at the penitentiary have been worked under the contract system for a number of years. The following statement shows the financial result of the industrial operation for the years 1888 to 1898, inclusive:

Year.	Average number of prisoners.	Cost per capita.	Receipts.	Expenses.	Surplus paid into the State treasury.	Amount earned by convicts on overwork account for themselves.
1888	567½	\$117.31	\$71,477.15	\$71,410.28	-----	\$7,838.43
1889	665½	116.61	76,875.62	77,565.21	-----	9,346.34
1890	687½	114.45	79,887.85	77,896.21	\$1,991.64	13,434.47
1891	636½	121.02	80,063.57	77,071.22	3,022.35	13,226.96
1892	582½	119.08	81,360.71	77,663.84	3,696.87	11,689.79
1893	657½	116.17	83,099.11	76,345.90	8,753.21	13,820.89
1894	650½	109.87½	82,873.29	71,528.05	11,345.00	11,451.47
1895	691½	105.77½	88,361.69	73,145.65	15,216.04	14,862.26
1896	740½	104.27½	94,965.93	77,241.48	17,724.45	15,878.56
1897	825½	97.38½	108,082.26	80,210.42	27,871.84	23,722.83
1898	866½	100.08½	114,877.72	85,687.01	29,190.71	22,687.10

Grand total of surplus earnings for the past nine years paid into the State treasury .. \$118,802.11
 Grand total of earnings on overwork account for the past eleven years by the convicts for themselves .. 157,469.10

PRISON LABOR.

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MICHIGAN.

Convicts are employed under either the contract or public-account systems, as appears most advantageous. The receipts from convict labor and the expenses of maintenance are presented as follows:

	Receipts.	Expenses for maintenance.
For biennial period ending June 30, 1892:		
From contractors	\$171,179.70	-----
From labor on public account	14,401.03	-----
Total	185,580.73	\$185,215.78
For the biennial period ending June 30, 1894:		
From contractors	137,810.19	-----
From convict labor on public account	30,541.89	-----
Total	168,352.08	176,463.97
For biennial period ending June 30, 1896:		
From contractors	130,800.24	-----
From labor on public account	25,198.44	-----
Total	155,998.68	180,637.53
For biennial period ending June 30, 1898:		
From contractors	144,624.48	-----
From labor on public account	18,510.41	-----
Total	163,134.89	175,762.43

MINNESOTA.

The convicts at the State prison are worked under the piece-price and public-account systems, and also in manufacturing supplies for the use of the public institutions. The following summary, taken from the report of the board of managers and warden, shows the financial results of the industrial operations during the biennial period ending July 31, 1898:

Report of earnings and expenses of the Minnesota State prison for the biennial period ending July 31, 1898.

CLASSIFIED EXPENSES.

1. Attendance	\$80,864.89	
2. Food	45,669.82	
3. Clothing and bedding	8,781.72	
4. Laundry supplies	1,220.79	
5. Fuel	16,591.23	
6. Light	940.56	
7. Medical supplies	1,849.07	
8. Freight and transportation	4,743.08	
9. Postage and telegraphing	1,686.48	
10. Books, stationery, and printing	2,270.85	
11. Amusements and instruction	912.39	
12. Household supplies	1,965.87	
13. Furniture and upholstering	192.33	
14. Building, repairs, etc	1,790.95	
15. Tools and machinery	2,804.94	
16. Farm, garden, stock, and grounds	1,072.15	
17. Insurance	318.89	
18. Burial expenses	114.70	
19. Expenses not classified	12,984.82	
20. Industrial training expenses	14,345.57	
		\$201,121.08
To net gain		43,647.40
		\$244,768.48

EARNINGS.

From convict labor for August, September, and October, 1896, 18,451½ days, at 50 cents		\$9,225.75
Piece-price system:		
Manufacture of 203,471 pairs of lined shoes, at 12.553 cents	\$25,541.49	
Manufacture of 403,984 pairs unlined shoes, at 7.556 cents	30,526.47	
Manufacture of 39,286 pairs of welt shoes, at 15.058 cents	5,915.91	
Manufacture of 21,088 pairs of boots, at 14.666 cents	3,092.63	
		65,076.50
From special convict labor	327.55	
From one-half salary of night watchman	600.00	
From United States for board of United States prisoners	10,971.01	
From punishment forfeitures	342.50	
From sale of high-school apparatus	3,844.21	
From sale of meal tickets	193.25	
From sale of old machinery	751.00	
From visitors' fees	1,813.75	
From Minnesota Thresher Manufacturing Co., balance account	474.62	
From convict labor in twine shop	17,619.25	
From miscellaneous	639.41	
		37,576.55
From profit on twine business for the year ending July 31, 1897		45,282.66
From profit on twine business for the year ending July 31, 1898		87,607.02
		<u>\$244,768.48</u>

NEW HAMPSHIRE.

Convicts at the State prison are worked under the contract system, and the following statement taken from the report of the institution for the years 1897 and 1898 show the financial results of the industrial operations:

EARNINGS.

	1897.	1898.
Labor of convicts	\$19,613.90	\$18,261.40
Visitors' fees	271.65	350.00
Rent	336.00	336.00
Board of United States prisoners	907.42	641.36
Gain on inventory	179.14	-----
Total	21,308.11	19,588.76

EXPENSES.

Deputy warden's salary ^a	\$1,339.83	\$1,200.00
Physician	500.00	500.00
Overseers	10,417.90	10,711.52
Clothing	350.19	730.09
Discharged convicts	233.00	134.00
Furniture	168.99	183.65
Subsistence (net)	3,181.30	2,778.71
Water, fuel, and light	1,749.14	2,016.48
Hospital supplies	156.00	154.10
Repairs	31.17	61.29
Incidentals (net)	496.82	330.42
Loss on inventory	-----	48.22
Total expenses for year	19,200.74	18,898.48
Excess of earnings over expenses	2,107.37	690.28
	21,308.11	19,588.76

^a Includes \$139.83 for services as acting warden in year 1898.

PRISON LABOR.

NEW JERSEY.

The piece-price system is in vogue at the State prison, and all the convicts, except those engaged in caring for the buildings and manufacturing supplies for the inmates, are employed under it. The financial balance sheet of the institution for the year 1898 is given as follows:

Maintenance	\$89,990.69	
Furniture and repairs	9,797.74	
		\$99,788.43
By amount of revenue paid to State treasurer	86,769.34	
Cash on hand	2,310.41	
		89,079.75
Net cost of maintenance and repairs		10,708.68
Net cost per capita per annum		8.87
Net cost per capita per diem .....		.0243

NEW YORK.

The State commission of prisons has furnished the following statement concerning the financial operations of the three State prisons:

"The following table gives the expenditures and earnings and deficiencies in the three State prisons of this State during each of the years succeeding 1889 until the adoption of the present system:

Year.	Expenditures.	Earnings.	Deficiency.
1890.....	\$494,267.47	\$276,251.83	\$159,015.64
1891.....	464,374.80	262,729.57	201,645.23
1892.....	484,936.19	344,437.29	140,498.90
1893.....	504,164.34	26,897.37	477,266.97
1894.....	465,269.85	99,197.99	366,071.86
1895.....	467,209.65	135,180.92	332,028.73
1896.....	474,916.52	121,522.24	353,394.28

"During 1898, under the present system, the total cost of maintenance of the same prisons was \$508,791.16, and their total earnings were \$130,748.69, leaving a deficiency of \$378,042.47.

"The same prisons from 1881 to 1886, inclusive, under a system which provided that contracts for convict labor might be entered into by the warden of these prisons, at any kind of work or trade that might be approved by the superintendent, and allowing the unrestricted manufacture and sale of prison-made goods, showed a surplus of earnings over expenditures each year in amounts varying from \$5,000 to \$10,000.

"While it is not expected under the present system the prisons will be self-supporting, it is expected that it will give better results when both the prisons and the people have become more familiar with its workings than it did in 1898, which was the first full year under the new law.

"During the year 1898, in addition to the earnings named above, the prisoners did a large amount of work for the State in the construction of new buildings, the improvement of old buildings, and upon highways in the vicinity of the prison, of which no account is made in the above statement."

The following statement furnished by the superintendent of the Albany County Penitentiary gives the financial results of the industrial operations at that institution:

"Since I assumed charge of this penitentiary, in 1895, all work done by convicts, aside from prison duties and work on the prison farm, has been done on the piece-price plan. The contractors furnish all the materials, tools, machinery, etc., the penitentiary furnishing only the labor of the convicts and the buildings in which they were employed.

"Working on the above plan the results for the several years have been as follows:

EARNINGS.

	1895.	1896.	1897.	1898.
Laundry department	\$13,420.62	\$15,022.18	\$11,956.63	\$3,053.72
Brush department	9,077.41	9,997.71	9,624.84	10,261.46
Shirt department	17,452.55	16,435.55	1,068.85	-----
Chair-seating department	2,849.85	2,568.59	480.43	-----
Board of prisoners	42,800.53	44,024.03	23,130.75	15,315.18
Miscellaneous	96,588.51	96,721.90	92,874.15	67,047.88
	1,619.51	1,698.83	2,370.58	1,073.12
Total	141,008.55	142,444.76	118,375.48	81,435.88

EXPENSES.

Provisions	\$47,997.18	\$46,187.01	\$41,178.20	\$37,950.94
Expense	12,661.89	13,469.95	14,693.67	7,395.91
Clothing and bedding	6,716.23	2,381.88	2,627.84	2,040.16
Furniture	2,950.20	1,055.11	591.65	912.88
Improvements and repairs	5,909.49	2,479.47	1,120.92	3,486.61
Transportation	1,738.07	1,656.49	1,761.58	1,278.06
Salaries	33,368.36	35,085.31	35,756.34	34,270.42
Insurance	567.60	544.72	520.61	431.05
Total	111,909.02	102,859.94	98,250.81	87,766.03
Net profit	29,029.53	39,584.82	20,124.67	-----
Net loss	-----	-----	-----	6,390.35
Daily average number of prisoners	971	971	900	659
Daily average cost of maintenance per capita	\$0.304	\$0.295	\$0.299	\$0.3674

During different years there were Albany County prisoners confined without cost to the county. The number of such prisoners for each year and the amount of board that the penitentiary would have received if board had been paid at the rate paid by other counties was as follows:

	1895.	1896.	1897.	1898.
Number of Albany County prisoners	343	420	315	277
Estimated amount of board	\$14,000.00	\$14,010.10	\$12,940.31	\$9,602.36

"From the foregoing it will be seen that when we were permitted to work up our full capacity under the piece-price plan, this prison was not only self-supporting, but a source of revenue to Albany County. In November, 1897, I turned over to the county treasurer, from the surplus earned since I assumed charge of the institution in July, 1895, the sum of \$75,000.

"The passage of recent legislation prohibiting the reception of Federal prisoners and the employment of convicts on the piece-price plan has brought about an entirely different state of affairs, and until the matter of prison labor is more thoroughly investigated and understood by the people, and especially by workmen, to whose mistaken ideas and misdirected zeal the present state of affairs is due, the prisons of this State will be a large item of expense to the taxpayers."

PRISON LABOR.

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NORTH CAROLINA.

About nine-tenths of the convicts at the State penitentiary produce products for the maintenance of the institution and also for market. Some manufacture brick, and others work on public roads or under contract system. The following balance sheet is taken from the report of the institution for the year 1898:

Balance sheet of the penitentiary for the year 1898.

DEBITS.		
1898.		
Jan. 1. Balance due State treasurer.....		\$15,827.45
Bills audited for expenses for the year 1898, paid.....	\$107,713.21	
Bills audited for expenses for the year 1898, unpaid.....	63,670.39	
		170,383.60
Value of products consumed during the year.....		50,137.75
		\$236,348.80
CREDITS.		
Collections from sale of farm and other products, and from wages of convict labor.....		\$97,907.91
Value of farm products, excluding sales.....		169,705.40
Value of bricks on hand and for sale.....		1,835.72
Book accounts.....		12,150.87
Cash in bank and drawer.....		1,203.25
		\$232,802.15
Total debits.....		236,348.80
Balance.....		46,453.35
This balance of \$46,453.35 consists of farm products on hand for support and sale.....		31,264.51
Brick on hand.....		1,835.72
Book accounts due by United States Government.....	\$3,602.50	
Book accounts due by R. and C. F. R. Railroad.....	2,089.76	
Book accounts due by personal accounts.....	6,458.61	
		12,150.87
Cash in bank and drawer.....		1,203.25
		46,453.35

OHIO.

Convicts at the State penitentiary who are not required by the State to care for the institution and manufacture supplies for the same are employed under the piece-price and contract systems. The following statement, showing the earnings and expenditures for each year from 1891 to 1898, inclusive, has been furnished by the warden:

Ohio penitentiary, earnings and expenditures.

Year.	Average population.	Earnings.	Expenditures.	Gain.	Loss.
1891.....	1,596	\$241,173.84	\$230,021.39	\$11,152.45	.....
1892.....	1,725	260,317.17	257,440.58	2,876.59	.....
1893.....	1,798	295,451.49	284,371.53	11,079.96	.....
1894.....	2,016	261,768.56	270,905.61	.....	\$9,137.05
1895.....	2,085	228,736.13	284,197.35	.....	55,461.22
1896.....	2,174	230,947.21	288,807.80	.....	57,860.59
1897.....	2,273	272,068.26	306,650.22	.....	34,581.96
1898.....	2,424	319,072.93	347,443.91	.....	28,370.98

¹ Of these \$107,713.21 bills audited, \$33,929.57 was for debts contracted by John R. Smith, former superintendent, and audited in the current year.

PENNSYLVANIA.

The warden of the Western Penitentiary at Allegheny, in response to a request for information concerning the financial operations of the institution, furnished the following statement under date of July 13, 1898:

"In reply to your letter asking for full information concerning the financial results of the different methods under which the prisoners of this institution had been employed, I desire to state that this prison has fully tested the various methods of labor used in prisons, known as contract, piece-price, and State-account systems. It ceased to operate under the contract system by direction of a State law, enacted in 1883, but the financial results therefrom were nearly enough to pay the cost of support of the prisoners. The piece-price system has been used in the making of brooms; its financial results are about three-fifths of the earnings by contract. A further limitation has been made by a recent law removing all power machinery, except hand and foot power, in the manufacture of goods made for sale. Under the State-account method this prison has established several industries, giving its inmates useful and instructive forms of labor, but they are not so largely remunerative in money earnings as the contract system.

"The State has not found fault with this annual deficit, and one of its governors said in a public report some years ago, 'in neither of the penitentiaries of this State has there ever been an attempt yet made to administer them on the vulgar, wicked, unworthy consideration of making them self-sustaining. In neither of them has it been forgotten that even the convict is a human being, and that his body and soul are not so the property of the State that both may be crushed out in the effort to reimburse the State the cost of his scanty food, and at the end of his term what is then left of him be dismissed an enemy of human society.'

"As a result of the limitations of industries conducted in this prison only 35 per cent of the inmates are at present engaged in the manufacture of goods for sale, and the amount earned falls far short of the expense of maintenance. In Pennsylvania all deficiencies in earnings by labor is charged to the counties sending prisoners to the institution, at so much per diem, as the amount may be from year to year.

"If the Industrial Commission will look over the question in all its lines it will be seen that several of the Southern States have large manufacturing establishments within the walls of their prisons, and annually earn the entire expense of support, salaries, and repairs."

The total expenses and earnings of the institution during the years 1897 and 1898 are shown in the following statement:

The total expenses and earnings were as follows:

	1897.	1898.
DR.		
Provisions and supplies.....	\$46,465.36	\$42,879.96
Clothing and shoes.....	8,008.56	9,229.58
Beds and bedding.....	1,413.49	1,518.95
Fuel and light.....	20,672.55	20,972.19
General expenses.....	31,487.65	31,006.12
Extraordinary repairs.....	2,255.88	5,249.13
Electric-light plant account.....		12,618.78
Working capital, addition to.....	5,351.25	4,555.75
Reserved on account of stock on hand in manufacturing departments.....	36,217.43	3,732.38
	151,852.17	133,352.84
CR.		
Mat department.....	31,066.51	12,050.30
Hosiery department.....	22,011.78	12,994.62
Broom department.....	11,794.60	5,797.66
Shoe department.....	1,636.00	1,483.11
Sale of rags, iron, and other old material.....	422.67	203.99
United States, for keeping prisoners.....	5,351.25	4,555.75
Profit and loss account.....	2.20	
	72,305.01	37,085.40
Amount charged to counties.....	79,547.16	96,277.44
	151,852.17	133,362.84

PRISON LABOR.

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VERMONT.

Convicts at the State prison are worked under the contract system, and the following recapitulation shows the income and expenses for the biennial period ending June 30, 1898:

RECAPITULATION.

INCOME.

Fees from visitors	\$256.00	
Convict labor	53,932.68	
		<u>\$54,188.68</u>

EXPENSES CONSOLIDATED.

Miscellaneous expense account, balance	\$5,866.33	
Fuel and lights, balance	5,768.20	
Clothing, balance	1,194.42	
Subsistence, balance	6,984.51	
Board, balance	5,065.13	
Improvements and repairs, balance	3,164.96	
Boilers and engines, balance	6,235.02	
Officers' salaries, balance	15,987.17	
		<u>\$50,265.74</u>
Income, over and above expenses		3,922.94

CHAPTER V.

JAILS.

With but few exceptions there is no acknowledged system for the employment of prisoners in jails. In many States where the laws provide that such prisoners shall be employed the provisions are either ignored or no uniform system has been developed.

The information received by the commission from practically all of the States indicates that the conditions prevailing in most of them are, in many respects, similar to those existing in the State of Indiana, as depicted by the following quotation from the Ninth Report of the Board of State charities for the year 1898:

"The Indiana jail system is not a thing to be commended. The jails vary greatly in accommodations and adaptability, depending, doubtless, upon the intelligence and information of those under whose direction they were erected and the conditions existing at the time. Some modern ones are well constructed. From these they range to unwholesome cells in the basements of buildings, and structures erected with the sole idea of putting an unfortunate out of sight and keeping him there. Jail administration has not been thought of by many officials. They have not heard that there is such a thing. There are no rules as to the conduct of prisoners. These are expected to do what is done toward cleaning the jail and are permitted to have the run of the institution. It is impossible to estimate the extra amount of expense entailed through the maladministration of our jails. The horrors of the system and the more frightful realization of the conditions, as it appeals to those who visit these institutions, merit the condemnation of all."

Considering the above statement in connection with the following, taken from an Illinois report made in 1872, it is evident that an improvement in the jail systems has been long realized:

"Our deliberate judgment is that the practical value of jails, whether as means of prevention or of cure of crime, compared with their great cost, is very trifling. We find upon inquiry that others have arrived at the same conclusion before us. In fact, this opinion is shared by nearly all who have given this subject any attention. Probably no other equal expenditure of money is equally unprofitable."

The conditions existing in the jails of other States is indicated by the following quotations from a few of the many reports on the subject.

Report on prisons and reformatories of the United States and Canada submitted to the legislature of the State of New York in 1867:

"It is clear that our common jails are not now, and never can be, houses of correction in the proper sense—places for the reformation of criminals. The fact that they are mere places of detention to the majority of their inmates, the circumstance that the sentences of those confined in them for punishment are and are likely ever to be too short to admit of the application of reformatory processes, the constant flux in their population, the difficulty of organizing and enforcing a system of labor, without which there can be no reformation, and, above all, the want of a proper staff of officers."

The third annual report of the State commission of prisons of New York of 1897 states:

"Of all the public institutions in America the county jails are the most unsatisfactory. Of the 60 counties in this State, 49 do not employ their jail convicts in any form of labor."

The fourth annual report of the State commission of prisons of New York of 1898 contains the following information relative to the jails of the State:

"The county jails were found to be in a bad condition and badly managed, and many of them were old and poorly ventilated and drained. While they were occasionally clean, to receive the visits of boards of supervisors or grand juries, as a general rule they lacked ordinary cleanliness. Many were heated by stoves and lighted by kerosene lamps, which added to the general unhealthy condition. But few had bathrooms in connection with them, and the refuse usually went into near cesspools instead of into sewers. With their constant shifting, transient population, they endangered the public health. There was no uniform plan for their erection, each county having a jail after a pattern of its own, based upon the consideration of cheapness. There was no classification or separation of the classes of prisoners. Though the law prohibited the keeping of those in prison on civil process, or detained merely as witnesses with those convicted or committed on criminal charges, they were generally found in rooms or corridors together. The separation of women from men, as required by law, was very unsatisfactory. Those convicted and those awaiting trial or examination were usually found together. Young men and boys arrested for minor offenses, more as a result of heedlessness or want of training than by reason of criminal intentions, were in association with old offenders and hardened criminals, listening to their adventures and instructions. The jails were not only dangerous to public health, but they were schools where crime was taught and made to increase.

"By repeated inspections and recommendations to the boards and officers having to do with the management of the jails, a better condition was brought about. At meetings with the boards and officers, attention was called to the law, and also to the benefit to be gained by the proper management. The jails have been cleaned, stoves and lamps generally removed and replaced by steam heat and electric lights, which have proved more economical. Necessary improvements for sanitation and ventilation have been made in many instances, and sewer connections have replaced the ancient rotting cesspools. Employment has been furnished in some counties and shorter sentences to the jail, with labor, has been found to be better and more economical, and the population of the penitentiaries has thereby materially decreased beyond the natural decrease resulting from the laws preventing there being recruited from outside the State, and by a mingling of felons with misdemeanants.

"Before the creation of the commission, when there were no State officials whose jurisdiction extended to all jails, each was managed according to the views of the jailer in charge, subject only to the occasional visits of grand juries or committees of supervisors, which were formal and short. The jails were managed more as houses of detention than as penal institutions. The keepers were changed every three years on the election of a new sheriff, and no one seemed to be informed as to the laws regulating them and the confinement of prisoners, and there was no one with any authority that could call attention to any defects in plans or management. The most of them were built when the country was new and more sparsely settled, and they were in every way unsatisfactory in respect to size, sanitation, or adaptability to their purpose. All classes of prisoners, tramps, young offenders, hardened criminals, convicted and unconvicted, were herded together, and they were the primary schools where crime was learned. The commission called the attention of the boards of supervisors and other officers to the defects and the law requiring separation of prisoners, and by its reports and personal interviews urged improvements. The officials have shown a disposition to improve the conditions and to act on the suggestions for better management, and the people generally have shown an interest in the matter. The inspections and recommendations have resulted in much good, although the frequent changes in officials require the same work to be often repeated.

"The lack of cleanliness about jails and inmates of jails, poor sanitation, drainage, and ventilation, are dangerous to the public, as thereby contagious diseases may be engendered or the germs held to infect others. Yet often the recommendations of the commission in those respects have been received as if they were proposals for luxuries. Baths and general cleanliness are among the necessities of life rather than being mere luxuries.

"For more than 50 years the law has commanded that convicts in county jails be employed at some kind of work for 6 days in the week, but in about 60 counties the law has been overlooked or forgotten. Instead of labor, the convicts are left in idleness to smoke, play cards, exchange experience, or plot for future depredations. Such imprisonment is not punishment, but a rest or vacation. It has no terror after the first conviction, but is often an attraction, resulting in repetitions

of the offenses until later on the man is sent to the penitentiary, which proves an intermediate school between the primary of the jail and the State prisons. Young offenders, more unfortunate and heedless than criminal, listen to the adventures of old criminals and receive lessons in crime.

"If the misdemeanants sentenced to the jails were required to labor there would be more of punishment about the confinement. A sentence of 10 or 30 days with labor would be a punishment to be avoided. When it is found that a sentence to the jail means work instead of play, there would be fewer convictions and less occasion to repeat them. Those convicted of intoxication (more of a weakness than a result of a vicious or criminal mind or disposition) should be sent to work on county farms, where they would be removed from temptation, and could be useful, rather than to be confined with those actually vicious.

"By complying with the law of so long standing, requiring convicts in jails to be employed at labor, the officials may save money for the taxpayers in their counties, lessen the number of convictions, give occupation instead of idleness to the prisoners, and make the jails less discreditable to the localities. Labor, rather than the luxury of idleness, is another necessity for proper penal administration. With such labor, even if it brought no direct profit, there would be realized a profit by way of better roads and a decrease of convicts and of criminal acts."

Twelfth annual report of the general superintendent of prisons of Massachusetts, concerning prison labor, 1898:

"There are 22 county prisons in the State. The laws relating to the labor of prisoners now apply to all the State and county prisons. The prisoners in the various jails are employed, as shown by the following quotations and synopsis, in various industries: 'Pumping water with a hand engine into a tank at the top of the court-house.' 'Making shoe heels.' 'Some of the prisoners now work at making flexible soles, and others are employed in manufacturing leather board.' 'Cultivating land.' 'Cane seating of chairs.' 'Manufacture of umbrellas.' 'Making of brushes and the manufacture of mats on hand machines.' 'Preparing concrete for use on the public buildings.' 'Sorting cotton waists.' 'Making cheap overalls.' These industries are usually conducted under the public-account system."

Sixteenth annual report of the bureau of labor of Michigan, 1898:

"Of 83 counties in the State 66 reported 416 prisoners confined in their jails on the 1st of May, 1898. Twenty per cent of the county jails were empty on that date, and those having prisoners averaged about 6 each, the greatest number (34) being in Wayne County jail. Eight jails contained but 1 prisoner each. Of the 76 chartered cities in the State, 45 are county seats. Most of the cities use the county jails. Of the 298 incorporated villages in the State, 84 reported 314 prisoners confined in their village jails on the 1st day of May, 1898. There were no prisoners confined in 214 of the village jails on that date."

Report on the prison system of Michigan, 1899:

"A system to be effective must be good in its various parts, and the action of these must tend in the same direction. To use a homely illustration, an animal perfect in all other respects may be ineffective because of some defect in one foot. It is somewhat so with systems. In this respect Michigan stands among the first of the States. Still it has defects.

"First, there could be greater unification. The jails, the reformatories, and the prisons might be brought into greater harmony, so that the policy pursued in each should cooperate to achieve the same end. This would require that all the prisons, and the jails as well, should be brought under some common supervision. This is done in some countries.

"I recognize the great difficulty that would be encountered in any attempt to bring any such modification about here. The laudable jealousy of our people in guarding their personal and local rights is such that the residence in the road districts insist on controlling the road making in their localities as though they alone were interested in them, and even when they must see that a supervision of road making by an expert engineer having a wide field would result in cheaper and better roads.

"A little reflection will convince everyone how totally unfit the county jail is for the treatment of offenders after conviction. The keepers change often, and very few have any knowledge of the way to treat offenders in order to prevent their repeating crimes. Nor have the jails any equipment for this treatment. They have no work to do. . . And we know that the sending of disorderlies to jail has little tendency to lessen disorder, and none to reform the offenders.

"The jail, then, should be used to detain accused persons before trial only and not as a place of punishment after conviction. Provision should exist in the jails for keeping those awaiting trial in separate cells. Criminality is increased by placing young offenders in jail with hardened criminals. Where incarceration after conviction is necessary it should be in some place where the convict can be treated for a cure, some reformatory or house of correction with work to do.

"It is evident that while the industrial systems in vogue in the prisons, penitentiaries, and other State penal and reformatory institutions should be harmonized, any legislation on the subject would be superficial if it did not consider and dispose of the objectionable features of the system, or lack of system, for the employment of the prisoners in the city and county jails.

"Any legislation on this phase of the convict-labor problem must necessarily be of a radical character. The commission is of the opinion that the only true remedy is to be found in abolishing the county and city jails and establishing a district jail system.

"The vast majority of the jails are, as now conducted, a useless expense. The small number of prisoners confined in the majority of them does not justify the expenditure necessary to their proper construction and maintenance or the establishment of any system of employment and reformation. Their insignificance when considered separately does not arouse public attention and the consequent demands for reformation. The officials are under no general supervision and are not directly responsible to a central office.

"The district jail system would remove many of these objections and lead gradually to the construction of institutions having many of the features of State prisons and penitentiaries. Their industrial operations would be under the supervision of the same official that controlled the State institutions and the labor of the inmates systematized and utilized in many ways that are impossible under the present conditions."

CHAPTER VI.

EMPLOYMENT OF PRISONERS DURING 1898 AND 1899.

The laws in each of the States and Territories provide for a number of different methods under which the prisoners and inmates of the various penal and reformatory institutions may be employed. It is essential to a thorough understanding of the present conditions of prison labor to know which of these methods are in actual use, and whether in the distribution of the prison population one system is preferred to another.

The commission has consulted the reports for practically all of the institutions of this character, and has also sent circular letters to the officials of each requesting information in regard to the present methods under which the prisoners are employed. The information secured in this manner has enabled the preparation of the following table, which shows the methods under which prisoners were employed in each State during the years 1898 and 1899, and of the statements which follow for each State and Territory, giving in detail the industries in which the prisoners were engaged, the general system under which they were employed and the results of such employment:

States and Territories in which different methods of employing prisoners were in use during 1898-99.

Lease.	Contract.	Piece price.	Public account.		For use of public institutions.		On buildings and roads.
			Manufacturing.	Agriculture.	Manufacturing.	Agriculture.	
Alabama. Arizona. Florida. Louisiana. Maine. Mississippi. South Carolina. Texas. Wyoming.	Alabama. Arkansas. Connecticut. Georgia. Indiana. Iowa. Kansas. Kentucky. Maryland. Michigan. Mississippi. Missouri. Nebraska. New Hampshire. North Carolina. Ohio. Oregon. Rhode Island. Tennessee. Texas. Vermont. Virginia. West Virginia. Wisconsin.	Connecticut Maine. Massachusetts. Michigan. Minnesota. New Hampshire. New Jersey. Ohio. Tennessee. Wisconsin.	Alabama. Arizona. Arkansas. California. Colorado. District Columbia. Illinois. Kansas. Kentucky. Maine. Massachusetts. Michigan. Minnesota. New Jersey. New Mexico. North Carolina. North Dakota. Pennsylvania. South Carolina. Tennessee. Texas. Utah. Vermont. Washington. West Virginia. Wisconsin.	Alabama. Arkansas. Colorado. Connecticut. Georgia. Kansas. Mississippi. North Carolina. North Dakota. South Carolina. Texas. Virginia.	Alabama. Arizona. California. Colorado. Connecticut. District Columbia. Georgia. Idaho. Illinois. Indiana. Iowa. Kansas. Maine. Maryland. Massachusetts. Michigan. Minnesota. Mississippi. Montana. Nebraska. New Mexico. New York. Nevada. New Hampshire. New Jersey. New Mexico. New York. North Carolina. Ohio. Oregon. Pennsylvania. Rhode Island. Texas. Utah. Washington. West Virginia. Wisconsin.	Alabama. Arkansas. California. Colorado. Connecticut. District Columbia. Georgia. Idaho. Illinois. Indiana. Kansas. Maine. Massachusetts. Michigan. Minnesota. Mississippi. Montana. Nebraska. New Mexico. New York. North Carolina. North Dakota. Oregon. Pennsylvania. Rhode Island. South Carolina. Tennessee. Utah. Vermont. Washington. West Virginia.	Arkansas. California. Colorado. District Columbia. Idaho. Illinois. Indiana. Iowa. Kansas. Louisiana. Maine. Massachusetts. Minnesota. Missouri. Montana. New Jersey. New Mexico. New York. North Carolina. North Dakota. Oregon. Pennsylvania. Rhode Island. South Carolina. South Dakota. Tennessee. Utah. Vermont. Washington. West Virginia.

PRISON LABOR.

ALABAMA.

The major portion of the convicts, able-bodied males, are worked under the lease system in coal mines, the State receiving from \$7 to \$14 per month per convict. The males pronounced physically unable to work in the mines, together with the women, are employed on the State farms, producing articles for consumption at the penitentiaries, and in the State cotton mill, under the State account system. Some of them are also worked under the contract and lease system in sawmills or on farms and in other pursuits.

Arrangements are made with numerous companies and individuals located in different parts of the State for the employment of the convicts under leases and contracts, and according to the report of the board of inspectors of convicts for the 2 years ending August 31, 1898, the gross earnings from the hire and labor of convicts was \$325,196.10, and the expenses (not including the cost bills) was \$136,662.50, showing a net profit of \$188,533.60.

"The State cotton mill is a 3,300-spindle mill, and cost \$78,347.77. Of this amount \$67,532.77 was paid out of the State treasury, and the State furnished brick to the value of \$4,375 and convict labor to the value of \$6,440, making altogether \$78,347.77. The entire cost of the mill was paid for during the 2 years ending August 31, 1898, except \$9,801.74, which was paid in the former biennial period. The mill began operation about January 1, 1897, and has been operated about 12 months since in manufacturing the crops of 1896 and 1897 produced on the State farms. The entire expense incurred in the operation of the mill, charging the mill with the cotton at the market price, has been \$42,987.16. The proceeds from the sale of cloth of the crop of 1896 was \$27,701.76, and the product of the mill on hand of the crop of 1897, valued at \$25,102.56, makes the output of the mill \$52,804.56. Deduct the disbursements, \$42,987.16, and it leaves \$9,817.16 as a net profit. The labor used in the mill are women and boys that have always been an expense to the State, and when not at work in the mill are worked on the farm. The mill contains floor space for 5,000 spindles, and if increased to that number the fixed charges would not be greater than now and without any additional expense for power. The convict cotton stripes for the clothing of the convicts is made in the mill, which is a great saving to the State, and with the addition of a few box looms the wool stripes could also be made.

"The State farms have been well cultivated and the crops, consisting of cotton, corn, oats, pease, potatoes, sugar cane, and vegetables, have been fairly good, considering the season last and this year. There are good herds of cattle at each of the farms; also a great many hogs, which will greatly reduce the amount of meat which would otherwise have to be bought. Several hundred acres of land have been cleared, ditched, and brought into cultivation on the State farm on the Tallapoosa River. Several thousand dollars have been expended in improvements and repairs on the State farm during the two years ending August 31, 1898.

"With all the economy that has been practiced it has been impossible to make the State farm self-sustaining. The reason for this is that the State has to guard and maintain the old, broken down, and disabled convicts of the entire system, and this class greatly exceeds in number those who are able to work. Under the existing conditions, the low price of farm products, the State could not expect to do more than make the farm self-sustaining if every convict were able to work, and certainly can not do it when more than half of them are unable to work. It should be stated here that a great number of convicts are received into the penitentiary in bad physical condition, due to the terrible condition of the jails and overcrowding, and are thrown upon the State to maintain during their imprisonment, not only to maintain them, but to pay the cost of their conviction. A jail inspector is needed, with authority to enforce sanitary regulations in keeping with our civilization."

ARIZONA.

The convicts at the Territorial penitentiary are not engaged in any employment calculated to reimburse the Territory for their keep, and other than the regular work incident to the care of the institution and the manufacture of their own supplies they have no system of employment.

The shoes and clothing worn by the prisoners are made there. There are ample facilities for doing this work, and more could be accomplished in that direction if there was a demand for the product.

According to the biennial report of the Territorial prison the prisoners were worked by the Arizona Improvement Company, under the contract system.

"The Territory was to receive compensation therefor at the rate of 70 cents per day per man employed. Work for the company commenced October 22, 1897, with 12 men, and, with greater or less numbers, has been continued to this time, there being at present 2 men so employed. The men were employed at various tasks, including digging ditches, working on the company farm, driving teams, firing boiler at pump station, cutting wood, etc.

"The total amount of work performed for the company to date is 10,602 days, which, at 70 cents per day, amounts to \$7,421.40, of which no part has been paid.

"Convicts working on the canal—that is, working for the State of Arizona Improvement Company—and also those working in the wood camps for the Territory, were given a verbal promise of an allowance of extra credit over and above the regular credits allowed by law, of one day for each three days of actual labor performed. This promise of extra good time was made by Governor McCord. Faith in this promise has been kept for work so done, but such extra time allowances were discontinued when the change in the management was made.

The report also states that—

"The proper employment of prisoners is one of the prime factors in the good management of an institution. Unfortunately the opportunities in this direction are extremely limited. Outside of the necessary duties within the prison walls and the manufacture of adobes for sale, the hill upon which the prison is built affords the only means of employment. This hill is evidently the remains of a glacial moraine, which at some time or other covered the country hereabouts, and is made up of blue clay and granite bowlders. The blue clay when screened makes excellent sidewalks, and, as such, is used by citizens of Yuina, to whom it is occasionally sold at the rate of 3 wagonloads for a dollar. The clay is also largely used for repairs and improvements about the prison."

ARKANSAS.

Some of the convicts at the State penitentiary are employed on farms, cultivating corn, cotton, and food products for the use of the institution or to be sold on the State account system; others are hired or leased to contractors, but are under the management and control of the penitentiary officials. In June, 1899, there were 300 working under this system on the railroad, 50 manufacturing chairs, and 50 manufacturing brick.

The following quotations are made from the biennial report of the State penitentiary for the years 1897 and 1898:

"I have never made and gathered a crop under so many difficulties as the crop of 1898. The first overflow compelled me to replant 800 acres; the second overflow, 5,400 acres, requiring extra time and labor, and making the planting and working of the crops later than it otherwise would have been. These facts, together with the unprecedented low prices for the last two years, have been some of the obstacles we have had to contend with.

"Our total revenues for the years 1897-98 from sale of farm products, sale of wood in the city, and the hire of convicts is \$226,969.61.

"Owing to the fact that the general assembly have never appropriated one dollar for the maintenance of the penitentiary for the 5 years I have been connected with it, we have been compelled to make share crops, giving the landlord half of all the crops grown. The amount paid to them during this period exceeds \$250,000. I have, in former reports, recommended the purchase of a large tract of land for a State farm, and have no reason for changing my views on this subject. * * *

"Since my last report we have erected a plant inside the walls for the manufacture of excelsior, and now have same running in good order, and have worked over 100 carloads of cottonwood into excelsior since we started the plant.

"We have established at Palarm, 18 miles west of this city, a camp, where I work all the white convicts under the age of 21 years, also the women, separating the boys from the older criminals. There are now 43 boys and 10 men at this camp. If deemed advisable a teacher could be employed at this camp, and a por-

tion of the convicts' time devoted to school hours, as the building is sufficiently large for all such purposes. We now have confined in the penitentiary 43 white, 154 black, and 1 Indian, who were under 21 years of age at the time of incarceration. * * *

"The penitentiary has been more than self-sustaining during the past 2 years.

"This much has been accomplished under the present system of hiring, leasing, renting, and share cropping, which I consider very bad, both from a financial standpoint and from the standpoint of humanity.

"Under present conditions the increased freights and transportation necessitated to reach and maintain the various camps largely diminish whatever profits might accrue, and the amounts paid for rent, considering the fact that we are abundantly able to buy a large body of good land, are an actual waste.

"The actual cost of operating and maintaining the penitentiary is about \$100,000 per year, and more than 15 per cent of this amount is expended in the two items of freight and transportation, and about 30 per cent in salaries alone. It is a conservative estimate that out of these three items, and many others, \$20,000 could be saved to the State each year by consolidation, and the general conditions and health of the State's prisoners could be much improved. Moreover, the isolation of the camps from each other and from the penitentiary walls, renders their proper supervision an impossibility and the general management defective.

"To obviate these, and many other difficulties which, under present conditions, operate against the interests of the State, and to procure the numerous advantages apparent in the consideration of a State farm, and the consolidation of the convicts under one supervision and control, I most heartily endorse the recommendations of both my predecessors and the superintendent of the penitentiary in their respective reports urging that the State purchase and operate its own convict farm.

"That the penitentiary is abundantly able to purchase, equip, and maintain such a farm is no longer a question.

"From a State farm a part of the able-bodied convicts could be employed on such public work and at such times as the penitentiary board might determine. And such manufacturing enterprises as the class of convict labor would justify, might also be erected on a State farm."

In some of the counties the prisoners in jails are worked on the public roads, in others they are leased to contractors, who work them on farms, while in a number of the counties the prisoners in such institutions have no employment whatever.

CALIFORNIA.

The convicts at the State penitentiaries are employed in the manufacture of jute grain bags and macadam under modified forms of the public-account system. They are also employed in various departments of the institutions manufacturing clothing, etc., and in raising garden products for the consumption of the inmates.

The following quotations from the reports for the years 1895 and 1896, of the prison wardens at the two State prisons, show the character of the industrial operations conducted at each.

From the report for the prison at Folsom:

"We began crushing rock for sale about the middle of June, and have continued steadily since. The crusher has now been in operation 2 months and a half, and has demonstrated that, under provisions of the law requiring the prison to furnish the labor free, and the power free, we can turn out the very best road metal, on the cars at the prison, for a minimum cost of 25 cents per ton. There is in sight enough first-class macadam rock to last several years. For the month of August we quarried and crushed over 8,000 tons, an average of over 330 tons daily. The crusher was not operated more than three hours and a half daily to produce this amount. For the ensuing season, when the quarry is properly opened, we can certainly produce from 500 to 700 tons daily.

"By arrangement with the Southern Pacific Railroad Company the cost of transportation was fixed at a very low rate. Taking the two main points of distribution, Sacramento and Stockton, for example, the freight rate is 25 cents per ton to the former and 45 cents per ton to the latter. This enables us to deliver crushed road metal at Stockton for 75 cents per ton, and at Sacramento for 50

cents per ton. As the former price for similar road metal, although not nearly so good, was \$1.90 per ton, delivered in each of these two cities, it will be readily seen that an immense saving in the cost of improving streets and building roads is effected by the operation of this plant. A large saving to the taxpayers for the construction of streets and roads, having the effect of lowering taxes, is itself compensation for the expense of the plant.

"The power furnished for this plant is delivered from our air compressor at the State power house. That is inadequate for the purpose, and has been used temporarily because the appropriation made by the last legislature was not sufficient to purchase a compressor of proper size and power. The legislature should provide an additional appropriation for a 250-horsepower air compressor.

"For the last 9 years the many improvements at the Folsom prison have kept constantly employed all the convicts confined therein. The question of what we shall do to keep them employed in the future must now be met and a proper decision rendered. It is certain that public feeling in California will not permit the employment of convict labor in competition with free labor; therefore, some scheme of employment other than a competitive one must be devised. The convicts must be kept at work. Every consideration of discipline, economy, reformation, and health demands this. I can not contemplate keeping a large body of convicts in idleness without feeling that it is a crime against society, if not against humanity. Yet, it is no less the duty of the State to give proper attention to the demands of thousands of honest citizens who have never committed crime and only demand the opportunity to labor for their daily bread.

"It has been suggested that the convicts at the Folsom prison might be employed in manufacturing articles for the use of the various State institutions. In theory this sounds well, but in practical operation it will be found that the demand is so small that as a means of giving employment to any considerable number of convicts it will prove a failure as well as abortive in lessening expense. There are only 8,000 inmates of State institutions, of which 2,000 are confined in the State prisons. The only articles that could be manufactured are shoes, blankets, clothing, hats, brooms, willow ware, and tinware. I have obtained statistics of all public institutions in this State as to the amounts required yearly of these various articles and have made careful estimates of the labor required to supply them.

"The two prisons manufacture their own shoes. This would leave about 1,200 dozens to be manufactured for other institutions. Unless we tanned our own leather, so as to be independent of buying leather in the open market, we could not turn out shoes for a less price than is now being paid for them. The large factories employing improved machinery almost eliminate the factor of labor from the cost of boots and shoes. To produce these articles cheaply they must be manufactured in large quantities, the plant run regularly, and every item of expense carefully guarded. Otherwise, the free labor of the prisons would not successfully compete against the improved machinery on the outside. And, again, 40 convicts, with aid of a sewing machine or two, could manufacture by hand all the shoes required by all the State institutions.

"About 1,500 pairs of blankets are purchased annually, at an average cost of \$3.25 each. The same criticism as to the cost of shoe manufacture would apply to a small woolen mill. To produce blankets cheaply the mill must be run on a large scale, and every advantage taken of the market to purchase the raw material. The output must be regular, and, in fact, strict business principles must be adhered to in every department of the plant. It might be said that the woolen mill could also produce cloth for clothing; but this, too, is extremely doubtful. No woolen mill in California has paid expenses for some years past. We are now buying prison cassimere at 62½ cents, which 5 years ago we paid \$1.20 for, and other cloth in proportion. This could not be turned out at the prison for that price under any circumstances. The same may be said of other grades of cloth, such as would be used in ordinary suits. A plant of that kind would be in the same condition as the San Quentin jute mill—running at a constant loss, on account of the limited output and the unskilled labor employed in the mill. A saving to the asylums and other institutions could be made by buying the cloth in the open market and making it up into suits, either at the asylums or at the prisons. No expensive plant is required for this, and a few men could make all the suits necessary for the inmates of our charitable and penal institutions.

"What is true of a woolen mill is true of hats, caps, etc. The amount to be manufactured would not justify the purchase of the machinery; that is, as an element of profit to the prisons. I do not believe they could be produced as cheaply as they are now purchased in the market.

"Willow ware, but little is used; and of tinware, the largest element of cost is in the raw material and not in the labor employed in putting it together.

"As all these institutions are now supplied with furniture, the demand for that for some years to come will be small.

"Again, the most serious objection to convict labor is not directed against the output of such labor so much as against the fact that the employment of convicts at the various trades has the effect of discharging annually several hundred convicts from prisons who are skilled operators, and thereby come in competition with free laborers who have not had the opportunity of being educated in their various trades at the expense of the State.

"It will be seen from the above that the question of utilizing the labor of convicts must be met by the adoption of a broader and more comprehensive policy than has heretofore prevailed. The problem presses for a solution, and neither conditions nor the public temper can be ignored in the settlement.

"The labor unions of San Francisco have within the past year adopted resolutions favoring the quarrying of stone by convict labor and placing it upon the market undressed at a low figure. This will have the effect of giving employment to a large number of laborers in preparing it for building purposes. While it will be injurious to some of the quarry owners, it would be beneficial to a large number of stonecutters, stone masons, laborers, and others employed in building, and at the same time afford an economical and durable building material for the cities of our State. The rock-crushing plant will give employment to about 250 convicts.

"In concluding this subject, I would recommend, first, consolidation of the two prisons into one management; a reduction of the operating expenses to the lowest possible cost; the purchase of additional lands adjacent to Folsom Prison; enlarging the farm; raising more stock; producing a larger supply of vegetables, fruit, pork, bacon, and even beef; and the employment of a large number of prisoners in quarrying stone, placing it upon the market undressed at a price that will permit of its general use as a building material.

"This seems to be, at least for some years to come, a practical solution of the convict-labor problem. It will take 4 years' labor of all the convicts now at Folsom, with 200 or 300 more added, to prepare all the necessary buildings and improvements for the accommodation of the convicts now at the two prisons, and I feel satisfied that a sufficient saving over the present management can be made to fully repay the expense of consolidation within a period of 4 years."

From the report for the prison at San Quentin:

"As you will perceive, we sustained a considerable loss on the jute goods sold during the past year. There are a number of causes which combined to make the loss unavoidable. In the first place, the Wilson tariff bill, which went into effect two years ago, placed grain bags made in foreign countries on the free list, and while this had the effect of reducing the price of such bags imported in 1895 it does not appear to have had the same effect upon the price at which the raw material could then be obtained. Jute purchased in 1894, out of which were manufactured the bags we made up to the end of the year ending June 30, 1895, commanded a higher average price than it had for several years previous, and since then we have purchased jute at much lower prices.

"One of the most serious drawbacks we have to contend against in making ready sales of our bags is the law passed by the legislature in 1893, commonly known as the Ostrom Act.

"While this law evidently was intended for their benefit, yet a great many farmers most strenuously object to it, and in particular to section 3, which requires an affidavit to be filed with each order. In many instances it is a great inconvenience for a farmer to make a special trip of perhaps 20 or 30 miles in order to find a notary before whom to make such affidavit; and while many of them consider the bags made at the prison as superior, and would use them in preference to any others, they will not order them, but purchase Calcutta bags, sometimes at a higher figure, rather than make the affidavit.

"The general depression of business and low prices for wheat which have prevailed during the past two years also had a most pronounced effect against the operation of the law.

"Farmers, as a rule, have not made any profit on their crops during that period, and consequently had no ready money when the time came for them to provide themselves with bags for this season; therefore they were obliged to look to the merchants, banks, and warehousemen for money if they desired to use and purchase the prison bags; but as most of the merchants in the interior handle Calcutta bags for San Francisco firms, the farmers were, most naturally, easily induced to use the Calcutta product. Owing to this scarcity of ready money, many farmers who really prefer our bags were thus prevented from ordering and using them.

"The low price fixed by your honorable board, and to which you adhered all through the season, has, however, had a most decided tendency to prevent San Francisco dealers from raising the price of imported bags. This they were undoubtedly prepared to do, as the imports for this season were just about sufficient to supply the demand, and there is no doubt that a higher price would have been asked if the prison authorities had shown the slightest disposition to start such an advance. Keeping down the price as we did prevented the dealers from forming combinations with a view to advance the market, and in order to get rid of their stock importers were obliged to sell their bags at such low prices that they realized but a very small, if any, profit.

"Thus our loss this year has been really, and in fact has been, a gain and benefit to the farming community of the State, as had we fixed a higher price the market for Calcutta bags would also have been advanced, and all the farmers would have been obliged to pay a higher price for their bags, no matter what kind they used.

"The law as it stands will always place us at a disadvantage in disposing of the total output of the jute mill, for the reason, principally, that all the farmers who would use our bags are not in a position, financially, to place their orders direct with us, but are dependent upon middlemen to procure bags for them; and while the law was intended to benefit and protect the farmers, its operation practically has an opposite effect.

"At the beginning of the current year a change was made in the management of the jute mills, and the present superintendent, appointed upon the recommendation of your honorable board, made a number of improvements and changes in the arrangement and working of various machines, which are claimed by him will have the effect of increasing the output and reducing the cost of manufacture.

"It has been suggested and advised that it would be profitable to engage in the manufacture of other lines of jute goods besides grain bags; however, it appears that if we did so we should come in competition with the free labor of this State, and in particular with that employed by the California Cotton Mills, at Oakland, which factory makes a specialty of supplying this coast with ore, bean, and other similar bags. The only bags other than those used for grain, of which large quantities are used, and which are not manufactured elsewhere in this State, are sugar bags, and we have succeeded during the last few months in securing several contracts for the manufacture of these at a figure which will leave us some profit. The manufacture of these bags, together with the anticipated increased output and reduced cost of production, will doubtless lead to better results and a more profitable showing at the end of the ensuing fiscal year than we have been able to attain during the year just past."

There is no system for the employment of prisoners in the county jails. Prisoners in the city jails are worked on the public streets and roads.

COLORADO.

In their biennial report covering the 2 years ending November 30, 1896, the commissioners of the State penitentiary state as follows:

"The prisoners are employed in burning lime, making building brick, quarrying lime and sandstone, dressing building stone, gardening on ground leased by the State for prison purposes, and in the general work of the prison, including the making of their own clothing.

"If the board of commissioners had the power to use the prison labor within the walls so that all the prisoners could be worked in shops it would greatly reduce the expenses of the institution and increase the earnings, be a benefit to the prisoners, in that they would be released with a good trade, and it would help in the way of discipline and in a great many measures of reform that are now impossible when prisoners are worked outside, where the vicious and bad are necessarily mixed with those with whom they should not be, and intercourse among them can not be entirely stopped. It seems to us that any article or commodity manufactured outside the walls comes as much in competition with outside labor as that done inside the walls. Our idea of the matter is that we should do as much for the prisoner while here as possible to make a better man of him and fit him, if possible, when he leaves the place, to earn his own living, so that there will be less likelihood of his returning to a life of crime by teaching him a trade. At the same time we feel that while here he should, as much as possible,

be required to earn as much as he can to pay for his keeping. We feel that these ends can better be accomplished by manufacturing within the walls on State account. * * *

"During the months of December, 1895, January, February, March, April, and November, 1896, we have had 75 prisoners employed in the construction of a State canal.

"The main difficulty arises from a lack of employment for prisoners. How to employ our prison population is one of the vexed problems of the day. How shall prisoners be employed so the product of their labor will not be brought into competition with free labor? Convicts during confinement need constant employment to save them from destruction and degradation. Must prisoners be confined in idleness, driving them to insanity—driving many to such infractions of the rules as make punishment necessary? This is a matter that should receive careful consideration. As the sale of lime is greatly decreasing and the revenue from the quarries is growing less every day, it is apparent that some other means of production must be provided. In view of these facts I would recommend that steps be taken toward providing the prisoners with some suitable employment inside the walls of the prison which will not be in direct competition with free labor—employment which will be most beneficial to the prisoner, at the same time least detrimental to free labor, and, if possible, remunerative to the State. I would recommend, after a careful survey of the premises, that the manufacturing of boots and shoes be undertaken, as there would be less objection to this industry than to any other.

"First. In this industry the convict labor would not necessarily be competitive, as there is very little free labor employed in this industry in the Western country.

"Second. It would be profitable to the people of Colorado in producing a much cheaper, yet as good if not better, article than that which is secured from Eastern prisons, for a large percentage of the boots and shoes used in this State is made by convict labor in Eastern prisons; and why keep our own convicts in enforced idleness?

"Third. It would be a step in the direction of placing this institution upon a self-supporting basis, thereby relieving the people of a great burden, as every dollar earned by them in prison saves that much to an overburdened and over-taxed public.

"For these reasons and those already cited in regard to the preservation of the prisoners, morally, mentally, and physically, some steps ought to be taken in this direction. It has been my experience in this institution, where prisoners have come to me and almost begged for employment, to relieve them from the solitude of their cells. This perplexing question should be met in the coming legislature, and I recommend that the legislature make an appropriation for the erection of proper buildings and the purchase of the necessary tools and implements to carry on this industry."

The following information relative to the employment of the convicts of the State during 1899 has been furnished by Mr. Clarence P. Hoyt, warden of the State penitentiary:

"The last biennial report of this institution gives very meager information along the lines of employment of prisoners at this institution. Since compiling this report considerable has been accomplished in the way of furnishing employment to the 585 prisoners by making necessary repairs and improvements to the State property, so that at this date we have an average of 530 prisoners daily employed. The balance of our population are not at the present time engaged in any occupation, on account of being incapacitated by sickness or other satisfactory reasons.

"We have an average of 50 men working daily on the gardens and ranches, raising crops, which, while they make very little return in cash to the institution, make a material reduction in the cost of maintenance.

"We have 62 men working in the stone quarries and stone sheds, preparing dressed and undressed stone for building purposes, for which we find a ready market.

"Our blacksmith and wagon shop is occupied by 13 mechanics, doing work in this line for the institution.

"We are doing a very satisfactory business quarrying limestone and burning the same for the market. This branch employs an average of 75 men, and we find a ready market throughout the State for the product of their labor.

"We are employing about 20 men daily in building a State road, which is to reach from the city of Pueblo, on the eastern slope, to Grand Junction, on the western slope, near Utah line.

"Our carpenter and paint shop finds constant employment for an average of 20 men, their labor being confined entirely to building and repairing for the institution.

"Our tailor and shoe shop and tobacco factory engage the constant attention of about 25 men in manufacturing clothing, shoes, and tobacco for the inmates.

"Thirty hands are employed in our washhouse; 2 in the soap factory; 22 in our boiler and dynamo room. Fifty-five hands are employed in the dining rooms, kitchens, and bakery; and the balance of the 530 who find daily employment are engaged in various occupations in and about the premises.

"It is the aim of the present management to secure the establishment within our walls of such manufacturing enterprises as will in the least degree come in competition with free labor. Organized labor within our State has pursued the foolish policy of protesting against the employment of convict labor in any enterprise which would in the least degree come in competition with their profession, while they have no hesitancy in going into the markets and purchasing these products of manufactories conducted within the confines of Eastern penitentiaries. The present laws in this State on the subject of convict labor are very liberal, and we will, no doubt, within a short time close an agreement whereby a more remunerative system of employment will be obtained for our convicts that will meet with little, if any, objections from labor unions."

They have no workhouse or manufactories of any kind in the county jails in this State.

The biennial report of the commissioners and warden of the State reformatory for the years ending November 30, 1898, contains the following statement in regard to the employment of the inmates in that institution.

"The financial statement of this institution always shows a large balance against it. This is because the labor of its inmates is not valuable. Of course they work. They are employed in making improvements and beautifying the grounds. They cut and haul all the wood the institution uses for fuel.

"The wood is becoming scarce. We have now to go 12 to 14 miles for it, and it will soon be impossible to give them work in that line, as has been done in the past.

"In the summer season they are employed on the farm; besides the reformatory farm proper of 400 acres we have the farm of 160 acres joining on the south, which, with the sanction of your Honorable Board, I leased during the past year for a term of five years.

"Our principal crop is hay; however, we raise potatoes, onions, beets, and some wheat. Also peas, potatoes, and artichokes. The altitude is so great that the season is very short. Frost and hail have been a great drawback to our farming interests.

"The inmates take care of the stock, milk the cows, do the baking and cooking, make their own clothes and shoes, etc. In fact, they do all the work. While this work is not strictly remunerative to the State, it explains how we are able to provide the wholesome food we do at so small a cost per diem.

"Since taking charge of the institution I have kept them employed in some way, believing that it is better for them. They are in school or at work; we have no idle prisoners here.

"The ambition of every warden should be to make the institution as nearly self-supporting as possible. Our reports show that we have fallen far short of so doing. Yet we have labored in that direction, and with a remarkable degree of success, considering the conditions under which we have worked."

CONNECTICUT.

The directors of the State prison, in their report for the year 1898, state as follows:

"The average number of prisoners during the year was 505.6, and the average daily per capita cost of maintenance was \$0.3803. Three hundred and thirty-two of the convicts were employed under contract, and of this number 240 were engaged in the manufacture of boots and shoes at the rate of 50 cents per day per prisoner, and 92 in the manufacture of shirts at the rate of 5 cents per dozen.

"Owing to the exceeding poor year for raising farm products, especially potatoes, this industry shows a net loss for the year of \$1,224.86, the amount nearly equaling the gain made the previous year. It was intended to add to the acreage under cultivation, but owing to the inability of hiring 10 or 12 acres together, or in proximity to the land already leased, the matter fell through. As will be seen

by the following figures, showing the profits made by the farming industry for the previous years, it is clearly demonstrated that a farm can be carried on profitably by the institution; also that a farm furnishes a kind and quantity of food to the inmates at a nominal cost that could not be afforded if purchased, adding greatly to the variety of the food furnished, and thereby materially aiding in the retention of health while under confinement. Added to this is the fact that it gives remunerative employment to the tramp class committed here, which could not be found here otherwise; and it also furnishes a place for labor in the open air for those who, by long confinement or disease, are running down in health, thereby better enabling them to earn a livelihood upon their discharge.

"In view of the above facts, and others that might be cited, I would urgently recommend that farming lands be purchased of sufficient acreage to raise all the farm products required for the use of the institution."

In response to a request for further information, the warden states that:

"Under each system that the convicts are worked the State retains full supervision over them while at work, and no authority over their discipline is vested in the contractors. The products of the penal industries command practically the standard market price, and the competitive effect of the prison labor upon the free labor of the State is scarcely appreciable. Not over one State prison convict to every 2,500 inhabitants of the State is productively employed."

In the large jails the inmates are engaged in the manufacture of chairs under the contract system, also in farming, gardening, etc., for the benefit of the inmates.

The inmates of the State Reformatory are engaged in caning chairs, under contract or piece-price system, also in carpentering, printing, shoemaking, laundry work, farming, and baking.

DELAWARE.

Prisoners in this State are confined without employment in the county jails, except in Newcastle County, where a penitentiary is being erected. When this penitentiary is completed the prisoners in that county will be employed as in the penitentiaries of other States.

DISTRICT OF COLUMBIA.

Prisoners at the workhouse are employed in grading streets and roads of the District, and cleaning grounds; also making roadways in the Rock Creek park.

Inmates of the reform school are engaged in farm work, raising supplies for the inmates, and also in manufacturing under the public-account system.

FLORIDA.

The State convicts are all worked under the lease system in the phosphate mines or in the manufacture of naval stores.

A special committee was appointed by the legislature to investigate the condition of the convicts and convict camps, and submitted a report, May 19, 1899. This committee reported that the laws and rules for the government of the convicts were being violated in many particulars. The commissioner of agriculture for the State, who has general charge of the convicts, states that he is opposed to the lease system, but that it seems to be the best that can be done in Florida at this time.

The county convicts are worked under lease of the county commissioners of each county, or are given no employment whatever.

GEORGIA.

The methods for employing convicts have been changed materially during the past two years. The State convicts are controlled by a commission. The labor is hired to various parties for a term of 5 years, in companies of not less than 50 nor more than 500, engaged in the following pursuits: Iron and coal mining; saw-milling; turpentine; building railroads, and farming; the State employing all

officers and guards, and retaining absolute control. In addition to the above employment, the State owns a farm on which is located the central penitentiary. All females, juveniles, aged, and infirm convicts are placed on this farm and employed at such labor as they are able to perform, time and opportunity being given them to improve their moral and religious status.

The following quotations from the first annual report of the prison commission for the year ending October 1, 1898, indicate the present methods and the contemplated operations:

"As required by the act of the general assembly, the commission advertised, in 3 daily papers and 10 weeklies, to hire the labor of those convicts not required to be placed upon the farm, to the highest bidders, estimating this class at 1,800, thereby allowing a liberal margin, so that no complication could arise from having contracted to deliver a larger number than might be available.

"The bids accepted averaged in price \$99.13 per capita per annum, aggregating \$178,450 per annum for the labor of 1,800 convicts.

"Bids for labor on turpentine farms were rejected for the following reasons: A much larger cost to the State in guarding convicts so engaged; a larger risk of escapes; and difficulty in keeping the clothing of the convicts and the buildings clean.

"When it is remembered that for several years past there has been an effort to deprecate the value of convict labor, and serious doubts were expressed as to the ability of the State to hire this labor on satisfactory terms, this result is very gratifying.

"Under the lease contracts which have been in operation nearly 20 years, and which will terminate on April 1, 1899, the State received a gross revenue for the hire of all the convicts of only \$25,000 per annum, and as for a number of years the average prison population has exceeded 2,500, the cost of this labor to the lessees has been less than \$10 per capita per annum, exclusive of maintenance.

"At the same time that the commission advertised for the hire of convict labor it also run, as provided for by the statutes, an advertisement for the purchase of not less than 2 nor more than 5,000 acres of land. To this advertisement the commission received more than 100 offers, at prices ranging from \$2 to \$15 per acre.

"Considering all of this matter and weighing carefully each argument for and against the sites offered, the commission finally selected and purchased a tract of land in Baldwin County containing 3,334 acres, at and for the sum of \$20,500, or a cost of \$6.14 per acre.

"Owing to the constant changes in the prison population it is impossible to determine, except in the case of the women and boys, accurately, now, just how many convicts must be provided for at the farm.

"It is problematical whether 200 convicts can be profitably employed on a farm of the size which has been bought, for necessarily there must be a large proportion of this land which can not and ought not to be put under immediate cultivation.

"In looking into this matter of providing employment the commission has carefully considered many plans, and can only give a general idea of what will probably be done; and in this connection considering carefully the advisability of engaging a part of these convicts in manufacturing clothing for all the State convicts, misdemeanor convicts, and such garments as are bought or contracted for by the Georgia State Sanitarium and at other public institutions. Contracts can be made with the present contractors whose duty it is to supply the convicts with these garments, and if the general assembly will support this proposition by legislation which will be hereafter suggested, the misdemeanor convicts and inmates of the public institutions can also be supplied.

"There can be no income from the State farm until a crop has been made and harvested, unless from the industries heretofore mentioned; therefore provision must be made for the maintenance of all convicts on the farm for at least one year.

"But the future of the system will depend upon the encouragement and assistance given the commission by the legislature. If the penitentiary is to be used as a source of revenue to the State, a means entirely foreign to the most advanced idea of prison management and unheard of in the most prosperous States, and the commission is to be dependent, year after year, upon limited appropriations, in order that the revenue from this source may be as large as possible, the system will be a failure, and at the end of 5 years the State will be again confronted with the problem. But if the income from this source is used in building up a system that will reflect the intelligence and humanity of the State, and be an ornament instead of a disgrace to civilization, every particle of income from this source necessary to build it up should be devoted to the work.

"The commission respectfully suggests that a law be passed by the general assembly requiring all county and municipal corporations, and authorities in control of State institutions, prices and quality being equal, to purchase from the State prison such articles as can be supplied by it, for the public use, in preference to any other bidder or competitor. This is the present law in the State of New York, and has been found there, after various experiments to be practical and wise. It furnishes employment for the convicts at remunerative profits, and under it the prisoners of that State are rapidly becoming self-supporting. Under such a law in Georgia, the clothing of all felony and misdemeanor convicts, and inmates of other institutions, could be furnished by the prison, and a number of the convicts be engaged in profitable work. Other industries of a similar nature, manufacturing articles for public use only, and such as are not made now in this State, might be ultimately established upon a paying basis."

The first year of the active operation of the new convict law ended on April 1, 1900. The report for the year shows that the new system has brought into the treasury \$200,389.13, not including a profit of \$5,000 on the prison farm at Milledgeville. Of this amount \$120,000 was appropriated to meet the expenses of the department; and, as not all of this appropriation was needed, there will be left to the State, at the lowest figure, a profit of \$85,000 for the year as a result of its experiment.

IDAHO.

Convicts at the State prison are employed in quarrying stone to be used in building a new cell house; in making excavations to secure a supply of water for the prison; in working the prison farm to raise supplies for the use of the institution, and also as cooks, waiters, tailors, laundrymen, etc., in the prison. The warden in his annual report for the year ending November 30, 1898, states that—

"The stone quarries opened up during the preceding years have been worked and more fully developed during the past year. All the rock used in the buildings erected during this period have been easily and cheaply secured. The quarries, of which there are three, will furnish all the rock required for many years in prison building.

"From 15 to 20 convicts have been employed in cutting stone during the spring and summer. They have been under the direction of a prisoner who learned his trade at the prison, and who is competent to direct all the work required cutting lintels, arches, door and window sills, brackets, and all the ashlar used in the building."

In calling attention to the limited water supply for irrigating purposes, he says:

"By using prison labor, we could in one year build a ditch from the river to the upper portion of the prison reservation, thus giving a system that would afford a complete water supply that would irrigate 40 acres more of our best land that can not at present be irrigated, affording an opportunity of raising hay for the stock and increasing the supply of winter vegetables."

The prisoners in the county jails may be worked on the public roads, but there is no plan for their systematic employment.

ILLINOIS.

The convicts at the State penitentiaries are worked under the State account system. A number of the prisoners are also employed on the farms, about the institutions, and in manufacturing the necessary supplies for the same, also in repairing and making additions to the buildings.

It appears from the report of the penitentiary at Joliet that during the year 1897 the convicts were engaged in manufacturing oak chairs, cooperage, brooms, cigars, and knit goods, and cutting stone on the State account system. The results of the operations for the year are summarized as follows:

Loss on the business of the different industries.....	\$69,298.43
Cost of maintenance of prisoners while employed.....	50,198.94
Total loss.....	119,497.37

The commissioners of the penitentiary, in their report for 1898, state that—

“In the very nature of things, and also as a matter of history during the last administration, industries operated as these were, with the output fixed by the necessity of keeping the prisoners employed at all times, and the markets for the products variable, the State would often accumulate an over plus, which it had to sell at some price, because it was not and had not been capitalized to carry indefinitely such a stock as would soon develop. It was, therefore, forced to demoralize the market by selling below it, and, in many instances, at less than cost and at a loss to the State. The pernicious use of such a practice injured free labor first, for when the cost of raw material is reached by the outside manufacturer he must reduce the price of labor, and when that too is absorbed by this unfair competition of the State the outside shop must quit. It is needless to observe that the greater the number of these competitive industries the more widespread the demoralization to outside labor.

“To render this institution self-supporting, while a very natural and possibly in some respects a laudable ambition on the part of its officers, is by no means the supreme test of administrative success; nor, on the other hand, should they be excused from wasting the energy of the prisoners by embarking in hazardous enterprises which experience teaches have nearly always resulted not only in entire loss of labor expended, but also in hundreds of thousands of dollars to the people.

“The penitentiary occupies such an independent position under the law that there is no occasion for its taking any risk whatever for a single industry within its walls. The law requires the prisoner to be kept at hard labor, therefore his energy is the only thing to dispose of, and the management is not authorized in risking the people's money in experimental factories. Let the outsider furnish the material which the energy of the prisoner will work up into goods and wares. He can and does control enough capital not only to buy in the lowest market and take advantage of every discount, but he escapes the embargo laid on State products by boycotts and prejudice. He can also store his goods until the market will receive them, rather than force the market and the free labor down by the ruinous necessity of selling below, as the State had to do. We do not believe that it should be the policy of the State to enter into competition with its citizens, but the law requires the prisoners to be kept at hard labor, and we think it should be the policy of the management, in fairness to outside labor, to outside industries, and the taxpayer, to get the highest possible price for the work of the prisoner; to use every reasonable endeavor to supply his necessities, to keep him in health, to treat him in such a manner that if reformation is possible it may be accomplished, and to apply the same careful business methods to State affairs which private interests outside would demand; then let the people pay whatever deficit—and there will be one—for this institution is not now, and probably never will be, self-sustaining. It would seem that this theory is not at variance with the constitution and allows the burden to rest equally on each interest affected. It is fair to the outside labor (which would have to meet the competition of the labor of the prisoner were he free), fair to outside factories by preventing ruinous competition and disturbed markets, and fair to the taxpayer, whose burden is lessened by whatever earnings the institution can show.”

The principal industries conducted in the penitentiary at Chester are the manufacture of hollow ware, knit goods, and brick, also stonework and quarrying.

Prisoners in the houses of correction and county jails are worked under the State account system in the manufacture of bricks, brooms, and other articles, and also in breaking rock for macadam and in the general work incident to the institutions.

INDIANA.

The biennial report of the Indiana State prison for the two years ending October 31, 1898, contains the following information concerning the industrial operations of the institution. Convicts are worked under contracts, as follows: Two hundred men at 40 cents per day, 50 men at 42 cents per day, and 130 men at 32½ cents per day. These convicts were engaged in the manufacture of boots and shoes, chairs, woolen goods, and cooperage.

The warden makes the following recommendations:

“I believe that the plan of leasing a sufficient amount of land adjacent to the prison farm, and working on this land from 200 to 300 of our prison population composed of the older and short-term men, would be one of the best methods of

solving in part the question of labor in this institution. This land can be leased for a number years at a price not to exceed \$1.75 per acre, upon which could be raised potatoes, cabbage, tomatoes, and other vegetables in sufficient quantities to more than meet the needs of this institution. The surplus could be shipped to other State institutions not having the advantage of a farm. After the plowing of this land is done, it could be worked entirely by hand, not being necessary to purchase any improved machinery for its successful cultivation.

"It must be borne in mind that this institution is now the prison of the State, to which are committed the life prisoners, prisoners with long terms of sentence, and prisoners of such character that it would not be safe or practical to work outside of the walls. For this class of men (not exceeding 50 per cent of our population) I believe a system by which we can work them on the piece-price plan would be the most acceptable and practicable.

"In making contracts on the piece-price plan I would recommend that certain articles of merchandise be manufactured, such as boots and shoes, clothing, school desks and chairs, wooden ware, and brooms; and that not more than 100 men be worked in the manufacture of any one class of goods.

"In the enactment of such a law I would recommend that there be incorporated a section whereby the contractors who manufacture the articles mentioned should be compelled to furnish our State institutions and political divisions of the State, and such State institutions, or political divisions, be compelled to purchase such articles of said contractors at a price to be determined by a board appointed by the governor to fix prices at which said contractors shall be paid for the manufactured articles, the price to be such that the manufactured goods sold to said institutions would not undersell similar goods made by free labor, permitting said contractors to dispose of the balance of the goods manufactured in the market.

"Under the present law 400 of the convicts in the State prison may be employed under contract until 1904. If the population exceeds 800, 50 per cent of those in excess of that number may be likewise employed. The State has leased a tract of land near the prison, upon which to employ, through the summer season, any surplus of labor there may be remaining after supplying the above number and providing for the regular work of the prison. If at any time the whole number of inmates is not employed, authority has been given to utilize them in the manufacture of goods on State account. We have also a woman's prison, in which the women are largely employed about the institution, but do some little outside work, such as quilting and laundering.

"No work is provided in this State for those serving jail sentence, save in some counties there is a stone pile or wood pile upon which a part of their time is expended.

"The reformatory has all of its labor contracted for about 8 years to come. The reform school for boys expends all of its labor upon its farm and school industries. The reform school for girls, in addition to caring for the institution, does some laundry work for outside parties."

According to the biennial report of the Indiana Reformatory for the years 1897 and 1898, the prisoners in the institution are required to earn their own living. A man on entering the institution is given his first outfit and first meal; after that he must earn, by good work, sufficient to keep himself while there and have a certain amount to his credit before he can be paroled.

For each day's perfect performance of duty, men in the upper grade receive a credit of 55 cents per day; in the middle grade 50 cents per day; in the lower grade 45 cents per day. An additional credit is earned for all work done in excess of the fixed task, and a deduction is made for all unnecessary shortage. From these earnings a man is required to pay for what he receives in the way of board and clothing.

After 18 months' trial of this system and carefully comparing it with other systems, the officials of the institution are convinced that it is a strong element in the successful management of the reformatory. The prisoners in this institution are worked under a modified form of the contract system, but at the expiration of the present contract, in about 5 years, trade schools are to be established.

The board of State charities, in their ninth annual report, 1898, make the following statement:

"The most serious problem which has confronted the management of the State prisons has been the question of providing labor for the convicts. The new laws

against contracting prison labor made no provision for its employment. During the past year there have been 380 men under contract. In addition to that, every means that the warden could devise to keep the men in employment have been used, yet there have been some who have been unoccupied. At this season of the year, and through the months immediately succeeding this, there is but little opportunity to furnish employment for many of those that are not on contract. The spirit of the prison must be reformatory if it is successful. There is nothing that counts toward reformation in idle convicts locked in their cells their entire time devoted to thinking of self and to the cultivation of evil habits. The strain of these conditions is great, and the influence is not toward making better men."

IOWA.

The following quotation is taken from the biennial report of the warden of the penitentiary at Fort Madison for the year ending June 30, 1897:

"We have employed on an average 100 convicts at the work of improvement going on here since May, 1896. These men will have work, by the time it is finished, about 350 days, or an aggregate of 35,000 days, which, computed at 50 cents per day (the price of contract labor), would have earned \$17,500. And when we take into consideration that 20 or 25 of these men have been constantly employed cutting stone, which labor, if done by citizen stone cutters, would have cost \$3 or \$3.50 per day per man, an average of 7,000 days, and 10 men have been employed at laying stone, for which we have paid citizen masons employed on the work \$2.50 and \$3 per day who did no better work than the convicts, you can form some estimate of the saving to the State from the use of convicts.

"I have at all times, in the making of these improvements, utilized convict labor to the fullest extent possible. In the construction of the 140 new cells all the labor was done by convicts, under the supervision of a foreman from the factory, which was the only outside labor employed. In masonry work there has been a citizen foreman, and part of the time 5 or 6 citizen masons, as we found only 2 or 3 stone masons among the convicts. From this time until finishing there will be none but convicts employed, except the foreman.

"I find by comparison that the earnings of the men on contract amounted to \$74,947.22, a decrease of \$11,320.57, as compared with the previous biennial report. One reason for this decrease is on account of the shoe contract going out March 1, 1894, and also by modifications of the contract now in force between the State and the Iowa Farming Tool Company and the Fort Madison Chair Company, whereby the Farming Tool Company reduced the number of men working on their contract from 155 full pay men to 132, and half-pay men, or lumpers, from 11 to 9, a reduction of 25 in the aggregate and a reduction in price per day of the 132 men remaining from 50 cents per day to 45 cents per day. There was also a modification of the chair company's contract to run from June 1, 1896, to June 1, 1898, whereby the price of labor was reduced from 50 to 40 cents per day on the full number of men employed, the number of men was reduced from 130 to 120. These reductions were made upon a showing by the contracting firms of business depression and the fact of manufacturing articles piling up on their hands, the chair company making a sworn statement showing conditions corresponding with their claims, and the tool company also making showing to substantiate their claims. Notwithstanding these drawbacks, and with an increase of 65 men in average number of men confined, I have been able to keep up the general support fund and turn over during this biennial period \$11,000 as surplus earnings to the State treasurer and have now on hand to the credit of that fund \$7,265.51, besides contractors' notes to the amount of \$9,826.90 and \$3,000 due from contractors unsettled."

Convicts in the penitentiary at Anamosa are employed in quarrying stone to be used in constructing the prison, and engaged in the industries connected therewith, such as tailors, making prison clothing and discharge suits, shoemakers, and other like industries, all for the support of the prisoners, and in the care of the institution.

The warden of the Anamosa penitentiary, in his report for the year ending June 30, 1897, says:

"The question of convict labor, however difficult of solution, is imperative in its supreme importance. To remove the State labor out of the reach of interested competitors it would have to be removed out of this world. Every act performed

by a prisoner could be done by free labor; and if all the prisoners of the State were prohibited from doing what some men could do, and would like to do, then a sentence to 'hard labor in the penitentiary' would be ridiculous in the superlative degree. It does not require a very astute mind to discover that the State is sandwiched between two stubborn difficulties. It can not perform a single act without coming into conflict with what is termed 'free labor.' It can not remain idle, for it is under sentence 'to hard labor in the penitentiary.' And to attempt to escape the dilemma by farming out the State labor at a mere fraction of its real value only aggravates the seriousness of the situation. A glance at the results of this method can not fail to satisfy any clear-headed man that the policy is a dismal failure. It fails to bring the State any just recompense, save that of ridicule. It fails to offer any incentive to the convicts. The paltry sum paid for their services is an insult to their frayed manhood. It fails ingloriously to reach any harmonious results in the world. The reason is plainly told by the complaints of those who are operating plants within penitentiary walls. They complain of boycott and systematic opposition from manufacturing firms that are paying higher wages for the same class of service performed. The result could not be otherwise. Where is the solution of this vexed question? Not in idleness, for this has been weighed in the balance and found wanting. Not in ruinously low prices for prison labor; that only aggravates the difficulty. It is a dismal failure. Let the State demand and receive for its labor the same wages that are paid for the same class of labor in the outside world, and the difficulty disappears."

Prisoners in the county jails are for the most part unemployed, except upon minor duties about the prison, as there is no provision in the statutes for a guard to work the convicts. The cities of Cedar Rapids, Sioux City, Davenport, and Independence furnish a guard and work the prisoners on the streets.

The inmates of the industrial school are employed in the domestic duties incidental to the institution; also in making and mending their clothing and in studying.

KANSAS.

The inmates of the State penitentiary on June 30, 1899, were employed as follows: Under the contract system, in the manufacture of furniture, 76; in the manufacture of boots and shoes, 41; runners for these shops, 7. Those employed by the State were distributed as follows: Two hundred and sixty-one in mining coal for use in the penitentiary and other State institutions; 30 in quarrying stone for use in the penitentiary buildings and for building the State road; 15 on buildings being erected by the State; 60 in the kitchen, bakery, and dining room of penitentiary; 45 in the engineering department for light and power at the penitentiary; 18 in breaking stone for road use and cutting stone for building; 53 in laundry and State tailor shop; 36 in caring for cell houses; 51 in prison yard and general miscellaneous work (this includes many cripples and invalids); 14 on State farm raising products for the use of the penitentiary; 13 in and around penitentiary stables; 14 carpenters, tinkers, and blacksmiths in State shop; 15 cooks, nurses, etc., in hospital and insane ward; 9 insane prisoners; 97 clerks, runners, roustabouts, etc.; 25 at brickyard making brick for use of State institutions; 39 on State road.

In the large cities jail prisoners are employed generally in street work. The smaller cities and county jails, as a rule, furnish no employment for prisoners. The State reformatory and the State reform school furnish mostly farm work for prisoners.

From the eleventh biennial report for the State penitentiary, for the years 1897 and 1898, it appears that--

"During the year ending June 30, 1897, there were employed at the coal mine, working on the State-account system and in mining coal for the use of State institutions, an average of 292½ convicts per day working 309 days, and during the year ending June 30, 1898, there were an average of 313.08 convicts per day working 310 days. The convicts were also engaged in farming and in gardening and macadamizing public roads."

The employment of the prisoners is commented upon as follows:

"Toward the close of the fiscal year ending June 30, 1897, and during the early part of the fiscal year just closed, it seemed impossible to provide labor for the prisoners, but with the experience with one summer we have found a way to fully employ this labor, so that during the last 7 months of the fiscal year ending June 30, 1898, we sold the hitherto unprecedentedly small amount of 30,515 bushels of market coal. In this connection, I feel it incumbent upon me to say that the disposition of this labor is a question upon which your honorable body should make explicit report, and recommend to the governor, and through him to the legislature of the State. I hold the employment of this labor by any party or parties for private gain to be wholly wrong. There is no reason why the labor of the wards of the State should result in profit to a single individual, nor is there any reason why this labor can not be directed into channels that will result in profit to the State at large, nor at the same time be detrimental in the way of competition to a single free worker, organized or unorganized, in the State. To sum up, this labor should be used in preparing the material for the erection of public buildings, in manufacturing for the various educational and charitable institutions such articles as can be readily made here but can not be made in the charitable and educational institutions."

The second biennial report of the Kansas State Industrial Reformatory, 1898, states that—

"The inmates are engaged in cooking, washing and laundering, tailoring and shoemaking, blacksmithing and carpentering, stonecutting and masonry, all of which are fairly successful, besides farming and stock raising. I would suggest a recommendation by the board to the legislature for improved machinery in all these departments of labor, that our graduates may be on equal footing in their trades when paroled.

"So far our shoe department is confined to hand work, and, while answering institution needs, does not fit a tradesman for first-class competition. Our laundry supplies are of ancient pattern also, and our kitchen furniture and methods very meager. I also ask that the board consider a recommendation as to putting the inmates of this institution on some footing of earnings, as the penitentiary pittance at least."

KENTUCKY.

Convicts are worked under the lease or contract systems and also under the public-account system. The board of prison commissioners, in their annual report for the year 1898, state:

"When we took charge of the penitentiaries we found that at the Frankfort penitentiary 400 convicts were leased at 35 cents per man for each working day, and 650 convicts were being worked by the State in the manufacture of chairs, the output of which was sold to a contractor at a stipulated price per dozen chairs.

"Since the present board has been in existence they have succeeded in consummating a contract for the leasing of the labor of 650 convicts at the Frankfort penitentiary at 40 cents per day per man, which, in addition to 400 previously leased at 35 cents per day, will relieve the State of any expense on account of the penitentiary. There are now on hand from 100 to 150 idle convicts, for the labor of which they are now advertising for bids.

"At the Eddyville penitentiary there are about 500 convicts, 225 of which are now leased at 35 cents per day, and they are considering bids for leasing of the remainder of able-bodied men. It will be a difficult matter to place this penitentiary on a self-sustaining basis at the prevailing prices of convict labor, for the reason that nearly all the expense of running a large penitentiary, viz, salaries for warden, deputy warden, physician, chaplain and guards, light, fuel, etc., have to be paid, but all able-bodied convicts are leased.

"Labor is required of every convict in the penitentiaries whose physical condition will permit. This is not done solely for the purpose of increasing the revenues of the State. It is universally conceded by every officer in charge of a penal institution in the civilized world, and by all who are in a position to speak from the light of experience and close observation, that employment is absolutely essential as a preventive of discontent and restlessness among criminals, or, for that matter, any other class of individuals, as well as being the most potent reformatory factor.

"As the avowed object of our penitentiary system is to reform as well as punish the violator of the law, it will be the aim of the management to, if possible, return the convict to society a better man, qualified to earn his living in a legitimate and honest manner, stimulated in courage and moral purpose, and with a self-respect and self-reliance he never knew before, created by a consciousness of his equality with his fellows in the battle for existence."

The warden in his annual report for 1898 makes the following recommendation: "As you are, of course, aware, I took charge of the prison as warden on the 1st day of last August. I found the shoe and broom factories running with profit to the State; they being controlled by the Mason and Foard Company, with convict labor leased from the State. I found the chair factory, which is the chief industry of the penitentiary, running on what is known as "State's account" unsatisfactory and unprofitable. I would, therefore, respectfully recommend and urge that the contemplated change to leased labor be made as soon as possible, as the only means by which the prison can be put upon a self-supporting basis."

A State reformatory is now being erected.

Prisoners in county jails have, as a rule, no employment other than that incident to keeping the buildings and surroundings clean.

LOUISIANA.

The convicts at the State penitentiary are employed entirely under the "lease system." The warden, in his annual report for the year 1898, states that—

"The average death rate for the twelve years preceding the appointment of a State warden is 10½ per cent; since the appointment of a warden the death rate has been a little over 6 per cent, and this would have been still more reduced had it not been for the use of the convicts during the extreme high water in the spring of 1897. They were moved about in boats and barges to meet the exigencies of the occasion and were deprived, to some extent, of the care and comforts of camp life. While our death rate appears large in comparison to other prisons, it must be borne in mind that the work done by our prisoners is almost exclusively levee building, which is situated in the malarial districts of the State, and is acknowledged to be unhealthy work.

"While, as a principle, I do not favor the lease system, I do not think that the State, under like conditions, could take better care of the prisoners than do the present lessees.

"I have made monthly visits to the different camps, and while a few cases of brutality were reported to me, in every case it was the act of some subordinate, and the parties so offending are not now in the employment of the lessee.

"It has been my duty, on several occasions, to make suggestions as to clothing, sanitation, etc., and in every instance my suggestions have been promptly carried out."

Prisoners in the parish jails, as a rule, have no employment, except in New Orleans, where they are employed in cleaning the streets, public market, and parks.

MAINE.

Convicts at the State prison are employed under the public-account system in the manufacture of carriages, harness, furniture, and brooms.

The inspectors of the prison in their report for 1898 state that they are frequently asked why the prison is not nearer self-sustaining, and they give the following reasons:

"First. About 80 per cent of the prisoners are received each year on sentences as a rule of from 1 to 3 years each; by provisions of the revised statutes they are allowed 7 days off from every month for promptly obeying prison rules; this leaves the actual time served for a 3-years' sentence 2 years 5 months 8 days; for a 2-years' term, 1 year 7 months 15 days; and for a 1-year sentence, 9 months 23 days. They come with no trade or knowledge of the industries prosecuted at this place, and before their labor is of any value to the State they are discharged. Their labor is therefore of very little actual value to the State.

"Second. Every prisoner on entering is furnished a new prison suit; on leaving a new citizen suit. The expense of travel from the place of sentence for prisoner and officer in charge is borne by the State, and the State pays in cash to each

prisoner not less than \$5 or more than \$10 to pay travel home. The last two items alone cost the State for the year just closed \$1,502.40.

“ Third. The unusual expense necessary to prison discipline, not known to similar industries outside of prison walls.”

The warden in his report for the same year states that a large per cent of the convicts, on account of bodily infirmities, are utterly worthless in any mechanical work, and in order to keep that class of convicts out of idleness he leased a few acres of land near the prison and put them at work, and the result of their labor for the year is as follows: Ten thousand five hundred ears of sweet corn, 300 bushels of potatoes, 200 bushels of turnips, 4,000 heads of cabbage, 5,070 cucumbers, 85 bushels of shelled corn, 50 bushels dried beans, 60 bushels string beans, and 18 tons of hay.

He recommends that the legislature authorize the purchase of land enough for the use of the prison, thereby saving the amount paid out for rent.

A number of the county jails are provided with workshops where the prisoners are engaged in making heels and inner soles for boots and shoes, which are sold to shoe manufacturers. The heels are made from scraps of leather purchased from shoe manufacturers as waste leather. The leather is cut into convenient pieces by use of dies, which makes considerable work. The convicts also make what is called “ pan cake,” which is made of piece of leather too small to cut, but is pasted together in sheets about a foot square, pressed, and cut with a machine into the shape of a boot heel.

The jails in a few of the counties are leased with the labor of the convicts. In speaking of their visit to the York County jail, which is leased in this manner, the inspectors state:

“ The fourth quarter inspection recently made was very unsatisfactory. It was Saturday afternoon when prisoners are excused from the workshop. There were 119 all roaming the corridors at pleasure; no discipline whatever; the corridors, cells, and bedding in a very filthy state.”

The inmates of the State reform school are employed at farm labor, dairying, tailoring, and much of the time in building, making roads, grading grounds, etc., for the institution. Some are also employed in cane-seating chairs on the piece-price plan.

The farm is regarded as an important factor in the reformation of the inmates. Their time is divided between manual labor and school work.

MARYLAND.

According to the annual report of the directors and warden of the State penitentiary for the year 1898, the convicts were constantly employed under the contract system and in other ways, and performed their duties in a way most satisfactory, the nonproductive prisoners being only 8½ per cent of the entire number.

There were 775 prisoners employed under contracts; of this number 79 were engaged in the manufacture of furniture and plumbers' marble; 163 in the manufacture of hollow ware and foundry work; 494 men and 39 women in the manufacture of boots and shoes. In addition to these 71 were engaged in manufacturing supplies for the institution and in necessary work connected with the same.

In 1897 the net earnings amounted to \$27,871.84, a gain of \$10,508.41 over 1896. In 1898 the net earnings amounted to the sum of \$29,180.71. The per capita cost for the support of the prisoners for the year was \$100.08½, against \$97.38½ for the previous year.

Inmates at the house of refuge at Baltimore are engaged in the general work incident to the care of the institution and in manufacturing supplies for the same. A number of them, averaging about 70, are employed under the contract system.

There is no regular system for the employment of prisoners in the county jails, and as a result most of them are kept in idleness.

MASSACHUSETTS.

The employment of convicts in the State prison, reformatories, jails, and houses of correction is now restricted, by the law of 1897, to the public-account system, except upon the industries of cane seating and making umbrellas, which may be conducted under the piece-price system.

When prisoners are employed on public account, the principal officer of the prison purchases the raw material, makes it into commodities, and sells them in the market, the same as an outside manufacturer; when employed on piece-price system the materials are furnished to the prison by an outside manufacturer, who pays for the labor of the prisoners by the piece, instead of by the day, as under the contract system prior to 1887. In all cases the tools and machinery are supplied by the prison. Sometimes the instructors are also paid by the prison, and sometimes by the manufacturer; but, however they are paid, they must in all cases be appointed by the principal officer, with the approval of the general superintendent of prisons.

It is provided in the laws relating to the labor of prisoners that all of the industries, both in the State and county institutions, shall be under the supervision of the general superintendent of prisons, and the following information is taken from his report for 1898:

"The different kinds of work carried on at the State prison during the year are described in the following paragraphs:

"A small number of prisoners are employed in making paper boxes, part of which are used in the State prison and part in the Massachusetts reformatory. The work is all done by hand and furnishes useful occupation.

"Thirty-five prisoners are employed at brush making. The goods produced consist of dustbrushes, windowbrushes, etc. These are sold, by the superintendent of that industry, under the direction of the warden.

"Another industry carried on by hand is harness making, in which some of the prisoners acquire a good degree of skill. Harness of various kinds and qualities is produced, and as the work is well done, the product commands good prices.

"An agreement was made in 1893 for a term of 5 years for the employment of prisoners in the State prison in making clothing on the piece-price system. The principal articles of manufacture at first consisted of colored shirts, but toward the close of the term other articles were substituted. Upon the expiration of the agreement the business was discontinued.

"Prior to the 1st day of January about 300 prisoners were employed in making boots and shoes, but on that date the number was reduced to 200. The goods made here, consisting of men's and boys' shoes, are sold by an agent, under the direction of the warden.

"Various styles and grades of trunks and suit cases are made. This is a small industry and furnishes very little occupation. It can not be enlarged, as the statutes restrict the work to a few prisoners.

"Early in the year an experiment was made in a small way with chair work for the prisoners confined in the solitary prison. It was found, however, after a short trial that the income from the labor of these prisoners would not pay even the small salary of an instructor, and no permanent arrangement was entered upon.

"In addition to the industries carried on for purposes of revenue as well as occupation, some hand work has been done in the State prison in the way of supplying articles for the institution.

"At the reformatory prison for women the inmates are engaged in making curtains and other small articles by the piece; also in manufacturing shirts and laundry work. In addition to the mechanical industries some of the inmates are given work in connection with the farm, on the land as well as in the dairy, and looking after the poultry.

"At the State reformatory cane seating is done on the piece-price system by a small number of inmates. This work is used mainly to furnish occupation for the prisoners in the third grade.

"A small number of prisoners are engaged in printing. Some cash income is derived from this business, but the greater benefit received from it is the useful instruction it affords.

"Before the new law took effect more than 300 prisoners were engaged in making shoes. On January 1, however, the number was reduced; and since that time not more than 175 have been in the shoe shop at once. Owing to the change from piece price to public account, there was a great interruption to this business, and at one time only 7 prisoners were at work. A good quantity of men's and boys' shoes are made. They are sold in the open market by an agent appointed by the superintendent.

"The making of chairs has been carried on at the reformatory for a number of years; and it was therefore considered advisable to continue this industry, at least until other work could be provided. Wood chairs of various kinds are made and sold under the direction of the superintendent.

"In addition to the work already described, there has been started at the reformatory the largest industry yet established under the statute of 1898, for the employment of prisoners in making goods for the use of public institutions.

"Other useful occupations for the inmates are provided by the trade schools, which have been maintained through the year in the same manner as heretofore. A great deal of work has also been done in clearing and grading land recently acquired by the institution, and some crops have been cultivated.

"At the State farm there was on the average 160 convicts employed in cane-seating chairs, and the net earnings amounted to \$23.42 for each prisoner employed. Aside from the cane seating, the principal occupation is the cultivation of a large tract of land.

"By chapter 412 of the acts of 1897, which became operative on the 1st of January, 1898, all piecework, except cane-seating chairs and making umbrellas, is forbidden in the prison. In compliance with the terms of that act, notice was given late in 1897, in all but two cases, that the piece-price agreements would be terminated on the 1st of January following. The two exceptions were the manufacture of clothing at the State prison under an agreement made in 1893, for a term of 5 years, and containing no provision for its termination or notice, and the manufacture of shoes at the Lawrence House of Correction on a similar agreement. These agreements have now expired, and at the date of this report the only piece-price work done at any of the prisons is upon the two industries exempted by the statute of 1897.

"The establishment of the different kinds of work needed to produce goods for the use of institutions by labor of prisoners has progressed as rapidly as circumstances will allow. It has been necessary to exercise great care in the selection of the places where articles are to be made, as it is essential to the success of the experiment that they shall be entirely acceptable to the officers required under the law to purchase them. It is the purpose of the general superintendent to make this new work serve as far as possible the interests of the prisons producing the goods, and it is equally his purpose to regard the interests of the institutions buying them. Experiments requiring the expenditure of money are not practicable to any extent, because under a statute of last year the prison industries must be maintained by their own receipts. It will therefore be understood that this work can not be undertaken without careful scrutiny of the prison population for the purpose of determining whether it will furnish the required skill or adaptability.

"Soon after the passage of the law a shop was opened at the State prison for the manufacture of shoes by hand labor for institution use. These shoes are not as nicely finished as those produced by machinery, but they are well made and have been generally satisfactory to the officers using them. It is the intention to put into them as good material as is used in shoes selling for the same price elsewhere, and it is hoped that the hand labor may add to their durability, and thus enhance their values to the institutions.

"The State prison has also supplied some brushes to other places. For the convenience of the officers, the general superintendent has designated the State prison to furnish one kind of brushes and the East Cambridge house of correction another kind.

"The largest industry yet established under the statute of 1898 is the cloth making at the Massachusetts reformatory. Woolen cloth, in all respects good enough for institution use, is now produced there, and considerable quantities of it have already been sold. As far as known it has been satisfactory. All the weaving is done on hand looms, and many other processes are performed without the aid of machinery.

"A shop for the manufacture of clothing was established at the Massachusetts reformatory. So many orders have been received for clothing that another shop will be started at the State prison. All the clothing in both places will be made of cloth produced at the reformatory.

"As soon as the most advantageous place to establish a general shop can be selected a number of small articles will be made for the use of institutions. As already noticed, the industries must be self-supporting, and it is necessary to

proceed with great caution in order to avoid a financial loss. The expense of superintendence and instruction must bear so large a proportion of the cost of goods that only an insignificant return will ever be likely to come from the labor of prisoners employed in this way.

"It is proposed to manufacture hosiery for the use of institutions as soon as the needed capital has been accumulated in any prison having a population capable of performing this work, which will be done by hand power.

"A few blankets have already been made at the Massachusetts reformatory, and it is proposed to put this industry on such a basis that all the institutions can be supplied with blankets produced on hand looms.

"In September a conference was held with all the principal officers of the public institutions of the State and counties, and samples of the goods in general use were exhibited for the purpose of inspection and comparison. From the testimony at the conference and the samples submitted, information has been gained as to what has been mainly purchased by the officers and what is most likely to be acceptable to them.

"The first list of articles published in accordance with the law was issued by the general superintendent in September, and it included boots, shoes, and slippers, brooms, brushes, cabinetwork, clothing, furniture, harness, mats, and rugs, shirts, tinware, and woolen cloth. All the articles named in this list are now made in the prisons, as far as possible, by hand power. The list of articles and materials will be enlarged from time to time as the industries are extended.

"There has never been anything in the statute to prevent one institution from buying goods of another; and, in fact, the law of 1887 seems yet to require that prison-made goods shall be so used. Nevertheless, in the entire 11 years of the operations under that law no appreciable amount of work has been obtained in this way. That such employment can be provided by proper direction is shown by the fact that in the first month under the new law, when only a few industries were established, several thousand dollars' worth of goods were sold to the institutions."

The prisoners in the county jails and houses of correction, except where there are only a few or where they are temporarily retained awaiting trial, are as a rule engaged in some mechanical or manufacturing industry under the piece-price or public-account systems.

MICHIGAN.

A sufficient number of the convicts are employed doing the work of the prisons. Those not required for this purpose work at productive labor of various kinds, such as making agricultural implements, furniture, clothing, etc. Some of these industries are carried on upon State account; others are carried on by contractors who hire the convicts of the State. The contract system and the State-account system exists in all the prisons, and in all of them the prisoners are employed on State account or in working for contractors, as found best for the State.

In the State prison at Jackson 300 convicts are employed in making and laundering shirts; 175 in making agricultural tools; 25 in woodwork for wagons; 30 in monumental granite work; 40 in making brooms, and 20 in making boxes and packing cases.

In the house of correction at Marquette 100 convicts are employed in the manufacture of cigars under the piece-price system, the contractors furnish the materials, and the cigars are made at a stated price per 1,000; 40 convicts are employed in the manufacture of overalls, jumpers, jean pants, and duck coats under a contract for a fixed price per day per convict, and 60 convicts are employed on the prison farm, in engine room and kitchen and at other work on State account.

The State-account system predominates in the employment of convicts at the house of correction at Detroit.

In the house of correction at Ionia 244 convicts are employed under contract in making and laundering shirts, and 60 in knitting cotton socks, while 148 are employed in miscellaneous prison work.

The prisoners in the county jails are kept in idleness, except in a few instances they are employed in cleaning the premises or possibly in breaking stone in the jail yard.

The inmates of the State reformatories are employed under the same systems that are in use at the prisons. In the institutions for juvenile offenders the inmates are taught industries, and are employed, to some extent, in producing articles for use in the institutions, and sometimes for sale.

The industrial school at Lansing has a farm of 260 acres, on which the boys are taught farming, and raise the vegetables required for the institution. In the carpenter shop 75 are taught woodwork, and do all needed repairing. In the tailoring and shoe departments all the clothes and shoes required are made and repaired. There is also a printing shop and other departments in which trades are taught.

The board of control of the prisons of the State, in their annual report for 1898, give the following information concerning the prison systems:

"Formerly the law required all convicts to be let to contractors if possible, and provided that those only be employed on State account who could not be let to contractors. This is changed now. Prisoners can be and are worked on contracts or on State account, as may appear the 'most beneficial to the State.' They are not let to contractors if, in any case, they may be employed on State account to better advantage. No prejudice exists in the prison boards in favor of one system of work as against the other. Indeed all the prisons carry on industries on State account, as well as on contracts, and all will increase State account work over the contract system whenever this mode will be more beneficial to the State than the contract system.

"As to the convict, he is treated the same, and has the same opportunities when he works on contract as when he works on State account. He remains in charge of the same prison officers in the one case as in the other. He is never in this State put under the control of contractors.

"In the Michigan State Prison the cost of maintenance above earnings was only \$10,229.87 a year for the two years ending June 30, 1898. For the calendar year 1897 the deficiency was only \$998.69. During the two years \$20,000 only were drawn from the State treasury for maintenance of the State prison at Jackson, and for the calendar year 1897 only \$4,000, of which all but \$998.69 remained unexpended January 1, 1898."

Before closing this report I feel that I should say a word regarding labor. This question has been the subject of much discussion during late years, and seems to be far from settlement. Since 1888, when I gave utterance to my views on this most important and necessary division of prison government, in my annual report for the year, I have had no reason to change them in any particular; and therefore at this time I will quote you what I then said:

"In selecting and planting prison industries, find out and adopt the intellectual and the mechanical—the finer and the coarser mechanical work. Select the difficult and the remunerative, anything that will interest, awaken, and enlarge the mind and the skill of the man, and in which he will see a fair remuneration for free, honest work. The prisoner should never be employed on what is not salable or remunerative. Employ the prisoner upon the moral, the esthetic and the elevating. Give him instruction in the purer and best paying arts; when practicable lead him into the most abstruse and absorbing pursuits of science and also assign him work in the hardest drudgeries of manual toil. But as success in prison management is desired, never employ a man in labor that is not intellectual, or is not a paying industry. That which is to be sought in these things as employed in prisons is the union of public and individual interest, variety of labor, versatility of thought, and the better application of taste and of skill, and an improved public spirit constantly arising, and an intelligent trend of social life maintained in the prisoners, a life which shall lead to a disdain of meanness and wrong. Let these means and others be employed until a generous and dignified public spirit shall arise and be cherished and maintained. This procedure may be slow and costly, but it is the only antidote for crime."

MINNESOTA.

The convicts at the State penitentiary are employed under the State account and piece-price systems. The manufacture of rope and cordage, and of high school scientific apparatus, is carried on under the State account system, and about half of the prisoners are engaged under the piece-price system in the manufacture of boots and shoes.

The board of managers and warden of the State prison, in their biennial report for the year ending July 31, 1898, give the following information concerning the industrial operations of the institution:

"There have been several important changes made in the industrial management of the institution during the past two years, the most important of which is the introduction of the 'piece-price system' as provided by law (chapter 154, general laws of 1895), the introduction of a new industry on State account for the manufacturing of high school scientific apparatus, and the enlargement of the twine factory."

"Under the 'piece-price system' we entered into a contract with the Union Shoe and Leather Company to furnish all materials for the manufacture of boots and shoes; to keep steadily employed for a period of 8 years not less than 200 prisoners, and to take the finished product at so much per piece, the work done to be classified according to its quality and nature. Under this system the management is enabled to exercise better control over the prisoners. It affords a larger discretion in assigning prisoners to work best adapted for them, and to make such changes, from time to time, from one kind of work to another as the best interests of health and temperament may dictate. From every point of view we find the 'piece-price system' an improvement over the old system of contract labor. We also find that it has yielded equal, if not better, results to the State financially."

"The manufacture of high-school scientific apparatus was commenced under State account nearly two years ago, and is gradually growing, under very satisfactory conditions. This has proved a very interesting and important industry, in that it provides skilled mechanical labor of a high order for our prisoners, yet does not compete or interfere in any way with any industry of like character in the State. It has also proved a great benefit to the schools of the State financially, as we have been able to manufacture and sell them the apparatus at an average cost of at least one-third less than they have been obliged to pay to Eastern manufacturers. At the same time it has been a success for the State financially, and has yielded good, substantial returns from the start. We are much in favor of a gradual extension of this industry."

"We regret to say that the twine factory did not give the protection to the consumers this season that it should and naturally would have given under more favorable conditions, or the protection that the management fully intended would be provided under the plans which have been in force for the sale of the prison twine during the past five years."

"Early in the life of the twine plant it was found impossible to dispose of the product direct to the farmers. The first year, with a product of only 300,000 pounds, over one-half was carried over. Conditions were but little better the second year, though the management made every possible effort to get the farmers to buy direct from the prison. At this period it became plainly apparent to the management that if the twine plant was to live, maintain a healthy growth, and fulfill the hopes and expectations of its creators, as well as to fulfill the spirit of the law creating it, some arrangement would have to be made whereby the sale of each year's product could be made certain. Sound business judgment dictated it, and this purpose was accomplished by getting the country dealers and farmers' clubs to handle such portion of the output each year as could not be sold to the consumers. Under this arrangement it was disposed of in carload lots at one-half cent a pound less as an inducement to dealers and farmers' clubs to handle it. The prison twine was soon conceded to be equal to the best in quality and was popular, but the farmer who is accustomed to buy from a dealer in his own town preferred to get it when he wanted it and with no trouble to himself, and generally on 60 or 90 days' time, rather than send his order and cash direct to the prison, and yet the fact that he could always send his order direct and get the twine at a price only one-half cent higher than the dealer or farmers' club paid for the same twine in carload lots was a complete and effectual check against overcharge on their part. Up to the present year the plan has worked well and gave general satisfaction to the farmers. In fact, this method of handling it created such a lively competition that in the majority of cases the farmers got the prison twine on time from their local dealers fully as cheaply as they could get it by sending their orders with cash direct to the prison. Our output this season was about 5,000,000 pounds. The requirement of the whole State was about 17,000,000 pounds, and 800,000 pounds were reserved for direct orders from the farmers—a much larger reserve than usual, and more than we have ever been able to sell direct any preceding season."

"All of our industries have become so productive of good financial results that we are pleased to be able to show that the institution has become much more than

self-sustaining during the past two years. Our earnings during the past two years have been \$244,768.48, and our total expenditures \$201,121.08, leaving a net gain of \$43,647.40. The financial showing of the institution is very gratifying to the management, and from the best information we have been able to gather we believe that there is not another institution of this character in the United States making so favorable a showing financially."

No work is provided for the inmates of the county jails. The inmates of the State reformatory are employed in different industries, as shown by the following quotations from the biennial report of the board of managers for the two years ending July 31, 1895:

"Our population has been employed in the different trades about as follows:

"Quarrying and dressing granite, 40; the various building trades, 30; blacksmithing, 8; cooks, waiters, butchers, and domestics, 16; engineers, firemen, plumbers, steam fitters, and tanners, 10; greenhouse, gardens, farm, stock, and teamsters, 40; tailoring, etc., 5; bakery, 2; laundry, 2; shoemaking, 3; printing office and book-binding, 1; creamery, etc., 1; clerks in office, store, and library, 3.

"Except what we have been able to sell, the product of our granite industry is now incorporated in our new buildings.

"Our next largest industry is farming and gardening. During the past 2 years the last of our 700-acre farm has been grubbed and broken, the old land has been well dressed, and all is now in a good state of cultivation.

"We this year raised 3,500 bushels of corn, 1,800 of oats, and have 350 tons of good hay. We have milked an average of 50 cows—more than supplying the institution with milk and butter. We are raising 60 calves, besides those used for veal, and have now 175 head of cattle.

"We have raised ample fresh pork, and have hams, bacon, and lard for the coming year. We have in store fresh vegetables of every kind for the year, and much in roots for stock, and also have a large quantity of preserved fruit, vegetables, and pickles.

"I am still of the same opinion expressed in my report 2 years ago, viz: 'As most of our inmates come to us without trades, and are here on an average of only about a year, and nearly all do farm work while on parole, I question whether we can do a better thing for them, or for the State, than to utilize our 700-acre farm to train many of them in farm, garden, small fruit, stock, dairy, chicken raising, and other similar work. If, by making it as attractive as possible, we can interest a few of these boys in such work, so as to cultivate a liking for country life, will it not pay?'

"One-half the number, and probably more in value, of our inmate labor is constantly employed in making permanent improvements for the State, which are proportionally as much assets to the State as the new capitol at St. Paul.

"I feel that the education of our inmates, to vigorous, useful, cooperative labor, resulting in stately buildings, in a well-improved, attractive farm and stock, affording the necessities and many of the comforts of life, in the making of clothing and everything for protecting the body, and with all the employments and economies of family and community life in daily operation before their eyes, and in which each one of them is a useful worker, is a practical education never to be forgotten by them."

MISSISSIPPI.

Convicts at the penitentiary are worked under the lease or contract system, and are engaged principally in agricultural pursuits.

The following quotations from the biennial report of the board of control of the State penitentiary for the years 1896 and 1897 show the methods under which the convicts are employed:

"Inasmuch as it is now demonstrated that the State can, without any danger of financial loss, employ its convicts in agricultural labor upon lands owned by the State, the board respectfully submits and earnestly recommends for consideration the proposition that the State should not delay any longer the purchase of sufficient lands upon which the entire prison population may be placed permanently at farm and agricultural labor.

"The lands thus purchased should be grouped together, if not all in one tract, and sufficiently near to be directly controlled by one central headquarters, and of quick and easy access to each other. A more perfect administration of the police

of the prison would thus be secured, as well as the economical management of the labor of the convicts and the general operations of the penitentiary.

"The system of contracting with landowners, for planting operations on the share plan or any other basis, is unsatisfactory, but could not be avoided by the board under the conditions of the penitentiary.

"The State owns 3 farms and has worked 10 other farms, three of which they rent for so much money per acre, and the other 7 they work on what is known as the 'share system,' the landlord furnishing the land, teams, etc., and the State furnishing the hands, and dividing the crop equally.

"The chief aim of the penitentiary authorities, and those who have the management of convicts in hand, should be, first, to use every effort to cause the death rate to be as small as possible; second, to have as few escapes as possible; and third, to make as good financial showing as possible after the first two objects have been accomplished.

"The contract method involves the annual breaking up and moving of convicts from place to place, thus involving the State in great and unnecessary expense. Besides, it is not compatible with a uniform and systematic prison discipline, nor those sanitary regulations that can only be put in operation in a permanent establishment. It is impossible for the State to provide the convicts and officers with the kind of buildings and structures that a State should provide for one of its institutions.

"These considerations, in the estimation of the board, are not only important, but are controlling, in the adoption of a permanent basis for the State prison, and we earnestly recommend that the board of control be authorized by legislation to sell such lands as they have by experience found to be unprofitable, and use the money so realized, together with the funds in the hands of the treasurer to the credit of the penitentiary, and to assume such obligation as may be necessary to purchase good, productive woodland, and clear same for use by the State."

MISSOURI.

The prisoners at the State penitentiary, with the exception of those employed in the incidental work of the institution, or in manufacturing supplies for the same, are worked within the prison walls, under the contract system, and are engaged in the manufacture of saddlery, brooms, boots and shoes, clothing, and other industries.

The warden, in his biennial report for the years 1897 and 1898, states:

"That at the beginning of his administration there were 1,100 male convicts working under contract, and that during the two years the number was increased to a daily average of 1,362; also that there are 60 females in the penitentiary, and 25 are working under contract, and with more room the entire number could be contracted."

The male prisoners in the county jails in some of the counties, and at the workhouse in St. Louis are worked on the public roads, also at quarrying stone and in doing necessary work on the premises. The female prisoners at the workhouse at St. Louis sew, scrub, wash, and do general housework of the institution. The inmates of the house of refuge in St. Louis manufacture the clothes, shoes, and other supplies used by the institution.

MONTANA.

During the year 1898 the convicts at the State prison were employed as brick masons, stone masons, carpenters, and in other occupations in erecting the penitentiary buildings, doing all the work of building, except the superintending, in a satisfactory manner. During 1899 they had no employment beyond cleaning the buildings and other work incidental to the work of the institution.

The inmates of the State reform school are employed in the various duties incidental to the management of the farm, and caring for the buildings and grounds, and the domestic labor of the school. During the spring and summer a majority of the boys are kept employed planting, hoeing, and caring for the crops, also

handling and caring for the live stock. The laundry furnishes practical work for some of the older boys, and quite a force of boys is kept busy in the boys' building; and in the kitchen the boys learn the practical part of baking and preparing food.

The girls are employed in the kitchen in the girls' building, in the sewing room, and in the general duties of the hall and dormitory, and in caring for the building generally.

The prisoners in the county jails are, as a rule, not employed. In the city jails they are sometimes employed on the streets under the "chain-gang system."

NEBRASKA.

According to the report of the State penitentiary for the year ending December 1, 1898, the prisoners were engaged in the manufacture of cooperage and brooms under the contract system, also in work incident to the care of the institution and in the manufacture of supplies and the cultivation of farm products for the use of the same.

The cooperage contractors employ 110 prisoners, paying the State 35 cents per man per day for the labor and \$175 per month for steam power. The broom contractors employ 95 prisoners, and pay from 37½ cents to 45 cents per day per man for labor.

The shoe shop has recently been established by the State, where 7 prisoners are employed, manufacturing shoes for this and other State institutions.

The warden recommends that a law be enacted authorizing the sale of all penitentiary lands located in different counties throughout the State, and, from the money realized from such sale, land for farming purposes to be purchased as close as practicable to the penitentiary. The State has paid \$424.50 in the last year for the lease of 190 acres of land near the penitentiary, which amount could be saved if the State would purchase land as stated.

He also recommends that \$534.45 rent, collected from penitentiary land located in different parts of the State, be placed to the maintenance, penitentiary, special labor fund.

The inmates of the State industrial school for juvenile offenders are employed in various industries and educational pursuits. Farming and gardening are important industries conducted at the institution, and the superintendent recommends the acquisition of more land and the extension of farming pursuits.

NEVADA.

The warden of the State prison reports that there are only about 60 convicts, on the average, confined there during the year, and that their time is occupied in cooking, washing, and ironing, tailoring, and the miscellaneous duties incident to the institution.

NEW HAMPSHIRE.

The convicts at the State prison are worked under the contract system, a fixed sum being paid per day per convict, and the State having general control of the convicts.

With one or two exceptions no work is done by the prisoners in the county jails, there being no system for their regular employment.

The inmates of the State industrial school are employed on the farm connected with the institution, also in the general work incident to the care of the buildings and manufacturing the necessary supplies; also, under the contract or piece-price system in the manufacture of hosiery. The State furnishes the building, power, heat, and light, and the contractor employs the inmates when they are not otherwise engaged.

NEW JERSEY.

The convicts at the penitentiary are employed under the piece-price system. The State furnishes the labor, power, and room, and the contractor furnishes the tools, furniture, and materials. The contracts are made for 4-year periods and at fixed prices per piece, dozen, gross, or yard, as the case may be, of the articles manufactured.

A number of the prisoners were also employed in making up articles of clothing for both male and female prisoners, and in making the bedding used throughout the prison.

The official report of the industrial operations of the prison for the year 1898, states—

“That the average number of prisoners employed during the year upon contract work was 579½, and the number employed in the necessary work of the prison was 251, making a total average of 837½ employed during the year. The computed value of the services of those engaged in ordinary labor is 45 cents per day, and of the skilled labor employed at mechanical work 75 cents per day.

“The anticipated increased number of prisoners, whose employment was profitable, and the increased value to be derived from their labor, was fully realized, as the average number of men employed was 579, while the average number employed during the preceding year was 426, an increase of 153 men, while the increase in revenue from the labor of prisoners employed was \$19,104.85.”

The prisoners in some of the county penitentiaries, jails, and workhouses, are employed in quarries and in making macadam for county roads, also under the piece-price system and in the work incident to the care of the buildings, while in others no work is supplied for them.

The inmates of the State industrial school for girls and of the State reform school are employed in various mechanical industries of a reformatory and educational character, also in making supplies for the institution, and at the reform school in manufacturing brushes under the State-account system.

NEW MEXICO.

The convicts at the Territorial penitentiary are employed in the construction of the capitol buildings, enlarging the penitentiary, in the manufacture of brick and lime, and also in farming on a small scale. All these industries are under the direct control of the penitentiary officials. The superintendent in his report for 1898 states as follows:

“Although the work on the extension was commenced in May, 1897, but little progress in the erection could be made, as the rebuilding of the Territorial capitol and the making of brick for the same required sometimes more men than the actual working strength of the prison was able to supply. But in the face of these obstacles, 2,341 cubic yards of excavations have been made, and the dirt carted away; 440 yards of concrete spread; 1,941 perches of solid stone foundation placed, and upon this foundation 2,150 linear feet of rough ashlar wall, resting on 250 linear feet of nicely cut water table, has thus far been erected.

“The steady increase in the number of convicts makes it an imperative necessity to complete the new cell house. This can be accomplished under favorable conditions within 6 months.

“There are now some notable instances of native criminals at this prison who have always followed an idle life that have developed here into skilled and industrious workmen; no longer shirking labor, but eager to execute and proud to display their work. Two years ago our convicts commenced to learn the dressing of stone in the prison yard, and to-day we have a dozen convicts who may justly be ranked as first-class workmen. A few good carpenters, quite a number of expert bricklayers, some plasterers and blacksmiths, tailors, and even skilled photographers have been employed.

“It is necessary to place the Territorial penitentiary on as near a self-supporting basis as possible. The wisdom of this is plain to everyone. It is also equally true that industries should be taken up which will not interfere with the usual employment of the industrious, honest, and worthy wage earners of the land.

"This matter has been carefully investigated, and it is believed that the following machinery will supply the best means of carrying out the object above stated:

"A brick press of sufficient capacity to furnish employment to a considerable number of men. This machine is needed more especially for the reason that the present one has been in constant use for 5 years and is practically worn-out. The manufacture of brick has been a source of much revenue to the Territory. Aside from the number sold, over 6,000,000 have been furnished different Territorial institutions, representing a saving to the taxpayers of about \$30,000. By putting in this new machine the capacity of the penitentiary brickyard will be materially increased, and the earnings of the institution added to in a proportionate degree.

"Second. Machinery to manufacture terra-cotta lumber, which includes the manufacture of sewer pipe. This industry is unknown in New Mexico, and a ready market will be found for the product as far south as Mexico."

The prisoners in jails are, as a rule, not employed.

NEW YORK.

The penitentiaries in this State are county institutions, and are intended for the detention of short-termed convicts committed thereto for minor offenses. There are 6 in the State. Counties not having penitentiaries of their own send this class of convicts, by contract, to the penitentiary of some other county. The convicts in some of these penitentiaries are now (June, 1899) employed in the manufacture of products for use in county institutions; but in some of these penitentiaries the new law has not yet gone into active operation, owing to the fact that at the time it was enacted the penitentiaries had existing contracts under a former system, which have not yet expired, and which the courts have held they are bound to fulfill notwithstanding the enactment of this law.

It is the intention of the law in this State that all convicts sentenced for terms exceeding one year shall be sent to State institutions known as "State prisons" or "State reformatories." The convicts in this State are employed either in doing the work of the institution in which they are confined or in the manufacture of products for the use of that institution, or for the use of the State or its institutions, or for the use of the political divisions of the State or their institutions. No product of the prisons is sold in the public markets. The goods made in the prisons are furnished to the State and the political divisions thereof and to the State institutions at a price determined by the board of classification, consisting of the comptroller, the State commissioner of prisons, the superintendent of prisons, and the commissioner of lunacy, and is intended to be as near the usual market price for such labor and supplies as possible. The industries in which the convicts shall be employed are determined by the State commission of prisons.

The following quotations from the report of the State commission of prisons for the year 1898 show the present condition and the future prospects of the industries in the prisons and penitentiaries:

"The industries in the State prisons have been very successful during the fiscal year ending October 1, 1898. The object of the law (to give employment to the convicts, as required by the constitution) has been accomplished, and it has been done in such a way as to remove the unfair competition of the old system, which had forced an abandonment of some industries. There is a revival of the brass industry and the manufacture of iron hoppers for use in sanitary closets, and of other industries that had been nearly driven out by the competition of those speculating contractors for prison labor, who were often not taxpayers, and were able to make a market price of such goods so low as to drive out the manufacture by free labor. There are no more complaints of the 'sweat shops,' which constituted a great social evil, growing out of the effort to compete with the manufacture, through contracts for prison labor, in the production of women's calico and gingham wrappers and gowns at 50 cents per dozen, waists at 30 cents per dozen, men's trousers at 75 cents per dozen pairs, and fine laundered shirts at 30 cents per dozen. Yet, as stated, the convicts are more fully employed than before, and the State is receiving the full value of their labor.

"The labor of about one-third of the convicts in each prison is required in manufacturing supplies for the prison, laundry work and repairing, and as clerks,

engineers, waiters, cooks, firemen, care of cellars and corridors, etc., about the institution.

"The sales of manufactured goods have been very large, and demonstrate the fact that the convicts, not only in the State prisons, but in the penitentiaries and other institutions, will be kept fully employed in the production of goods for use by the officials and institutions of the State and its political divisions.

"It is now practicable to figure out the amount received for labor of convicts in the State prisons under the new system. This makes a good showing, and indicates that with the natural increase of production and the regularity that will come from experience and management the convicts will earn enough to pay the cost of their maintenance.

"The estimates for 1898 and 1899 have come to the commission more promptly and for larger amounts than for 1897. The satisfactory quality of the goods, the promptness with which requisitions are filled or certificates furnished to permit purchases in the open market because of inability of the prisons to promptly fill the orders, the general relief from the importunity of the salesmen, and the economy to the institutions in getting the goods without paying commissions or wages of agents are elements that make the new system more attractive than was expected.

"The penitentiaries are all situated in or near large cities, and are in populous counties where are many public works and institutions to be supplied. The field is ample for the employment of the convicts in those penitentiaries, now that the number to be employed is so greatly reduced.

"In each of the penitentiaries the clothing for the inmates is made from the cloth purchased of the State institutions, and they make their own boots. They can therefore well extend those industries to the manufacture of clothing and boots and shoes for the county poor and for the various institutions in each county.

"The 'tramp' class, which is generally useless for any other purpose, can be employed in breaking stone for use in road and street building. Convicts can be employed in the manufacture of wheelbarrows, street brooms, picks, shovels, trucks, and other tools used in road building and other public works. They can make mattresses and many other supplies for hospitals and asylums. In Kings County a large number have been employed outside the walls in excavating, grading, setting curb, and the like; also in ditching and grading the almshouse farm; rebuilding, painting, and otherwise improving and repairing county buildings and hospitals, thus returning in substantial improvements more than was received under the former employment by contractors, which caused such unjust competition with manufacturers by free labor.

"For the most part the convicts in jails in this State are not employed. Prisoners are not sentenced to jails in this State usually, except for very short terms. In a few counties the prisoners in the jails are employed to some extent in work on highways. In the reformatories in this State at the present time the convicts are employed in doing the ordinary work of the institution in which they are confined, and in the manufacture of the products to be used in that institution; and during all the rest of their time they are employed in industrial training and instruction. In these reformatories no products are manufactured for the State or any other institution or for sale in the market."

The advance summary of the reports of the superintendent of State prisons and the State commission of prisons for the year ending September 30, 1899, shows that there has been a decrease in the sales of goods manufactured in the three State prisons, which is explained to be due to the competition of the State insane asylums and other institutions. The total sales were \$494,720 in 1898 and \$394,501 in 1899. The net earnings of these prisons from labor in 1899 are given at \$54,000. Meantime there had been some increase in the sales of goods manufactured in the various local penitentiaries and the reformatories. The commission of prisons concludes as follows:

"All things considered, the present industrial system of employing convicts has made satisfactory progress, and is furnishing a reasonable amount of employment to the convicts, and a remuneration to the State as great, if not greater, than the system superseded by the new constitution, and that in a little more time, when the output of prison-made goods has been more accurately adjusted to the demand and the difficulties incident to the establishment of new industries and the purchase of prison-made goods by public officials have been overcome, the earnings of the convicts will be largely increased and the system will be even more successful than at the present time."

These reports show a slight decrease in the number of prisoners in the State prisons, and a considerable decrease in the number in the penitentiaries. The number of prisoners becoming insane in the State prisons was 54 in 1897, 52 in 1898, and 45 in 1899. The question is raised by the reports whether any or all of these reductions are due in any degree to the change in the system of convict labor.

NORTH CAROLINA.

The able-bodied convicts at the State penitentiary at Raleigh are employed about as follows: Nine-tenths on State farms, producing corn, wheat, rye, cotton, peanuts, vegetables, etc., for the maintenance of the institution and for market; one-tenth in the manufacture of brick on State account; one-twentieth in the machine and repair shop; one-twentieth in the mattress factory. State convicts are also worked under lease or contract by railroad companies.

The board of directors and the general manager of the penitentiary report that farming operations during 1898 were more extended than ever before.

"Two new farms have been added, namely: The Tillery, on the Roanoke, and the rice farms on the Cape Fear River. The former is operated on the cropper system, the penitentiary furnishing supervisor, overseers, guards, and convicts to make the crop, and getting one-half of the products.

"There have been cultivated 265 acres in rice, which is now being thrashed, and the yield is estimated to be 10,000 bushels. On 5,300 acres we have produced 3,283 bales of cotton, the largest amount ever before produced on the State farms; but at an average of 4¢ cents, it is not encouraging to one who would hope to make this great business self-sustaining. On about 4,350 acres there have been made 73,700 bushels of corn, which will be twice as much as will be needed for support. About 500 acres were planted in peanuts, and the yield has been about 9,000 bushels, a poor yield, the season being bad for them. Eight hundred and five acres were sown in wheat and produced 7,320 bushels, 5,394½ bushels of which are stored at the Weldon Mills, Weldon, N. C., to be ground into flour. Fourteen hundred and eighty acres were sown in oats, and produced 24,075 bushels, and many more would have been saved but for the extremely wet season in harvest. There have been cultivated in all crops over 12,800 acres, being 11½ acres for every man and woman convict, old and young, sick and well, in the penitentiary, and 16 acres to every man and woman, old and young, sick and well, who were on these farms to labor, and about 39½ acres for every horse and mule.

"I am satisfied that at the present prices of farm products, with its too extensive farming operations, its aggregated enormous rents, its exceedingly large guano bills, its great expense to keep up the supply of team and tools, together with the diminution in convicts, with just as many officers, overseers and guards to pay as it would be if there were several hundred more convicts, the penitentiary can not be self-sustaining.

"It therefore ought to be brought down to a narrow scope, and possibly it were better if one or two of the best farms were purchased by the State and farmed all together in provision crops.

"The operation of the machine shop has been confined entirely to repairing.

"Finding it very necessary to send the women to the farms to help gather the crops, the laundry was operated for only ten months. During this period it was run at its full capacity. What machinery is now in the laundry is about worn out, and I feel confident, with new and improved machinery, that the female prisoners will be of more pecuniary benefit here than elsewhere.

"We have made in the shop this winter 2,073 pairs of shoes, in addition to doing the general repair work of the prison.

"We have made and burned 9 kilns of brick of 225,000 each, and have now on hand, hard and salmon: Hard, 7,800; salmon, 237,544.

"The shirt factory since last March has been operated, employing on an average 70 prisoners. In the past 60 days there has been a laundry established in connection with the shirt factory, employing 25 prisoners. Federal prisoners are almost exclusively used for this work.

"We cultivated 35 acres in a garden, which gave the officers and prisoners abundant supply of all kinds of vegetables and added much to the health and comfort of all. After being supplied with summer vegetables, we now have on hand a sufficient supply of turnips and potatoes to last during the winter."

Prisoners in jails, and in fact all convicts other than those sent to the State prison, are worked on the public roads.

NORTH DAKOTA.

According to the biennial report of the trustees and warden of the State penitentiary for the period ending June 30, 1898, the convicts were engaged principally in agricultural pursuits, a portion of the product being sold and the rest being consumed in the institution. The convicts are also engaged in the manufacture of brick under the State account system.

The warden states that, "The above-named industries are the only ones that can be carried on, as the law now stands, out of which a revenue can be obtained, as there is a large part of the year in which little or nothing can be done in either, and as the work about the institution and grounds, including the capitol and executive mansion, affords employment for less than one-quarter of the inmates, it is readily to be seen that the proposition of furnishing employment for all the inmates all the time, as required by law, is a difficult one if not an absolute impossibility."

OHIO.

The convicts at the State penitentiary that are not required by the State to care for the institution and manufacture supplies for the same are employed under the piece-price and contract systems. Under the piece-price system the State receives for the product of the labor of the prisoners a price agreed upon between the board of managers of the penitentiary and the firms or individuals doing business at the institution. The prisoners remain in the complete control of the State, while the contractor pays for the product of their labor, and it is claimed that this does away with the criticism of the old contract system, viz, that the convict's daily task imposed by the contractor was greater than it should be. Now, the State, through its penitentiary officials, prescribes the task, care being always taken so that impossibilities are never required of the prisoners. All contracts made since 1884 have been under this system.

The contractor pays only for the finished and accepted product. The losses during process of manufacture, when such occur, do not burden the contractor. During the year ending October 31, 1898, the revenue from the work of the convicts under the piece-price system was \$114,379.84, and under the contract system \$80,944.71.

The work performed by the convict is such as will enable him to secure when discharged profitable employment at labor similar to that performed by him while in prison, where he was not hindered or prevented from being self-supporting on discharge by teaching him trades at hand work while the outside used machinery.

The prisoners in the county jails have no employment. At the workhouse in Cincinnati there are about 340 male prisoners, and about 200 of them are employed under the contract system. Of the 65 female prisoners 10 are employed under contract. The prisoners not working under contract are employed as far as possible in the general work of cleaning the buildings and in manufacturing supplies for the institution.

The Cincinnati house of refuge is rather a home and a school for the training of unfortunate children. "A large proportion of the children who come under its care are committed as homeless, and all are sent there more to escape the vicious influences of others than in consequence of their own evil doing. The whole course of the discipline, therefore, is paternal and not punitive. There is a constant pressure upon the child encouraging him to habits of industry. Each inmate is required to attend the school and to devote a definite portion of the day to the learning of some useful trade."

OKLAHOMA.

The Territorial convicts are kept in the Kansas Penitentiary by contract, the rate heretofore having been 25 cents per day. In April of this year, however, the Kansas authorities stated that, owing to a lack of employment even for their own prisoners, they could no longer keep the Oklahoma prisoners for less than 50 cents per day. A contract was finally made with the Kansas authorities to retain the Oklahoma prisoners for 35 cents per day, the contract to run for 1 year, and until terminated by 60 days' written notice by either party.

During the present year the Territory has expended for the transportation and care of its convicts \$18,220.13, an increase of \$1,715.33 over the preceding year.

The prisoners in the county jails have no employment, and in some cases spend their time reading and playing games.

OREGON.

An act of the legislature of 1895 authorized the employment of the convicts at the State penitentiary under the contract system, and the majority of them were so employed during 1898 and 1899 in the manufacture of stoves; others were engaged in manufacturing supplies for the institution, and also in the manufacture of brick for the use of public buildings, and on the farm and gardens of the prison as well as other work incident to the care of the penitentiary and other buildings.

The superintendent of the penitentiary in his report for the two years ending December 31, 1898, states that—

“The expenses incurred two years ago in ditching, tilling, and grubbing the lands belonging to the prison have resulted in the stoppage of land renting, and the returns from these new fields of farm and garden products are far beyond the amounts required for prison consumption.

“No brick has been made on the prison yard since 1895. The State ought to make some provision by which brick would be made at the prison yard the coming season. There is on hand now about 5,000 brick, and the demands of the various institutions can not be met with this number.

“The public highways run through the penitentiary land for three-quarters of a mile. To improve this section of the road was considered a part of the duty of the prison management. To bring the roadbed up to the required grade 3,780 yards of dirt were hauled, and 1,160 loads of gravel completed the job. No better piece of dirt and gravel road can be found in the State. The cost in labor was 213 days with team and 1,023 days work of men.”

There is no system of employment for prisoners in jails.

PENNSYLVANIA.

In the Eastern Penitentiary, at Philadelphia, the work of the convicts is performed entirely within the cells. In the Western Penitentiary, at Allegheny, the convicts are worked in workshops. By an act of the assembly approved June 13, 1883, the contract system in the prisons and reformatory institutions of the State was abolished, and it was directed that convicts be employed for and in behalf of the State. The number of convicts that may be employed in different industries is also limited. The effect of these laws on the industries of the two institutions named above is shown by the following quotations from the annual reports covering the years 1897 and 1898. The report for the Eastern Penitentiary calls attention to the growing tendency there and elsewhere to abolish or restrict labor in penal institutions, and states—

“That there can be no justification for such legislation. It answers no good purpose. It is idle to suggest that it protects outside labor. The output from all the prisons in the State, if run to the utmost, would be small and could not disturb the labor market to any appreciable extent. It is merely sentiment, and can not stand fair investigation for a moment. A father would not be com-

mended, who had four sons, one of whom was bad, if he should forbid the bad one to do any work because he was bad, and should require the other three to support the bad one in idleness.

"The act of assembly of the 18th of June, 1897, specifies that not more than 5 per cent of the whole number of inmates shall be employed in the manufacture of brooms, brushes, or hollowware, or 10 per cent in the manufacture of any other kind of goods, wares, articles, or things that are manufactured elsewhere in the State. Why 10 per cent? If the above is good legislation, it would be better to abolish labor altogether. Ninety per cent of 1,267 persons in the Eastern Penitentiary forbidden to work for years. There never could be placed on a statute book more monstrous legislation than this. It is a disgrace to the intelligence of the nineteenth century. Every prisoner should be compelled to work—to work hard 8 or 10 hours every day. It would produce greater reformation in the character of the prisoners than all other means combined. The act produces a strange contradiction. Every prisoner sent to the Eastern Penitentiary is condemned by the law to solitary confinement at hard labor, and yet this act forbids putting 90 per cent of those thus sentenced to any labor whatever.

"It is frequently contended that imprisonment causes mental disorder. The wonder is that all prisoners incarcerated for years and forbidden to do any work, living in absolute idleness, do not go raving crazy. In the name of humanity this act and all such should be abolished and the fullest employment given to prisoners.

"It was on October 22, 1829, that the first prisoner was received into the penitentiary, and from that time to the present, a period of 70 years, 20,016 have been received, convicted of crimes of every character. Each one of that great number was subjected to individual treatment, and I confidently believe was bettered both in health and morals by the treatment received.

"Many efforts have been made during the last decade to improve the condition of prisoners in what are known as congregate prisons in this country by offering inducement to good conduct, such as good-time law, that is, deducting time off the penalty pronounced by the court; the ticket-of-leave mark system, here called indeterminate sentences, and parole, formerly known in Great Britain as the Irish system. The parole scheme is now very generally advocated by those favoring congregate prisons or reformatory institutions. Large beneficial results are claimed for it. It is even stated that 80 per cent of the prisoners paroled are reclaimed from crime life.

"All such estimates are and must be untrustworthy. They are mere guesses. They are not backed by any authentic statistics of the subsequent life of discharged convicts. It is true that some of the reformatories who parole the better portion of their convicts do, during the time of such paroles, keep some oversight of them. It is also true that many of the paroled prisoners fail to live up to the conditions of the parole, and many of them disappear altogether. All reports from sources professing to give any definite proportions of convict reformations are guesses, dependent on the temperament of the guesser, and can not be relied upon for scientific or statistical purposes.

"From a long continued and intimate association with criminals as prisoners, I have a strong conviction that the best results are obtained from separate confinement. This view is sustained by the penologists of the whole world outside of the United States. I have for many years endeavored to follow the subsequent life of prisoners, and however successful I have been, I must refrain from stating actual numbers or percentages, as my observations and information are fragmentary and can not be reduced to figures or percentages capable of proof. It is doubtful whether the adoption of any legal plan for obtaining information might not, on the whole, do more harm than good, for the reason that it is obviously to the interest both of the convicts and the community that those discharged, who really desire to pursue an honest life, should quickly and imperceptibly be merged into the general body of society.

"The labor act of the last legislature, as interpreted by Attorney-General McCormick, only permits one industry for the manufacture of goods for the open market to be carried on and only 10 per cent of the population of the penitentiary to be employed at that.

"Ten per cent of the inmates are employed on hosiery, the remaining 90 per cent are in idleness, except such as can be employed in repairs about the place and making clothes, shoes, blankets, and other articles used by the prisoners."

The report of the Western Penitentiary states that owing to "The embarrassed conditions of labor in the prison, resulting from the restrictions placed upon its methods by the law passed by the last session of the legislature, the law, with its radical changes, particularly with reference to its limitations as to the number

of prisoners to be employed upon various industries, has thrown out of work and into enforced idleness one-half of our prison population, a condition which you will agree with us is to be greatly deplored.

"The law referred to is an act of the general assembly, approved the 18th day of June, 1837, directing that all work shall be performed by hand or foot power, and limiting the number of prisoners to be employed upon productive industries in the prisons of the State. The immediate result of this law was, as we have stated, that exactly one-half of the number of our men hitherto employed here in manufacturing goods for sale are now idle, and must largely remain so until remedial legislation is enacted.

"This idleness became so irksome and injurious to those who were taken from the shops that measures were promptly taken to give relief, so far as possible, by creating nominal positions, and work of an extensive character was undertaken in improvements upon buildings and grounds, giving employment to some during all the summer months. An electric-light plant has been constructed largely by prison labor. Work of excellent character was performed in wiring the buildings and erecting a power house, employing many young and able-bodied men upon valuable labor now nearly completed. We wish more labor could be furnished as likely as this to be helpful on release from prison.

"We were instructed by eminent counsel that the provisions of the bill referred to permit the employment of 5 per cent of the prison population in making brooms, 10 per cent in making hosiery, and 20 per cent in the manufacture of cocoa mats and matting, with power to add other industries, upon which 10 per cent of the prisoners may be employed. Acting upon this legal interpretation of the bill, the necessary changes were made in the shops. Subsequently we learned that the attorney-general of the State had given an opinion to the industrial reformatory, in which he held the ground that if 5 per cent of the whole number of inmates were employed on anyone of the industries named in the act with that limitation, 'it would seem to be impossible to employ any others in the manufacture of other kinds of goods.' Similar language is used if work of 10 or 20 per cent limit be selected, concluding as follows: 'Difficult as it may be to understand the reason for the legislative enactment, * * * the employment of the inmates would therefore be 5, 10, or 20 per cent of the whole number, as the case might be.'

"Other institutions ceased at once all productive labor. Work was continued here throughout the year, but only on industries previously established, as we feared to hazard investments in new plants until further legislation made the meaning clear. We are advised by those who framed the bill and took part in the debate that the interpretation given to it by this prison conforms to the intention of its framers.

"We desire to note that by the limitation to the use of hand-power tools and machinery, one or two details in finishing mats and knitting tops for hosiery, upon which not exceeding 4 persons are employed, had to be performed in shops outside, entailing a direct loss of \$4,275.70 to the prison.

"We have, as briefly as possible, called your attention to the scope and results of the present law, and we have confidence that our legislators will make the effort to apply such remedies as are necessary to relieve the present difficult situation. You can readily see that the enforced idleness of such a large number of prisoners is a most serious matter. It is not merely irksome, but pernicious in its results to the prisoners. Steady employment, whether in a prison or upon the outside, is a power of incalculable value in the maintenance of order and in the promotion of good habits. Idleness fosters discontent, lawlessness, and disorder. It is particularly so in prison life, and idleness inevitably results in the demoralization of the prisoner, often ending in his physical, mental, and moral ruin.

"Since the opening of this prison, some seventy-three years ago, its management, in their reports from time to time, have emphasized the necessity of useful and interesting labor, and its ameliorating influences upon the prisoner, and also its effective aid in helping to reduce the burden of support devolving upon the taxpayers of the counties from whence the prisoners are sent. It is deeply to be regretted that in the assaults made upon prison labor the estimate of its competition with outside labor has been so greatly exaggerated as to create an unwarranted prejudice in the minds of many against any form of productive labor in prisons.

"Statements of this character were the immediate cause of the passage of the present law, and there may be danger of further retrograde movements by legislative enactment if legislators, who are legally intrusted with the care and protection of the prisoner as a ward of the State, are not 'on guard.'

"The subject of convict labor has been a very perplexing and annoying one to legislators, and we do not wonder that they are anxious to have some satisfactory plan adopted having the merit of permanence. We understand that the Pennsylvania legislative commission, appointed to investigate this question, are prepared to present their report at the present session of the legislature, and will doubtless accompany the same with the draft of a bill in harmony with their suggestions. We sincerely trust that their conclusions may receive the serious consideration they deserve, and that such a plan may be evolved as will furnish steady and useful employment for prison inmates. Anything less than this we are convinced will be only temporary."

The wardens of some of the county prisons report as follows:

Berks County prison, at Reading: Only 10 per cent of the convicts are employed. The 90 per cent are idle, except the few who are employed in the general work incident to the institution.

Delaware County prison, at Media: Two convicts are employed in weaving carpet, 2 knitting stockings, 2 toeing stockings, 2 caning chairs, and the balance sewing carpet balls.

Montgomery County prison, at Norristown: Ten per cent are employed in weaving carpet or knitting stockings and caning chairs.

Chester County prison, at West Chester: The convicts are employed in scrubbing and baking; the women in making clothes. They also weave cloths, sheeting, and drilling, cane chairs, weave carpets, sew and cut rags.

The superintendent of the Allegheny workhouse states that the institution being a corporation, did business like any other manufacturing establishment and employed the inmates, and as many thereof in manufacturing as the trade permitted or required.

"Recent legislation abolishing machinery in prisons made the manufacture of cooperage with unskilled labor impossible, and hampered the manufacture of brooms and brushes. A further restriction, that only 5 per cent of the inmates could be employed allows work for only 30 men out of a total of 600 on brooms and the same number on brushes. The balance have to be idle, except such for which remunerative work can be found around the prison.

"The above restrictions are practically an abolishment of all remunerative employment, as no business can be carried on satisfactorily that can not accommodate its consumers when in need of goods.

"It may so happen that the business season is brisk, requiring more goods, while the number of prisoners falls off, reducing the number to be employed and reducing the output."

The inmates of the House of Correction, Employment, and Reformation, at Holmesburg, Philadelphia, are employed in quarrying stone from a quarry owned by the city, and on the farm connected with the institution, as well as on the roads and highways in the near neighborhood.

Inmates of the reform school at Morganza are employed in producing articles required for use in the institution, and are taught bricklaying, blacksmithing, painting, carpentering, typewriting, mechanical drawing, etc.

RHODE ISLAND.

The convicts at the State prison are employed under the contract system, at rates ranging from 40 cents to 50 cents per day per convict, in the manufacture of boots and shoes. The convicts at the Providence County jail are employed in the same way, at 20 cents per day per convict. A contract was made in 1892 for the employment of 150 convicts in making boots and shoes, for 3 years. In 1895 this contract was renewed, and again, December 1, 1898, it was renewed, each time for the same period and under the same conditions. During the past year the contractor employed an average daily number of 220.

Another contractor employs 12 men upon wire goods, as he has done since 1878. The short-termed convicts have been employed, as in past years, in farming,

gardening, and quarrying and breaking stone. It is estimated that over 2,000 tons of stone have been broken by them of suitable size for macadamizing roads.

The superintendent of the workhouse and house of correction states that—

“The routine of labor has been followed as usual during the year, the skilled inmates doing the repairs of the institution to a large extent, and the women making and mending clothes, washing, ironing, etc. The men work largely out of doors, farming, breaking stone, clearing the land, and building roads.

“As no large work of construction was going on the past year requiring the labor of the prisoners, it was possible to give more attention to the farming, and the result was that the crops were larger than usual.”

SOUTH CAROLINA.

At the State penitentiary in May, 1899, there were 246 convicts hired out under leases to farmers, at \$6.50 per month per convict, the State furnishing clothes, shoes, medicine, and medical attention, also transportation. One hundred and fifty-seven were worked on 3 State farms, raising products for consumption and for sale; 262 on State account in a hosiery mill inside the prison walls, and 120 in the prison yard and hospital, discharging the duties incident to the care of the institution.

Prisoners in the county jails are usually worked under the chain-gang system on the public highways, but in a number of counties they are given no employment.

SOUTH DAKOTA.

The warden of the State penitentiary states that there is no definite system for working the convicts, and that he finds it difficult to keep them employed, except during the summer, when they are worked in the stone quarry and on the farm; also that there is no definite system for the employment of prisoners in jails.

The board of charities and correction of the State, in its report for the years 1897 and 1898, states:

“The penitentiary farm and garden is an important factor in the support of that institution when managed, as is now the case, by intelligent and practical methods, and it is the intention and policy of the board to add to the farm domain and increase the opportunities for farm labor as the wisest and best means for furnishing useful and healthful employment to the prisoners, an employment not only demanded for their physical well-being, but conducive to their moral improvement and tending toward the formation of industrious habits in a class of persons whose misfortunes and crimes in many instances have been due to temptations which beset them because of a lack of useful employment, and possibly because they were ignorant of all useful avocations.

“The penitentiary is located in the immediate vicinity of immense rock deposits, and its chief industry is the quarrying and cutting of stone for the use of the State in erecting its public buildings. A large number of convicts are constantly employed in this industry, and thus far there has been a demand for all that could be furnished, a large proportion of the output for the past 3 or 4 years having been used in constructing the magnificent walls surrounding the penitentiary, which was brought to completion during the past summer, and is said to be the finest and most substantial work of the character in the United States.

“The stone used in the construction of the girls' dormitory at the reform school, and also in what is known as the boiler house, were furnished by the State through the agency of the convicts at the penitentiary, where the stone was quarried and prepared for use.”

The superintendent of the reform or industrial school states that—

“The question of furnishing employment for the inmates during the year is a question that is difficult to solve with the means at his command. During the spring, summer, and early fall months he is able to find work for all hands—but when the work on the farm and in the garden is a thing of the past, he has several conditions as well as theories confronting him. He is not in favor of placing the industrial school in the position of desiring to be a competition of outside free labor, but the enforced idleness of the inmates drives him to the conclusion that it is not the part of theorists to frown upon any and every attempt to provide mechanical industries for those who are being cared for by the State.”

TENNESSEE.

The State maintains all its convicts, and works over one-third of them in the State mines and on the State farm. Several hundred are worked on the piece-price system in foundry, hosiery, and other industries. The remainder are hired by the day to work in small factories inside of the prison walls.

From the report of prison commissioners and prison officials for the year ending December 31, 1898, it appears that the convicts at the main prison were employed as follows:

"Two hundred and twenty-five in the manufacture of hosiery, 15 manufacturing paper boxes, 110 foundry labor, 80 chair and carriage manufacture, 80 saddlery and harness, 160 shoe manufacture, 80 brick manufacture, 50 on the farm and garden, 25 cooking and washing, etc., 25 mending and making shoes, clothes, and prison supplies.

"The product in no one line is of sufficient importance to seriously compete with any industry employing free labor. In none of the lines in which the production is the heaviest is there similar manufactures in this State to a large extent. The most extensive output from the prison is shoes and ladies' and children's hosiery. These articles are not those of extensive manufacture in this State.

"The product of manufacturing establishments in the penitentiary is not only produced largely from material obtained from Tennessee and surrounding States, but three-fourths or more of the output is sold without the State, the hosiery in the North, the hollow-ware and castings, the saddles, harness, etc., in the Southern States, and the shoes and rattan chairs, baby carriages, and brick are sold in Tennessee and adjoining Southern States. The goods produced by the manufacturers operating with convict labor are not of the usual low grade, underquality produced in prisons, but are high class of their kind, equal to the product of similar manufactories operated with free labor, and are all sold at full market rates. Most all manufacturers have striven for quality rather than quantity, so as to sell their goods at full market prices of their worth and merit. They have found no necessity to cut prices because their goods are produced with convict labor.

"The crystallization of public opinion in favor of a change in the State's penitentiary system found its response in an act known as "the penitentiary act," passed by the forty-ninth general assembly, providing for the abolition of the lease system and the erection of a new main prison, and the purchase of a farm in connection therewith, and the purchase of coal lands and the opening of a coal mine thereon, thus providing for the care and maintenance of the convicts.

"The operations of the mine have been carried on with but little interruption. The total number of days idle during the year, excluding Sundays and national holidays, was 11½, eight of which were attributable to shortage of railroad cars. This result, in view of the past records, is particularly gratifying and saliently emphasizes the splendid physical condition of the plant as well as the watchfulness of all employees. The result of the continuous operation of the mine is an increase in tonnage of 47,339 tons over the previous year. The total net tonnage for the year was 271,681.

"The excellent physical condition of the men, as indicated in the decrease in the average number of men sick and idle, is a potent argument of their humane and proper treatment. The good moral, financial, and physical condition of this branch of the system, if we mistake not the temperament of the enlightened people of this great Commonwealth, who through their representatives have expended nearly three-quarters of a million of dollars for the express purpose of improving the moral and financial condition of the penitentiary system, should be a source of some satisfaction, at least to the lovers of the State.

"The State has expended on this branch of the penitentiary system a total of \$189,688.24 more than it has received, and has to offset this expenditure a property that is worth at a low estimate, based on its earning capacity, \$500,000, leaving an approximate profit to the State of \$310,311.76, less the amount of interest charges."

In most of the more populous counties the prisoners in the county jails are employed in building roads or in working on the county farm. In the other counties no employment is furnished for prisoners of this class.

TEXAS.

The convicts at the State penitentiary are employed almost entirely in agricultural pursuits and on railroads, either under the contract or public account system, they are also engaged in working farms on the share-crop plan, and in manufacturing for sale on public account and for use of the institutions.

The following quotations from the report of the superintendent for the 2 years ending October 31, 1898, indicate the character and result of the work of the convicts:

"It is an absolute requisite to bodily health and welfare that all men, physically able, should be employed. Work is necessary to the body and mind alike, in order to maintain mental equilibrium. The inmates of the penitentiaries, wherever physical condition will permit, are kept employed, this being the best remedy for disease, both of body and of mind, work having a great tendency to improve the moral standard of the man, besides helping him to preserve his self-respect, which is an important factor in influencing his behavior and conduct.

"The capabilities of the convict are considered in assigning him to any duty, and strict obedience and compliance with all orders are in all cases insisted upon.

"First-class convicts working under contract on cotton and sugar farms are paid for at the rate of \$19.50 per month, and on cotton farms alone at the rate of \$18 per month. The second-class hands on cotton farms are paid for at the rate of \$16.50 per month.

"In considering the above figures, the fact should be taken into account that the State supplies furniture, bedding, clothing, medical attention, provisions, transportation, etc.

"Tobacco for prison consumption has been raised at the Wynne farm for the last 6 years. This has been so successful that last year a tobacco farm of the same class was instituted at Woodlawn, near Rusk Prison. The tobacco from Woodlawn is shipped to Huntsville, being manufactured at this point, and the amount of tobacco produced on these farms forms a large proportion of the total quantity consumed in the penitentiary system. Habana or cigar tobacco is also cultivated for sale.

"The State farm at Harlem consists of 2,788 acres of fertile land, of which there are about 2,200 in a high state of cultivation. This farm has proved a financial success, as demonstrated by the financial receipts, besides showing the wisdom of the policy of employment of all short-termed convicts on State account.

"The class of labor used on this farm are second-class convicts, who are not suitable for contract forces where first-class labor is required. The average number of convicts on this farm for the two years just ended was 171.

"It will be noticed in the various inventories of prisons and farms, that we are raising a large number of hogs, which reduce expense to a considerable extent in reference to meat supply, etc.

"My policy, from the beginning of my connection with this department, has been to manufacture and raise on farms everything possible that is necessary for the maintenance of convicts.

"The net receipts from the railroads working convicts under contracts for the last two years are \$84,486.59, as against \$81,013 shown in my last report. The net earnings for the last two years per capita per month being \$9.47, as against \$7.12 for the two years ending October 31, 1896.

"The plan of hiring out short-term convicts was adopted many years ago, and has been kept up, not from choice, but for the reason that the two penitentiaries (Huntsville and Rusk) do not afford room for the employment of more than one-half of our prison population. Consequently, this system, of necessity, was adopted, and has been continued, rather than support this large number of men in idleness."

UTAH.

According to the report of the State board of corrections for the year 1898, the convicts at the State prison were engaged in making repairs and additions to the buildings and in caring for the same, also in agricultural pursuits, and in manufacturing articles for consumption at the institution, or for sale on State account. The following quotations from the report of the warden indicate the character of the industrial enterprises conducted at the prison:

"In accordance with your instructions, and with the consent of the city council, a reservoir has been built of concrete, with a capacity of about 80,000 gallons.

The total cost of the water system was \$7,676.84 for material; all work done by prisoners.

"The new addition authorized by the board has been completed, giving us a room for manufacturing which will accommodate 75 men. The cost of this new addition was \$1,105.58; work done by convicts. Fifteen knitting machines, 1 finishing machine, 2 ribbon machines, 1 spooler, and 1 wire mattress machine have been placed in the factory at cost of \$1,165.41.

"I have had to make haste slowly in manufacturing for the following reasons: (1) The prisoners must learn to run the machines. (2) We must make goods that this market demands; then we must not interfere with home industry.

"I have manufactured and sold during the past year cotton socks to the value of \$1,714.81; hair cinchas, \$559.82; clothing and shoes for the State insane asylum, \$1,701.54.

"I would advise increasing the number of knitting machines until the prison can furnish all the cotton socks this market demands, and which are now shipped here from the East. The canvas hammocks which were in all the cells, and which were expensive and uncomfortable, have been replaced with iron frame spring cots at a cost of \$244.55 for material. The 180 cots cost only for material, all work being done in prison shops.

"The farm has produced during the past two years 389 bushels of oats, 600 bushels of parsnips, 4,150 bushels of potatoes, 115 bushels of turnips, 1,375 bushels of carrots, 550 bushels of beets, 45 bushels of onions, 425 tons of hay, and quantities of melons, squash, tomatoes, peas, beans, lettuce, and strawberries. Much more could be raised on the farm if we possessed an adequate irrigating water supply.

"During the past two years, with the work on reservoir, pipe line, new building, workshop, and farm, every prisoner capable of working has been employed. Now, with this extra work finished, and not having work for all the prisoners in the manufacturing department, I have placed the men not otherwise employed at breaking rock. This work can only be done in moderate weather, as we have no sheds for the protection of the men."

VERMONT.

The convicts in the State prison are worked under the contract system in the manufacture of shoes. The contract is made for 5 years, and the State receives 72 cents per day for each able-bodied convict. The convicts work from sunrise to sunset. The directors, in commenting on the work of the prison during 1897-98, state that—

"The income of the prison has been \$3,922.94 over and above all expenses of the institution during the biennial period preceding the date of this report. The total receipts for convict labor were \$53,932.68.

"By reason of the favorable contract for the prison labor—72 cents per pay per man—and the large daily average of prisoners employed by the contractors (all the able-bodied men except the few reserved by the State for other work), the institution has been self-sustaining, notwithstanding many demands for extraordinary expenditures."

The prisoners at the house of correction are largely employed under the State-account system in cutting and polishing marble; the product is sold in the open market. The directors in their report for 1897-98 give the following information in regard to the work of the prisoners:

"In a large number of States and Territories no attempt is made to provide shop or indoor labor in the prisons for those sentenced to short terms of confinement. Especially is this true at the South, the Southern States working their short-time prisoners to a large extent outside the prison walls. We have worked quite a number of prisoners at the house of correction outside of the shop in connection with repairs, and also to cultivate the land, which labor has produced for the State as good, if not better, results than would have been attained had all found employment in the regular way. The earnings of the prisoners in the shops have been increased from an average of 46 cents a day, as per our last report, to 53 cents a day for the last biennial period. The favorable showing made is a credit to the manager. The board of directors, who are conducting the work on State account, find this to be a better result for the State than has previously been shown. If it

were not for so many short-term commitments a still better showing could be made."

The inmates of the State reform school are engaged principally in seating chairs. No employment is given to prisoners in county jails.

VIRGINIA.

The convicts at the State Penitentiary are employed under the contract system within the prison walls. Up to October 20, 1897, a number of them were worked by a company engaged in the manufacture of tobacco and the remainder by a company engaged in the manufacture of boots and shoes. A number of them are also employed on the State farm, engaged in various agricultural pursuits, raising vegetables and supplies for the use of the institution.

The superintendent in his annual report for 1898 states that—

"The net profits at the penitentiary and at the farm were \$57,127.28—a gain of \$2,942.99 over the previous year. There were 1,275 prisoners within the walls of the prison. Of these, 1,011 men and 65 women are employed by the shoe company. One hundred and seventy-five are necessary for prison detail.

"The tasks of those employed on the contract are not excessive, which is evinced by the fact that \$20,231.86 have been earned by the prisoners by overwork. The State farm continues to serve a good purpose, for which the legislature intended it. It has been a great aid to the penitentiary the past year in receiving and caring for many of those broken down from confinement, and from the ravages of an epidemic of measles last spring. It has not only supported an average of 324 men, but shows a net gain to the State of \$2,057.27."

WASHINGTON.

Ordinarily about 255 of the convicts of the State penitentiary are employed in a jute mill, manufacturing grain bags, burlap, and other jute fabrics. During the summer and fall about 50 are employed in the manufacture of brick. These industries are conducted under the public-account system. The remainder of the convicts are daily employed in the various workshops, on the farm, and around the prison generally.

The manufacture of jute goods and bricks are the principal industries conducted at the prison, and the following information concerning the operations during the 2 years ending September 30, 1898, is obtained from the State board of audit and control:

"The jute mill has been operated continuously since April 1, 1897, except a short time when it was closed down for necessary repairs. All of the products manufactured have been readily disposed of, there being on hand September 30, 1898, only 130,000 grain bags, while 2 years ago the biennial report printed at that time shows the number of grain bags on hand to have been 1,190,000. On account of the decrease in the prison population during the last 2 years it has been impossible to run the mill to its full capacity. During the season just ended there has been an average of about 112 convicts employed. Under these circumstances we consider the output for the year 1898 to be exceptionally good. The total profit for the mill for the 2 years was \$11,202.82.

"Work has been commenced in the brickyard as early each season as the weather would permit. We have manufactured during the fiscal years 1897 and 1898 2,656,000 brick. There has been a steady sale for brick, and the demand has been so great that it has been impossible for us to manufacture enough to supply it. The brick manufactured is of uniform size, good red color, and splendid quality. Brick masons commend them as giving good satisfaction."

Ordinarily the prisoners in the county jails have no employment other than keeping the jail in a cleanly and sanitary condition. In a few cases they are worked on the roads and streets.

The inmates of the State reform school are employed in manufacturing shoes, and tailoring for the benefit of the inmates; also in general work incident to the care of the building. They also made during the year 148 pairs of slippers for the use of the Soldiers' Home.

WEST VIRGINIA.

Convicts at the State penitentiary are worked inside the prison walls under the contract system, in the manufacture of brooms, nets, whips, trousers, shirts, etc. Those not employed under contract are engaged in the general work of the institution and in the manufacture of brick for the State use.

While the law provides for the working of the prisoners in county jails on the roads and highways, it is not enforced, and, as a rule, they are given no employment.

WISCONSIN.

The convicts at the State prison are engaged in the manufacture of shoes under the contract system; in the manufacture of knit goods under the piece-price system; and in the manufacture of clothing for the use of inmates of the prison and for other institutions.

In regard to the tailor shop the warden, in his report for 1899, states:

"During the last year we have manufactured clothing in large quantities for other State institutions, which accounts for the increase in cash receipts of last year over the year previous. The prisoners' clothing, including going-out suits and overcoats, are also manufactured here. The net earnings of prisoners employed in tailor shops were 57 cents per day for the two years."

The inmates of the Milwaukee house of correction are employed principally in the manufacture of chairs under the State-account system. The report of the institution for the year 1898 shows that the chair factory yielded a profit of \$1,248.41; 179,123 chairs of the value of \$48,642.34 were manufactured during the year, while 175,381 chairs valued at \$47,679.89 were sold. The inspector states that—

"The chair factory yielded a gain of \$1,248.41, a rather ungratifying result; but we are hampered on all sides; our laborers are unskilled; our machinery is mostly old and of an unimproved pattern, so that the variety of our output of chairs is rather limited. Prices of lumber, oils and paints, and materials of all sorts have been steadily advancing, while the prices of chairs have not. We have been trying to raise the price, but since other chair manufacturers did not follow the same example we were not successful.

"It has been charged that we are selling our chairs cheaper than competitors, but this is a grave mistake. The fact is that many prospective customers who came here to look over our line of chairs, after hearing prices, declared they could do better elsewhere and refused to buy."

The inmates of the industrial school for boys are engaged in a variety of industries, but the products are consumed almost entirely in the institution. The boys make their own clothing, shoes, and socks, run their own laundry, do the general repair work for the school, and furnish all the labor for the farm and garden. Some boys learn trades, but the prevailing notion that all boys, or that any considerable number, can learn trades here that they can follow through life is incorrect.

The prisoners in county jails have no regular system of employment. In some counties, however, they are employed in breaking stone in the jail yard.

WYOMING.

A contract exists by which all of the convicts are maintained in the State penitentiary buildings at a stated price per day per convict, and the lessee has in addition the labor of the convicts. He employs them in manufacturing brooms and cigars, also in farming and in making clothes and shoes for their own use. Their employment is at the option of the contractor.

There is no system for the employment of prisoners in county jails. In some instances they do janitor work about the court-house and jail.

CHAPTER VII.

SUGGESTIONS FOR CHANGES IN SYSTEMS OF EMPLOYMENT.

In order to ascertain whether the systems under which the prisoners are employed in the different State, county, and municipal penal and reformatory institutions are satisfactory, and also to obtain suggestions for changes or improvements in the laws regulating such employment, the commission addressed a circular letter to the officials of a number of such institutions in each State. This letter called for answers to the following questions:

First. If the system and laws under which convicts are employed in your State are not satisfactory, what changes do you suggest?

Second. What system of employing convicts do you consider to be of the greatest advantage, morally and physically, to convicts and the least injurious to the interests of free labor?

Third. If you consider that convict labor as now conducted competes with free labor, please give any facts that may be in your possession relative to the reduction in the number of wage-workers, reduction of wages, or the reduction in prices of manufactured articles by reason of such labor.

These circulars were sent to prison wardens, superintendents and commissioners, and to other persons, who, by actual association with the prisoners and practical experience in their employment, are supposed to be competent to give opinions that are worthy of serious consideration. The replies for each State are summarized as follows:

ALABAMA.

At the State penitentiary the system of employment is satisfactory, and no material change in the laws is recommended. The employment of convicts on farms and in sawmills is the least injurious to all interests involved. Convicts worked in the mine appear to compete with free labor, but as a matter of fact it is beneficial to free labor, as it prevents strikes, keeps the free miners employed and insures the running of the industries of the State that use coal, and the employment of the labor connected with them without cessation, insures the running of railroads at all times and the transportation of all products. Hence, the employment of convicts in the coal mines is of the greatest benefit to the free labor of the State.

ARIZONA.

The system of employing convicts in use at the penitentiary is not satisfactory. The institution should be made self-sustaining. The legislature has not dared to devise any plan whereby convict labor can be made remunerative. As all classes of material for manufacture would have to be shipped into Arizona it is more than probable that the cost of manufacturing many articles would be a bar to competition of any kind.

ARKANSAS.

The contract system of employing convicts, as now operated at the penitentiary, gives better satisfaction than the lease system formerly in use. The employment of convicts in farming would result in the greatest advantage to the prisoner and

be the least injurious to free labor. Convicts should be made self-sustaining and the charge of competition with free labor is a myth. It is cruelty to keep the convicts in idleness, and an outrage to tax the honest masses to support them.

CALIFORNIA.

The system of employment in vogue at the State prison at San Quentin is satisfactory. The convicts are engaged principally in the State jute mill, and other industries that do not compete with free labor ought to be carried on in order to teach the inmates some trade that will be of benefit to them when they have served their time in prison. The trouble with the jute workers is, there is no demand in this part of the country for such labor outside of the jute mills, as there is but one other jute or cotton mill in the State and it employs women and children. There are plenty of industries that can be carried on that will not, to any extent, compete with free labor, such as the manufacture of clothing, shoes and various other articles used in the other State institutions. That system of employment which occupies the mind and inculcates the idea that permanent employment will be obtained from the knowledge so derived is the most desirable. Our present industry does not conflict with free labor, does not cause a reduction of wages or of prices of manufactured articles.

COLORADO.

The system of employment in use in the penitentiary is not considered satisfactory, because it is not remunerative; and it is suggested that the convicts be put to work either on the State piece-price plan, or contracted to some one to be employed at any work that conflicts least with outside or free labor. The manufacture of hollow ware is suggested as a good industry on which they could be employed, because there is no establishment west of the Missouri River engaged in manufacturing that class of goods. The laws as they now stand are considered satisfactory, because the warden has the right to work the convicts at any class of employment on the prison grounds. They can not be leased to work on grounds other than those belonging to the State. It is not considered that convict labor, as now contracted, competes with free labor. It is believed that every dollar that the convict earns goes toward relieving the laboring man from taxation. The laboring man is the greatest taxpayer, even if he does not own a dollar's worth of property.

The superintendent of the State industrial school states that the inmates should be allowed to make shoes, clothing, and other articles for the use of other State institutions.

CONNECTICUT.

Prisoners are worked under the contract and piece-price systems. These methods are satisfactory. The board of directors and warden contract for the labor with reformatory methods always in view. That system of labor which will best equip the convicts to earn an honest living after being discharged or paroled, regardless of any competition, is the most desirable and most advantageous. The warden of the State prison states that there is doubtless some competition with free labor, but he has never known contractors of prison-made goods to undersell articles manufactured by free labor.

DELAWARE.

No employment is furnished for prisoners in the penitentiary or county jails. The superintendent of the State reform school recommends the introduction of more work on State farms.

DISTRICT OF COLUMBIA.

Prisoners at the workhouse are worked on the public roads and in the public parks. It would be beneficial to the prisoner and for the best interests of the District if those sentenced to serve time in the jail were employed in the same way that the workhouse prisoners are. The present system is satisfactory. Road work is the ideal work for prisoners. Prison work, as conducted in the District of Columbia, does not compete with free labor.

FLORIDA.

The financial condition of Florida is such that the lease system of employing convicts is the best method possible under the circumstances. The system has recently been investigated by a special committee of the legislature, which has recommended some important changes. The commissioner of agriculture, who is charged with the supervision of convict labor, states:

"I do not think that convict labor, as now employed, competes with free labor in Florida; in fact, contractors inform me that the only difference in cost between free labor and convict labor is that you are always certain of the labor. State convicts in Florida are worked in phosphate mines and in the manufacture of naval stores, and in each of these industries the contractors are short of labor and gladly give employment to free labor; in fact, we need men that will labor, and no laborer suffers by reason of the employment of convicts in this State. I have always been opposed to the lease system, but it seems that it is the best to be done in Florida at this time. A great many abuses occur under this system."

GEORGIA.

Convicts are employed under the contract system and also on the State farm and on the public roads. The warden of the State prison states that "the present system is, perhaps, as good as any, morally, and as little hurtful to free labor, and is far superior to many others from a physical standpoint, for the reason that it furnishes outdoor exercise, with plenty of pure air."

IDAHO.

The convicts at the State prison are employed now in the erection of new State buildings and on the prison farm. The warden states that this work will be sufficient to keep all the convicts employed for 4 or 5 years, and that the best system of employment is to utilize the prisoners in the erection of good substantial prisons and other necessary buildings and to put the prison grounds in the highest state of cultivation; also to have a good-sized farm connected therewith, and employ as many of the convicts as possible in making needed improvements and in raising produce for prison consumption. The prison labor has not come in conflict with free labor, and it will not for several years, because it will be utilized in the improvement of the prisons.

ILLINOIS.

The public-account system under which most of the convicts are employed is in a measure satisfactory. It comes as near giving entire satisfaction as any system that is liable to be adopted. Working on the public roads is a desirable method for the employment of convicts. The competition with free labor is but slight, and if it were not for the agitators on the outside convict labor would be of little consequence in the competition with free labor.

INDIANA.

The contract system in use at the State penitentiary and reformatory is referred to as giving more general satisfaction than heretofore, with the exception that at the reformatory more attention should be given to teaching trades. If the New

York system proves satisfactory it would be recommended for adoption in this State. It is also suggested that trade schools be established in all penal institutions, provided the matter of cost is not to be considered. If the expense of maintenance is to be considered it is thought that the contract system as now in operation is the best. The convict labor at the State prison, as now conducted, does not compete with free labor to any noticeable degree.

The Secretary of the Board of State Charities states:

"Probably few of those who speak much upon the competition of convict labor with free labor have visited prisons, particularly prisons in which a large part of the population is unemployed, and realized the conditions there existing. They fail to recall that these inmates were to perhaps as great an extent competing laborers on the outside, and that having entered the prison it is necessary that they be fed and clothed and cared for; that where they have no work, but are kept locked in their cells, their condition, both of mind and body, is pitiable in the extreme, leading on one side to evil practices, faded complexions and declining health, and on the other weakening and lost minds.

"In this State attention was called to the condition of things that existed in the State prison of Indiana for the past year. There a large per cent of the inmates were without employment. They were asking for something to do; many were losing health; the number of insane therein was increasing; the attention of the press and the people of the State was drawn to their conditions. The federation of labor took it up and appointed a committee to consider what could be done. This committee, with the State labor commission and the board of prison managers, recognizing that some action must be taken to provide those convicts with work, agreed upon the present law, which was almost unanimously passed by our last legislature."

The work of the inmates of the women's prison is confined to domestic duties and education in such duties. It does not compete with free labor.

Prisoners in workhouses and jails should be provided with more constant employment, especially on such work as would assist in their maintenance, and also in the manufacture of goods for the use of other institutions. The products should not be sold on the open market.

IOWA.

The contract system, as it is used in the penitentiary at Fort Madison, is referred to as giving general satisfaction. The number of hours that the convicts are worked per day should be fixed, possibly, at 8; it is now, by the custom of the contractors, 10 hours—there is no law on the subject. The labor in the prison undoubtedly competes with free labor, but not in the same ratio as skilled free labor, inasmuch as contractors suffer more or less loss from learning inexperienced hands, and from willful destruction of material: still, convicts with experience become adept the same as other men.

The method of employing convicts at the Animosa penitentiary in the erection of new penitentiary buildings and the manufacture of supplies for the State, has proved satisfactory. The New York plan of employing convicts in the manufacture of supplies for the use of institutions is preferred. The manufacture of binding twine under the State account system would lead to the least competition with free labor in this section.

It is suggested that the work of the inmates in the State industrial schools be extended along industrial lines where the inmates can acquire the knowledge that will fit them to compete successfully when they leave the institution.

Work should be provided for prisoners in the county jails, and it is suggested that in counties containing cities of the first class there should be a workhouse established, wherein all men under sentence ranging from 3 days to 1 year should be confined and compelled to work. Other counties might work their convicts on the streets and roads. There is no question but what convict labor will be detrimental to free labor to a certain extent as long as it is in use, but as

it enables the State to make its prisons self-supporting institutions, or nearly so, and as the prisoners there confined are human beings, it is no more than necessary that they should have employment, as idleness would tend to make a colony of insane people, which would be a greater detriment to all concerned than contract labor.

KANSAS.

The employment of convicts in mining coal for use of State institutions has given satisfactory results. The mining for sale on the open market has not been so satisfactory. The coal should not be sold, not only because it competes with free labor, but because the capacity of the mine is limited and the institutions should be regularly supplied. The employment of convict labor by any party or parties for private gain is wholly wrong. The labor should be used in preparing material for the erection of public buildings, and in manufacturing for various educational and charitable institutions.

KENTUCKY.

It is believed that the contract system in use at the penitentiary is giving general satisfaction, and the board of prison directors make no suggestions for changes. They state, however, that while perhaps not so remunerative the system of the State working her own convicts on her own account where no others are interested in the labor, or product of the labor, it is certainly the best system for the convicts. Everything manufactured in a penal institution will, to some extent, come in contact with free labor, and will to that extent injure the sale of such articles manufactured.

LOUISIANA.

The lease system is giving satisfaction from a financial standpoint. Convicts should, however, be worked within the prison walls in manufacturing industries, and the products should be stamped with the stamp of the institution before they are offered for sale on the market. Jail convicts should only be employed in such menial labor as does not compete with honest labor, such as working on the roads and streets. Convict labor in this State does compete with free labor to some extent, as the convicts are hired out to levee contractors at a nominal figure per capita. Thus a large number of free laborers are deprived of work.

MAINE.

Convicts are now employed under the public account, piece price, and lease systems, also in producing agricultural products for the use of the institutions. No material change is recommended. Extended facilities should be furnished for agricultural work, and it is also urged that workshops be established in more of the county jails.

MARYLAND.

Convicts at the State penitentiary are worked under the contract system, which appears to be giving satisfaction from both an industrial and financial standpoint, at least in so far as the prison authorities are concerned. The superintendent of the house of refuge states that sufficient appropriation should be made for the reform schools to enable them to dispense with contract work; and also that the piece-price plan is a good method for employing the inmates.

MASSACHUSETTS.

The system of employing the convicts under the public-account system principally, also in manufacturing for the State and under the piece-price plan, have proven generally satisfactory. The general superintendent of prisons states that

the only change he would suggest is that the opportunities for employing convicts on public works should be enlarged. In his opinion, that system which best promotes habits of attention and industry is of the greatest advantage to convicts, and the conditions that are beneficial to the prisoner do not depend so much on the system itself as on the administration of it. The system of making goods for institutions and employing prisoners on other public work is the least injurious to the interests of free labor. As to a reduction in the price of manufactured articles in consequence of convict labor, he states that every effort is made in this State to avoid that result. The State statutes expressly provided that prison-made goods should not be sold below the market price; and constant effort is made to observe, as strictly as possible, this provision of the law.

The officers in charge of some of the large penal institutions in the State make various recommendations as follows:

The system is not satisfactory; should return to the contract system, and engage in manufacturing a cheap grade of shoes that would not compete with free labor.

The system is in the main satisfactory. The limit as to the number of convicts that can be employed in a given industry should be removed. Convicts should be employed in reclaiming wilds of land, building roads, etc. The land when brought into proper condition could be sold to small farmers. Prison labor is not, as a rule, profitable in a pecuniary sense, and rarely pays back the invested capital. There is but slight competition with free labor.

The system is satisfactory, but the number to be employed on any given industry should be increased. The public account is the best system. Convict work does not interfere with free labor.

MICHIGAN.

The president of the joint boards of control of the prisons states that the combination of the public account and contract systems, now existing in the prisons of the State is more satisfactory than either one exclusively. To say that any system is satisfactory to all would be saying too much, but the present system is satisfactory to the most, and is believed by those best able from their positions to judge, to be the most rational, and it produces the best results.

I suggest no change in the present system, but draw attention to the fact that it possesses the advantage enjoyed by all successful private enterprises, namely, the liberty to make changes and adopt improvements in work or methods that may be found best for the State.

As conditions are, the limited contract system as it exists in this State is as well as any. The State-account system may be as good in all respects, provided the merit system of appointments to positions and the merit tenure of office prevail in the prison.

If convicts work at anything, they compete with those who would do that thing if the convicts did not do it. But competition is inevitable, and inheres in the act of production; so there can not be production without competition. It is no valid objection to prison labor that it competes with free labor. The production in the prison is only the same as though the convicts were free. If it is right for such a man to produce when free, it is when in prison, and for the same reason. What he produces in the one case is as much an addition to the wealth and resource of the nation as in the other.

This production is the least hurtful, in fact, if left to the operation of natural causes, in which case prison products are left to go where they are most wanted, scattered abroad. It is most hurtful when the sale and consumption of the products are restricted to localities or classes of consumers.

In this State the prison labor most objected to was furniture manufacturing at the Ionia prison on the State account. But I know of no real injury to free labor from it.

In view of the fact that to change from one system of work to another does not abolish competition; that to go from one kind of work to another does not do so, but merely takes it from one class to cast it upon another, and that to make articles in the prisons for use in State institutions and municipalities does not and can not abolish competition, it is believed to be the wiser course to select suitable kinds of labor and to justify the pursuit of these rather than to apologize for them. A rational defense meets with less opposition than apologies which inspire unfounded objections. Prison labor has, it is believed, the same reason for being that free labor has. An analysis of the objections to it reveals the fact that these are generally based on incorrect assumptions or violate the principles of economics.

The opinion that the products of prison labor are to be treated differently from the products of free industries simply because they are the product of convict labor, and the opinion that the natural competition of convict labor with free labor is of itself ground of objection to such labor, are believed to be unwarranted. The products are the same as though made by free labor. The competition is inevitable and exists between similar free industries just the same as between a prison industry and a free industry.

These industries add to the State's resources and greatness. The articles which prisoners manufacture constitute wealth and contribute to the subsistence and comfort of the human race just the same as though they were made in shops outside the prison; just the same as though the prisoners who made them were free. All agree that every man is under obligation to support himself and avoid being a public charge. All hold that if the men who are prisoners labored before they were convicted to support themselves this was laudable, and that it would be laudable for them to do so when their imprisonment ends. By parity of reasoning it is equally laudable for them to do so while they are prisoners. The man gains no right to be supported in idleness by committing crime, nor does society lose the right to insist that he shall support himself, nor is the laudableness of self-support diminished by his act. Those who advocate measures calculated to lessen or abolish productive industries in our prison seem to assume that a different economic principle applies to prison labor and to persons in prison from that which controls free men and free industries; that somehow it is for the interest of the State that the prisoners do not produce or that they produce as little as possible. But this is waste, and waste is a vice. The adoption of such a policy inculcates a vicious principle in the administration of the prisons and neglects the best good of the convict himself.

Industry and the habit of producing is the greatest support to the honesty of the man. Industry is the most available exercise the prisoner can have. To those who have been led into crime through idleness or dislike of labor it is the most appropriate punishment. From every point of view prison industry is justified. It is also an essential means of prison discipline and of reformation of the convict.

While the employment of a large number of convicts on one good industry is financially better for the prison, the pursuit of a variety is believed to be expedient, as this course prevents the concentration of competition and makes the convict familiar with a greater variety of work whereby he will be more likely to find employment when released.

Experience in this State has seemed to justify the preference expressed by the manufacturers and mechanics of 50 years ago in favor of the contract system of prison industries and to confirm the reasoning on which that preference was founded, for the greatest and worst competition of prison industries has occurred where the prison industry was carried on upon State account.

The history of prison industries shows that as a matter of fact the contracting of the labor of convicts to manufacturers for wages has been less hurtful to free labor than the State account system of work, and at the same time it has been more profitable to the State in a large majority of cases.

The circumstances and incidents that attend the two systems of work, the State-account system and the contract system, are so different in different States that it seems well to mention what they are in this State. What the convict really earns inures to the State whether he be employed under the one system or the other. The maintenance of the convicts, their guarding and keeping, are in all cases done by the State and at its expense.

It is usual for the State to furnish the shops also, so the cost of these are not taken into account in comparing systems, but here the conditions that are common to both systems usually end. Under the contract system the State employs the convicts to work for contractors by the day for wages agreed upon between it and the contractor. The latter supplies the machinery, the raw material, working capital, superintendent of the work, and so on. Under the State-account system the State supplies all these and conducts the business throughout.

When prisoners are employed, working for wages agreed upon, the financial result to the State is fixed and apparent. It consists of the wages earned. When they are employed manufacturing on State account the financial result is at first uncertain and indefinite. It consists of the amount realized from the sale of the articles made, less the cost of selling them and the losses of the trade, less the cost of the raw materials used and wasted in the manufacturing, less the interest on the money paid for machinery and employed as working capital, less the wear and depreciation of machinery, and the like.

The preference for the contract system exclusively, so manifest years ago, went quite too far, and it was a step in the direction of rational management of prison industries when the law was so revised as to allow the prisons to employ the convicts on State account as well as upon contracts.

From the preference for the contract system exclusively, a tendency has manifested itself in some quarters to rush into the opposite extreme and to require all labor in prisons to be done on State account. It proposes to restrict and embarrass the sale of prison-made goods, to brand them and subject those who sell them to an unequal license tax, to restrict prisons to the making of things for other State institutions, and, finally, to prohibit the sale of prison products altogether.

It is believed to be the only safe course in the management of prison industries, as in other affairs, to select and adhere to a rational policy, one that conforms to the policy that makes outside industries prosperous. The economic principles that apply to free manufacturing avail also in the prisons. The law as it now stands gives scope for the carrying on of prison work according to business methods. The liberty to employ the prisoners at work on State account or to have them work for contractors for wages, is essential to the attainment of the best results and is in harmony with the conditions that exist in a state of freedom where each man carries on business on his own account or works for wages as he finds best in his situation.

The recommendations of various other officials of penal and reformatory institutions in the State are summarized as follows:

No change is desired by the management of the State prison or the public at large. The present system is the best. The competition is so small that if all the industries of the penal institutions were abolished the public would not notice the difference. There is but little agitation of the question in this State.

The piece-price plan of contract is the most satisfactory, provided the terms and conditions of the contract place the regulating of tasks, etc., in the hands of the prison authorities, so that the inmates may be allowed a certain per cent of all

earnings over and above the required reasonable task or requirement. Under it you can regulate the output, allow your inmates a certain amount of his earnings over and above a specified task, so as to encourage industry, which is the acknowledged foundation of reform. I do not believe a prisoner should be allowed any privilege unless he earns it, and if this is impressed upon his mind he will work out his own salvation.

I do not believe that convict labor competes with free labor in general results. The average term of confinement throughout the United States is something less than 2 years, when these men are again placed in a position where it will be necessary to rely on their teaching of industry to earn an honest living as free labor. If they are not taught industry by steady employment wherein they can see that honesty is the best policy while in prison, they will go out entirely unprepared to battle with the outside world, and will sooner or later return to crime.

Abolish the contract system and substitute the State-account system. The State-account system is the most desirable, the prisoners being directly under the control of the prison authorities at all times.

I do not believe that convict labor competes with free adult labor to any appreciable extent. It is the competition of child labor, in my opinion, that needs correction, much of the results of child labor being charged to convict labor.

We have tried all the systems of employment, and find the piece-price plan of contract the most satisfactory, for the following reasons:

First. The contractor pays for what he gets only, knows exactly what each article is costing him, and has no fault to find regarding the amount of work performed by any particular inmate.

Second. The prison authorities can regulate the tasks to be performed at any amount which they may consider a reasonable day's work.

Third. The disposition and character of an inmate can be judged better by the class and amount of work he does than in any other way. If he is forced to do a certain amount of work, and does it well, I believe in holding out inducements for him to work for himself by allowing him a certain percentage of what he earns over and above the required task. This teaches him industry and at the same time takes away the sting of oppression.

Contract labor by convicts yields the most revenue to the State, and the manufacture of shirts and other cotton goods are clean, light, and healthy occupations. I have been unable to observe that prison labor in this State has lowered the price of goods or the wages of free labor.

The elastic system of Michigan, which permits of State-account, piece-price, or contract systems of employing convicts, as in the opinion of the board of control is most desirable, is the best for all concerned, under certain existing circumstances. Convict labor, like any other labor, must compete.

All prisoners in county jails should be compelled to work.

MINNESOTA.

The public-account and piece-price systems in use at the State penitentiary have given general satisfaction. The warden states that it is his belief that any well-regulated penal institution of moderate size can be conducted on State account and made self-sustaining with proper management. The only changes he would suggest in the laws of this State would be such as to require all convicts to work on State account, and to place a reasonable limit on the number that might be employed upon any given industry. He does not believe that convict labor as now conducted in Minnesota cuts any appreciable figure with free labor, or that it has ever been the cause of reducing the price of labor.

There is not adequate provision made for the employment of prisoners in jails, and it is suggested that farm and road work would be most desirable, as it benefits the community without exciting the opposition of free labor.

Prisoners should be employed at State work, not on contract. The public account system is the best.

MISSISSIPPI.

The lease or contract and share-crop systems, as now worked, are not satisfactory. It is recommended that facilities be furnished for extending farm and agricultural work, the products to be sold on the open market and consumed in the State institutions.

MISSOURI.

The warden of the State penitentiary states that the contract system as it is used at that institution is giving satisfaction, and no changes are recommended. There appears to be no system so advantageous to both the taxpayers and the convicts. The competition with free labor is very limited.

The officials of other institutions state as follows:

It is believed that a law that requires convicts to work directly for the State, rather than the present plan of hiring their labor to contractors, would be beneficial to both convict and free labor. Convicts should have plenty of healthy labor. Keep body and mind employed as great a part of the time as possible without requiring over or unreasonable exertion. The amount of manufacturing in Missouri penal institutions, including the penitentiaries, is too small to have much effect on free labor.

The practice of working prisoners in the jails on the public roads is desirable. While employed on building public roads convicts do not compete with free labor, for the reason of the great amount of this work to be done and the small sum of money available for such use, all sums appropriated are exhausted in employing free labor, and convicts are employed in addition.

MONTANA.

Beyond the duties incidental to the care of the institution, no employment is furnished convicts at the penitentiary. This practice of no employment for the inmates of the penitentiary and jails is not satisfactory. It is believed that the employment of convicts on public improvements, and at such work as raising produce for their own consumption, where they would not compete with free labor, would be very satisfactory to all the people of this State. It is suggested that they should be employed in improving and beautifying public places, such as highways and parks, where the cost of guarding would not be too great—dangerous prisoners to be employed within the walls in repairing the State property.

Industrial training on the "Elmira plan" is desirable for the younger prisoners. Older prisoners should be employed in manufacturing for the needs of the State institutions. Plenty of road work should be furnished, also cutting paving stones and making macadam. Laws should be adopted providing for a better classification of the prisoners. More employment and education, and permanent confinement for habitual criminals. Industrial training should also be introduced into penal institutions. Diversified trades should be furnished those capable of learning, and work on highways furnished when desirable.

NEBRASKA.

The contract system is largely in use. It is recommended that farming operations, to raise supplies for the use of the institutions, be extended.

NEVADA.

There are but comparatively few convicts, and they are kept constantly employed in the duties incident to the care of the institution and also manufacturing supplies for their own consumption.

NEW HAMPSHIRE.

The contract system, under which the State has full charge of the discipline, etc., of the men, is giving satisfaction. Good, healthful work in well-ventilated shops is the best.

Convicts do not compete any more, if as much, as if they worked outside. Free labor ought not to be taxed to support criminals in luxury and idleness.

The inmates of the State Industrial School are employed under the piece-price system. The president of the board of trustees states that the management is humane. There is an entire absence of anything in the exterior or interior of the building to denote that it is a penal institution, except that the windows of the dormitory are barred. It is impossible to adopt any system of labor which will not be the occasion of complaint on the part of those engaged in a similar occupation outside. In this respect we have been fortunate, as fault-finding has been noticed by its absence. In addition to the knitting machinery, we have a few cards, breakers, and spinning mules, so as to give the boys some knowledge of that kind of business. What I now say will be substantiated by hundreds, and that is, the annual examination of the school, which is held in May, in general interests and the good character of the exercises, are fully equal to those of any public school in the State. For good conduct during the year, a certain number of the pupils receive honorable discharges at this annual meeting. I do not believe that there is an institution in the country, that so far as net results are concerned, can make a better showing than the New Hampshire State Industrial School.

NEW JERSEY.

The piece-price system of employing convicts has been in use in the State penitentiary for about fifteen years, and has proved eminently satisfactory, not only to the State government, but to the citizens interested in the abstract question of convict labor. The supervisor of the prison states:

"It is not, in my opinion, desirable to make changes in the laws so long as their operation is harmonious and is obviously beneficial to all concerned. The question of the advantage morally and physically of the convicts and the minimum injury to the interests of free labor depends less upon the particular system adopted than upon the care and discretion with which any adopted system may be carried out. It is his opinion that the labor and production of the convicts under the present system as now conducted in the institution does not compete to any appreciable extent with outside labor, or has any noticeable effect to reduce the number of wage-earners, to diminish their earnings, or to depreciate the prices of manufactured articles. The laws of this State forbid contracts to be made for the manufacture, by convict labor, of the product of more than 100 men in any branch of industry. There are 9 branches of industry carried on in the prison, and upon these there are employed about 700 men, an average of a fraction less than 78 men to each. The production of this small number of inexperienced men in any one branch of manufacture is practically microscopic as compared with outside production, and by the operation of this law, the mental, moral, and physical benefits of regular labor are secured to the convicts, while the competition of their labor with outside or 'free' labor, is reduced to a point at which its effects are inappreciable."

The officials of other State and county institutions refer to the systems of labor as follows:

"Farm work and making macadam and working on roads is giving satisfaction. No convict labor should be let by contract or machinery used in production. Under such conditions there can be no competition with outside labor."

"The most desirable method of employing convicts is in building and repairing roads and in preparing macadam to be furnished free to burroughs, towns, and cities for road purposes only. Convict labor engaged in building roads or repairing same is less objectionable to free labor than any other industry in which they can be employed.

"Hard physical labor is the best for convicts, especially work in which the majority of people dislike to engage.

"Where convict labor is done without machinery it does not compete with free labor.

"That system for employing convicts that will keep them constantly employed during imprisonment and fit them to earn an honest living after release, and also surround them with elevating influences, is the best. The most important question is not, 'Does convict labor unduly compete with free labor.' It is this: 'How can we best qualify and inspire these unfortunate creatures with an earnest desire to compete with free labor when they become free?' This is the best remedy for competition between convicts and free labor, viz: Do all we can to lessen the convict class by seeking to make them self-respecting and self-supporting. Then they will become consumers as well as producers and thus increase the demand for the products of other free labor. The difficulty does not lie so much between convict and free labor, rather between idleness and industry, skilled and unskilled labor. Make every convict an industrious and skillful producer and there will be a demand for all the products of free labor, because each will be a consumer."

NEW MEXICO.

The present system of employment of convicts at the penitentiary in the construction of public buildings, farm work, and manufacturing bricks and lime to a limited extent on the State-account system has been satisfactory. The warden states that the best method is to maintain strict discipline, employ convicts under the management of penitentiary authorities directly, and employ them on public works or in the manufacture of articles that do not come in competition with free labor. Convict labor in the Territory does not come into competition with free labor to any material extent. It is absolutely necessary to keep convicts employed in order to maintain discipline and their health physically and morally.

NEW YORK.

The president of the State Commission of Prisons states:

"That the present method of employing convicts in manufacturing supplies for the State, county, and municipal institutions is proving satisfactory; also that convict labor competes in some measure with free labor. The present New York system reduces this competition to a minimum. This system gives the convicts sufficient labor for health and exercise and leaves reasonable time for industrial training and instruction in letters, as the average time which the convicts actually worked in these prisons is about six hours a day.

"As the convict-made goods are sold to the State and county institutions at market prices, there is no reduction of prices of manufactured articles by reason of such labor; and as the industries in the prisons are so much diversified, the amount of product in any one industry is so small that its reduction of the number of free wage workers or their wages is inappreciable.

"The average number of convicts in the 3 State prisons during the year ending September 30 last was 3,311. These convicts performed during the year 451,945 days' labor, of an average of about 6 hours each, on productive industries. This does not take into account a considerable amount of work done upon what are termed 'nonproductive industries,' such as the building of additional prison buildings.

"In these prisons much of the work is task work—that is, a stated task is to be performed by each convict each day. This task is of necessity gauged to the capacity of the least competent, and is, of course, very much less than the amount which a free laborer would do in a day. Then it is further worthy of remark that a convict at his best does not compare in average efficiency with a free workman. Hence it is true that a few hundred competent men employed as free laborers will accomplish as much work in a year as was accomplished by 3,300 convicts in the 3 State prisons of the State. This will more fully appear from the following statement:

"The total value of the industrial product of the 3 prisons for last year was \$564,288.

"The value of the convict labor entering into this product was \$130,748. Dividing that by 304, the number of working days in the year, we find that the average daily earnings of all the convicts was \$430.

"It will thus appear that the earnings of 286 men, at \$1.50 per day, would equal the total earnings of the 3,311 convicts in the 3 prisons.

"In a State with a population of over 7,000,000, and containing vast industries such as this State has, this insignificant amount of convict labor can not cause any appreciable reduction in the number of wage workers or their wages.

"Other officials of State and county institutions refer to the desirable and undesirable features of the system as follows:

"It seems to afford more advantages than any other we have previously tried.

"A legislative committee, who investigated the matter thoroughly recently, reported that they had failed to find that any business or individual was injured by the present system.

"The present system seems to have the least objectionable features of any known, and seems to be most satisfactory to all laboring classes.

"Convict labor must of necessity compete with free labor just as free laborers of one class compete with each other.

"The system is satisfactory, but the institution should be furnished with more work for the inmates.

"The system recently inaugurated by the State of New York is the best known. There is no competition from the labor of the prisoners except that the supplies made by the prisoners in the prisons and sold to other institutions and to the civil divisions of the State, competes by taking the place of other supplies which, if such a system did not exist, would be made by free labor.

"Of course there can be no useful work done by any man in prison or out but it is more or less in competition with the work of some other man.

"The reformatory system is satisfactory to a very high degree, as it enables the reformation of the inmate to be kept constantly in view. Trade instruction, manual training, and common-school instruction is the best.

"The system is not satisfactory, convicts should be employed indoors, on the premises, making any article that can be made by hand or with as little machinery as possible, and the products should be sold on the open market. The State constitution should be amended so as to open all markets to prison production at outside prices. Free labor does not suffer. The convict, if he were free, would have to produce more than he does while a prisoner.

"I believe the State should go back to the so-called Fassett law, which provides for the employment of convicts not more than 8 hours a day on the piece-price plan. The entire number of convicts employed in any one industry should be not greater than 5 per cent of the number of free persons employed in such industry in the State. This system would be of the greatest advantage to the convicts, both morally and physically, because it provides steady employment, and at the same time gives them an opportunity to become proficient in some line of work at which they may, after their release from prison, earn an honest living. Under this law the interests of free labor were practically uninjured, the 5-per-cent clause prohibiting the employment of a sufficient number in any one industry to make competition with free labor profitable."

The State commission of prisons, in its annual report for the year 1898, makes the following recommendations:

"The experience of the past 2 or 3 years has demonstrated that great benefits will result from the law in regard to the new system of labor, and that the commission should have the support of the legislation. The fact has been fully recognized that the commission is the only official body with jurisdiction extending to all the penal institutions and the otherwise disconnected parts of the penal system. For, as is often mentioned, the State prisons are not connected with the reformatory, house of correction, or penitentiaries, which are under entirely separate management, except through the commission.

"The law of 1895, which created the commission, therefore put upon it the duty of outlining and reporting a system for the employment of convicts in accord with the constitutional provision which applies alike to prisons, reformatories, and penitentiaries. The system enacted into law by chapter 429 of the laws of 1896, also recognized as a fact that the commission, only, had jurisdiction over all institutions, and therefore it provided for the distribution of industries to prisons, reformatories, and penitentiaries, under regulations to be made by the commission. By the same law also, the commission was logically the only body to regulate requisitions for supplies which, if one class of penal institutions could not fill them, could be passed to another. The duty of overseeing in an advisory way

the general working of a new system was put upon the commission, which is, for that reason, by the public, held to a degree of responsibility for the results. Such being the situation, the commission should be given the fullest possible means of knowing all the time what is the actual condition of industries in each penal institution, what requisitions are being made, and what supplies there are in each institution or class of penal institutions to fill them. If the commission gives a certificate to one official, permitting the purchase of certain goods in the open market because the penal institutions report that they can not furnish them, and then refuses a certificate to another official as to a requisition for the same class of goods because the penal institutions do not report that they can not fill it, the commission is criticised, though blameless, and frictions occur. The law ought to explicitly require that all requisitions be made in duplicate by the purchasing officials or institutions, one of which shall be sent to the commission and the other to the superintendent of prisons, or the superintendent of the reformatory or penitentiary upon whom, under the rules, requisition is made. This would make less work for the prison officials than now, and as the requisitions are usually type-written, two copies can be made as easily as one."

NORTH CAROLINA.

The working of convicts on public roads is satisfactory, and working to produce for consumption at the institutions is more satisfactory than profitable. In this State the working of convicts on public roads is, beyond question, the most advantageous to everybody. Morally and physically it is as good, if not better, for the convict than any other system.

Forty-two counties in the State are working their convicts in improving their roads, and our laws in this line are almost perfect. I think the convicts in the penitentiary, now engaged in making shirts, brick, and farming on a large scale, should be employed in improving the State roads.

NORTH DAKOTA.

The warden of the State penitentiary states as follows:

"I have made a careful study of the question 'How best to provide for the surplus or unemployed labor of the inmates of the institution?' In doing this, I have kept in mind all the conditions and circumstances which are elements and ought to be considered in solving the problem, and my conclusion is, considering particularly the best interests of the State from a financial point of view, and for the institution and its inmates from all points of view, that a 'plant for the manufacture of binding twine and cordage,' to be operated on the State-account plan, should be established; this would furnish the relief needed without interfering in the least degree with free labor, and, carefully managed on sound business principles, would, inside of 5 years, place the institution on a self-supporting basis."

OHIO.

The labor of convicts at the penitentiary not required by the State is employed under the piece-price system. The warden states that the system is as satisfactory as it ever has been. He knows of no system of employment for convicts that offers better results to all concerned than that which secures to the State a fair remuneration for the labor of each convict employed at such labor as will enable him to be self-supporting when discharged from penal service. There must and always will be competition as long as prisoners are employed, and no sensible person will ever suggest that prisoners should remain idle. He knows of no instance where the number of wage workers, their wages, or the price of manufactured articles were reduced by reason of the product of convict labor in this State.

The Ohio penitentiary used to make contracts for a specified number of prisoners, and the price received from the contractor ranged from 50 to 75 cents per day for each convict. During 1884 the system of contracts was changed by legislative enactment to piece price, and all contracts made since then have been made in compliance with this statute.

As a matter of fact the piece-price system is not so profitable to the State as the old contract system was, but it wipes out the charge then often made that the convicts' daily task, imposed by the contractor as it was, was greater than it should have been.

The work performed by the convict is such as will enable him to secure when discharged profitable employment at labor similar to that performed by him while in prison, where he was not hindered or prevented from being self-supporting on discharge by teaching him trades at hand work while the outside uses machinery.

The officials of other institutions state as follows:

Under all prison systems, if discipline is to be maintained at its best, and reformation promoted and health preserved, some form of labor is absolutely essential. The law provides that a convict must labor, and he is so sentenced by our courts to hard labor. The prisoner can so demand from the State to furnish him with work. Labor is the base of prosperity of every state and government. The entire prison population of this country, as compared with the labor outside of prisons, amounts to only 2½ per cent. While no system can be devised which in some way does not raise the question of competition, there is no way of determining the amount of reduction in prices and wages caused by such competition.

OKLAHOMA.

The prisoners of the Territory are kept under contract at the Kansas State penitentiary. Prisoners in jails are not employed. The following suggestions are submitted by the official of one of the county jails: Convicts should be worked 8 hours per day, and if they work overtime they should receive a reasonable compensation for such overtime. They should be employed at some occupation whereby they could learn a trade and improve themselves intellectually.

OREGON.

The systems of employing convicts under contracts, in farm work and in making articles for their own support, have proved satisfactory.

The superintendent of the State prison makes the following recommendations in his annual report for 1898:

"The prisoners must be employed, and, with 4 years' experience and observation in the prison, I have concluded that there is no better system for the employment of the convict than the lease (under rules and regulations looking to the protection and care of the men), and can say nothing better than to report what was said 2 years ago: The leasing of convict labor within the walls, with proper hours of labor and just treatment of prisoners, under the supervision of the prison management, together with the control of the necessary free and expert employees, can not be too highly recommended by me. I have no hesitation in saying the lease system is the best for the State, and under proper supervision by prison authorities nothing is better for the convicts. In carrying out the provisions of the present lease there has been no conflict of authority. The prisoners have, as a rule, been contented and obedient, rather preferring to be at work in the shops than to be idle in their cells. Not a single case of insubordination nor serious trouble of any kind has occurred among the men working in the foundry. A system of prize money, awarded by the lessees for honest and faithful work, adds much to the contentment and comfort of the prisoners. I am of the opinion that the law should be amended so as to extend the authority of the governor to make other leases for the employment of these men."

PENNSYLVANIA.

The warden of the Eastern Penitentiary at Philadelphia states that—

"The public-account system, as practiced in his institution, is giving satisfaction, also that all machinery should be eliminated, the work to be done by hand and the prisoners working in their separate cells, being isolated from all other

prisoners. Under these conditions the system would be the most desirable for the employment of convicts. Under the system in use in this penitentiary, there is no competition with free labor; all the convict labor being by hand, there is not enough made to make the production felt. Representatives from the labor organizations have examined the system and admit that the penitentiary does not manufacture enough to interfere with free labor."

The warden of the Western Penitentiary, at Allegheny, states that—

"The system there in use is not satisfactory, because there is not sufficient employment. By an act of the assembly approved June 18, 1897, steam power in all penal institutions was prohibited, and the number of convicts to be employed on certain industries limited to 5, 10, and 20 per cent of the total population of the respective institutions. It is desirable that legal authority be given to furnish employment to all persons sentenced to imprisonment at labor, not only for the benefit of the State, but as best for the man when he is released from prison. The industries selected should be least competitive and the work should be of a character helpful to make the prisoner a skilled laborer. Prisoners do not perform half the amount of labor in a day that a free man must to keep his place. The total extent of injury to free labor, in the opinion of most of those who have given the matter any consideration, is greatly exaggerated, and really so small a factor that in good times it is never heard of.

"My personal experience has convinced me that labor in a prison must be real, earnest, and interesting. To be helpful to the imprisoned man it should be performed in shops, operated as an outside shop would be, and the man must be taught to work skillfully and carefully or he will be unable to do such work when released. Labor is an absolute necessity and most helpful to prison discipline. In most States the cost of support by labor is a material question; where ignored, as in New York, where the prisons receive an annual appropriation for support from the State, it may take the question out of politics, but the inevitable result follows that goods made for State and political divisions cost more than have hitherto been paid for similar goods, and establishments hitherto furnishing such goods keenly feel that the State is competitive.

"The question of competition by prison labor has many sides. The duty of preservation of health, both of mind and body, of the prisoner is best helped by real labor, and the extent of injury to free industries by such labor is less than fifty-two one-hundredths of 1 per cent, or an amount so small as to be scarcely felt in the vast market for all forms and conditions of labor in this country. In any event, whatever may result from the various experiments under test, the entire matter is a local question, to be finally solved by the parties concerned, as public sentiment may be guided by social or economic reasons."

The officials in charge of some of the county workhouses and prisons give the following information concerning the methods of employing convicts:

"The system is not satisfactory; all prisoners should be employed. Any article manufactured by convict labor is injurious to free labor, but if you do not desire to fill the insane asylums you must furnish the convicts with employment.

"The system is not satisfactory. All long-term prisoners should be worked on strictly hard work, no power machinery should be used. As long as convict labor is done by hand it can not interfere with free labor. It would require 50 men by hand work to do as much work as 1 man by the use of power machinery.

"We buy and sell on the open market, and the profits go toward maintaining the institution. There is no better system of employing convicts."

RHODE ISLAND.

The contract system has been in use for 30 years. It has kept the prisoners constantly employed, and appears to give entire satisfaction to the prison officials and all others interested in the subject.

SOUTH CAROLINA.

The present system of leasing convicts, working farms, and manufacturing on State account is satisfactory. The farm work is more healthful, but not so profitable. The warden of the penitentiary states that he does not consider convict labor, as now conducted in South Carolina, competes with free labor, the numerical percentage of convicts being so small.

SOUTH DAKOTA.

There is no system for the employment of convicts at the State penitentiary. The warden states that some system should be devised for the employment of prisoners within the walls. The laws in regard to prison labor are very incomplete and should be thoroughly revised. Prison labor in the State does not conflict in a marked degree with free labor.

TENNESSEE.

The present system of employing convicts at the penitentiaries under the piece-price, contract, and State-account methods are in the main satisfactory.

The board of prison directors state that—

“The industries in which the prisoners are engaged are so diversified that the product of no one line are of sufficient importance to seriously compete with any similar industry employing free labor. In none of the lines in which the production is the heaviest is there similar manufactures in this State to a large extent. The most extensive output from the prison is shoes and ladies and children’s hosiery. These articles are not those of extensive manufacture in this State.”

TEXAS.

The superintendent of the State penitentiary gives the following information relative to the conditions of employment at his institution:

“Under the present management we have been able to make the penitentiaries more than self-supporting. By reference to the report of the financial agent it will be seen that on November 1, this year, we had on hand a cash balance of \$136,801.45. However, I am unalterably opposed to the lease system and believe it should be abolished, for the following reasons:

“First, there is too much uncertainty attending such a system, at remunerative prices.

“Second, humanity demands that the State-account system should be adopted.

“After a long experience I am thoroughly convinced that no sort of supervision can be inaugurated that will absolutely prevent abuses under the contract system. I repeat what has been said before in this report, that it is gratifying to me to be able to report that the change in contracts which provides for the State feeding all convicts is a long step in the direction of State account and reform. Indeed, it is pleasing to be able to say that I have not had a complaint with reference to food since the change was made.

“Farming on State account is no experiment. By reference to the report of the plantation situated in Fort Bend County and known as the Harlem plantation it will be seen that second-class negroes, such as are employed on this place, have been more profitable to the State than first-class labor, such as hired or leased to contractors. Therefore, I renew my recommendation of former years with reference to the State buying suitable lands, where short-term convicts may be employed on State account.

“It is clear to my mind that if the State owned sufficient lands to work all the convicts now employed under the lease system it would not be a great while until the profits would go a long way toward paying expenses of the State government. It may be said that agricultural products are low, which is true, but my plan would be to go into sugar raising as rapidly as possible, thereby taking the convict labor out of competition with the cotton farm, and at the same time produce that which is much more profitable.

“I would suggest that some law be passed by the legislature requiring that every institution in this State should be required to purchase any and all goods from the penitentiary, such as boilers, engines, furniture, wagons, buggies, carriages, etc.; providing, however, that no greater price shall be paid than the same goods may be bought elsewhere.

“I can see no good reason why the State’s money should be sent out of the State when it can be used among its own departments. Such laws are now in force in some of the States, and work admirably, providing employment for very many convicts in the manufacture of such goods as are desired by other departments of the State government.”

The officials of county jails furnish the following statements:

"The State should furnish convicts labor or let them remain idle. There is no doubt that contractors abuse their convicts, and any man with ordinary sense knows that you can never reform criminals by abusing them.

"The State should not be allowed to manufacture articles for sale. It is now selling furniture manufactured by convict labor cheaper than that manufactured by free labor can be sold.

"The State should cultivate enough land to make the penitentiary self-supporting.

"Ten years' hard labor by convicts on lease farms either kills them or ruins their constitutions. It is a well-known fact that the present system of controlling convicts not only ruins what little moral character they have left, but seems to destroy the very basis on which all moral character is built.

"Counties should own farm land on which to work county convicts."

UTAH.

The present system of working convicts in constructing public buildings and caring for the same and in agricultural pursuits, also manufacturing on public account, is giving general satisfaction, and it is recommended that the facilities for such diversity of employment be extended.

VERMONT.

The contract system as in use at the State prison appears to be giving satisfaction. The officials claim that there should be a wider system of industrial training. There is no better way of employing convicts than to leave the entire matter in the hands of a good board of directors.

Convict labor does not materially compete with free labor. No law should be passed designed to prohibit productive labor of prisoners. Legislation should proceed with great caution, prisoners themselves have a right to employment.

The best method of employment is in trade schools, and otherwise upon such articles as are used in State, county, and municipal offices and institutions.

The contract system is not desirable.

The number of convicts employed is so small as compared with the number of free laborers that their work does not compete with free industry.

VIRGINIA.

The contract system as now in use at the State penitentiary has given satisfaction. Farming operations in connection with the penitentiary have been of great assistance.

The best work for jail prisoners appears to be on the public highways, under direction of competent road builders.

WASHINGTON.

The employment of convicts at the penitentiary in the manufacture of jute bags and burlap under the public-account system and on the State farm and in workshops connected with the institution have given satisfaction, for the reason that it does not in any way compete with free labor.

Both the moral and physical effect is always better when prisoners are constantly employed. Any system of employment where their labor does not compete with ordinary citizens' labor is desirable.

The law admits of the working of prisoners upon the public highways, and it would be hard to improve upon such a system. It does not compete with free labor and is entirely for the public benefit.

The best system of employment for convicts is upon the construction of large public improvements which would not otherwise be undertaken.

WEST VIRGINIA.

Convicts at the State penitentiary are employed within the prison walls under the contract system. This system as conducted is considered to be to the best interests of the State and is humane and conducive to the health and well-being of the convicts. It does not conflict with the interests of free labor.

The officials of the county jails state that the present law, providing that convicts may be worked on the public roads, would give entire satisfaction if enforced.

WISCONSIN.

The employment of convicts at the State prison under the contract and public-account systems is satisfactory, especially the results that have been reached under the contract system. The warden states—

“That the contract system is the least injurious to free labor, and that in his opinion the effect upon free labor is very trifling, as the amount of work done by a convict is not much over one-half the amount that is performed by a free laborer.”

The officials of other institutions make the following statements:

“Convicts at the State prison should be employed in making macadam and fixing the roads and not in the manufacture of shoes and clothing, to be sold on the open market in competition with the products of free labor.

“Our prison does lots of work that takes employment away from laborers, and it would help free labor if the prison stopped the manufacture of clothing and shoes.

“The inmates of the industrial school for boys should all be employed in the shops or on farm work, and also attend school.

“I do not believe in the contract system for prisons. I would have about three good shops, the character to be determined as in any other business, and the products sold on the open market.

“Every time a man works he is in competition with every other man that works when they are in the same competing group. The only way to avoid competition is to have the prisoners idle.”

WYOMING.

The penitentiary and the convicts are leased. The lessee has the privilege of working the convicts. This is considered as the best system that can be devised in this State under the present conditions.

APPENDIX.
SUMMARY OF CONVICT-LABOR LAWS.

The following statement presents a summary, by States, of legal provisions in force in the United States in 1898, relating to systems, hours, and kinds of convict labor; to the regulation of the sale of convict-made goods, so far as such regulations tend to establish or limit prices, or to prescribe rules governing the business of dealing therein; and to the diminishing of competition between convict and free labor.

ALABAMA.

CONTRACT SYSTEM.—Code of 1896, secs. 4463 and 4498 make general provision that State convicts shall be hired or employed at such labor, in such places, and under such regulations, as may be prescribed by the authorized authorities, having in view the end of making the system self-sustaining; and that contracts may be made "for the hire of the labor" of State convicts, by the day, month, year, or term of years, the State in such case controlling and supporting the convicts.

LEASE SYSTEM.—Secs. 4476, 4477, and 4478 provide for the leasing of State convicts, and require that all hiring of them must be per capita; that not less than 50 such convicts shall be hired to one person or kept at one prison, except that less than 50 may be worked in the county where they were convicted; that such convicts must be classed or tasked if hired to work in mines; and that no such convict must be worked at a different place or occupation than that expressed in the contract, or be rehired, or placed in the keeping or control of any other person than the contractor, without authorization by proper State officials.

Secs. 4521, 4527, 4529, and 4534 authorize the hiring of county convicts to labor anywhere within the State, the place and kind of labor to be restricted to that expressed in the contract of hiring; and such convicts must not be sublet or rehired, unless authorized by proper county authorities.

PUBLIC-ACCOUNT SYSTEM.—Secs. 4514 and 4516 authorize the employment of State convicts at farming or other labor on any land owned by the State, and provide that any part of the net income derived from State convict labor may be applied to manufacturing, "looking to the more permanent employment" of the convicts.

PUBLIC-WORKS-AND-WAYS SYSTEM.—Secs. 4521, 4522, 4528, 4529, and 4530 authorize the employment of county convicts on public roads, bridges, and other public works in the county where convicted, it being provided that no female shall be required to labor upon any public highway.

HOURS OF LABOR.—The statutes of Alabama contain no provision regulating the hours of convict labor.

KINDS OF LABOR.—Manufacturing, farming, and employment upon public works and ways and in mines.

SALE AND COMPETITION.—The statutes contain no provision regulating the sale of products of convict labor or for diminishing competition between convict and free labor.

ARIZONA.

LEASE SYSTEM.—Acts of 1895, No. 19 provides that the labor of the inmates of the Territorial prison and reform school may be leased, on contract with a responsible person or persons, without obligating the Territory "to furnish tools, machinery or money, or make other expenditure other than the labor of the inmates, properly clothed and fed, and the proper guards for the same, together with the use of the property, buildings and lands;" and that no contract or lease shall be made for a longer period than 10 years. The labor of the inmates may be performed either inside or outside the prison or reformatory confines. It is also provided that the buildings and property connected with the insane asylum, prison, and reform school may be leased for the purpose of furnishing employment to the inmates of the prison and reform school.

PUBLIC-WORKS-AND-WAYS SYSTEM.—This act authorizes the employment of convict labor upon public works, by stipulating that the labor of the inmates of the institutions named shall not be leased when it is required upon the buildings or property thereof.

Revised Statutes of 1887, Sec. 2459, provides that prisoners in the county jail may be required to perform labor upon the public works and ways of the county.

HOURS OF LABOR.—The statutes of Arizona contain no provision regulating the hours of labor of convicts.

KINDS OF LABOR.—Manufacturing, and employment on public works and ways.

SALE AND COMPETITION.—The statutes of Arizona contain no provisions regulating the sale of convict-made goods or diminishing competition between convict and free labor.

ARKANSAS.

CONTRACT SYSTEM.—Digest of 1894, secs. 5499 (as amended by act No. 20, extra session of 1897), 5500, 5502, 5504, and 5506, authorize the employment of State convicts under the contract system, either inside or outside the prison walls, the State to retain the control, management, and discipline of the convicts, and "to direct how, at any and all times and under all circumstances, its convicts shall be lodged, fed, clothed, guarded, worked, and treated;" but no contract shall be let for any such convict labor if equally remunerative employment can be furnished by the State, so as to work the convicts on State account.

LEASE SYSTEM.—Secs. 910 (as amended by act No. 16, of 1895), 913-931 provide that contracts shall be made for the maintenance, safe-keeping, and working of prisoners in county jails, the contractor to keep, feed, and clothe the prisoners.

Sec. 888 authorizes the leasing of houses of correction, and the farms attached thereto, and the labor of the inmates, for terms not exceeding two years, the lessees to pay all expenses of maintenance and care of the institutions and the inmates thereof.

PUBLIC-ACCOUNT SYSTEM.—Secs. 5499 (as amended by act No. 20, extra session of 1897), 5500, 5502, 5504, and 5506 authorize the employment of State convicts under the public account system, either entirely or conjointly with the contract system, it being provided that no contract shall be let for the labor of such convicts if equally remunerative employment can be furnished them under the public-account system.

Secs. 883, 885, and 886 provide that inmates of houses of correction may be employed in cultivating the farms and gardens connected therewith, or in mechanical pursuits, and the products of their labor shall be applied to paying the expenses of the institution, and the surplus arising from the sale of such products shall be paid into the county treasury.

STATE-USE SYSTEM.—Secs. 5501, 5502, and 5506 authorize the carrying on of manufacturing and other industries, either inside or outside the prison walls, with State convict labor, the products of such labor to be used in State institutions.

PUBLIC-WORKS-AND-WAYS SYSTEM.—Acts No. 33 and 38, extra session of 1897, authorize the employment of State convicts in repairing roads leading to the various convict camps, and in constructing State railroad and telegraph lines.

Digest of 1894, sec. 5543, provides that penitentiary convicts may be worked on public improvements, buildings, and grounds in the city of Little Rock.

Secs. 896, 911, and 932 provide that convicts in county jails may be worked on the public bridges, highways, levees, and other county improvements.

HOURS OF LABOR.—Sec. 906 provides that persons hiring county convicts shall not work them for a longer time during any day than other laborers doing the same kind of work are accustomed to labor

KINDS OF LABOR.—Manufacturing, farming, coal mining, stone quarrying and cutting, clearing and fencing timber land, building railroad and telegraph lines, and upon public works and ways.

SALE AND COMPETITION.—The statutes of Arkansas contain no provision regulating the sale of convict-made goods. Digest of 1894, secs. 5500 and 5559, prohibit the lease system as to State convicts, or the hiring of female convicts as domestic servants.

CALIFORNIA.

PUBLIC-ACCOUNT SYSTEM.—Acts of 1888, chap. 264, authorizes the employment of State convicts in manufacturing or other work, and the sale of such manufactured articles as are not required for use by the State.

STATE-USE SYSTEM.—Acts of 1889, chap. 264, authorizes the employment of State convicts "in the manufacture of any article or articles for the State."

PUBLIC-WORKS-AND-WAYS SYSTEM.—Acts of 1897, chap. 8, authorizes the employment of State convicts in the construction and repair of public roads.

Acts of 1891, chap. 216, authorizes the employment of prisoners in county jails "upon the public grounds, roads, streets, alleys, highways, public buildings, or in such other places as may be deemed advisable for the benefit of the county."

HOURS OF LABOR.—Acts of 1889, chap. 264, provides that an able bodied State convict shall be required to perform "as many hours of faithful labor in each and every day during his term of imprisonment as shall be prescribed by the rules and regulations of the prison."

KIND OF LABOR.—Manufacture of jute goods, of road metal or crushed stone, and of articles for State use, and employment upon public works and ways.

SALE AND COMPETITION.—Acts of 1889, chap. 264, Acts of 1893, chap. 42, Acts of 1895, chap. 208, and Acts of 1897, chap. 97, limit the commodities to be manufactured by State convicts for sale to jute fabrics and crushed rock. The selling price of crushed rock is to be 10 per cent above the cost of its production, but such rock shall not be sold for less than thirty cents per ton. The selling price of

jute bags shall not be more than one cent per bag in excess of the net cost of production, exclusive of prison labor; not more than 5,000 grain bags shall be sold during any one year to any one person or firm, except upon the unanimous approval of the board of prison directors—except that after June 15 of each year larger quantities may be sold to actual consumers, upon consent of a majority of the board of prison directors; and orders of farmers for grain bags shall take precedence over all others. Constitution, art. 10, sec. 6, prohibits the working of convicts under the contract or lease systems.

COLORADO.

CONTRACT SYSTEM.—Mill's Annotated Statutes of 1891, secs. 3425, 3435, and 3436, and Acts of 1897, chap. 5, provide that penitentiary convicts are to be worked to the best advantage of the people of the State; that their labor may be hired out to be worked under the superintendence of the warden, and, if outside the prison walls, under the custody of a guard or overseer of the penitentiary; but no labor shall be performed by the convicts off the grounds belonging to the penitentiary except such as may be incident to the business and management thereof.

LEASE SYSTEM.—Secs. 1446 and 1447 authorize the working of county convicts in quarries or mines, and when so working they shall be in the legal care and custody of the person by whom they shall be employed, subject to such regulations as the jail keepers may prescribe.

PUBLIC-ACCOUNT SYSTEM.—Sec. 3425, *idem*, and Acts of 1897, chap. 5, authorize the erection of workshops at the State penitentiary, and the employment of able-bodied convicts at such labor as may be of the most advantage to the penitentiary and the people of the State.

Annotated Statutes, sec. 4163, authorizes the employment of convicts in the State reformatory in manufacturing and mechanical industries, the products of their labor to be sold or disposed of for the benefit of the State.

PUBLIC-WORKS-AND-WAYS SYSTEM.—Sec. 1446 authorizes the employment of prisoners in county jails on any of the public streets, highways, or other works in the county where confined, or in adjoining counties.

Sec. 2438 and 3425 authorize the employment of State convicts in constructing ditches, canals, reservoirs, and feeders for irrigation and domestic purposes, and in making improvements in the penitentiary buildings.

HOURS OF LABOR.—Sec. 1445, 4174, and 4435 provide that convicts sentenced to hard labor shall be "kept constantly employed during every day except Sunday;" that inmates of the State reformatory shall be worked on an average of not exceeding 10 hours per day, Sundays excepted; and that persons convicted of violating municipal ordinances shall be employed not exceeding 10 hours each work day.

KINDS OF LABOR.—Manufacturing and mechanical industries; employment in quarries and mines, in the construction of irrigating ditches, canals, and reservoirs, and on public works and ways.

SALE AND COMPETITION.—The statutes contain no provision regulating the sale of convict-made goods.

Mill's Annotated Statutes of 1891, sec. 3448 and 3449 prohibit the bringing into the State to perform labor of any persons convicted of crimes or misdemeanors, except ex-convicts; or the bringing in of material for use in the repairing or erection of any public building labor in preparing which has been performed by convicts.

Sec. 4163 provides that convicts in the State reformatory shall, as far as practicable, be engaged in the manufacture of articles not manufactured elsewhere in the State. Acts of 1897, chap. 5, provides that able-bodied convicts in the State penitentiary shall be employed in work which may least conflict with the free labor of the State.

CONNECTICUT.

General Statutes of 1888, secs. 3341 and 3343, make general provision for the employment of inmates of the State prison "at such labor as the directors shall order;" and for the employment of a limited number outside the prison walls, within a limited distance, under the superintendence of the warden.

Sec. 3365 provides that county convicts may be required "to work according to their ability."

CONTRACT SYSTEM.—Sec. 3355 prescribes regulations under which 50 or more State convicts may be employed "by contract or otherwise at any trade or occupation."

PUBLIC-ACCOUNT SYSTEM.—Secs. 3394 and 3396 direct that inmates of workhouses be employed "at such labor as they shall be able to perform," be furnished with materials for their work, and be directed by authorized officials in the kind, manner, and place of their employment.

Acts of 1895, chap. 317, provides that inmates of the reformatory shall be employed in such manner as to provide as far as possible for their support, their reformation, and the formation of the ability and disposition to support themselves and their families.

HOURS OF LABOR.—The statutes contain no provision regulating the hours of convict labor.

KINDS OF LABOR.—No specific provision is made as to the kinds of labor at which convicts may be employed, but it is provided generally that they may be employed at "such labor as the directors shall order;" that they shall work "according to their ability," or at "such labor as they shall be able to perform," or "at any trade or occupation."

SALE AND COMPETITION.—The statutes contain no provision regulating the sale of convict-made goods.

General Statutes of 1888, sec. 3355, provide that when it is proposed to employ 50 or more convicts at any trade or occupation the directors of the State prison shall advertise the fact in newspapers throughout the State for four weeks before so employing them; shall inquire into the effect of the proposed employment upon the interests of the State and upon free labor; shall give hearing to all who wish to be heard in the matter; and if it shall appear from such inquiry that the proposed employment will not be for the best interests of the State, or will seriously injure the citizens of any State engaged in the proposed trade or occupation, it shall be prohibited.

Acts of 1895, chap. 153, provides that "no person confined in any penitentiary, or other place for confinement of offenders, under control of the State, shall be employed in or about the manufacture or preparation of any drugs, medicines, food or food materials, cigars or tobacco, or any preparation thereof, pipes, chewing gum, or any other article or thing used for eating, drinking, chewing, or smoking, or for any other use within or through the mouth of any human being."

DELAWARE.

LEASE SYSTEM.—Acts of 1881, chap. 550, sec. 7 (Revised Code of 1893, chap. 54), authorizes the hiring out of convicts "upon the most favorable terms for their county," in case contracts can not be made for their custody and maintenance in other States.

PUBLIC-ACCOUNT SYSTEM.—Revised Code of 1893, chaps. 54 and 133, provides that inmates of county jails designated as workhouses, and of workhouses, shall be provided with tools and materials for their use and work; and that prisoners under conviction of felony, or under sentence exceeding three months for misdemeanor, may be compelled to work, the proceeds or profits of their labor to belong to the county.

STATE-USE SYSTEM.—Acts of 1891, chap. 278, and acts of 1893, chap. 670 (Revised Code of 1893, chap. 54), authorize the employment of convicts in New Castle County in quarrying stone suitable for being broken into macadam, and in the conversion of stone into macadam for use in improving the public roads in the county.

PUBLIC-WORKS-AND-WAYS SYSTEM.—Acts of 1881, chap. 550, sec. 7 (Revised Code of 1893, chap. 54), authorizes the employment of convicts "upon the roads or any public works," in case contracts can not be made for their custody and maintenance in other States.

HOURS OF LABOR.—Revised Code of 1893, chap. 54, provides that 8 hours shall constitute a day's work at hard labor, to be performed between 8 o'clock a. m. and 5 o'clock p. m., for convicts in the jail or workhouse in New Castle County.

KINDS OF LABOR.—Quarrying and breaking stone into macadam, and employment upon public works and ways.

SALE AND COMPETITION.—The statutes contain no provision regulating the sale of convict-made goods or diminishing competition between convict and free labor.

DISTRICT OF COLUMBIA.

PUBLIC-ACCOUNT SYSTEM.—Webb's Digest, p. 24, authorizes the sale of manufactured articles and agricultural products produced by the inmates of the Washington Asylum and Workhouse, and the purchase of raw materials, tools, implements, and machinery for the purpose of carrying into effect the principle that employment must be provided for all inmates of the institution named capable of any species of labor.

Compiled Statutes of the District of Columbia, chap. 33, sec. 6, provides that prisoners in the jail may be employed at such labor as may be prescribed by the proper authorities, the proceeds thereof to be applied in defraying the expenses of their trial and conviction.

Acts of 1884-85, chap. 145 (U. S. S., vol. 23, p. 314), authorizes the production of commodities for sale by the inmates of the Reform School, by providing that the revenue derived from the labor of the inmates and the products of the farm shall be paid into the United States Treasury.

HOURS OF LABOR.—The statutes contain no provision regulating the hours of convict labor.

KINDS OF LABOR.—Manufacturing and farming.

SALE AND COMPETITION.—The statutes contain no provision regulating the sale of convict-made goods or diminishing competition between convict and free labor.

FLORIDA.

Revised Statutes of 1892, secs. 2940 and 3057, make general provision for the employment of State and county convicts, it being provided that State convicts sentenced to hard labor "shall be constantly employed for the benefit of the State," and that county convicts sentenced to hard labor "may be employed at such manual labor as the county commissioners may direct."

LEASE SYSTEM.—Secs. 3065 et seq. provide for the making of contracts with any person for the labor, maintenance, custody, and discipline of State convicts, for a term of years not exceeding 4. In case no application is received for the hire of the prisoners, the State may pay "to any person or persons such sums of money for taking such prisoners on such conditions as may be deemed advantageous to the interests of the State."

Sec. 3032, *idem.*, and acts of 1895, chap. 4323, authorize the hiring out or otherwise contracting for the labor of county convicts, upon such terms and conditions as may be deemed advisable.

PUBLIC-WORKS-AND-WAYS SYSTEM.—Revised Statutes of 1892, sec. 3032, authorizes the employment of county convicts "at labor upon the streets of incorporated cities or towns, or upon the roads, bridges, and public works in the several counties where they are so imprisoned."

HOURS OF LABOR.—Secs. 3057 and 3065 provide that State convicts shall labor not less than 8 nor more than 10 hours per day, and when under contract shall work between sunrise and sunset, and not be required to labor on Sunday.

Sec. 3033 provides that county convicts shall not be required to work more than 10 hours per day.

KINDS OF LABOR.—Employment upon public works and ways. The kinds of labor at which leased convicts may be employed are not specified.

SALE AND COMPETITION.—The statutes contain no provision for the regulation of the sale of convict-made goods or for diminishing competition between convict and free labor.

GEORGIA.

LEASE SYSTEM.—Acts of 1897, No. 340, sec. 10, authorizes the leasing of any number of State convicts to counties or to municipal corporations for not less than \$36 per convict per year, to be utilized upon their public roads or works.

Secs. 11 and 13 authorize the leasing to private companies or persons, for terms not longer than 5 years, of all State convicts not employed by the State or leased to counties or municipalities; the hirer to furnish transportation, maintenance, medicine, clothing, and all other necessities, and buildings; the convicts must be leased to the bidder or bidders offering the highest price per annum per capita; the hirer has the right to sublet the labor of the convicts leased by him.

PUBLIC-ACCOUNT SYSTEM.—Secs. 1, 6, and 8 create a prison commission, which is given full control of State convicts and general supervision of misdemeanor convicts, and is authorized to establish a State convict farm, and to provide for the employment of convicts thereon by the purchase of machinery, utensils, live stock, and other necessary equipments; and authorize the sale, to the best advantage, of surplus products of the penitentiary.

STATE-USE SYSTEM.—Sec. 8 authorizes the use of surplus products of the penitentiary by State institutions.

Penal Code of 1895, secs. 1144 and 1145, authorize the employment of county convicts in quarrying or gathering rock or gravel or other material for use in the improvement of county or municipal roads or streets.

PUBLIC-WORKS-AND-WAYS SYSTEM.—Acts of 1897, No. 340, secs. 9, 10, and 13, authorize the employment of convicts leased under prior laws, the control of whom has been resumed by the State, in erecting buildings, stockades, and appurtenances on the convict farm, or in such other labor as may be deemed profitable, and the hiring by counties or municipal corporations of State convicts, to be employed upon their public roads or works.

Penal Code of 1895, secs. 1039, 1137-1139, and 1143, provide for the working of misdemeanor convicts on public works or roads, and for the hiring of county convicts from other counties to be so worked.

HOURS OF LABOR.—Acts of 1897, No. 340, sec. 6, provides that the hours of labor of State convicts shall be regulated by the prison commission.

KINDS OF LABOR.—Quarrying and gathering rock and gravel for use on roads and streets; employment on the State convict farm and on public works and ways. The kinds of labor at which leased convicts may be employed are not specified.

SALE AND COMPETITION.—The statutes contain no provision regulating the sale of convict-made goods.

Acts of 1897, No. 340, sec. 11, provide that leased convicts shall be employed, as far as they can consistently with the best interests of the State, so "that the products of their labor shall come least in competition with that of free labor."

Penal Code of 1895, sec. 1039, stipulates that county authorities are not authorized to employ misdemeanor convicts "in such mechanical pursuits as will bring the products of their labor into competition with the products of free labor."

IDAHO.

LEASE SYSTEM.—Act approved Mar. 6, 1893 (acts of 1893, p. 155), authorizes the State prison commissioners to contract with responsible persons for the care, maintenance, and employment of all State convicts, such employment to be within the prison limits.

PUBLIC-ACCOUNT SYSTEM.—The same act authorizes the State prison commissioners to provide for the employment of State convicts within the confines of the penitentiary "by direct expenditures."

PUBLIC-WORKS-AND-WAYS SYSTEM.—Constitution, art. 13, sec. 3, authorizes the employment of State convicts "on public works under the direct control of the State," and act of Feb. 3, 1891, sec. 7 (acts of 1891, p. 22), authorizes the employment of such convicts upon the buildings and grounds of the penitentiary in making improvements and repairs.

Act approved March 9, 1895 (acts of 1895, p. 100), provides that male prisoners over 18 years of age in county jails shall be required to labor in and about the county jail and court-house for the "betterment, improvement, cleanliness, or maintenance" of said buildings or their grounds.

HOURS OF LABOR.—This act also provides that county convicts upon public works shall be employed not to exceed 8 hours per day, Sundays and holidays excepted.

KINDS OF LABOR.—Employment upon public works. The kinds of labor at which convicts may be employed under the lease and public accounts system are not specified.

SALE AND COMPETITION.—The statutes contain no provision regulating the sale of convict-made goods.

Act of March 6, 1893 (acts of 1893, p. 155), provides that no contract shall be made permitting the use of convict labor in any industry that will "conflict with any existing manufacturing industries in the State."

ILLINOIS.

PUBLIC-ACCOUNT SYSTEM.—Annotated Statutes of 1896, chap. 108, sec. 19, authorizes the employment of penitentiary convicts in manufacturing, under the direction of the warden; the articles manufactured to be sold for the benefit of the State.

Chap. 67, sec. 13, indirectly authorizes the remunerative employment of inmates of houses of correction by making provision for the expenses of maintaining such institutions "over and above all receipts for the labor of the persons confined therein."

STATE-USE SYSTEM.—Chap. 108, sec. 61, authorizes the employment of penitentiary convicts in quarrying stone for the use of the State.

PUBLIC-WORKS-AND-WAYS SYSTEM.—Chap. 108, secs. 27 and 54, authorizes the use of the labor of State convicts upon the penitentiary buildings and grounds or other public works, so far as the labor can be advantageously performed at the penitentiary.

HOURS OF LABOR.—Chap. 108, sec. 13, provides that the hours of labor of State convicts shall be determined by the penitentiary commissioners.

KINDS OF LABOR.—Manufacturing, employment upon public works and in quarrying stone.

SALE AND COMPETITION.—The statutes contain no provision regulating the sale of convict-made goods.

The fourth amendment to the Constitution, adopted November 2, 1886, prohibits the letting, by contract, of the labor of any convict confined in a penitentiary or reformatory institution in the State to any person.

INDIANA.

PUBLIC-ACCOUNT SYSTEM.—Acts of 1897, chap. 187, sec. 1, requires that inmates of State penal and reformatory institutions be placed at employment for account of the State, and directs the establishment of the public-account system.

STATE-USE SYSTEM.—Acts of 1897, chap. 187, provides for the employment of inmates of State penal and reformatory institutions at such trades and vocations as the convicts are adapted to, and as will supply said institutions, as nearly as possible, with all necessary articles of prison consumption; surplus products are to be sold to other State institutions needing the same.

Annotated Statutes of 1894, sec. 8221, provides that materials for building and repairs of the State prison shall be manufactured in the penitentiary.

Sec. 8235 authorizes the employment of convicts in the State prison in Clark County in chopping wood or timber for the use of the prison, in making brick, or in other labor on State land near the prison, and in the cultivation of any fields or grounds that may be leased for the purpose of raising vegetable products for the use of the prison.

Sec. 8250 provides that convicts in the southern State prison may be employed in manufacturing arms, implements, goods, and munitions of war needed in defense of the State, or for the use of State troops.

PUBLIC-WORKS-AND-WAYS SYSTEM.—Secs. 1935 and 4194 provide that male inmates of county, town, and city jails may be put at hard labor on public wharves, streets, alleys, or other thoroughfares, or upon public roads or highways, or any other work or improvement within the county for the public good or benefit.

Sec. 8334 provides that inmates of workhouses shall be kept at hard labor, as far as may be consistent with their age, sex, and ability, in such manner as may be deemed most advantageous, in or about the workhouse or upon any public wharf, street, alley, highway, thoroughfare, or other work or public improvement within the county, or at such work or in such manner as may be deemed best.

HOURS OF LABOR.—Acts of 1897, chap. 187, provides that the hours of labor in State prisons and reformatories shall not exceed 8 hours per day, "subject to temporary changes under necessity or to fit special cases."

Annotated Statutes of 1894, sec. 3502, provides that persons committed to city workhouses or county jails for certain offenses shall be required to labor not less than 6 nor more than 10 hours per day.

KINDS OF LABOR.—Manufacturing, including the production of material for repairing and building State prisons, arms, implements, goods, and munitions of war, and brick; chopping wood and timber; farming, and employment upon public works and ways.

SALE AND COMPETITION.—Acts of 1895, chap. 162, prohibits the sale or exposing for sale of convict-made goods manufactured in other States by any person, without first obtaining a license to sell such

goods, for which \$500 per year must be paid; the dealer is required to make a detailed annual report of his transactions in such goods; all such goods before being exposed for sale shall be branded or marked with the words "convict-made" followed by the year and the name of the institution in which made, in plain English lettering, of the style known as great primer roman capitals, upon the outside of, and the most conspicuous part of, the finished article, and its box, crate, or covering.

Acts of 1897, chap. 187, abolishes the contract system in State penal and reformatory institutions, and renders it unlawful to hire out, under contract, any of the inmates of such institutions; and directs that all work done by inmates of such institutions shall, as far as practicable, be hand work.

IOWA.

CONTRACT SYSTEM.—Code of 1897, sec. 5702, authorizes the making of contracts for the labor of convicts confined in the State penitentiary at Fort Madison, for terms of not longer than 10 years.

PUBLIC-ACCOUNT SYSTEM.—Sec. 5691 authorizes the carrying on of branches of labor and manufactures in the penitentiaries, under the superintendence of overseers having suitable knowledge and skill, who may be employed for the purpose of such superintendence; the management, superintendence, and guarding of the convicts to be in accordance with prescribed rules and regulations, or under the direction of the warden.

Sec. 5707 provides that the surplus stone produced by convict labor in the State stone quarries, not used by the State, shall be made into macadam and disposed of in such manner as may be for the best interests of the State.

Secs. 5654 and 5655 provide that county, city, or town prisoners may be furnished tools and materials to work with, their earnings to belong to the county, city, or town at whose expense they were supplied with tools and materials.

STATE-USE SYSTEM.—Secs. 5707 and 5708 authorize the employment of State convicts in the State stone quarries, and in breaking with hammers stone not used by the State for building purposes, for use in improving and macadamizing streets and highways; such broken stone to be furnished free of charge, except for transportation, to any county, township, town, city, or road district needing it.

PUBLIC-WORKS-AND-WAYS SYSTEM.—Secs. 5658 and 5660 authorize the employment of county or city convicts upon the streets, roads, public buildings, and grounds of the county or city where confined. Sec. 5707 authorizes the employment of State convict labor, when not otherwise employed, in the improvement and macadamizing of streets and highways.

HOURS OF LABOR.—Secs. 5658 and 5660 limit the employment of county and city prisoners upon public works and ways to 8 hours per day.

KINDS OF LABOR.—Manufacturing; stone quarrying, and breaking stone with hammers; and employment upon public works and ways.

SALE AND COMPETITION.—The statutes contain no provision regulating the sale of convict-made goods.

Code of 1897, secs. 5634 and 5707, prohibit the leasing of State or county convicts.

KANSAS.

CONTRACT SYSTEM.—Acts of 1891, chap. 152, secs. 34, 35, and 39, authorize the making of contracts for hiring out the labor of State convicts for terms not exceeding 6 years, to the highest bidder, at not less than 45 cents per day per convict; the State retaining full control over the convicts, and their labor to be performed within the prison grounds.

STATE-USE SYSTEM.—Acts of 1891, chap. 152, sec. 41, provides that coal mined by State convicts in State coal mines shall be used by the penitentiary, statehouse, insane asylum, and other State institutions.

General Statutes of 1889, secs. 5426 and 5427, provide for the employment of county convicts in breaking stone to be used in macadamizing streets and roads, and the use of such broken stone as can not be sold "for the improvement of some designated road or street."

PUBLIC-ACCOUNT SYSTEM.—Acts of 1891, chap. 152, sec. 8, provides that the warden of the penitentiary shall use proper means to furnish employment to State convicts most beneficial to the public, and shall superintend any manufacturing, mining, or other business carried on in or about the penitentiary, and shall sell or dispose of articles produced for the benefit of the State.

Secs. 40 and 41, *idem*, and acts of 1897, chap. 163, sec. 2, authorize the employment of penitentiary convicts not otherwise employed in mining coal, the surplus not required for use in State institutions to be sold to the general public.

General Statutes of 1889, sec. 5427, authorizes the sale of broken stone produced by the labor of county convicts.

PUBLIC-WORKS-AND-WAYS SYSTEM.—Acts of 1891, chap. 152, sec. 43, authorizes the use of such State convict labor as may be necessary in keeping in repair the road from the penitentiary to the limits of the city of Leavenworth.

General Statutes of 1889, sec. 5428, authorizes the employment of such county convicts as may so desire to work upon the public highways of the county.

HOURS OF LABOR.—Acts of 1891, chap. 152, sec. 39, provides that the hours of labor of State convicts employed under the contract system shall be 10 hours per day.

KINDS OF LABOR.—Manufacturing; farming; coal mining and work on public highways.

SALE AND COMPETITION.—Acts of 1837, chap. 163, prohibits the making of any contract for the sale of coal produced in State coal mines by convict labor not required for use in State institutions; but authorizes the sale of such coal as may not be so required, under the direction of the board of directors of the penitentiary.

The statutes contain no provision tending to diminish competition between convict and free labor.

KENTUCKY.

CONTRACT SYSTEM.—Acts of 1898, chap. 4, secs. 13, 15, and 17, provide for the making of contracts for the labor of penitentiary convicts with one or more contractors, the hiring to be per capita, for a term of not more than 4 years, with privilege of renewal; the contractor shall be entitled to the use of the various shops belonging to the State and the power therein; the various prisoners hired shall remain under prison police and government; the contractor may be permitted to introduce such machinery as may be necessary to the conduct of his business or manufacturing in the prison.

LEASE SYSTEM.—Statutes of 1894, secs. 4870 and 4871, provide that county workhouses, and the labor of the inmates, may be leased for a period of not more than one year, the lessee to have the same power and to discharge the same duties as if he were manager of the workhouse; or, inmates of workhouses may be hired out to individuals for all or any part of their terms, the lessee to provide for their maintenance in addition to the agreed price of hire.

PUBLIC-ACCOUNT SYSTEM.—Acts of 1898, chap. 4, secs. 3, 5, and 16, provide that State convicts not employed under the contract system shall be employed at such useful labor as can be profitably conducted within the prison walls.

The wardens are directed to purchase necessary materials and supplies for the employment of the convicts, and to make report "of all articles of manufacture, and other things made or fabricated in the penitentiary, by the labor of the prisoners, when the same are sold from time to time."

Acts of 1898, chapter 35, provides that inmates of houses of reform shall be employed in useful labor, the proceeds thereof to be used in reducing the expenses of the institutions.

PUBLIC-WORKS-AND-WAYS SYSTEM.—Constitution, sec. 253, authorizes the legislature to provide for the employment of convicts upon public works.

Statutes of 1894, secs. 1379 and 4322, provide for the employment of inmates of county jails and workhouses upon public highways in their respective counties; or upon public works of the counties, or of any city or town therein.

HOURS OF LABOR.—Sec. 1380, provides that prisoners in county jails "shall not be required to labor more than 8 hours a day."

KINDS OF LABOR.—Manufacturing; and employment on public work and ways.

SALE AND COMPETITION.—Statutes of 1894, secs. 524, 525, and 526, provide that no goods produced by convict labor outside of Kentucky shall be sold or offered for sale without being branded or marked with the words "convict made," followed by the year and the name of the institution in which made, in plain English lettering, of the style and size known as great primer roman condensed capitals; such brand or label shall be placed upon the most conspicuous part of the article, or its covering, if impossible to place it upon the article.

Constitution, secs. 253 and 254, prohibit the employment of penitentiary convicts outside of prison walls, except upon public ways and works.

LOUISIANA.

CONTRACT SYSTEM.—Constitution of 1898, art. 196, prohibits the leasing of convicts to work anywhere except on public works or convict farms, or in manufactories owned or controlled by the State; the provision to go into effect after the expiration of the existing lease. This implies the contract system as permissible.

LEASE SYSTEM.—Revised Laws of 1870, edition of 1897, act No. 114 of 1890, and act No. 134 of 1894, secs. 2855 and 2866, authorize the leasing of State convicts, to be employed in such manufacturing, mechanical, or other labor as the lessees may deem proper; the convicts may be employed by the lessees in working on levees, railroads, or other works of public improvement; or if such employment for them can not be obtained, they may be employed on plantation or farm work or at any other employment. The subleasing of leased convicts is forbidden.

Act No. 29 of 1894 provides that services of parish convicts may be hired or leased for the purpose of working them within the parish.

PUBLIC-WORKS-AND-WAYS SYSTEM.—Act No. 38 of 1878, and Constitution of 1898, art. 292, provide that convicts sentenced to imprisonment at hard labor may be sentenced to labor on the public works, roads, or streets of the city or parish in which the crime was committed.

Act No. 121 of 1888 and act No. 29 of 1894 provide for the working of parish convicts on roads, levees, or other public work or farm under the direction of the parish authorities.

HOURS OF LABOR.—Act No. 38 of 1878, act No. 121 of 1888, and act No. 29 of 1894 provide that 10 hours shall constitute a day's labor for leased parish convicts, or of convicts employed under the direction of parish authorities.

Act No. 134 of 1894 provides that State convicts working under lease, at agricultural pursuits, shall not be worked beyond the hours of labor usually devoted to farm work.

KINDS OF LABOR.—Manufacturing and mechanical industries; on railroads, levees, farms, and plantations; and on public ways and works.

SALE AND COMPETITION.—Act No. 132 of 1894 requires that convict-made brooms shall not be dealt in or sold unless each broom is stamped or labeled "convict made;" said stamp or label is required to be "not less than 4 inches long and 2½ inches wide and the letters thereof not less than 1 inch in size."

MAINE.

CONTRACT SYSTEM.—Revised Statutes of 1883, chap. 80, sec. 29, authorizes the making of "necessary and proper contracts for the carrying on of manufacturing or other industry" in county jails in behalf of the county.

LEASE SYSTEM.—Chap. 140, sec. 19, appears to authorize the lease system by authorizing the making of such contracts for "the letting to hire of such of the convicts [in the State prison] as the inspectors may deem expedient."

PUBLIC-ACCOUNT SYSTEM.—Chap. 140, secs. 8, 19, and 29, provide that reports of "the amount of manufactures of each kind, and of all other articles, sold from the (State) prison," shall be annually made to the legislature; that "all sales of limestone, granite, and other articles from the prison" shall be made by the warden; and that persons having suitable knowledge and skill in the branches of labor and the manufactures carried on in the prison shall, when practicable, be employed as superintendents.

STATE-USE SYSTEM.—Chap. 78, sec. 13, as amended by acts of 1889, chap. 288, provides that suitable materials and implements shall be provided, sufficient to keep inmates of jails at work; and that convicted tramps shall be put to labor at breaking stone for use in building and repairing highways.

HOURS OF LABOR.—Revised Statutes of 1883, chap. 128, sec. 17, as amended by acts of 1889, chap. 288, provides that tramps confined at hard labor in county jails shall be required to work 10 hours each day.

KINDS OF LABOR.—Manufacturing, including the manufacture and repair of all kinds of wagons, carriages, and sleighs, breaking stone, and quarrying or dressing granite.

SALE AND COMPETITION.—Acts of 1887, chap. 149, sec. 4, requires that all articles or goods manufactured at the State prison for sale shall be distinctly labeled or branded with the words "Manufactured at the Maine State prison."

Secs. 1, 2, and 3 provide that no more than 20 per cent of the male convicts in the State prison shall be employed at one time in any one industry, or in the manufacture of any one kind of goods which are manufactured elsewhere in the State; and that the manufacture and repair of all kinds of wagons, carriages, and sleighs, except the manufacture of infant carriages, shall be considered one industry; also that "so far as practicable, the industries upon which said convicts shall be employed shall be the manufacture of articles not elsewhere manufactured in the State."

MARYLAND.

CONTRACT SYSTEM.—Public General Laws, sec. 406, authorizes the directors of the State penitentiary to enter into such contracts as they may deem proper for the employment of the convicts therein.

LEASE SYSTEM.—Sec. 315 provides that inmates of the house of correction shall be kept at some useful employment, and that they may be "hired out for such useful employment as may be best suited to his or her age and most profitable to the institution."

Sec. 319 authorizes the hiring of convicts in the house of correction to a canal company, the convicts to be clothed, fed, and guarded by the managers of the institution.

Acts of 1890, chap. 529, authorizes the hiring out, for some useful employment, of persons sentenced to the Dorchester County jail.

PUBLIC-ACCOUNT SYSTEM.—Public General Laws, secs. 406 and 425, provide that State penitentiary convicts shall be put to hard labor, at such employment as will be most advantageous, and authorize the making of contracts for the sale of the products of their labor.

PUBLIC-WORKS-AND-WAYS SYSTEM.—The laws of this State contain several special statutes that authorize the employment of prisoners in county jails upon public roads, streets, and alleys in particular counties.

STATE-USE SYSTEM.—Acts of 1892, chap. 624, provides for the employment of persons convicted of assault, drunkenness, disorderly conduct or vagrancy, in Carroll County, in the breaking of stone to be used on public thoroughfares.

HOURS OF LABOR.—The statutes contain no provision regulating the hours of convict labor.

KINDS OF LABOR.—Manufacturing, breaking stone, employment upon public works and ways, and canal construction.

SALE AND COMPETITION.—The statutes contain no provision regulating the sale of convict-made goods.

Acts of 1890, chap. 590, prohibits the making of any contract for the manufacture, with the labor of penitentiary convicts, of tin cans for oyster or fruit packing purposes, or iron heating or cooking stoves, or iron castings used for machinery purposes.

MASSACHUSETTS.

Acts of 1897, chap. 434, makes all laws relating to convict labor in the State prison, reformatories, and houses of correction applicable to the labor of convicts in jails and at the State farm.

CONTRACT AND THE PIECE-PRICE SYSTEMS.—Acts of 1897, chap. 412, sec. 3, authorizes the employment of convicts under the contract system or under the piece-price system in the industry of cane seating and in the manufacture of umbrellas.

(The contract system had previously been abolished by section 1, chap. 447, acts of 1887.)

LEASE SYSTEM.—Public Statutes of 1882, chap. 219, sec. 23, provides that contracts may be made for the employment at domestic service of the female inmates of a jail, house of correction, or female reformatory for such terms and upon such conditions as may be deemed fit, such hiring to be made with the consent of the woman hired.

PUBLIC-ACCOUNT SYSTEM.—Acts of 1887, chap. 447, sec. 3, and acts of 1888, chap. 403, provide for the purchase of tools, implements, and machinery to be used in employing prisoners in penal and reformatory institutions, the manufactured articles to be sold for the public benefit.

STATE-USE SYSTEM.—Acts of 1898, chap. 334, sec. 13, and acts of 1887, chap. 447, require that, as far as possible, the products of convict labor shall be articles and materials used in the public institutions in the State and the counties thereof, to be sold to such institutions.

Acts of 1898, chap. 365, authorizes the employment of prisoners in any jail or house of correction in the preparation of materials for road making, to be sold to county, city, or town officers having the care of public roads.

Acts of 1898, chap. 393, provides that inmates of jails and reformatories may be employed in reclaiming and improving waste and unused land belonging to the State, and in preparing, by hand labor, material for road building, to be sold to State, county, city, or town authorities.

PUBLIC-WORKS-AND-WAYS SYSTEM.—Acts of 1898, chap. 307, provides that prisoners in the reformatory for males may be employed upon lands or buildings owned by the State.

Acts of 1885, chap. 94, provides that prisoners in the reformatory prison for women may be employed upon land appurtenant to the prison, or in buildings thereon.

Public Statutes of 1882, chap. 220, sec. 4, provides that convicts in jails may be employed upon the public lands and buildings belonging to the counties.

HOURS OF LABOR.—The hours of convict labor are not regulated by statute.

KINDS OF LABOR.—Manufacturing, including the manufacture of cane, rattan, and rush chairs, clothing, shirts, hosiery, harness, mats, shoes, shoe heels, brushes, umbrellas, and trunks; stonecutting; laundry work; domestic service by women; cane seating; reclaiming and improving waste and unused public land; preparation of road material; employment on public buildings and land.

SALE AND COMPETITION.—Acts of 1897, chap. 412, sec. 3, prohibits the employment of convicts under the contract or piece-price systems, except in the industry of cane seating and in the manufacture of umbrellas.

Acts of 1898, chap. 334, sec. 5, provides that the prices of products of convict labor, used in public institutions, "shall be uniform, and shall conform, as nearly as may be, to the usual market price of like goods manufactured in other places."

Acts of 1898, chaps. 365 and 393, require that only machines operated by foot or hand power shall be used in the preparation of material for road making, and that convicts in camp on certain State lands shall be employed in preparing such material by hand labor.

Acts of 1897, chap. 412, prescribes that no goods produced by convict labor shall be sold, except for use in public institutions, for less than the wholesale market price prevailing at the time of sale for similar goods; also, that the number of inmates in all the prisons of the State who may be employed in the production of certain commodities, not for use in public institutions, shall not exceed the number below specified: Brushes, 80; clothing, other than shirts or hosiery, 375; harness, 50; mats, 20; cane chairs with wood frames, 80; rattan chairs, 75; rush chairs, 75; shirts, by women only, 80; shoes, 375; shoe heels, 125; trunks, 20; stonecutting, 150; at laundry work, 100.

Acts of 1897, chap. 412, as amended by chap. 480, prescribes that not more than 30 per cent of the number of inmates of any penal institution having more than 100 inmates shall be employed in any one industry, except in the production of goods for use in State institutions and in the industry of cane seating and in the manufacture of umbrellas.

Acts of 1891, chap. 209, prohibits the employment of any prisoner in a State institution, outside the precincts of such institution, in mechanical or skilled labor for private persons.

Acts of 1888, chap. 189, prohibits the employment of convicts in the State prison in engraving of any kind.

Acts of 1887, chap. 447, provides that no new machinery to be propelled by other than hand or foot power shall be used in the State prison, reformatories, and houses of correction, and that articles manufactured therein shall be sold at the wholesale market prices of similar goods.

Resolves of 1898, chap. 81, provides for the erection of shops at the State prison in which convicts may be employed upon industries that can be prosecuted by hand labor.

MICHIGAN.

CONTRACT SYSTEM.—Acts of 1893, No. 118, makes provision for the employment of convicts in the State prisons and State house of correction and reformatory, superseding previous laws that provided for the contract system, and in effect doing away with that system, but providing that existing con-

tracts made under prior laws shall not be affected. Inasmuch as contracts for convict labor were authorized by prior law for periods of 10 years, and may have been made just prior to the adoption of the act of 1893, the contract system may still be in operation in these institutions.

PUBLIC-ACCOUNT SYSTEM.—Acts of 1893, No. 118, secs. 9 and 31, authorize the wardens of the State prisons and the State house of correction and reformatory to superintend manufacturing and mechanical business carried on therein, and to sell the products of convicts' labor for the benefit of the State.

STATE-USE SYSTEM.—Sec. 35, *idem.*, requires the employment of "so many prisoners in either prison (including the State prisons, reformatory, and house of correction) as are necessary in making all articles for the various State institutions, as far as practicable," the institutions using such articles to pay the institution making them therefor.

Howell's Annotated Statutes, sec. 9710, authorizes the employment of convicts in the State prison "in quarrying stone or other labor useful in the erection or repair of the building or walls of the prison."

PUBLIC-WORKS-AND-WAYS SYSTEM.—Acts of 1893, No. 118, sec. 31, authorizes the employment of inmates of the State prison, reformatory, and house of correction in the erection or repair of the buildings or walls of those institutions.

Howell's Annotated Statutes, sec. 9643, authorizes the employment of inmates of county jails "on any of the public avenues, streets, or highways, or other works in the county where such prisoner is confined, or in any of the adjoining counties."

HOURS OF LABOR.—Acts of 1893, No. 118, sec. 38, directs that able-bodied convicts in the State prisons, house of correction, and reformatory "shall as far as practicable be kept constantly employed at hard labor at an average of not less than 10 hours per day, Sundays excepted."

Howell's Annotated Statutes, sec. 9642, directs that inmates of county jails sentenced to hard labor, for whom any mode of labor shall be provided, shall be "kept constantly employed during every day except Sunday."

KINDS OF LABOR.—Manufacturing and mechanical industries, coal mining, stone quarrying, farming, and employment on public works and ways.

SALE AND COMPETITION.—The statutes contain no provision regulating the sale of convict-made goods.

Constitution, art. 18, sec. 3, provides that no mechanical trade shall be taught to convicts in State prisons, except in the "manufacture of those articles of which the chief supply for home consumption is imported from other States or countries."

Acts of 1893, No. 118, sec. 3, provides that once in 6 months the prison boards shall determine what lines of productive industry shall be pursued in the State prisons, house of correction, and reformatory, and shall select such diversified lines of industry as will least interfere with the carrying on of such industries by the citizens of the State.

MINNESOTA.

PIECE-PRICE SYSTEM.—Acts of 1895, chap. 154, sec. 4, authorizes the manufacture of articles in the State prison or State reformatory "by the piece under what is known as the piece-price system, by contracts with persons who furnish the materials used in such manufacture."

PUBLIC-ACCOUNT AND STATE-USE SYSTEMS.—Acts of 1895, chap. 154, provides that inmates of the State prison or reformatory shall be regularly employed and compelled to perform a reasonable amount of labor in some industrial employment; that necessary tools, implements, and machines shall be purchased for carrying on the industries of the institutions; and that such articles shall be manufactured, so far as possible, as are in common use in the various State institutions, to be sold to or exchanged between such institutions; but the products of convict labor may be sold in any market that can be found.

General Statutes of 1894, sec. 3598, provides that prisoners in the State reformatory may be employed in quarrying, manufacturing, and cutting granite, either for sale or for public use.

Sec. 7426, provides for the purchase of tools and materials to be used in the employment of prisoners in county jails, within jail limits, whenever and however it may be deemed practicable by the county commissioners, such labor to be compulsory for convicts and optional for prisoners held for trial.

PUBLIC-WORKS-AND-WAYS SYSTEM.—Acts of 1897, chap. 127, provides that able-bodied male prisoners in county or village jails may be required to labor upon the public streets or highways, or in or about public buildings or grounds, or at other public places in the county in which they are confined.

HOURS OF LABOR.—Sec. 2, *idem.*, provides that prisoners in county jails shall not be required to labor upon public works and ways exceeding 10 hours per day.

General Statutes of 1894, sec. 3598, provides that "no convict shall be obliged to labor at stonecutting and stonework more than 8 hours per day."

KINDS OF LABOR.—Manufacturing, including the manufacture of hard fiber twine; quarrying and cutting granite, and employment on public works and ways.

SALE AND COMPETITION.—The statutes make no provision regulating the sale of convict-made goods.

Acts of 1895, chap. 15, sec. 4, provides that "no contracts for the leasing of the labor of prisoners confined in the State prison, or State reformatory, at a certain rate per diem, giving the contractor full control of the labor of the prisoners, shall hereafter be made."

Sec. 8 provides that the number of prisoners in the State prison or reformatory employed in a single industry at the same time shall not exceed 10 per cent of the total number of persons engaged in such industry in the State, unless a greater number is required to produce articles or materials to be supplied to State or municipal institutions; but this limitation does not apply to the manufacture of binding twine.

General Statutes of 1894, sec. 3598, provides that not to exceed an average of 33 per cent of prisoners in the State reformatory shall, during any year, be employed in quarrying, manufacturing, and cutting granite for sale.

MISSISSIPPI.

LEASE SYSTEM.—Acts of 1894, chap. 76, and Acts of 1896, chap. 133, authorize the leasing of convicts in county jails, either by public auction to the highest bidder or in a body to a convict contractor, for a term not exceeding four years. The convicts, in either case, are to be controlled, directed, and maintained by the lessee. All female convicts in county jails, except incorrigibles, must be hired out individually and not to a convict contractor, and must not be worked with male convicts or upon public works or ways.

PUBLIC-ACCOUNT SYSTEM.—Constitution, sec. 225, and Code of 1892, sec. 3201, and Acts of 1894, chap. 75, authorize the carrying on of farming operations with the labor of penitentiary convicts, or manufacturing, under the sole management and control of State officials; or the working of such convicts in the penitentiary under State control and discipline.

Acts of 1894, chap. 76, sec. 2, and Acts of 1896, chap. 133, sec. 2, authorize the employment of county convicts in farming, under the direction of county authorities.

STATE-USE SYSTEM.—Acts of 1894, chap. 75, sec. 4, authorizes the employment of State convicts in making articles and implements necessary for use on the farms upon which convicts are employed; and in making shoes, clothing, and other articles for the convicts.

PUBLIC WORKS AND WAYS SYSTEM.—Constitution, sec. 224, and Code of 1892, sec. 3202, authorize the employment of penitentiary convicts on public roads or works, or on public levees, when such working will not interfere with their working at farming, the work to be performed under official discipline and management.

Acts of 1894, chap. 76, sec. 2, and Acts of 1896, chap. 133, sec. 2, authorize the employment, under official direction and management, of county convicts on public roads or works; but female convicts must not be so employed.

HOURS OF LABOR.—Acts of 1896, chap. 133, sec. 6, provides that leased county convicts shall not be worked more than 10 hours a day, or from sunup to sundown.

KINDS OF LABOR.—Manufacturing, including the manufacture of drainage tile, brick, wagons, agricultural implements, gearing, shoes, and clothing, farming, and employment upon public works and ways and levees.

SALE AND COMPETITION.—The statutes contain no provision regulating the sale of convict-made goods.

Constitution, secs. 223, 224, and Code of 1892, sec. 3201, prohibit the contracting or leasing of the labor of penitentiary convicts, and of county convicts for labor outside the counties of their conviction.

MISSOURI.

CONTRACT SYSTEM.—Revised Statutes of 1889, sec. 7238, authorizes the making of contracts for the employment of penitentiary convicts, for periods not exceeding 10 years, under such terms and conditions as may be deemed for the State's best interests, the labor to be performed within the prison walls. Such contracts are made to be made after advertisement calling for bids for the unemployed convict labor; but contracts already in existence may be renewed without advertising. Other sections provide that the discipline and maintenance are to be under the direction of the State.

LEASE SYSTEM.—Sec. 3437 appears to authorize the leasing of misdemeanor prisoners committed, for nonpayment of fines, in county jails, by providing that the amount "received for the services for such person so hired shall be applied upon the judgment against him."

PUBLIC-ACCOUNT SYSTEM.—Sec. 7235 provides for the employment of penitentiary convicts in manufacturing, and for the sale of the manufactured products "in such manner as may be for the best interests of the State."

STATE-USE SYSTEM.—Secs. 7235 and 7251 authorize the employment of penitentiary convicts in manufacturing commodities for State use.

Secs. 3438 and 3439, and act approved February 18, 1891 (Acts of 1891, p. 63), authorize the employment of county, city, town, and village convicts at breaking stone to be used for macadamizing purposes.

PUBLIC WORKS AND WAYS SYSTEM.—Sec. 7238 authorizes the employment of convicts in the penitentiary in making improvements connected therewith, or on other State improvements, or in erecting buildings for the State, or at labor for the preservation and security of property of the State and in collecting and providing materials therefor, or in improving any public grounds belonging to the State.

Secs. 3438 and 3439 and act approved February 18, 1891 (Acts of 1891, p. 63), authorize the employment of county, city, town, and village convicts on the public roads, highways, streets, alleys, turnpikes, or public works, or buildings of the county, city, town, or village.

HOURS OF LABOR.—Sec. 7274 provides that 8 hours per day from October 15 to April 15, and 10 hours per day from April 15 to October 15, shall constitute a day's labor of penitentiary convicts; and that no such convict shall be required to do work on Sunday, except necessary labor for the State.

KINDS OF LABOR.—Manufacturing, farming, making brick, quarrying, and making macadam, procuring fuel, ice, water, and other supplies for the penitentiary, and employment on public works and ways.

SALE AND COMPETITION.—The statutes make no provision regulating the sale of convict-made goods. Revised Statutes of 1899, sec. 7252, forbids the hiring out of male or female penitentiary convicts as domestic servants to any person outside the prison walls; or permitting convicts to be used as servants without reward, except by the warden or deputy warden in their own families.

MONTANA.

PUBLIC-ACCOUNT SYSTEM.—Penal Code, secs. 2960 and 2981, authorize the employment of State-prison convicts in such manner as will best subserve the interests of the State and the welfare of the prisoners; and provide for their employment in manufacturing and mechanical industries, with tools and materials purchased by the prison commissioners, the manufactured articles to be sold and the money therefor collected by the commissioners.

PUBLIC WORKS AND WAYS SYSTEM.—Sec. 2961 authorizes the employment of any portion of the prisoners in the State prison in the improvement of public buildings or grounds, or otherwise where they may be profitably employed either within or without the walls or inclosures of the prison.

Sec. 3038 authorizes the employment of convicts in county jails at labor on the public works and ways of the counties.

HOURS OF LABOR.—The statutes contain no provision regulating the hours of convict labor.

KINDS OF LABOR.—Manufacturing and mechanical industries, and employment on public works and ways.

SALE AND COMPETITION.—The statutes contain no provision regulating the sale of convict-made goods.

Constitution, art. 18, sec. 2, and Penal Code, sec. 2960, prohibit letting, by contract, the labor of any convict in a State penitentiary, prison, or reformatory institution.

NEBRASKA.

CONTRACT SYSTEM.—Acts of 1897, chap. 75, sec. 16, provides that the labor of such penitentiary convicts as can not be utilized to advantage in the manufacture of articles for use in the prison and other State institutions shall be "let out" by contract for a term not exceeding 3 years; the convicts to remain in the custody, control, discipline, and safe-keeping of the prison authorities, and be provided with board and clothing by them.

Compiled Statutes of 1895, secs. 7260 and 7261, direct that contracts shall be made for the employment in a profitable manner of convicts in county jails, under such regulations and provisions as shall be prescribed by county authorities, who shall provide for their safe custody while employed under such contracts, and pay for their board and other expenses incident to their labor out of the proceeds thereof.

PUBLIC-ACCOUNT SYSTEM.—Acts of 1897, chap. 75, sec. 16, provides that "as rapidly as it may be profitably done the State shall provide for the labor of the (penitentiary) convicts on its own account, to the end that the State may eventually provide means for the employment of all prisoners without the intervention of contractors; and the warden shall be charged with the duty of making the State prison as nearly self-sustaining as possible."

STATE-USE SYSTEM.—Sec. 16 authorizes the use of the labor of penitentiary convicts in manufacturing articles for use in the prison and all other State institutions.

PUBLIC WORKS AND WAYS SYSTEM.—Compiled Statutes of 1895, secs. 1099, 1281, 1315, and 7260, provide that county convicts may be employed on roads or other places, as may be designated by the county commissioners; and that prisoners sentenced for violation of city ordinances, or committed for nonpayment of fines and costs "shall be put to work for the benefit of the city" for the term of imprisonment or until the fines and costs are worked out at \$1.50 per day. It is presumed that the intention of this provision is to utilize the labor of prisoners upon the public works and ways of cities.

HOURS OF LABOR.—The statutes contain no provision regulating the hours of convict labor.

KINDS OF LABOR.—Manufacturing, employment at stone quarries, and upon public works and ways.

SALE AND COMPETITION.—The statutes contain no provision regulating the sale of convict-made goods, or tending to diminish competition between convict and free labor.

NEVADA.

CONTRACT SYSTEM.—Acts of 1893, chap. 91, sec. 1, authorizes the renting or hiring out of any or all the labor of the convicts in the State prison.

LEASE SYSTEM.—General Statutes of 1885, sec. 1406, authorizes the hiring out of State-prison convicts for labor upon any private work or employment.

PUBLIC-ACCOUNT SYSTEM.—Acts of 1887 and of 1893, chap. 91, sec. 1, and General Statutes of 1885, sec. 1405, authorize the employment of State-prison convicts in manufacturing or mechanical pursuits, the materials and appliances necessary therefor to be purchased by the State, and the products, thereof to be sold for the benefit of the State.

STATE-USE SYSTEM.—Acts of 1887, chap. 91, provides that State-prison convicts engaged in the manufacture of boots and shoes shall make all the boots and shoes required for the use of inmates of the prison, and by wards of the State in other institutions to be paid for thereby.

Acts of 1887, chap. 132, Acts of 1889, chap. 60, and Acts of 1891, chap. 78, require the employment of State convicts in preparing stone or other materials for use in the construction of public buildings.

PUBLIC WORKS AND WAYS SYSTEM.—General Statutes of 1885, sec. 1406, provides that State-prison convicts may be employed in the improvement of public buildings and grounds, either within or without the walls or inclosures of the prison, whenever in the opinion of the prison authorities it will be to the advantage of the State to so employ them.

Secs. 2148 and 2151, provide that convicts in county, city, or town jails shall be put to labor upon the construction, repair, or cleaning of public ways and works in their respective counties, cities, and towns.

HOURS OF LABOR.—Sec. 1417 provides that every able-bodied State-prison convict shall be required to perform "as many hours of faithful labor in each and every day during his term of imprisonment as shall be prescribed by the rules and regulations of the prison."

Sec. 2151 provides that prisoners in county, city, or town jails employed at labor upon public works and ways shall be kept at such labor, when so required by the proper authorities, "at least 6 hours a day during 6 days a week, when the weather will permit."

KINDS OF LABOR.—Manufacturing and mechanical industries, including boot and shoe making, and employment upon public works and ways.

SALE AND COMPETITION.—Acts of 1887, chap. 91, provides that boots and shoes made by State-prison convicts in excess of the requirements of inmates of State institutions may be sold in the open market at prices to be fixed by the warden not less than the cost of materials. Such sales shall only be made at wholesale, in full cases and unbroken packages of not less than one dozen pairs.

NEW HAMPSHIRE.

CONTRACT OR LEASE SYSTEM.—Public Statutes of 1891, chap. 285, sec. 5, Paragraph VI, authorizes the governor, with the advice of the council, to make contracts for the support and employment of State-prison convicts.

PUBLIC-ACCOUNT AND STATE-USE SYSTEMS.—Sec. 5, Paragraph V, *idem*, authorizes the employment of State-prison convicts in the manufacture of commodities for sale and for State use, by providing for "the sale of articles manufactured in the prison or not necessary for the use thereof."

Public Statutes of 1891, chap. 282, sec. 14, authorizes the employment and setting at labor of "any prisoner confined in the county jail, in such manner as shall be consistent with his safe-keeping, if the labor can be prosecuted without expense to the county."

Chap. 283, sec. 3, *idem*, provides that the county commissioners and selectmen "shall direct as to the manner and kind of labor to be performed by the inmates of houses of correction in their respective counties and towns, and the place of its performance, and shall furnish materials therefor."

HOURS OF LABOR.—The statutes contain no provision regulating the hours of convict labor.

KINDS OF LABOR.—The only kind of employment mentioned in the statutes for the utilization of convict labor is manufacturing.

SALE AND COMPETITION.—The statutes contain no provision regulating the sale of convict-made goods or diminishing competition between convict and free labor.

NEW JERSEY.

CONTRACT SYSTEM.—General Statutes of 1896, pages 3167-68, secs. 15 and 18, authorize the hiring out of the labor of prisoners in the State reformatory, by contract, to the best bidders, after public advertisement.

PIECE-PRICE SYSTEM.—Pp. 3161-3162, secs. 54 and 56, authorize the employment of convicts in any prison, penitentiary, jail, or public reformatory institution, not employed in the production of goods for use in State institutions, "on what is commonly known as the piece-price plan." Before any agreement is made under this system advertisements must be published calling for bids, "so that there shall be a proper and just competition" for the labor of the convicts.

P. 3169, sec. 20, authorizes the employment of inmates of the State reformatory under the "piece-price plan."

THE LEASE SYSTEM.—Acts of 1898, chap. 239, secs. 9, 10, and 11, provide that persons committed for disorderly conduct or as tramps, in any county, city, township, borough, or district, may be bound out to labor in the service of any suitable person or corporation for the terms of their commitment.

PUBLIC-ACCOUNT SYSTEM.—General statutes of 1896, pp. 3161-3162, secs. 54 and 56, authorize the employment of convicts in any prison, penitentiary, jail, or public reformatory institution, not engaged in the production of goods for use in State institutions, "under what is known as the public-account system," and authorize the selling of the goods produced under such system.

Act of March 25, 1895, pp. 3167-3169, sec. 15, 18, and 20, authorizes the employment of inmates of the State reformatory in the production of goods to be sold for the benefit of the State, "under the public-account system."

P. 1888, sec. 51, authorizes the procurement of "suitable articles, materials and things" for the "labor, work, and employment" of inmates of workhouses.

STATE-USE SYSTEM.—P. 3161, sec. 54, provides that prisoners in penal and reformatory institution shall be employed, as far as practicable, in the manufacture of or at work upon goods used in State institutions.

Acts of 1898, chap. 239, sec. 10, provide that persons convicted as tramps or disorderly persons by county, city, township, borough, or district authorities may be required to work on the county farm in producing food, presumably for use in public institutions.

PUBLIC-WORKS-AND-WAYS SYSTEM.—Acts of 1898, chap. 237, sec. 167, provides that convicts in county jails or penitentiaries may be required to perform reasonable labor, such as cooking, cleaning, gardening, mechanical, or other service necessary to be performed, within the bounds of the court-house or county property.

Acts of 1898, chap. 239, sec. 10, provides that tramps or disorderly persons convicted by county, city, township, borough, or district authorities may be required to perform labor upon any county farm, or upon the streets, roads, and highways.

HOURS OF LABOR.—General statutes of 1896, p. 3152, art. vii, sec. 4, requires that State prison convicts "shall every day, except Sundays, be kept, as far as may be consistent with their sex, age, health, and ability, strictly at hard labor of some sort."

Acts of 1898, chap. 239, sec. 16, require that inmates of workhouses be compelled to work, when able, not less than six hours per day.

KINDS OF LABOR.—Manufacturing, mechanical, and agricultural pursuits; cooking, cleaning, gardening, or other service necessary to be performed within the bounds of court-house or county property, and employment on public ways.

SALE AND COMPETITION.—General statutes of 1896, p. 3156, sec. 24, and p. 3168, sec. 18, require that goods manufactured in the State reformatory and under contract in the State prison, in whole or in part, be marked, stamped, or tagged with the words "Manufactured in the New Jersey State prison," or "Manufactured in the New Jersey Reformatory." If it be impracticable to stamp each article, or if articles are manufactured which are usually put up in packages, it shall be sufficient to put the stamp, label, or tag upon the packages in a good and permanent manner. The marking of convict-made goods must be "in a legible and conspicuous manner."

Pp. 3155 and 3162, secs. 17, 18, and 59, and p. 3168, sec. 18, prohibit the manufacture of felt or silk hats, or any part thereof, or the employment of more than 100 persons at a time in any special branch of industry, or in making or manufacturing goods, wares, or merchandise of any kind whatsoever, in penal or reformatory institutions.

P. 3162, sec. 56, requires that goods manufactured in penal and reformatory institutions under the public-account system shall only be sold after public advertisements in the principal newspapers, "calling for public bids, so that there shall be a proper and just competition" for their purchase; "and every effort shall be made to obtain current market prices for the same."

P. 3161, secs. 50-53, prohibits the making of "any contract for the labor" of prisoners in penal and reformatory institutions; but this inhibition has been greatly modified by subsequent legislation, as hereinbefore set forth.

NEW MEXICO.

CONTRACT SYSTEM.—Compiled laws of 1897, sec. 3518, provide that the labor of penitentiary convicts may be hired out, their labor to be performed under the control of the superintendent of the penitentiary.

LEASE SYSTEM.—Sec. 3528 authorizes the hiring out of the labor of penitentiary convicts; but convicts so hired shall not "be allowed to go out to labor without being under the custody of a guard or an overseer of the penitentiary."

PUBLIC-ACCOUNT SYSTEM.—Secs. 3601, 3518, and 3649 provide that male penitentiary convicts shall perform labor under such rules and regulations as may be prescribed by the proper authorities; that convicts not working on public buildings and improvements shall be employed "as may be most advantageous," and that the "products of convict labor shall be sold to the highest bidder for cash."

Sec. 841 provides that able-bodied convicts in county jails shall be compelled to labor at some useful employment during the terms of their conviction.

STATE-USE SYSTEM.—Secs. 3477 and 3548 authorize the employment of penitentiary convicts in the production of brick, lime, and stone for use in the capitol building, and in quarrying and hauling stone for use on public improvements.

PUBLIC-WORKS-AND-WAYS SYSTEM.—Sec. 3477 requires that all the labor possible of penitentiary convicts be used and utilized in the reconstruction and rebuilding of the Territorial capitol building.

Secs. 3518 and 3649 authorize the use of the labor of convicts in the erection or extension of the prison buildings, walls, workshops, or other improvements.

Sec. 3548 provides that penitentiary convicts not otherwise occupied may be employed in and about any work, labor, or improvement on the capitol building or grounds, or upon public thoroughfares or bridges in and near Santa Fe, or in quarrying or hauling stone, or at work for preventing the banks of the Santa Fe River from overflow and destruction.

Sec. 3631 directs that any number of penitentiary convicts not exceeding 50 be surrendered to any contractor for the construction of certain public buildings and improvements, to be worked thereon; such convicts to be under the care, custody, and control of, and to be maintained by, the contractor, who is not to be required to pay anything for their services.

HOURS OF LABOR.—The statutes contain no provision regulating the hours of convict labor.

KINDS OF LABOR.—Manufacturing, including the production of brick, lime, and stone; quarrying and hauling stone, and employment on public works and ways.

SALE AND COMPETITION.—Compiled laws of 1897, sec. 3649, required that "all the products of convict labor shall be sold to the highest bidder for cash, after twenty days' notice by advertisement in three daily newspapers, not more than one of which shall be published in the same county.

NEW YORK.

PUBLIC-ACCOUNT SYSTEM.—Constitution, art. 3, sec. 29, provides that no person in any 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 given or sold to any person, firm, association, or corporation other than State institutions; but it was declared incidentally by the New York court of appeals, on October 11, 1898, in the case of *People v. Hawkins* (51 N. E. Reporter, p. 257), that this constitutional inhibition does not forbid the sale of convict-made goods to the general public, although the chief basis of the decision in that case rested on another question. The statutes of 1896, however (*Birdseye's Statutes and Codes of 1896*, p. 2362, secs. 97, 102), appear to prohibit the sale of goods except to the State or its subdivisions.

Birdseye's Statutes and Codes of 1896, p. 881, secs. 20, 21, and p. 878, sec. 1, provide that persons convicted by city or county authorities as disorderly persons shall be confined in the county jail or city prison at hard labor and the product of such labor sold, half the proceeds going to the county or city and half to the prisoner on his discharge; but these provisions appear to be subject to the terms of the later statute.

STATE-USE SYSTEM.—Constitution, art. 3, sec. 29, and *Birdseye's Statutes and Codes of 1896*, pp. 2363-2364, secs. 98 et seq., authorize the employment of convicts in State prisons, penitentiaries, jails, and reformatories in the production of commodities for use in the public institutions in the State, to be paid for thereby.

P. 760, sec. 93, authorizes the employment of prisoners in county jails in preparing materials for highway purposes, to be sold to and used in their respective counties or the towns, cities, and villages therein.

PUBLIC-WORKS-AND-WAYS SYSTEM.—P. 2363, sec. 103, provides that the labor of convicts in State prisons and reformatories, after the manufacture of needed supplies, shall be primarily devoted to the State and the public buildings and institutions thereof; and that the labor of convicts in penitentiaries, after the manufacture of needed supplies, shall be primarily devoted to the respective counties in which said penitentiaries are located, and the towns, cities, and villages therein. This provision is construed as authorizing the employment of convicts on public works and ways.

P. 2368, sec. 113, authorizes the employment of State-prison convicts, not to exceed 300 in each prison, in the improvement of public highways, outside of incorporated cities or villages, within a radius of 30 miles from the prison.

P. 760, sec. 93, authorizes the employment of prisoners in county jails in repairing penal institutions and in building and repairing the highways in their respective counties.

Acts of 1897, chap. 106, and acts of 1898, chap. 133, authorize the employment of convicts in the Sing Sing prison in making improvements upon the prison building, and those in the prison at Clinton in improving a specified highway.

HOURS OF LABOR.—*Birdseye's Statutes and Codes of 1896*, p. 2362, sec. 98, directs that able-bodied convicts in State, penal, and reformatory institutions shall be kept at hard labor not to exceed 8 hours per day every day except Sundays and holidays.

P. 758, sec. 93, directs that prisoners in county jails shall be constantly employed at hard labor, when practicable, every day except Sunday.

KINDS OF LABOR.—Manufacturing, including the making of brooms and brushes from broom corn, preparing material for highways, and employment on public works and ways.

SALE AND COMPETITION.—Acts of 1897, art. 4, chap. 415, requires the procurement of a special license for the sale of convict-made goods; and that no convict-made goods shall be sold or exposed for sale to the general public without being branded, labeled, or marked with the words "Convict made," followed by the year when and the name of the penal or reformatory institution in which such commodities were produced. The brands, marks, or labels must be printed in plain English lettering of the style and size known as great primer roman condensed capitals. Labels are to be used only when branding or marking is impossible, and must be in the form of a paper tag and attached to each article by wire, if possible, and placed securely upon the box, crate, or other covering in which such goods are packed, shipped, or exposed for sale.

(NOTE.—Acts of 1894, chap. 699, and acts of 1896, chap. 931, required the marking and labeling of convict-made goods sold or offered for sale to the general public. The act of 1896 was declared unconstitutional by the court of appeals of New York, on October 11, 1898, in the case of *People v. Hawkins* (51 N. E. Reporter, p. 257). The act of 1894 was declared unconstitutional by the supreme court of New York in the case of *People v. Hawkins* (85 Hun., p. 43).

Acts of 1898, chap. 645, provide that no printing or photo-engraving shall be done in any State prison, penitentiary, or reformatory for the State or for any public institution owned or controlled thereby, except such as may be required in State penal and charitable institutions, and the reports of the State commission of prisons and the superintendent of prisons, and printing required in their offices.

Birdseye's Statutes and Codes of 1896, p. 2369, secs. 123, 124, 125, provide that whenever it is ascertained by actual enumeration that the total number of prisoners in the several prisons, penitentiaries, reformatories, and other penal institutions, employed in manufacturing brooms and brushes of broom corn exceeds 5 per cent of the total number of persons in the State employed in manufacturing such goods "the governor shall require the managers of any one or more of such penal institutions to discontinue such employment, wholly or in part, as he shall direct."

Sec. 118, p. 2368, provides that "not exceeding 300 of the convicts confined in each State prison" shall be employed in the improvement of public highways.

Birdseye's Statutes and Codes of 1896, p. 2362, secs. 97 and 98, Constitution, art. 3, sec. 29, and prohibit the employments of convicts in State prisons, penitentiaries, jails, or reformatories, under the contract, piece-price, or lease systems, and appear clearly to prohibit the sale of goods made by convicts in such institutions, except to the State or any of its institutions and subdivisions.

NORTH CAROLINA.

LEASE SYSTEM.—Constitution, art. xi, sec. 1; acts of 1897, chap. 219, sec. 5; acts of 1899, chap. 314, sec. 5; and code of 1883, secs. 3433, 3449, 3450, authorize the "farming out" of convicts; the making of "contracts at remunerative terms with persons or corporations in order to employ and support as many of the able-bodied (penitentiary) convicts on public works as the interests of the State and the constitution will permit;" that "in any scheme to make the penitentiary self-sustaining preference shall be given to contracts for able-bodied convicts in larger bodies, hired out to the best advantage;" and general authority is given for the hiring out of penitentiary convicts.

Code of 1883, sec. 3448, provides that inmates of county, city, or town jails may be hired out "to labor for individuals or corporations."

PUBLIC-ACCOUNT SYSTEM.—Constitution, art. xi, sec. 1, authorizes the employment of convicts punished by imprisonment by hard labor at "other labor for the public benefit" than the "farming out" of such convicts or their employment on public works and ways.

Acts of 1897, chap. 219, sec. 5, provides for the employment of penitentiary convicts within the penitentiary or on farms owned or leased by the institution, and for the sale of "all articles manufactured or products produced by the convicts not deemed necessary for their use and comfort for the next ensuing year."

STATE-USE SYSTEM.—Acts of 1897, chap. 219, sec. 5, authorize the production of commodities by convict labor, for use in the penitentiary, by providing for the sale of all manufactured articles and products of the labor of penitentiary convicts "not necessary for their use and comfort for the next ensuing year."

PUBLIC-WORKS-AND-WAYS SYSTEM.—Constitution, art. xi, sec. 1, authorizes the employment of convict labor on public works and highways.

Acts of 1895, chap. 194; chap. 314, sec. 5, and acts of 1899, chap. 361, sec. 6, make provision for the use by counties of penitentiary convicts, in working their public roads, canals, and turnpikes, the use of female convicts in working on public roads is being prohibited. The statutes of this State contain many other laws authorizing similar employment of convicts in particular counties.

Code of 1883, sec. 2508, as amended by acts of 1885, chap. 70, and acts of 1887, chap. 74, authorize the employment of not more than 325 penitentiary convicts in reclaiming State swamp lands and in constructing canals, ditches, roads, and other necessary works of improvement through or in the vicinity of such lands.

Acts of 1889, chap. 361, sec. 5, and Code of 1883, sec. 3448, authorize the employment of prisoners in county, city, or town jails on public roads.

HOURS OF LABOR.—The statutes contain no provision regulating the hours of convict labor.

KINDS OF LABOR.—Manufacturing; farming; reclaiming State swamp land; employment in the construction of railroads, canals, and ditches, and upon public works and ways.

SALE AND COMPETITION.—Acts of 1897, chap. 219, sec. 5, provides that such products of the labor of penitentiary convicts as are sold shall be sold "at the highest market prices," as and when the superintendent may deem best; "but any article or product held more than 2 months for better prices shall be sold when the board of directors shall direct."

The number of convicts that may be hired or employed on public ways and works, or otherwise, is frequently limited by statute.

NORTH DAKOTA.

PUBLIC-ACCOUNT SYSTEM.—Acts of 1897, chap. 108, and Revised Codes of 1895, secs. 8571, 8574, authorize the carrying on of farm operations and the manufacture of brick by convict labor, the proceeds of such enterprises to be disposed of by the State.

Revised Codes of 1895, sec. 8554, provides that State convicts may be employed in cultivating any ground belonging to the penitentiary.

Sec. 8622 provides that prisoners in common jails sentenced to hard labor shall be furnished, in the discretion of the sheriff, with suitable tools and materials for their profitable employment for the benefit of the county.

STATE-USE SYSTEM.—Acts of 1897, chap. 108, and Revised Codes of 1895, sec. 8571, authorize the disposal of products of convict labor "to the State or any political division thereof," or to any public institution of the State, and the manufacture of brick for State use by convict labor.

PUBLIC-WORKS-AND-WAYS SYSTEM.—Revised Codes of 1895, secs. 8564, 8573, authorize the employment of penitentiary convicts upon public buildings, and in macadamizing or otherwise improving the roads and streets used as approaches to public buildings and institutions.

Sec. 8622 authorizes the employment of prisoners sentenced to hard labor in common jails, outside the jail or jail yards, at work for the county or for any municipality therein, on public streets or highways, or otherwise.

HOURS OF LABOR.—Revised Codes of 1895, sec. 8546, requires that penitentiary convicts shall be "constantly employed" for the benefit of the State.

KINDS OF LABOR.—Manufacturing, including brick making; farming, and employment on public works and ways.

SALE AND COMPETITION.—Acts of 1897, chap. 108, prohibits the employment of convicts under the contract, piece-price, or lease systems, and the disposal of products of convict labor (except brick or farm products) to any private person, firm, association, or corporation, by providing that "no person in any prison, penitentiary, or other place for the confinement of offenders in said State 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 the profit of his work shall be farmed out, contracted, and given or sold to any person, firm, association, or corporation," the production of brick and farm products excepted, and the disposal of products of convict labor to the State or political divisions thereof, and to the public institutions, being allowed.

OHIO.

Act of April 25, 1898 (93 Laws of Ohio, p. 349), provides that the labor imposed upon inmates of the Ohio State reformatory or the industrial pursuits prescribed for their employment shall be in the discretion of the board of managers.

PIECE-PRICE SYSTEM.—Act of March 31, 1892 (89 Laws of Ohio, p. 192), authorizes the establishment of the piece-price system in the State penitentiary, contracts thereunder to be made, after due advertisement, with the best and most satisfactory bidders; the labor is to be performed under the direction and control of the prison officials; no contract for the product of convicts' labor on the "piece or process plan" shall bind the State for a period exceeding 5 years and no arrangement shall be made for a period of more than 1 year that will produce less than 70 cents per day per capita for the labor of able-bodied convicts, except in certain specified cases.

PUBLIC-ACCOUNT SYSTEM.—Revised Statutes of 1890, sec. 6801, provides that prisoners in county jails shall perform labor anywhere within the county, the avails of which shall be paid into the county treasury.

Secs. 2100, 6856-3 provide that inmates of workhouses shall be kept at hard labor either within the institution or elsewhere within the limits of the corporation, and that certain convicts therein "shall be employed at useful labor and earn their own living," and

Secs. 2107-3, 2107-21 authorize the working of inmates of workhouses under the public-account system by making provision for the costs of maintaining such institutions "over and above the proceeds arising from the sale of the products thereof."

STATE-USE SYSTEM.—Act of April 17, 1896 (92 Laws of Ohio, p. 184), provides that all articles of food, raiment, or use, produced by the labor of inmates of any penal, reformatory, or benevolent institution, that can be used in the support or maintenance of any other such institution shall be supplied by the institution growing, making, manufacturing, or producing the same to such other institutions, of which accounts shall be kept and bills rendered.

Act of March 31, 1892 (89 Laws of Ohio, p. 192), requires the managers of the State penitentiary to employ all the prisoners that are necessary in making all articles for the various State institutions, as far as practicable, to be paid for by such institutions.

Revised Statutes of 1890, sec. 7424, authorizes the employment of a portion of the penitentiary convicts in manufacturing articles used in carrying on the penitentiary.

PUBLIC-WORKS-AND-WAYS SYSTEM.—Laws of 1891, p. 386 (vol. 88), authorizes the employment of convicts in the State reformatory in making improvements and additions to the buildings thereof.

HOURS OF LABOR.—The hours of convict labor are not regulated by statute.

KINDS OF LABOR.—Manufacturing and mechanical industries; production of food, raiment, knit and woolen goods, and employment on public works.

SALE AND COMPETITION.—Act of April 25, 1896 (93 Laws of Ohio, p. 349), provides that the "contract system shall not be employed" in imposing labor upon the inmates of the Ohio State reformatory, or in the industrial pursuits prescribed for their employment.

Act of March 31, 1892 (89 Laws of Ohio, p. 192), prohibits the making of contracts whereby any contractor shall have control of the labor of convicts in the penitentiary.

Act of May 19, 1894 (91 Laws of Ohio, p. 346), made regulations governing the sale in Ohio of convict-made goods produced in other States; but it was declared unconstitutional by the Ohio supreme court May 11, 1897, in the case of *Arnold v. Yanders* (47 N. E. Reporter, p. 50).

Act of April 21, 1898 (90 Laws of Ohio, p. 224), prohibits the manufacture of knit or woollen goods in any penal, reformatory, or charitable institution, except for the use of the inmates thereof.

Act of April 24, 1893 (90 Laws of Ohio, p. 237), provides that after May 1, 1894, the total number of prisoners and inmates of penal and reformatory institutions employed at one time in the manufacture of any one kind of goods which are manufactured in the State outside of such institutions shall not exceed 10 per cent of the number of persons engaged in manufacturing such goods outside such institutions, except in industries in which not more than 50 free laborers are employed, as shown by the Federal Census, or State enumeration, or by any report of the Commissioner of Labor statistics.

Act of April 27, 1898 (90 Laws of Ohio, p. 319), requires that convict-made goods produced in penal, reformatory, or other institutions in which convict labor is employed "in this or any other State," "imported, brought, or introduced into the State of Ohio," shall, before being exposed for sale, be branded, labeled, or marked with the words "convict-made," followed by the name of the institution where made, in plain English lettering, of the style known as great primer Roman capitals; such articles must be branded or marked, if possible; if not possible, a label must be used in the form of a paper tag which must be attached by wire to each article when its nature will permit, and placed securely on the box, crate, or covering in which such goods may be packed, shipped, or exposed for sale; the brand, mark, or label must be on the outside of and upon the most conspicuous part of the finished article and its box, crate, or covering.

Act of March 31, 1892 (89 Laws of Ohio, p. 193), provides that penitentiary convicts under 22 years of age shall be employed, when possible, at hand work exclusively, for the purpose of acquiring a trade.

Act of April 30, 1891 (88 Laws of Ohio, p. 420), provides that prisoners in the State reformatory shall be employed in such ways as not to interfere with or affect free labor in the least possible degree.

OKLAHOMA.

PUBLIC-ACCOUNT SYSTEM.—Statutes of 1893, sec. 5436, provides that convicts in jails, sentenced to hard labor, shall be furnished with suitable tools and materials to work with, if in the opinion of the sheriff they can be profitably employed, and that the county shall be entitled to the earnings of such convicts.

PUBLIC-WORKS-AND-WAYS SYSTEM.—The same section and Acts of 1895, chap. 41, sec. 50, authorize the employment of jail convicts either for the county or for any municipality therein, upon the public streets or highways.

HOURS OF LABOR.—The hours of convict labor are not regulated by statute.

KINDS OF LABOR.—Mechanical, and upon public ways.

SALE AND COMPETITION.—The statutes contain no provisions regulating the sale of convict-made goods or tending to reduce competition between convict and free labor.

OREGON.

Hill's Annotated Laws, sec. 3861, provides that penitentiary convicts may be employed "in accordance with rules which may be prescribed from time to time by the governor."

CONTRACT SYSTEM.—Act of February 23, 1895 (Acts of 1895, p. 40), authorizes the making of contracts with any person, firm, or corporation for the labor of penitentiary convicts at a compensation of not less than 35 cents per day per convict, for any period or periods of time not exceeding 10 years, the labor to be performed within the penitentiary or the inclosures thereof, under the general charge and custody of the prison officials.

STATE-USE SYSTEM.—Hill's Annotated Laws, p. 1817, sec. 4, authorizes the use of materials produced by the labor of penitentiary convicts in the construction and establishment of the State reform school.

PUBLIC-WORKS-AND-WAYS SYSTEM.—Act of February 23, 1895, sec. 20 (Acts of 1895, p. 54), authorizes the employment of convicts, as far as practicable, in the improvement and construction of roads on and adjoining State lands.

Hill's Annotated Laws, p. 1817, sec. 4, authorizes the use of the labor of penitentiary convicts in the construction of the reform school.

Act of February 17, 1899 (Acts of 1899, p. 84), provides for employing such convicts as can be safely used for that purpose on roads in the vicinity of the State prison and the adjoining public buildings.

Acts of 1893, p. 131, sec. 82, provides that convicts failing to pay fines for violations of municipal ordinances may be required to labor one day for every \$2 of such fines, upon the streets or other public works of the municipality.

HOURS OF LABOR.—Act of February 23, 1895 (Acts of 1895, p. 40), provides that penitentiary convicts employed under the contract system shall not be "compelled to labor for a longer time than 10 hours per day."

KINDS OF LABOR.—Manufacturing (by implication), and upon public works and ways.

SALE AND COMPETITION.—The statutes contain no provisions regulating the sale of convict-made goods or diminishing competition between convict and free labor.

PENNSYLVANIA.

LEASE SYSTEM.—Digest of 1894, p. 996, sec. 16, appears to authorize the lease system as to inmates of houses of correction by providing that they may be detailed to do work outside the grounds of the institution, "for such other person [than any of the departments or institutions of the city] as may be approved by the board of managers."

PUBLIC-ACCOUNT SYSTEM.—P. 1661, secs. 13, 17, direct that inmates of penal and reformatory institutions be employed for and in behalf of the State, the institutions, or the counties, and prescribe regulations governing the sale of their products to the general public.

P. 1077, sec. 4, authorizes the furnishing of suitable articles and materials for the employment of able-bodied inmates of county jails, workhouses, and houses of correction, at labor and manufacturing, the products of their labor to be disposed of as the county commissioners may direct.

P. 1080, sec. 20, directs that articles manufactured by convict labor in the Philadelphia county prison "shall be sold."

PUBLIC-WORKS-AND-WAYS-SYSTEM.—Acts of 1895, act No. 264, provides that persons sentenced to simple imprisonment in county jails may be required to labor "about the county buildings and upon the grounds and property of the county."

Digest of 1894, p. 1486, sec. 562, and p. 1547, sec. 35, authorize the working at hard labor of persons convicted of violations of city ordinances, upon the streets or elsewhere for the benefit of the city.

P. 996, sec. 16, provides that inmates of the house of correction may be detailed to work "outside the grounds of the institution for any of the departments or institutions of the city."

STATE-USE SYSTEM.—The same law provides that inmates of the house of correction may be employed in manufacturing "such articles as may be needed for the prison, almshouse, or other public institution of the State or city."

HOURS OF LABOR.—The hours of convict labor are not regulated by statute.

KINDS OF LABOR.—Manufacturing, including the making of brushes, brooms, hollow ware, mats and matting; quarrying stone, farming, and on public works and ways.

SALE AND COMPETITION.—Digest of 1894, p. 1661, secs. 17-20, require that all products of convict labor, except goods shipped to points outside the State, must be branded immediately upon completion, and before removal from the place where made, or before being taken into and exposed for sale in any place, at wholesale or retail, in plain English lettering, with the words "convict-made," followed by the year and the name of the establishment in which made; the brand is to be placed upon each article where the nature of the case will permit, otherwise upon the box or other receptacle or covering in which it is contained; such branding may be done by casting, burning, pressing, or such other process that it may not be defaced, and in all cases the branding must be upon the most conspicuous place upon the article or its covering; such brand must not be removed except as the goods are sold at retail to "customers for individual use;" and the box, receptacle, or covering containing such brand shall be open to the inspection or view of each customer.

Acts of 1897, No. 141, prescribes that in any State prison, penitentiary, or reformatory not more than 5 per cent of the whole number of inmates shall be employed in the manufacture of brooms, brushes, or hollow ware, nor more than 10 per cent in the manufacture of any other kind of goods that are manufactured elsewhere in the State, except mats and matting, in the manufacture of which 20 per cent of the whole number of such inmates may be employed.

Similar restrictions are prescribed as to the employment of inmates of county prisons, workhouses, and reformatories.

It is also provided that "no machines operated by steam, electricity, hydraulic force, compressed air, or other power, except machines operated by hand or foot power, shall be used in any of said institutions in the manufacture of any goods, wares, articles, or things that are manufactured elsewhere in the State.

Digest of 1894, sec. 14, p. 1006, and secs. 13, 15, p. 1661, abolish and prohibit the contract system in all penal and reformatory institutions.

RHODE ISLAND.

CONTRACT SYSTEM.—General Laws of 1896, chap. 285, sec. 39, and chap. 289, sec. 14, authorize the employment of prisoners in jail or in the State prison for the benefit of the State "in such manner, under such contract, and subject to such rules, regulations, and discipline" as the board of State charities and corrections may make.

Chap. 291, sec. 10, authorizes the State board of charities and corrections to make such contracts as they may deem proper respecting the labor of inmates of the penal and reformatory institutions of the State.

PUBLIC-ACCOUNT SYSTEM.—The same section authorizes the State board of charities and corrections, in their discretion, to sell the products of the State farm and of other penal and reformatory institutions under their charge.

HOURS OF LABOR.—The hours of convict labor are not regulated by statute.

KINDS OF LABOR.—Manufacturing (by implication) and farming.

SALE AND COMPETITION.—The statutes contain no provision regulating the sale of convict-made goods or tending to reduce competition between convict and free labor.

SOUTH CAROLINA.

CONTRACT OR PIECE-PRICE SYSTEM.—Revised Statutes of 1893, part 3, sec. 574, authorizes the authorities of the State penitentiary "to make contracts for the performance of specific work, such work to be done entirely under the direction and control of the officers of the penitentiary."

LEASE SYSTEM.—Secs. 565-567, idem, act 314 of 1893, and act 528 of 1894 provide that convicts in the State penitentiary, except those sentenced for certain heinous crimes, may be leased or hired out to the highest responsible bidder, such convicts to be boarded, clothed, and safely kept by the lessee. As far as practicable the convicts shall be hired to work on farms in healthy localities.

PUBLIC-ACCOUNT SYSTEM.—Revised Statutes of 1893, part 5, sec. 531, authorizes the purchase of materials necessary for employing the prisoners in the State penitentiary, and the sale of such articles produced therein "as are proper to be sold."

PUBLIC WORKS AND WAYS SYSTEM.—Constitution, Art. XII, sec. 6, act 524 of 1898, act 113 of 1896, and Revised Statutes of 1893, part 5, sec. 544, authorize the working of convicts upon the public works and ways of the State and of the counties and municipalities therein.

Act 7 of 1899 permits any county to contract with another county for hiring out or exchanging convict labor to be employed on public works.

HOURS OF LABOR.—Revised Statutes of 1893, part 5, sec. 566, provides that penitentiary convicts leased or hired out "shall not be required to labor more than 10 hours a day, or on Sundays or holidays."

KINDS OF LABOR.—Manufacturing (by implication), farming, and employment on public works and ways.

SALE AND COMPETITION.—The sale of convict-made goods is not regulated by statute.

Revised Statutes of 1893, part 5, sec. 578, prohibits the "hiring or leasing of convicts in phosphate mining."

SOUTH DAKOTA.

CONTRACT SYSTEM.—Compiled Laws of 1887, secs. 7714-7720, authorize the contracting of the labor of penitentiary convicts, together with shop room, machinery, and power, after due advertisement, for periods not exceeding 5 years at any one time, subject to cancellation after 6 months' notice to the contractor; the convicts are to be worked under the general supervision and government of the prison authorities.

PUBLIC-ACCOUNT SYSTEM.—Acts of 1893, chap. 131, provides for the purchasing, erection, and maintenance of the necessary machinery and appliances for the manufacture, in the State penitentiary, of binding twine from hemp or flax fiber, and for the sale thereof.

Compiled Laws of 1887, sec. 7705, authorizes the employment of penitentiary convicts in quarrying stone.

Sec. 7813 provides that inmates of county jails shall be provided with suitable tools and materials to work with within the jail confines in the discretion of the sheriff.

STATE-USE SYSTEM.—Acts of 1890, chap. 11, authorizes the purchase of the necessary machinery and appliances to enable the State convicts to work in developing stone quarries belonging to the State, the stone to be used in erecting a wall around the penitentiary and in other improvements.

Compiled Laws of 1887, sec. 7705, authorizes the employment of penitentiary convicts in "cultivating the prison farm or in doing any work necessary to be done in the prosecution of the regular business of the institution."

PUBLIC WORKS AND WAYS SYSTEM.—Secs. 7813-7815 authorize the employment of inmates of county jails and of violators of city ordinances "in work on public streets or highways or otherwise," for counties or municipalities.

Acts of 1890, chap. 11, provides that penitentiary convicts may be employed in erecting the prison wall or in making other improvements on the penitentiary.

HOURS OF LABOR.—Compiled Laws of 1887, sec. 7696, provides that convicts sentenced to hard labor in the penitentiary "shall be constantly employed" for the benefit of the State.

KINDS OF LABOR.—Manufacturing, including the manufacture of binding twine, stone quarrying, farming, and employment on public works and ways.

SALE AND COMPETITION.—Acts of 1893, chap. 131, requires that the price of binding twine manufactured in the State penitentiary "shall be fixed at the actual cost of production; but no twine shall be put upon the market at a greater price than it can be purchased for of other manufacturers, and no twine shall be sold outside of the State so long as there is a market for the same within South Dakota." Fiber grown in the State must be preferred in manufacturing such twine.

TENNESSEE.

CONTRACT SYSTEM.—Acts of 1897, chap. 39, authorizes the making of contracts for the labor of penitentiary convicts not otherwise employed, with any persons desiring to carry on a manufacturing or other business within the penitentiary walls; contracts are to be made so as to yield the greatest possible revenue to the State, and the convicts employed are to be at all times under the care and supervision of the prison authorities.

Acts of 1897, chap. 125, sec. 31, provides for the employment, under contract, of "able-bodied, shorter-time convicts," at branch prisons, outside the penitentiary walls.

LEASE SYSTEM.—Acts of 1895, extra session, chap. 7, sec. 19, and Acts of 1897, chap. 125, sec. 31, authorize the leasing, for the best interests of the state, of such penitentiary convicts as are not otherwise employed; and the continuance of an existing lease under which such convicts are worked in certain ore mines.

Acts of 1891, chap. 123, sec. 19, provides that any county convict, held for nonpayment of fines and costs, may, with his consent, be "bailed out," and be under the care, custody, and direction of the bailee until the amount due by him shall have been paid by the bailee in monthly installments.

PUBLIC-ACCOUNT SYSTEM.—Acts of 1897, chap. 125, secs. 11 and 12, authorize the employment of penitentiary convicts at farming, coal mining, and coke making, and the sale of products of their labor while so employed.

STATE-USE SYSTEM.—Sec. 30 provides that all coal and coke needed for use by State institutions shall be furnished by the board of prison commissioners; and that such institutions shall be required to use only coal and coke furnished by State mines and produced by the labor of penitentiary convicts.

PUBLIC WORKS AND WAYS SYSTEM.—Sec. 31 authorizes the temporary employment of "more able-bodied, shorter-time convicts" in the penitentiary, in building public roads and pikes, under contracts with county or municipal authorities.

Acts of 1891, chap. 123, sec. 5, provides that inmates of county workhouses, or county jails declared workhouses, shall be worked, when practicable, on the county roads in preference to all other kinds of labor.

HOURS OF LABOR.—Code of 1884, sec. 6366, provides that the work of penitentiary convicts "shall be at an average of 10 hours per day, Sundays excepted, through the entire year," and that the number of hours to be worked in the different seasons of the year shall be regulated by the prison authorities.

KINDS OF LABOR.—Manufacturing, coal mining, coke making, clearing land, farming, and employment on public works and ways.

SALE AND COMPETITION.—Acts of 1897, chap. 125, secs. 29, 30, direct that contracts be made, if practicable, for the sale of the output of the State coal mines for a period not to exceed 6 years" at such price per bushel or ton as will give the State of Tennessee a fair price for the labor of its convicts and a just compensation for its coke or coal," and that coke or coal furnished to State institutions shall be at the same cost to them as if bought in the general market.

Sec. 28 prohibits the hiring of any female penitentiary convict "to any person on the outside as cook, washerwoman, or for any other purpose."

Sec. 31 provides that "the more able-bodied, shorter-term convicts" in the penitentiary, temporarily employed under contract in building public roads or pikes, clearing ground, or in farming operations, shall be so employed "where competing the least with free or skilled labor."

Acts of 1897, chap. 39, secs. 1, 4, 8, direct that not more than 99 penitentiary convicts shall be employed under contract with any one firm, or in any one business, within the walls of the penitentiary; that no contract shall be made extending beyond March 1, 1903; and that contracts shall be so made "that competition with free labor shall be the least possible, and that the manufacturing industries established within the penitentiary shall be as diversified as practicable or possible for the best interests of the State, at the same time having due regard for the interests of free labor."

TEXAS.

CONTRACT SYSTEM.—Revised Statutes of 1895, arts. 3654, 3655, 3709, authorize the establishment of the contract system in the State penitentiaries, the convicts employed thereunder to remain under the control, discipline, and management of the prison authorities.

LEASE SYSTEM.—Arts. 3744, 3745, 3746 authorize the hiring out of county convicts either by private contract or at public auction, or by general contract for any specified time, at some fixed rate per day, week, or month, the hirer to give bond for the humane treatment and proper care and support of convicts in his employ.

PUBLIC-ACCOUNT SYSTEM.—Arts. 3654, 3655, 3701, 3709 authorize the establishment of manufacturing industries in State penitentiaries—particularly those of cotton goods and cotton and jute bagging—and the carrying on of farming operations, and provide for the sale of the products of the convicts' labor; and it is required that "all convicts shall be placed within the prison walls or on State farms, and worked on State account as soon and speedily as possible."

Arts. 3727, 3730 authorize the utilizing of the labor of county convicts on farms or in county workhouses.

PUBLIC WORKS AND WAYS SYSTEM.—Constitution, art. 16, sec. 24, requires that legislative provision be made for utilizing convict labor in laying out and working public roads and in building bridges.

Revised Statutes of 1895, arts. 3733, 3744, provide that county convicts shall be put to labor upon the public roads, bridges, or other public works of the county when their labor can not be utilized in the county workhouse or on the county farm. The employment of female convicts on public works and ways is, in effect, prohibited by art. 3736, which provides that females "shall in no case be required to do manual labor, except in the workhouse or when hired out."

HOURS OF LABOR.—Art. 3716 provides that penitentiary convicts sentenced to hard labor "shall be kept at work under such rules and regulations as may be adopted; but no labor shall be required of any convict on Sunday except such as is absolutely necessary, and no greater amount of labor shall be required of any convict than a due regard for his physical health and strength may render proper."

Art. 3733 requires that county convicts "shall be required to labor not less than 8 nor more than 10 hours each day, Sundays excepted."

Art. 3746 requires that persons to whom county convicts are hired shall bind themselves not to work the convicts "at unreasonable hours, or for a longer time during any one day than other laborers doing the same kind of labor are accustomed to work."

KINDS OF LABOR.—Manufacturing, including the production of cotton goods and cotton and jute bagging, farming, and on public works and ways.

SALE AND COMPETITION.—The statutes contain no provisions regulating the sale of convict-made goods or for the diminishing of competition between convict and free labor.

UTAH.

PUBLIC-ACCOUNT SYSTEM.—Acts of 1896, chap. 81, secs. 9, 32, provide for the carrying on, in the State prison, of manufacturing and mechanical industries, and for the sale of the products of the convicts' labor for the benefit of the State.

STATE-USE SYSTEM.—Secs. 29, 32, 33 provide that State-prison convicts are to be employed in manufacturing and mechanical industries, and on the prison farm, and in producing "all articles for the various State institutions, as far as practicable."

PUBLIC WORKS AND WAYS SYSTEM.—Constitution, Art. XVI, sec. 3, requires the enactment of laws prohibiting the labor of convicts outside of prison grounds, except on public works under the direct control of the State.

Acts of 1896, chap. 81, sec. 29, authorizes the employment of State-prison convicts in the erection or repair of the buildings or walls of the prison.

Acts of 1896, chap. 131, sec. 30, authorizes the employment of prisoners subject to hard labor, in county jails, upon the public grounds, roads, streets, alleys, highways, or public buildings for the county.

Compiled Laws of 1889, sec. 1759, as amended by Acts of 1896, chap. 59, provide that violators of city ordinances "shall be required to work for the corporation at such labor as his strength will permit," presumably upon public works and ways.

HOURS OF LABOR.—Acts of 1896, chap. 81, sec. 37, requires that State-prison convicts shall, as far as practicable, be kept constantly employed at hard labor at an average of not less than 8 hours a day, Sundays and holidays excepted.

Compiled Laws of 1889, sec. 1759, as amended by Acts of 1896, chap. 59, provides that violators of city ordinances may be required to work for the corporation "not exceeding 10 hours for each working day."

KINDS OF LABOR.—Manufacturing, farming, and employment on public works and ways.

SALE AND COMPETITION.—The sale of convict-made goods is not regulated by statute.

Acts of 1896, chap. 181, sec. 32, requires that at least once in 6 months the prison board shall meet to determine what lines of productive industries shall be pursued in the State prison, and "shall select diversified lines of industry with reference to interfering as little as possible with the same lines of industry carried on by citizens of this State."

Constitution, Art. XVI, sec. 3, and Acts of 1896, chap. 181, sec. 32, prohibit the making of contracts for the labor of convicts.

VERMONT.

CONTRACT SYSTEM.—Statutes of 1894, sec. 5188, provides that the directors of the State prison and the house of correction may contract, for not exceeding 5 years to any one person, the labor of all or part of the convicts in said institutions, on such terms as they shall judge best for the State; but such contracts shall not interfere with the management and discipline of the convicts.

PUBLIC-ACCOUNT SYSTEM.—The same section provides that the directors of the State prison and house of correction may "purchase material required for employing the prisoners and sell articles belonging to either institution proper to be sold."

HOURS OF LABOR.—The hours of convict labor are not regulated by statute.

KINDS OF LABOR.—Manufacturing (by implication).

SALE AND COMPETITION.—The statutes contain no provisions regulating the sale of convict-made goods, or tending to diminish competition between convict and free labor.

VIRGINIA.

CONTRACT SYSTEM.—Code of 1887, sec. 4130, authorizes the employment of penitentiary convicts in "executing work under contract with individuals or companies."

LEASE SYSTEM.—Acts of 1893-4, as amended by chap. 795, secs. 4136-4138, authorize the leasing of penitentiary convicts, not otherwise employed, to railroad companies, to be fed, clothed, guarded, and sheltered by the lessees.

PUBLIC-ACCOUNT SYSTEM.—Code of 1887, sec. 4130, and Acts of 1893-94, chap. 62, direct the purchase or leasing of farming lands, to be improved and cultivated by penitentiary convicts, the products thereof, not used in the penitentiary, to be sold.

STATE-USE SYSTEM.—Code of 1887, secs. 4110, 4130, as amended by Acts of 1893-94, chap. 795, and Acts of 1893-94, chap. 62, authorize the employment of penitentiary convicts in farming operations for the use and benefit of the institution.

PUBLIC-WORKS-AND-WAYS SYSTEM.—Code of 1887, secs. 4110, 4130-4133 (as amended by Acts of 1893-94, chap. 795), authorize the employment of penitentiary convicts in improving, repairing, or working on public buildings, grounds, and property, or the furnishing of such convicts to counties to be worked on county roads.

HOURS OF LABOR.—Acts of 1893-94, chap. 795, provides, as to convicts leased to railroad companies, that such sum shall be paid for their labor as may be agreed upon, "for each day's work of 10 hours actually performed."

KINDS OF LABOR.—Manufacturing (by implication), farming, and employment on railroads and on public works and ways.

SALE AND COMPETITION.—The statutes contain no provisions regulating the sale of convict-made goods, or tending to reduce competition between convict and free labor.

WASHINGTON.

PUBLIC-ACCOUNT SYSTEM.—General Statutes of 1891, secs. 1158, 1170; Acts of 1893, chap. 86, and Acts of 1895, chap. 132, authorize the manufacture, by penitentiary convicts, of such articles as are sanctioned by law, including jute and other fabrics and brick, and the sale of such products of the convicts' labor as are sanctioned by law and not needed by the State.

STATE-USE SYSTEM.—General Statutes of 1891, sec. 1158, authorizes the employment of penitentiary convicts in "the manufacture of any article or articles for the State."

PUBLIC-WORKS-AND-WAYS SYSTEM.—Sec. 1158 authorizes the employment of penitentiary convicts "in the performance of work for the State," which, it is presumed, is intended to authorize their employment on public works and ways, as their employment in manufacturing articles for State use, or for sale, is expressly provided for in the same section.

Secs. 290, 1192, 1193, direct that convicts in city and county jails be employed at labor on the public roads, streets, grounds, and buildings of the city or county; it being provided that county convicts shall not be put to labor at a greater distance than 5 miles from the jail.

HOURS OF LABOR.—Acts of 1897, chap. 74, provides that there shall be required of every able-bodied convict in the penitentiary "as many hours of faithful labor in each and every day during his term of imprisonment as shall be prescribed by the rules and regulations of the penitentiary."

General Statutes of 1891, secs. 1192, 1193, provide that inmates of county and city jails may be compelled to perform 8 hours labor each day of their terms of imprisonment, except Sundays.

KINDS OF LABOR.—Manufacturing, including the manufacture of jute and other fabrics, and brick, and employment on public works and ways.

SALE AND COMPETITION.—General Statutes of 1891, sec. 1158; Acts of 1893, chap. 86, and Acts of 1895, chap. 132, limit the production of articles for sale to jute and other fabrics and brick. It is required that these commodities shall not "be sold for less than the actual cost of production," the method for ascertaining which is prescribed; and that they shall be sold only to actual consumers who are residents of the State of Washington, for cash on delivery, in the order, as near as may be, of the making of written applications therefor.

Constitution, art. 2, sec. 29, prohibits the hiring out of the labor of convicts by contract to any person, firm, or corporation.

WEST VIRGINIA.

CONTRACT SYSTEM.—Acts of 1893, chap. 46, secs. 28, et seq., authorize the making of contracts for the labor of penitentiary convicts, together with the necessary steam power for operating machinery which the contractors are required to supply; the contracts are to be made with the highest and best bidders, after due advertisement, for periods not exceeding 5 years, at a specified price per day per convict, and for the manufacture of the particular articles specified by the bidders. Convicts not hired under general contract may be temporarily hired until "their labor is required on any contract."

PIECE-PRICE SYSTEM.—Sec. 44 provides that, if deemed advisable, penitentiary convicts not employed under the contract system "may be employed or let to contract on the piece-price system."

PUBLIC-ACCOUNT SYSTEM.—Secs. 8, 44, provide that penitentiary convicts, not employed under contract, may be employed in manufacturing, the warden to sell and dispose of the goods manufactured for the benefit of the State.

STATE-USE SYSTEM.—Sec. 44 provides that a portion of the penitentiary convicts may be employed in the repair or manufacture of articles used by the State in carrying on the penitentiary or other State institutions.

PUBLIC-WORKS-AND-WAYS SYSTEM.—Secs. 43, 50, provide that penitentiary convicts, not employed under contract, may be employed "in the performance of work for the State" (presumably on public works and ways); or, able-bodied male convicts may be furnished to any county of the State, to be worked on public roads, free of hire, under specified conditions.

HOURS OF LABOR.—Sec. 41 provides that convicts employed under the contract system shall labor "not to exceed 9 hours a day during the year, Sundays and national holidays excepted."

KINDS OF LABOR.—Manufacturing, and employment on public works and ways.

SALE AND COMPETITION.—The statutes contain no provisions regulating the sale of convict-made goods, or tending to reduce competition between convict and free labor.

WISCONSIN.

CONTRACT SYSTEM.—Annotated Statutes of 1889, secs. 4938-4943, authorize the making of contracts for the labor of State-prison convicts, together with such shop room, machinery and power as may be necessary for their proper employment; contracts must not be made for periods exceeding 5 years at any one time, and the convicts are to remain under the supervision of the prison authorities. Before making such contracts, sealed proposals therefor are to be invited by public advertisement.

PUBLIC-ACCOUNT SYSTEM.—Sec. 567d provides for the establishment of "the business of manufacturing" in the State prison, and the sale or disposition of the goods, wares, and merchandise produced "to the best interest of the State."

Secs. 4726, 4727, authorize the employment of prisoners in the county jails at such labor as shall be appropriate to their sex and physical condition, which may be required to be performed at any suitable place within the county, under the direction of county authorities, the "avails of their labor" to be paid into the county treasury.

Acts of 1895, chap. 290, provides for the employment of inmates of county workhouses at hard manual labor, and the sale of the products of such labor for the benefit of the county.

Acts of 1897, chap. 346, sec. 8, provides that prisoners at the State reformatory may be employed at agricultural or mechanical labor, as a means for their support.

STATE-USE SYSTEM.—Annotated Statutes of 1889, sec. 608, provides that all public institutions maintained in whole or in part by the State shall obtain all goods necessarily required by them from the State prison or other institution manufacturing the same; and the officers of said prison or other institution shall cause to be made and delivered all such articles or goods, so required, as can be made or furnished by them.

Sec. 4927 provides that State-prison convicts may be employed outside the prison walls in cultivating the prison farm, or in quarrying or getting stone therefrom, or in doing any work necessary in the prosecution of the regular business of the institution.

PUBLIC-WORKS-AND-WAYS SYSTEM.—Acts of 1895, chap. 250, provides that persons convicted in any court in the State, including convictions for violations of city or village ordinances, for vagrancy, and other specified offenses, may be required to work upon highways or other public improvements, in case other work is not provided for them.

Annotated Statutes of 1889, sec. 1547d-10, provides that tramps sentenced to hard labor in county jails may be required to work "upon highways or other public improvements," in case other work is not provided for them by county authorities.

HOURS OF LABOR.—Sec. 4918 requires that State-prison convicts sentenced to hard labor shall be "constantly employed."

Acts of 1895, chap. 290, and Acts of 1897, chap. 318, provide that inmates of county jails and workhouses shall be kept at labor not to exceed 10 hours per day, Sundays excepted.

Acts of 1891, chap. 206, provides that no person confined in any penal institution "shall be compelled to perform any factory work on any legal holiday."

KINDS OF LABOR.—Manufacturing, including the manufacture of chairs, general furniture, boots, shoes, buggies, carriages, wagons, sleighs, and cutters; farming; stone quarrying; and employment upon public works and ways.

SALE AND COMPETITION.—Annotated Statutes of 1889, sec. 567d-3, requires that, in selling commodities produced by the labor of State-prison convicts, they shall be disposed of "to the best interests of the State and at the best prices obtainable."

Acts of 1897, chap. 155, requires that all goods, wares, and merchandise made by convict labor in any institution outside of Wisconsin and imported into the State shall, before being exposed for sale, be branded, labeled, or marked with the words "convict made," etc.; the details of the law being substantially the same as those of the laws of other States relating to the marking of convict-made goods.

WYOMING.

CONTRACT SYSTEM.—Acts of 1890-91, chap. 37, sec. 5, authorizes the providing for the care, maintenance, and employment of inmates of penal or reformatory institutions by contract.

PUBLIC-ACCOUNT SYSTEM.—Revised Statutes of 1897, sec. 3375, authorizes the employment by the Territory (State) of inmates of penal and reformatory institutions "upon its own account."

Acts of 1890-91, chap. 37, sec. 5, authorizes the employment of inmates of penal or reformatory institutions by "direct expenditure."

PUBLIC-WORKS-AND-WAYS SYSTEM.—The same law provides that inmates of penal and reformatory institutions may be employed to complete or repair the place or the surroundings of the place where they are confined.

Revised Statutes of 1887, secs. 3371, 3374, provide that prisoners in county jails may be compelled to work in any way that the county commissioners may direct for the benefit of the county, and that convicts in the jail or prison of any county, city, town, village, or municipality may be employed or put to work upon any public work of improvement, or upon highways, streets, alleys, parks, or public places.

HOURS OF LABOR.—Revised Statutes of 1887, sec. 3372, provides that prisoners in county jails shall be required to labor "during the working hours of every week day."

KINDS OF LABOR.—Manufacturing (by implication), and employment on public works and ways.

SALE AND COMPETITION.—The statutes contain no provision regulating the sale of convict-made goods.

Acts of 1890-91, chap. 37, sec. 5, prohibits the working of convicts in any coal mine, or at any occupation in which the products of their labor may be in competition with that of any citizen of the State.

Revised Statutes of 1887, sec. 3375, provides that the employment of inmates of penal and reformatory institutions shall be so conducted as to offer no competition to free labor, and that such employment on Territorial (State) account shall not be enforced or required any further than shall be necessary for the physical and moral well-being of the convicts.

THE UNITED STATES.

STATE-USE SYSTEM.—Acts of 1894-95, chap. 189 (28 U. S. S., p. 957), provides that convicts in the United States penitentiary at Fort Leavenworth, Kans., shall be employed exclusively in the manufacture and production of articles and supplies for the penitentiary, and for the Government; the convicts are not to be worked outside of the Fort Leavenworth Military Reservation.

Acts of 1890-91, chap. 529 (26 U. S. S., p. 839), authorizes the construction of three United States prisons, and provides that convicts therein shall be employed exclusively in the manufacture of supplies for the Government, within the prison inclosures.

HOURS OF LABOR.—The hours of convict labor are not regulated by statute.

KINDS OF LABOR.—Manufacturing.

SALE AND COMPETITION.—Acts of 1897-98, chap. 11, sec. 31 (30 U. S. S., p. 211), prohibits the importation into the United States of any goods, wares, or merchandise manufactured wholly or in part by convict labor in any foreign country.

Acts of 1890-91, chap. 529 (26 U. S. S., p. 839), requires that convicts in the United States prisons to be erected under said act are to be employed in manufacturing such goods for the Government "as can be manufactured without the use of machinery."

Acts of 1886-87, chap. 213 (24 U. S. S., p. 411), forbids the hiring or contracting out of the labor of the United States convicts confined in any State prison, jail, penitentiary, house of correction, or other place of incarceration.