No. 8867.

DELAWARE, LACKAWANNA & WESTERN COAL COMPANY

v.

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

Submitted February 8, 1918. Decided February 11, 1918.

Statement in the original report, 46 I. C. C., 506, 509, to the effect that the complainant is still a subsidiary of the defendant and that the defendant has endeavored in ways lawful and unlawful to give preferences and advantages to the complainant, withdrawn in the light of the further facts adduced upon the rehearing, the findings and order in the original proceeding being in other respects affirmed.

Wilbur L. Ball for complainant.
J. L. Seager for defendant.

REPORT OF THE COMMISSION ON REHEARING

HARLAN, *Commissioner:*

In the original report in this proceeding, 46 I. C. C., 506, we refused to award reparation for the reasons stated therein. The complainant objects to the denial of reparation, and the defendant insists that the refusal of an award was proper. The principal matter of concern to both parties was the following language in our report, found at pages 509–510:

The record shows that when the shipments in question moved the complainant was, and that it still is, a subsidiary of the defendant, and that the defendant has endeavored in various ways, both lawful and unlawful, to give preferences and advantages to the complainant. The payment of freight charges by the complainant to the defendant seems to have been largely the transfer of money from one pocket to another. That fact, however, does not simplify or aid the complainant's demand for an order of reparation. Moreover, an award of damages in the present proceeding, from some points of view, would simply be an extension, under our authority and with our approval, of the practices condemned in the *Anthracite Case.*

That language was based largely on the facts before us in the *Anthracite Case*, 35 I. C. C., 702, the record in which was referred to and made a part of the record in this proceeding. The history both of the past and present relationship between the coal company and the railroad company was fully developed on the rehearing, and it was made clear that the language in question, in so far as

it concerns this relationship, must be withdrawn as not being justified by the conditions existing at the time the report was written. It will not be necessary to go into details beyond the mere statement that the railroad company owned and still owns large tracts of anthracite coal producing lands on which it operates a number of collieries; that prior to August 2, 1909, the carrier also transported the coal and sold it in the markets, but since that date, conforming to the decision of the Supreme Court of the United States in the *Commodities Clause Case*, 226 U. S., 324; 228 U. S., 158, the output of the collieries has been sold at the breakers to the coal company, which was organized by the interests controlling the defendant for that purpose. A cash dividend of 50 per cent was declared by the defendant railroad company and distributed to its stockholders, who were invited to subscribe for stock in the coal company at par. With few exceptions they did so, the result being that practically all the stockholders in the railroad company became also stockholders in the coal company, the latter being "officered by those who were directing the affairs of the railroad company." This was the situation existing at the time the *Anthracite Case*, *supra*, was submitted for decision by the Commission, on February 1, 1915. Shortly before our report in that proceeding was announced, the Supreme Court of the United States handed down its decision in *U. S.* v. *D., L. & W. R. R. Co.*, 238 U. S., 516, as the result of which all the officers and directors of the coal company in any wise connected with the railroad company resigned and new officers and directors having no connection with the railroad company were elected, so that at the present time neither company participates in the affairs of the other. There was at one time a substantial identity of ownership in the stock of the two companies, but on October 5, 1917, as the record shows, 1,100 stockholders of the railroad company owning 155,533 of the 845,540 shares of stock outstanding in that company held no stock in the coal company; 214 stockholders of the coal company owning 10,039 of the 131,814 shares of stock outstanding in that company owned no stock in the railroad.

So far as the question of reparation is concerned, nothing has appeared on the rehearing to require us to modify the conclusion announced in the original report or the general principles upon which that conclusion is based. The order heretofore entered dismissing the complaint will therefore stand.