Western Road was not built in the right place; but that it ought to have been built somewhere between Meadville and Erie. How is it possible to get that question before the Court? I can make a railroad over my own lands, and it concerns myself alone. It is an individual right. But when I come to make a railroad through the lands of other people and to issue stock to irresponsible parties, it becomes a franchise. It is a royal prerogative in the hands of the subject. How is it possible for any private person or persons to raise any questions about my right to do this?

Suppose the Attorney General out of the case altogether, and that you had never heard of him in it. How is it possible that six sensible, intelligent men, looking at each other here, can doubt for a single moment about any question like that. But when the Attorney General does come into Court, and when he does bring his *quo warranto* and does not touch a single question about this road between Franklin and Milton, but confines himself to other matters, are private parties to be allowed to take up these questions and have a decision of them whenever they please! It has been said that the Atlantic and Great Western Company had the right to appoint a constable somewhere in the region of Erie. But the Pennsylvania Railroad Company has never been appointed High Constable! The Pennsylvania Railroad Company was never authorized by law to raise these questions before the Court any more than any private man within the State.

Ah! But this is to be a rival road. The complainants have printed this in their bill. They have put it in their argument. They have averred it with tenfold earnestness upon this floor. Two-thirds of the opposing argument was taken up with this question of rivalry. Is rivalry a ground for the jurisdiction of a court of equity? Fraud is; account is; trust is; and the exercise of unlawful authority is; but I have never heard that rivalry formed such a ground. When the Pennsylvania Railroad Company finds that anybody is rivalling her interests, is she to assume the place of the commonwealth, and come in here armed with sovereign power? If every time anybody is about to do anything which she thinks may injure her, she is to file a bill in equity and bring these questions here, where is the thing to end?

Your Honors sometimes read the newspapers. The complainants' counsel certainly do. Perhaps you may have seen there some account of the labors of that man in Jersey City who is constructing a flying machine. His operations are carefully concealed, and he works in an enclosure closely boarded up, so that nobody can oversee him. But it is a large machine, constructed so as to operate somewhat on the principle of the rotary fan. It is to have a rudder and to go by steam. It is not to go very high, just over the tops of the houses; but it is to accomplish something like 180 miles an hour. I believe from what I have heard of this adventurer, that he has just as much confidence in his machine as the complainants' counsel have in the success of their argument. Suppose the machine to succeed, and your Honors to desire to go to Pittsburg to open court there? You can go in two hours.

Is not that rivalry? Should not the Pennsylvania Railroad Company file a bill to restrain the completion of this flying machine, by which their fares and tolls are to be taken away? After a few trial trips are made with it, I certainly shall not trouble myself to go home in cars of the Lehigh Valley Railroad, or the Northern Central, or the Pennsylvania Road, but I shall hurry home by a shorter passage through the air. The gentlemen on the other side may be waiting for the completion of the machine, but they may then be too late. Ought they not at once to file a bill in equity to restrain the inventor from rivalling their road? Is not this a fair case of rivalry?

Suppose two men should undertake to run a horse race, and thus violate the law. Your Honors might go after them and not catch them, and the race might develop the fact that the horse is the best locomotive a man can adopt. They might run faster for a while than the Philadelphia trains, and thus constitute a new rivalry to the Pennsylvania Railroad Company. Would not the gentlemen be justified in enjoining horses from running? When are we to stop, may it please your Honors, if we are to get into this imaginary line of argument? Can it be possible that when judges such as you are come to consult over this case that questions like these will give you any trouble? If they are to say as they do here—for this is the ground of their case—if they say that the commonwealth, the king, the owner of the soil, the great sovereign power to which we all ought to be obedient, shall not raise these questions, but that a private party may raise them, what is to be the end of it? Take this away and where is the Pennsylvania Railroad? She has no case at all.

I will not abuse these parties as they did us, but I wish to follow up some of the observations made before the Court. One of the counsel spoke of the serpent and the toad. He compared the Atlantic and Great Western Railway Company to the serpent. I am afraid that the Gettysburg Railroad was running in his mind, for that looked more like a serpent than anything else in the railroad way. Or is the Pennsylvania Railroad to be called a serpent and the Philadelphia and Erie the toad? I believe it is one of the chief uses of the toad to furnish food for the serpent, as the Philadelphia and Erie supplies food to the Pennsylvania Company, and the Pennsylvania Railroad seems to have swallowed the poor Philadelphia and Erie, as the serpent swallows the toad.

But, may it please the Court, the State and not the Pennsylvania Railroad Company is the proper party to complain of the acts alleged here as violations of law. The interference of the Pennsylvania Railroad reminds one of the story that General Jackson used to tell of an old man in Tennessee, who, in the course of his life, amassed a large fortune. When he was near the end of his life, and the secret could be of no further service to him, he divulged it, and the secret was minding his own business. That is what the Court should say to these complainants. It is not the business of the Pennsylvania Railroad Company to complain of the violation of the franchises of the Commonwealth. The State alone is the judge of what is necessary to preserve and vindicate the law.

I do not know that to establish so plain a principle of law authorities are needed; but take the case of the Schuylkill County Bank, at the suit of Murphy, where the inquiry was refused on the same ground that I have stated as a reason here. Take the case of the Beaver Meadow Railroad Company against the Lehigh Coal and Navigation Company. Everybody is familiar with the history of that case. Day after day and week after week it was contested before the present Chief Justice. The Lehigh Navigation Company were required, under their charter, to do one of two things at a certain point. They were required to make an election whether at that place they would build their navigation works or build their railroad. We were building a railroad just on the spot, so that we wanted to know what they would elect. We said to them, "Gentlemen, please make your election. Let us know whether you will build a dam here, or whether you will build a railroad; because, by the terms of your act of incorporation, you are required to do one of these two things?" But the Chief Justice said, that is a matter for the commonwealth to decide and not for you. If the commonwealth were to say to this company, you must make your election and either build your dam or your railroad, then the Court would have to take notice of the authority of the commonwealth, but you cannot raise the question.

That was the doctrine laid down, clearly and unmistakably there. That is the doctrine that has been maintained in every imaginable case, in every imaginable form. That is the doctrine for which I contend in this case. How is the Pennsylvania Company to raise the question about the right of the Atlantic and Great Western Company to complete their line from one point to another, to build a road between Franklin and Milton? Suppose they have no right, and the commonwealth choses not to contest it. Even if the act be not lawful, (which we do not for a moment admit, for it is a plain statute,) but even if it be not lawful, the commonwealth may decline to contest the exercise of the right. Can a rival company then do it?

The Pennsylvania Railroad Company is not within sixty miles of the Catawissa Railroad Company. It cannot set foot on it. It cannot go there. It cannot put a sill or a rail there. She has not even the right of massacre there—a right which these railroad companies seem to be so reluctant to yield. She cannot go there and slaughter innocent people. How then does it concern the Pennsylvania Railroad Company, that we have made a contract with the Catawissa by which we have leased that road? What right has she to dispute that lease? Rivalry? Rivalry will not do!

But Andrew Scott has a bill. Did I hear fall from such lips as those of the complainants' counsel the word "sham?" Did I hear aright? Apply that doctrine to Andrew Scott. It is a very unusual thing to hear in a court of justice language like this. It would not have been heard now but for the fact that the counsel was driven to it by the stress of his situation, by the meagreness of his case, and by finding himself pinched round and round by the questions from the bench and by the arguments on this side of the case. Apply that same doctrine to Andrew Scott. Who is he? Where does he come from? I thought when he was first mentioned that he might be descended from the old hero of Lundy's Lane, such belligerent qualities did he manifest in this case. But I found otherwise. If he have any ancestral pride, he may perhaps boast his descent from the "Author of Waverly," to judge from the romantic and poetic turn of mind displayed in his bill. He has 12 shares of the old stock of the Atlantic and Great Western Railroad Company of Pennsylvania. They are very valuable, he thinks, and so indeed they are. They are worth $600. He prizes them. He wants to enjoy the income while living, and dying, to bequeath them as a legacy to his children. He will not sell them. He will not take the par value of them. He will not go, under this law, and have their value assessed as the law points out. He opposes that.

He will not take indemnity for them to-day. He will not take a bond of $100,000 to secure him against the loss of $600. Not he! Andrew Scott is so virtuous, so indignant, that he will have nothing on this wide earth but a bill in equity. What a fortunate coincidence that was on the part of Mr. Scott when he happened to get into the hands of two such able and distinguished gentlemen as the counsel of the Pennsylvania and Philadelphia and Erie Railroads; a coincidence almost as remarkable as that other coincidence, that while for months, up to the trial of this cause in the Court below, the Pennsylvania Railroad Company had an advertisement in Appleton's Guide stating that their road connected with the Atlantic and Great Western Railway at Corry, and immediately after the matter came into Court, by a singular chance the advertisement happened to slip out and not to occur there again!

What does Andrew Scott say? He says that he is afraid of a *quo warranto;* that he is afraid that the Attorney-General will succeed in his *quo warranto* taken out against the Company in which he owns $600 worth of stock. Now mark it, your Honors, after the word "sham" which has been used here, Andrew Scott comes into court and assumes the expenses of a suit which may amount to six, seven or eight thousand dollars. (Our own paper book cost us $1500 just to print.) He says he is afraid of losing his stock. He ought to be here by the side of his counsel to hear his case tried. Had he been here, to his amazement and horror he would have seen his own counsel stand up in court and ask your Honors that this *quo warranto* shall be successful. And not only that. They not only ask for that which Mr. Scott says will strip him of every dollar of his rights, but my friend Mr. Cuyler must, in his argument, eulogize the argument of the Attorney-General and call it by such phrases as solid, compact mass of reasoning—that very argument which is to take away from Andrew Scott every dollar of his rights in this case. Is that a sham? Was there ever before seen such a spectacle as that of a stockholder filing a bill to restrain a Company because he fears that a *quo warranto* will issue against the Company, and that very stockholder, by his counsel coming into court, and by an elaborate argument endeavoring to show that the *quo warranto* of which he is so much afraid ought to be successful!

Mr. Gibbons—Can you show me how a *quo warranto* can hurt the stock of Mr. Scott?

Mr. Porter—I thank the gentleman for the suggestion. The answer to the question is given by Mr. Scott himself. He avers in his bill that he is afraid that the *quo warranto* will be successful, and that it will strip him of his stock.

Mr. Gibbons—He does not say that!

Mr. Porter—He does so in substance; he says he is afraid that his stock is in peril, and as a proof of it says that a *quo warranto* has been issued, and the inference is direct. Andrew Scott comes here and says that the *quo warranto* imperils his property, and his counsel turn round and pray that the *quo warranto* may be successful. They commend the Attorney General. They call his argument splendid, and say that nothing can be said in reply to it—that nothing can equal it. Is not Mr. Scott's bill a sham? Does it not show that there was much force in the observation of that learned English Judge, who said that he would not allow a man to come into court who held such stock as this, when he made himself a mere puppet of a rival company. I quote the words of the Judge.

Must not a man come into a court of equity with clean hands? Must he not come having a real case? Is it possible that any party can come in and buy one or two shares of stock in our company or any other company, and then allege that he is injured and refuse to take damages, refuse to be idemnified, refuse any and every offer of settlement that can be made, set himself up as a real party, and then by his counsel ask for the success of the very proceeding that he says will injure his stock! If there ever was a sham surely this is.

I come now to the main question in this case as I understand it; though other questions have been introduced from time to time, the main question is the consideration of these acts of Assembly. There was an act passed on the 13th of March, 1847, which provided "that in all cases where two railroads in this commonwealth are or shall be connected, it shall be lawful for the company owning either of the said railroads (with the consent of the company owning the other of the said railroads) to run its cars and locomotive engines upon said other railroad and to erect water stations and other buildings for the due accommodation of the cars and engines employed thereon; provided, that nothing herein contained shall be construed or interpreted to release or exonerate any company owning a railroad from the obligation and duty which may be imposed by existing laws of transporting, subject to the rules and regulations of said companies, by locomotive steam engines, the cars, whether loaded or empty, of all persons and companies who may require such transportation, over and along so much and such parts of their railroad as locomotive steam engines shall be run upon, whether they be run by the company owning the road or by any other company."

That act speaks of two companies. It speaks of connecting with a company. There the railroads must be connected. There must be two railroad companies, and the companies must have the right to run their cars and locomotives upon the railroad of the other company. That is not this case.

Twelve years afterward the Legislature took up the subject again. In the act of 29th March, 1859, it was enacted "that the act of 13th March, 1847, shall be so construed as to authorize companies owning any connecting railroads in the State of Pennsylvania, to enter into any leases and contracts with each other, in respect to the use, management and working of their several railroads. Provided, That the company so contracting for or leasing any such railroad may have the right to fix the tolls thereon, but not at a higher rate than is authorized by the charter of either of the said railroad companies."

"Of their several roads." They must be connected and they may make leases. Now it is said that this was merely a supplementary act. Not at all. It was a totally new and independent act, providing for other and independent matters, and differing in its provisions entirely from those of the preceding act.

Then came the act of 1861: "It shall and may be lawful for any railroad company;" not one or two companies, but for any railroad companies, however great their numbers may be, "created by and existing under the laws of this commonwealth, from time to time to purchase and hold the stock and bonds, or either, of any other railroad company or companies chartered by, or of which the road or roads is or are authorized to extend into this commonwealth—and it shall be lawful for any railroad companies to enter into contracts for the use or lease of any other railroads, upon such terms as may be agreed upon with the company or companies owning the same, and to run, use and operate such roads in accordance with such contract or lease; provided, that the roads of the companies so contracting or leasing shall be directly, or by means of intervening railroads, connected with each other."

They must be connected in one of two ways. First, either directly, or secondly, by an intervening railway. There is not one word in this act of 1861 about the cars of one road running upon the tracks of the other road. All that phraseology was dropped.

Ah! But they have not the right to fix tolls or fares. I wish our opponents had been right about that. I see great personal advantages to be derived from that construction. If that construction were put in force, then we would be relieved from the necessity of paying tolls or fares altogether, and would be allowed to ride free. It would be a happy circumstance for the community to have the power of locomotion free, as they would if the power to fix tolls and fares did not exist under this act. I am afraid that the personal consequences that would ensue from such a construction, would not be very permanent. I am afraid we shall have to pay our fares hereafter as heretofore. I am afraid that even my friends on the other side would abandon the position if they had the right to make a railroad and use it.

There was an old writer who said: If I am invited into the grounds of another to play leap-frog, as leap-frog can only be played by two, I have a right to bring some one else with me. It is an incident to the invitation he gives me to play leap-frog in his grounds. On the same supposition, if a man invites me to dine with him, I have a right to enter his front door as well as to sit down at his table and partake of his cheer. If a man has a right to do anything, the ordinary, practicable means for the doing of it are involved in the power to do it. It would be a fortunate thing for the people who ride over the Sunbury and Erie Railroad if the Pennsylvania Railroad lease of the Philadelphia and Erie Railroad under this law stopped them from fixing the tolls and fares upon this road. What a delightful thing it would be for the people living near the confluence of these two rivers, to get into the cars and ride free to Erie or Corry! but that is a privilege I fear they will never enjoy.

His Honor Justice Read, in his opinion, so widely read and disseminated, and in regard to which there has been so much curiosity expressed, hung all the vast influence of his decision upon the meaning of the word connection. His Honor there fortifies himself by an allusion to an opinion of the Chief Justice in the Lehigh Valley case. As that has been alluded to by the learned Justice, I may be pardoned for saying a word upon it, as I happened to be concerned in it, and was so during the greater portion of last winter. It was a very laborate and intricate case, and as it now has come up in this case, let me strip it of any supposed authority from the learning and ability of the present Chief Justice. I can state it in a very few words, and when I have finished I am sure that your Honors, and even his Honor Justice Read, will see that it has no bearing on the present case.

Judge Packer, whose fame is now co-extensive with the commonwealth, had made a road from Easton up the Lehigh Valley, and when the road had been built as far as the town of White Haven, then Mr. Gibbons and Mr. Wharton, for the Lehigh Coal and Navigation Company, contested the right to go further. Two acts of Assembly came up for discussion. The first act authorized them to construct a railway at a point on the Beaver Meadow Road at or near Penn Haven, to a point at or near White Haven. This was the case argued before your Honors, and it was a remarkable case from the fact that when it commenced all the judges seemed to be against us, and when it concluded the opinion was unanimous in our favor, or nearly unanimous, one of the bench, I believe, Judge Agnew, remarking that while he did not entirely coincide with the views of his brethren, yet he would not dissent. The other act was supplementary to this; authorizing the Company to construct a line of railroad from any point in the valley of the Lehigh near the mouth of the Quakake creek, in the county of Carbon, to another point upon the Lehigh and Susquehanna road, in Luzerne county, and the learned Chief Justice, in illustrating his opinion in that case, used the language in question. Unusually in illustrating a case, the illustration is applicable to other subjects than the one in hand. The Saviour of mankind never used a parable which was equally applicable to all views of the subject, but had generally in view one application, as in the case of the unjust judge.

In deciding the case the Chief Justice said: "The bill and affidavits profess the corporate purpose to reach the Wyoming coal field, and their charter requires them to connect with the Lehigh and Susquehanna Railroad, and by a connection, I understand, such a union of the two roads, at some point, as shall enable cars to pass from one road to the other, for business purposes. Such a connection with the Lehigh and Susquehanna road must be formed by the plaintiffs before they finish their work, but I make no account of the fact that they have not yet selected the point of connection, nor disclosed it in the bill and affidavits."

The mind of the Chief Justice was there not upon *business connections* or *running connections*, as you will see by this circumstance. On the very day we were arguing the case: on the very day the case was decided and the Chief Justice delivered his opinion, and after that day the cars were running over both roads. We came up on them on Monday last, taking the cars at Bethlehem, which were not changed till they brought us here. There was no permanent connection at that time. There was not the most remote idea that the companies intended to form a running connection at all. Hostility was the word. Your honor can testify in regard to that road, and the roads connected with it, that have been running several years, (I think it is twelve years since I first took up the cudgels for Judge Packer against the Lehigh Coal and Navigation Company,) that there was not the least idea of these roads forming a running connection. Why, the hostility was so great that at times it almost communicated itself to the counsel vicariously, as my friend, Judge Black, would say, and in all of the discussions of the case the acrimony was very great. Hostility was indeed hardly the word. There was no such thing as connection at all. The mind of the Chief Justice was upon the point whether the power to complete the road had been exhausted when the road came to a certain point, or whether we could extend the road when we got to that point to the coal fields of Luzerne county. It was a different question altogether, and therefore I propose to lay it out of view entirely.

Mr. Gibbons—In that case each corporation denied the right of the other to make the change.

Mr. Porter—I think I may say that each of these companies denied everything that the other ever asserted.

Mr. Gibbons—That was the point argued before a full bench.

Mr. Porter—That point was discussed before a full bench, when we got the case narrowed down to a point which could be argued. The fact was, however, that on the day of that argument and long afterward there was no permanent running connection between the roads, and they intended to have no running connection at all. How, then, can the question there be called similar to this? I will just bring this question to the mind of the Chief Justice and of the Court. Suppose in the very heat of that argument, as we were laboring with might and main, straining every nerve to win the case, the Lehigh Navigation Company had changed its gauge, just as they went down two or three feet in their grade when we had reached the bridge, and thus dug what they hoped would be the grave of our case. Suppose they had changed the gauge at White Haven. Would that have changed the decision? They had a perfect right to make their road of any gauge desired. They could have changed it in a single night, but how could that have affected the result!

I come back to what I deem the great point in this case, the meaning of the word "connection." It is a very singular circumstance, an event of very rare occurrence, that so many parties can have a case of so much magnitude turning upon the meaning of a single word. There is nothing like it except the case before Judge Marshall, between McCullough and the State of Maryland, where he discusses the meaning of the word "necessary." He runs that discussion over several pages, distinguishing between "necessary" and "absolutely necessary." The discussion is probably one of the finest criticisms ever attempted.

But here are these large interests turning upon the word *connect*. It is of the very highest consequence that we should get at the meaning of this word, and the proper construction of the proviso that contains the phrase. What is it that is to connect? The phrase is not connecting rails. It is not connecting tracks. It is not connecting gauges. A railroad is something more than this. It is a railroad which is to be connected with another railroad. It is something more than connecting rails or connecting gauges. It is connecting roads.

Now just let me throw a consideration first to the right of this and then to the left of it. The consideration I throw out to the right is, that where railroad gauges are not the same, cars can run from one road to the other. If there are two roads of different gauges, one being a gauge of 4 feet 8½ inches and the other a gauge of 4 feet 10 inches, the cars can pass from one road to the other without a passenger knowing it. Your Honors saw by the model submitted by Mr. Gowen how this was done. It was explained before your eyes. "Children's toys," did I hear Mr. Cuyler say? Were they? Ah, they were more than "children's toys;" they were the conceptions of a very acute mind, very well presented, and you saw the thing demonstrated before your eyes. No man doubts that, where the difference between connecting roads be only an inch or an inch and a half in gauge, the cars may pass to and from the different roads; but who will say that, in the progression of science, the time will not come when the ingenuity of man may not pass cars from a road of four feet eight and a half inches in gauge to one with a gauge of six feet? In England, where the gauges are very different, you find that the cars are halted and hoisted up for a few minutes. The cars are held up by jackscrews or other appliances, while the old trucks are run out and new trucks of a different gauge are run in. Then the cars move on without any change, and with scarcely anybody in the cars knowing anything about it at all. This obviation of the difficulty in the difference of gauge can be done by means of a new truck or by increasing the tread of the wheels. The fact is incontestible that cars may run from one road to the other where the gauges are different, and we are attempting here by moral reasoning to find out whether difference in gauge ought to make any difference in the legal interpretation of this term.

But, may it please your Honors, I throw another consideration out to the left of this, and that is that the gauges may be the same exactly and the cars cannot run from one to the other, the gauge being the same and the rails united. You may cause one of the roads to enter the other at such an angle that the cars cannot enter upon the other at all, but will come to a dead stand. You may connect them in such a way that in the ordinary running of railroads the cars cannot be run from one road over the other, the grade being too steep. Take the Portage Railway for instance: we used to run up to the grade of the Portage road, where the gauge was the same, but where the grade was so steep that the cars could not go up at all, and we had to go towards the heavens by the aid of new machinery. There may be roads of which the gauges are the same, but where the tracks of the two roads are laid so differently with respect to each other, one set of tracks being four feet apart and the other only eighteen inches apart, so that the cars used upon one road cannot be used on the other, because they would strike against each other the moment they met. There may be such a difference in tunnels. There may be such a difference in bridges. There may be such a difference in the cars themselves which are used and owned by one road that they cannot run on another road of the same gauge. I therefore point to these two conditions of the case that cars can run from one road to another, when the gauges are different, and that cars cannot run from one road to another where the gauges are the same.

Then comes another element into the case that by the law of Pennsylvania—the law at this very hour—any railroad company has the right to establish or to change its gauge as it desires. If a company connecting with another road of similar gauge desires to thwart that other road, or for any other purpose to change its gauge, it has a perfect right to do so. It is not even to be done by the stockholders; the power is committed to the directors, under the law, to change the gauge of their road without consulting with anybody else. And now comes into the case what I deem the overwhelming consideration, that where there are two roads of the same gauge connected by an intervening road also of the same gauge, and a road at one end makes a lease with a road at the other end by virtue of being connected by an intervening road of equal gauge, the lease is perfect. Does anybody doubt the right to make the lease of the road in that state of the case? Remember, that neither contracting party is required to own the intervening road. There is nothing said about the intervening road. There is not one word in the statute, or in any statute, that alludes to owning the road so intervening. Now comes in the overwhelming fact that it may be held by an enemy in such a way that you cannot use it. It may be held by hostile owners, who, the moment that your lease is completed, will turn round and alter their gauge. The lease is perfected; the bonds are issued; the stock is all taken; but the alteration of the gauge of the intermediate road destroys the lease and destroys the bonds and stock. Thirty millions of dollars gone in the twinkling of an eye! Can this be possible?

Yet this is the view taken by the other side. The fact that the bonds are held by foreigners, I suppose, has no bearing upon the case, except that your Honors would be apt to be more tender to them, out of generosity. The moment you decide for the other side, you pronounce in favor of the most tremendous repudiation ever known in judicial history—a state of things to which my friend Governor Walker will say that the occurrences in Mississippi a few years ago were mere nothing. These companies, your Honors, can never take up their original status. How is it possible that stock which has been cancelled and destroyed can be restored? A man is not bound to surrender a franchise to the sovereign power, but when he goes through the operation of surrender, and when he goes through this operation of consolidation, how is it possible for any court to put him back where he stood before? To decide this case for the other side will be lending the seal of your official approbation to the most monstrous repudiation ever heard of on earth. Observe, I am supposing that one road has been leased to the other road, with a perfect road running between them.

That this has been done in the most lawful manner, in the most perfect manner—that it has been done in such a way that not even a Philadelphia lawyer could object to it, I am supposing the case of a perfect and absolute lease. I am supposing that these companies have got together by virtue of the existence of the intervening road—that they have perfected their arrangements, cancelled their old stock, issued their new stock, sold their bonds and put the whole thing into such a shape that it cannot be put back, and that after all this has been done, this intervening road, this third party, foreign to the contract and a stranger altogether to the agreement, changes its gauge. What will then be the result? Is it possible that you can control it in changing its gauge? Why, the law gives them the right to change it whenever the directors deem it advisable to do so. Shall another road say that they shall not do this thing? Suppose we were to go to that other road and say to them "you must not change your gauge; that will interfere with our lease, and you must not put finger upon it!" They would at once answer, "We do not know you; we have not the honor of your acquaintance!"

Here is a railroad, owned, we shall suppose, in Baltimore, the Northern Central Railroad. Over it, as a connecting road, the cars of the Pennsylvania Railroad run to the Philadelphia and Erie Railroad. The Pennsylvania Railroad Company leased the Philadelphia and Erie Railroad, because they were connected by the intervention of the Northern Central road, the gauges of all three roads being similar. Now, suppose the Northern Central Company changes its gauge. Then the lease of the Philadelphia and Erie is not a valid lease, the connection is not perfect. It is not a mechanical connection, and, therefore, the lease they have made is no lease. Now, can any man answer me that point? Will any one say that if the connection formed between two roads by an intervening road of similar gauge be broken by the change of that gauge, the intervening road can be controlled in their gauge. Suppose a bill be filed in equity to restrain them from changing their gauge, the Court would promptly say there is no ground for this suit. The law declares that they may change their gauge at will, and that would finally determine the matter.

I am trying to place before the Court the facts material to the great questions at issue. I am trying to speak as plainly as a counsel should speak. I am, indeed, endeavoring to throw out the strongest considerations we can offer, not only to sway the judgment of your Honors, but to induce his Honor Judge Read to reconsider the opinion that he gave in Philadelphia, and to show him, if we can, that in this question the matter of gauges is wholly unimportant.

Ah, but your road is not completed, say our opponents. You have never built your road from Franklin to Milton. Does that affect the question? What prevents a company that has made a lease of any other road, be that lease perfect or imperfect, from building ten roads? What prevents it from building any number of roads which the State may authorize it to build? Is there any restriction in that statute whether they build the road or do not build it? The intervening road is not the road to be built; and suppose we never build the road from Franklin to Milton, how does that affect the construction of the act? Is there any intervening road required to be built? Is there any requirement on our part to build any road, or any inability to build a road which the Legislature gives us the power to build?

But then there is a suggestion from the other side which we had not thought of. It is so kind, so strikingly kind—it is so amiable in its nature, that I do not know to which of the learned counsel on the other side to attribute it. They are both such amiable men—both so full of natural and proper sympathy—that I do not know to whom to attribute this sudden interest in our welfare. The objection they offer is "delays of transhipment."

Is it not kind in them thus to interest themselves in relieving us from such difficulties? But what business is it of theirs what *our* delays are? If by having a different gauge we require a more expensive transhipment than if the gauge were the same, whose business is that? Suppose the delays are greater, suppose the expense is greater, will not that help the Pennsylvania Railroad Company? She has a rival road in active operation. If people see that they can make a better arrangement with her, and have better accommodation and less delay, will not that help her? If the transhipment is bad, that is a very bad thing; but for whom? For us! This is a kind of sympathy for which we ought to be obliged to our learned friends, if it would in any way affect the decision in the case.

Let me, in what I have further to say on this subject, call your attention to three things in determining how this word "connect" is to be construed. I say *first* that it is to be interpreted according to its popular meaning. In your philosophical reading your Honors must have made this observation, that the popular meaning of a term is always the right meaning. The technical meaning of a term is generally unreliable, for the reason that it is usually the work of a few scholars, while the popular meaning embodies the sense of all mankind, and therefore you will find that it is the popular meaning of the word which is the safest in the interpretation of any written passage. Especially is this so in the construction of an act of assembly. Here we must take the popular meaning. These acts are not written by lawyers. They are not passed by lawyers. The Legislature—happily or unhappily, I leave the honorable Court to determine—is not always filled with lawyers.

You may remember the incident that occurred when the provision for the revisal of our civil statutes was before the Legislature; a blank was left in the statute for two names, and a member moved that it be filled with the names of one lawyer and one man of common sense! These bills may be passed by men of common sense, but not by lawyers. They are not written by lawyers, and it is therefore not to technicalities that we are to look in their interpretation. If you say that the construction of a term is to be something different from the popular acceptation of its meaning, that would be just like writing a law and hanging it up where nobody could see it. It is the masses that are eminently affected by these acts, and therefore you are to give the terms employed such a construction as is popularly given to them.

What is the popular meaning of the word connect or connection? This case was running in my mind when I came to Wilkesbarre on Monday. I thought of it when I left my home, and thinking about it I determined to make an experiment on the conductor and see what he would say. When I entered the North Pennsylvania Railroad car I said to the conductor: "Does this road connect with the Lehigh Valley Road?" "Yes, sir." "Is it a close connection?" "Yes, sir, you will not have to wait more than ten minutes." So when I reached Bethlehem I had to change the car and enter another one. I did not object. I regarded it as a connection. It is so regarded by nine-tenths of the men with whom you are daily thrown into contact. No idea of gauge ever rises in the mind of any man when you put such a question as that to him. He has no idea of the difference of gauge in his mind.

Do not confound the word connect with the word unite. Similar things may be united, but when united they become one and the same thing. You can say that a man is united to his wife, and generally it is a blessed and happy union, "They twain shall be one flesh." We speak of the United States united into one compact and glorious whole. That was the doctrine of General Jackson's proclamation of 1831, a doctrine which I always believed to be sound; one Union, a glorious whole. They are not connected States nor confederated States, where one may go out and withdraw tomorrow if she chooses. They are United States, and the term connected would be out of place. It is not connection, but union." Here is a paper book. Here is the contract between the Reading Railroad Company and the Atlantic and Great Western Railroad Company, and here is another pamphlet which one of the young gentlemen in my office connected, tied together with a string. Here is another book, and the same two pamphlets I first held up are here, bound within one cover. That is a union. No man would call it a connection, or a connected book, any more than he would speak of the argument of the gentlemen on the other side as a connected argument.

I suppose you can say with the utmost propriety that a line of boats connects with a line of stage-coaches. But they are not the same at all. I suppose that I can say with perfect propriety that a turnpike is connected with a railroad, but when I do so, the idea of similarity is not present to the mind. If you were to take a drive out of Philadelphia, on what is almost the only pleasant avenue on which to drive out of the city—the Township Line Road—and were to ask any toll-keeper, "What does this road connect with?" although it is a turnpike of a very different gauge from Broad street, he would promptly answer "Broad street!" We may say that this Susquehanna River is connected with the Ocean. How? By means of Chesapeake Bay. But the gauge is not the same, neither the gauge of Ocean, Bay, or River. So, with equal correctness, we may say that the French Emperor, that marvelous embodiment of intellect and energy, as useful as it is wonderful, is connecting the Mediterranean with the Red Sea, by a canal through the neck of land that in turn connects Asia with Africa. The Emperor says he will perfect the connection; but anybody who has ridden on the Mediterranean for a few hours, as I believe one of your Honors has, will say that it is a different thing from the Red Sea.

So we may speak of the Isthmus of Panama as connecting the two continents of America, one of which looks like a stout, well favored, broad shouldered man, and the other like a ham bone of the leanest sort. So, also, we speak of the Straits of Dover and the bodies of water they connect on either side of the German Ocean and the English Channel, without having present to the mind at all the idea of similarity or identity. Take the human body. A man's head is connected with his trunk by his neck; and it is a very important connection, as that gentleman whose name was introduced into this argument, the other day, Mr. Probst, ascertained by that accident which happened to him in the jail-yard, in the presence of the Sheriff. The head is connected with the body by the neck, and yet I have known men between the gauges of whose heads and whose stomachs there was no identity. We may speak of the lungs being connected with that little organ, no larger than my fist, that lies under my breast, the heart—capable, were an artery suddenly cut off, of ejecting my blood several feet into the air; and yet there is no similarity or identity between the lungs and the heart.

Take the external man. I may venture on an observation on these eye-glasses, which I seldom put on when anybody is looking, but frequently use when no one is observing it. These eye-glasses are connected by a slender arch. But there is no similarity whatever between the glasses and the arch. Take an old-fashioned watch seal. I do not happen to have one. You say that a watch seal is connected with the watch by a chain. Here is a bunch of keys; they are connected by a ring, but there are none of them alike. My horse is connected with the vehicle in which I ride by means of the traces; yet nobody would think of similarity there. The branches of a tree are all connected together, and are also connected with the trunk; but I never saw two branches of a tree that were alike. A telegraph operator would say my instrument here is connected with the wires, but it is a very different thing from the wires. The members of a domestic family are connected, and in this sense we speak of brothers being connected. We say that a man connects himself with the church, or connects himself with a political party. Lawyers are connected as colleagues in a cause, and to decide it Judges are in a certain sense connected on the bench, but there is no idea of similarity; and so, wherever you go, round and round, to any place you please, you will never have the idea of similarity in your mind when you use the word connect. This is the way in which the people use it.

But there is another mode of interpretation; I will therefore show you in the second place how these parties have used it, and in the third place I will show you how the State has used it.

These complainants have used it in the sense for which I argue, that the word connection is used without reference to gauge. In their annual report for last year they speak of connections existing between two certain roads of different gauges. They print the fact that they connect with roads of different gauges on their tickets, and they charge a passenger for such a ticket, which, if the doctrine of Mr. Gibbons be true, is the very highest injustice. They put into a passenger's hand, and take his money for, a ticket, informing him that they are going to carry him through from Philadelphia to Meadville over roads with which they connect, and over roads which are of dissimilar gauges.

In the contract of 1857, they say that the said companies do mutually covenant and do make certain connections and arrangements. That is, the Atlantic and Great Western Railroad Company and the Sunbury and Erie do this.

They say: "for the purpose of forming railroad connections." And again, "provided further, that after the aforesaid connections shall be made." And this is between these two identical roads in this contract, agreeing that connections will have to be formed, or that they have formed them, and that they hereby make the connections.

The word was used in certain resolutions. These parties, the managers of the Philadelphia and Erie Railroad Company, called a meeting at their office on the 16th of July, 1864, after the track of the Atlantic and Great Western Railroad Company was built, and after the gauge had been fixed, for there has not been a rail laid down since; and they said this:

Resolved, That the President of this Company be instructed to notify (under the seal of the Company) the President and Directors of the Atlantic and Great Western Railroad Company of the acceptance by this Company of all the obligations and conditions of the above recited act; and demand of said Atlantic and Great Western Railroad Company, on their part, a fulfilment of the same.

How could the Sunbury and Erie Road form the same and equal connections with the Atlantic and Great Western Railroad Company, as that road then formed with the New York and Erie, the gauge of the roads being so entirely different? What answer was given to the bench on this subject? "Ah! well," they say, "but one part of this act destroys the other." There is a part which says we shall make the same or equal connections, and there is a part which says something else. The part which suits us we will take, and the other we will reject. How could they get over the fact that the gauge of the Sunbury and Erie was fixed, and the gauge of the Atlantic and Great Western Railroad fixed? How could they call upon the Atlantic and Great Western Railroad Company to make the same connections with the Philadelphia and Erie that they made with other roads? How could they make equal and the same connections with both roads, one of which had a gauge of 4 feet 8½ inches, and the other of 6 feet. They did not believe at this time that difference of gauge should be considered in forming connections, otherwise they would not have sat down and agreed about forming connections, which they now say cannot be formed at all.

Then again this contract which was made on 21st of April, 1865, provided as follows.

"All business to or from the Atlantic and Great Western Railway, at or near Corry, and all business to or from Erie and Cleveland, or such other points west of Cleveland as may be determined by the Pennsylvania Railroad Company, destined by this route, shall be rated as through trade."

Both the plaintiffs in this very case and the Catawissa Railroad, on the 21st of April, 1865, sat down to make an arrangement together for the purpose of dividing the profits that should result to both from trade and travel coming from Cleveland over the Atlantic and Great Western to the road of the Philadelphia and Erie and the Catawissa road, and they state that this shall be called a through trade—a business connection.

That is the way the parties use the term. I have now shown you how the people use it, and how the parties themselves use it.

But thirdly, how has the State used it, the great *parens patriæ*, the State of Pennsylvania, not the Pennsylvania Railroad Company? The delusion that she is the State is one of those vagaries of the imagination which will be removed by the decision in this case. How has the State used it? By the act of 23d April, 1863, it was declared "that the gauge of all railroads heretofore or hereafter to connect with the Philadelphia and Erie, on which the track is not now wholly or partly laid, shall conform to and be the same as the gauge of the Philadelphia and Erie." Now at the time of the passage of this law, every rail was laid upon the Atlantic and Great Western road, and thereby we were specially exempted by the Legislature from making our gauge the same as the Philadelphia and Erie as clearly as if the Atlantic and Great Western had been named in the act. The Legislature knew that our track was laid; they knew the state of things of which they were speaking, and the Legislature said that the gauge of all railroads connecting with the Philadelphia and Erie should be the same as the Philadelphia and Erie, except those whose tracks had been laid; that is, except the Atlantic and Great Western; that is, other companies shall conform to this gauge whose tracks have not been laid; but as to the Atlantic and Great Western, whose tracks have been laid, while we include other companies in the act, we except her. That is the way the State has treated the subject. It was her intention to say that the "Atlantic and Great Western need not conform her gauge to the gauge of the Sunbury and Erie, because the track of the former was laid." But as to all companies that shall build roads hereafter, their gauges shall be the same as the Sunbury and Erie. In other words, the Atlantic and Great Western is as fully excepted as if it had been excepted by name.

Look at the connections between the roads of our State and the New York and Erie Road. The New York and Erie Railroad is authorized to connect and does connect with the Williamsport and Elmira Road. The New York and Erie Railroad having a wide gauge of six feet, and the Williamsport and Elmira one of 4 feet 8½ inches.

The New York and Erie Railroad is authorized to make a connection with the North Branch Railroad, a road of its own gauge; and by the same act the North Branch Company is authorized to connect with the Elmira and Williamsport Railroad of 4 feet 8½ inch gauge. A connection is also authorized to be made with the New York and Erie and the Delaware and Belvidere Railroads.

The Catawissa and Towanda Company are authorized to build a road of 4 feet 8½ inches in gauge from Catawissa to some point not only where a connection can be made, but a proper and convenient connection with the New York and Erie Railroad of 6 feet in gauge. Then the Philadelphia Easton and Water Gap Railroad Company, incorporated while the general gauge law requiring all roads to make their gauges 4 feet 8½ inches was in force, was authorized to connect with the New York and Erie Railroads and with other roads of different gauges.

The Allegheny Valley Railroad was authorized to connect with any railroad in New York, the Allegheny Valley being a railroad of 4 feet 8½ inches in gauge. The Canton and Athens Railroad, which was incorporated while the general gauge act was in force, was authorized to connect its road with the Delaware, Lackawanna and Western Railroad, the latter having a 6 feet gauge. The North Branch Railroad, a narrow gauge, was authorized to connect with the New York and Erie, a broad gauge. The Towanda and Franklin Railroad was authorized to connect with the New York and Erie Railroad, broad gauge, and with the Williamsport and Elmira, narrow gauge. The Mahoning and Susquehanna is authorized to build a road of any gauge deemed advisable, and to connect with the Sunbury and Erie Railroad. The Lackawanna and Lanesburg Railroad was authorized to connect with the New York and Erie Railroad or with any other railroad.

Then there are numerous acts of Assembly into which I shall not travel far, one of which is that of 24th March, 1865: "That it shall be lawful for any railroad company, organized under the laws of this State, and operating a railroad either wholly within or partly within this State, &c., to consolidate with any other company whenever the two railroads to be consolidated shall form a continuous line of railroad directly or by an intervening railroad. *Provided*, that railroads terminating on the banks of any river *which are connected by a ferry* shall be deemed continuous under this act." Here is a ferry intervening, and yet the connection is by Legislative authority declared perfect.

I will not go much further into this mass of acts, which, however, you will find it extremely necessary to do, when you come to decide upon this question. The act of February 27, 1858, authorized the Baltimore and Ohio Railroad to construct a railroad through Pennsylvania from Baltimore to the Ohio river, with authority to connect within this commonwealth with any other railroad or railroads, *canal or canals, or other works*. By the same act the right is given to connect the City of Pittsburgh with the main railroad. Then there is the Pennsylvania Canal act by which the Board of Canal Commissioners are required to locate a railroad across the mountain to connect the Juniata and Conemaugh sections of Pennsylvania Canal. Here you observe railroads are specially authorized to connect canals. The Canal Commissioners, by act 24th March, 1848, are authorized to survey the valley of the Monongahela from Pittsburgh to the Virginia line, and from Columbia to the mouth of the Connestoga, with a view of *connecting these streams* by a canal or railroad.

Then comes the act of 2d February, 1836, to connect the Cumberland Valley Railroad with the Pennsylvania Canal and with the Harrisburg, Lancaster and Portsmouth Railroad. Then comes the act of March 13th, 1837, by which authority was given to connect the North Branch Division of the Pennsylvania Canal with the slackwater navigation of the Lehigh by a railroad.

I have thus shown you how the State defines this word connect; I have shown you how it is used popularly; I have shown you how it is used by the parties themselves; I have shown you that in every instance the idea of identity or similarity between the things connected is never once present to the mind.

I will now go on to one or two other points. Among others I will say a word about this contract of 31st October, 1860. I touch this contract which relates to the Catawissa Railroad, for a special reason. You would have heard a very able argument in conclusion, if the learned counsel for the Catawissa, Mr. Wharton, had not been confined to his room at the hotel by illness. I did not argue the case in Philadelphia, and I would gladly have shrunk from the work now, but for the kindness and generosity of my colleagues who have assigned to me the duty of closing the argument. Mr. Wharton's company is specially concerned here, and I will devote a little attention to it.

Your Honors will observe on page 47 of the large paper book, this contract between the Sunbury and Erie and the Catawissa Railroad Companies. It is very important that you should have what we believe to be a just conception of this contract. Our friends on the other side say this contract was a binding contract between the Sunbury and Erie and the Catawissa, by which the cars brought to Milton by the Catawissa Railroad were to pass over the road of the Sunbury and Erie from Milton to Williamsport, on certain terms. They say that that contract was abrogated and destroyed by the transfer of the Catawissa to the Atlantic and Great Western; and that the decree of this Court at Nisi Prius annuls and destroys it. How can they take this position? They say that this contract was annulled by the lease of 1865, and then they turn round and say that that lease itself is void. They say in effect that the contract of 1860 is void because the lease is void. Did your Honors ever hear such a reason as that offered in a court of justice before?

Judge Woodward—Suppose the lease is valid, what then?

Mr. Porter—I was just coming to that. This is the language: "In case of an assignment for the benefit of creditors by the Catawissa Railroad Company, a judicial sale or transfer of the road shall at any time take place, then this agreement shall thereupon, without any act upon the part of the party of the first part, be thereafter null, void and of no effect."

What is the meaning of this clause of the agreement? The Catawissa Company had been unfortunate; she had made an assignment for the benefit of creditors before. The parties therefore said, she may make another assignment for the benefit of creditors; we will provide for that, so that if she makes such an assignment again, then this contract, without any act of ours, but simply on account of such an assignment for the benefit of creditors, shall determine and be at an end. In the argument in the Court below, somebody took the liberty of changing the punctuation of this clause, and putting a comma after the word sale. We took the liberty, as it was not in the original, to leave it out. The insertion of the comma was probably not intended by the learned counsel; it was no doubt done by those unfortunate men, the printers, for we all know that printers sometimes take such liberties, and that sometimes they make blunders even in the highest of all documents, a judicial opinion. I know this to my own cost, for there are some opinions on record which I would like to have corrected, if possible.

What is the kind of a transfer meant? A transfer by means of an assignment for the benefit of creditors, that is what is meant by a judicial sale or transfer. Not a judicial sale, and a transfer of some other kind; we see this from the rest of the sentence. The whole sentence is to be taken together and not divided by a comma, but whether they are right in calling that a sale, or a transfer, that is a matter of no concern to your Honors, if it be not a judicial sale or transfer. The paper means that the transfer is to be made by a sort of judicial proceeding under a claim for indebtedness. Suppose it mean a judicial sale under a mortgage. There has been no sale under a mortgage. This is simply a lease of the road. I do not deem it necessary to cite law to show that when I make a lease of my house I do not sell my house, and the liens on the property are not disturbed by that lease at all. If I say to a man that I have a house in Walnut street which I shall lease to him for a year, I do not sell it to him. I expect at the end of a year to take my house back again. Observe from the whole sentence that the word transfer is indissolubly joined to the word sale. It is a very common thing with persons drawing these contracts to use more words than are necessary. They suppose it is a necessary legal form, but it is always a fault. It is a redundancy, and ought to be avoided in correct writing. It is frequently done in these contracts.

But read it as it is, an "assignment for the benefit