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THE GREAT BAILBOAD CASE.

Philadelphia and Erie Railroad Company and Pennsylvania Railroad Company vs. The Catawissa and the Western Central Railroad Company, of Pennsylvania, and the Atlantic and Great Western Railway, of Ohio, New York and Pennsylvania.

Decision in Favor of the Plaintiffs.

Opinion of Justice Read at Nisi Prius Tc-Day.

SUPREME COURT OF PENNSYLVANIA IN AND FOR THE EASTERN DISTRICT.-JANUARY Term, 1866.-In Equity.-The Philadelphia and Erie Raliroad Com-pany vs. The Catawissa Railroad Company and The Western Central Raliroad Company of Pennsylva-nia, and The Atlantic and Great Western Rallway Company of the States of Ohio, New York and Penn-Sylvania. Andrew Scott vs. the same Read, J. The real question in this case is whether the rail-roads of the Atlantic and Great Western Rallway Company and the Philadelphia and Erie Railroad Company, are connecting roads within the meaning of the Acts of Assembly of the 12th March, 1847. the 25th March, 1859, and the 23d April, 1861; for, if they are such connecting roads, then the first-named road is connected by means of an intervense; railroad with the Catawissa Railroad, which is uaquestionably di-arter connect of the Atlantic and Great Western Inter-sects the Philadelphia and Erie Road at Corry, in the county of Erie. Does it connect as well as intersect? The one has a gauge of six test, and the other of four feet eight and a half inches. The one runs across the State, and by means of connectus groads forms a through line from New York to Dayton, Ohio, with further western connections, whils the other road is entirely on Pennsylvania soil, and connects the clu-paia, the commercial metropolis of the State. The road not have a faust of gauge at Corry, and the cars and locomotives of one road cannot run noon the other road. This is a physical impossibility, as the two roads are now constructed and are proved to the court to exist at the present moment. If all the roll-ing stock of one road were by an accident destroyed, or withdrawn, the remaining road could not operate it with their rolling stock, silved and perfective with the could perfect weat it we are and so and were by an accident destroyed, or withdrawn the remaining road could not operate its

awn, the remaining road could not operate 1 heir rolling stock, although perfectly willing to the wants of the intersecting road. There can

pply the wants of the intersecting road. There can-t therefore be, and there is not, any mechanical con-cilon between the two roads. But as the opinions of eminent engineers on both iss have been laid before us as to their understand-g of the terms "connecting" railroads or roads "di-ctly or by means of intervening roads connected the each other," it becomes necessary to look into the ilroad system generally, and particularly of that of is State.

The Liverpool and Manchester Baliway, plaened and executed by George Stepheuson, was opened hirty-six years ago with steam locomotive power, rought into successful operation by the genius and kill of this distinguished engineer. The gauge of this oad was fifty-six and a half incres, being that of the oal roads i.e. in use. Three years after wards Parlia-nent authorized the construction of a railway from ondon to Birmingham. This railway was of the ame gauge, and built by the same engineers: and has ince grown into the London and Northwestern Bail-iay, with 124 miles of road, on which have been ex-ended over fifty-two millions of pounds sterling, and i whose management and operations a most interest-ing account is given in the Quarterly Ecview for De-ember. 148. The half-yearly dividend of this road or the first balf of 1865 was three per cent. The scheme for the Great Western Railway, running comportion of the first named piace, and its principal Liverpool and Manchester Bailway, plaened

third that there should, of course, be no break of gauge. In a State like Pennsylvania, crossed and inter spersed by chains of bills and mountains, where the passes are few and narrow, there can be no doubt that the only permissible gauge should be the uniform har-row gauge of four feet eight and a half inches, origi-nally fixed and adopted by the State upon the Colum-bia Road, which regulated that of the Pennsyl-vania Railroad, the Philadelphia and Erie, Northern Central, Catawissa, Philadelphia and Erie, Northern on, and Baltimore, Germantown and Norristown, and the West Chester Reads, all leading to and connected with the city of Philadelphia, now covering 130 square miles of iteritory, with a population of more than soo-600 souls. The State of New York. in 1824, had nearly completed their canal from Lake Erie to the Hudsen, which, with

Whenever this becomes necessary then the superior advantages of the uniform narrow gauge will be self-vident in the diminished wildt of roadwan, of bridges, embankments, deep cuttings and tunnels, and the decreased cost of the foundation and superstructure, and of the rolling atock of the railway. The decreased cost of the foundation and superstructure, and of the rolling atock of the railway. They feet had been introduced on one road, but when it reached a narrow gauge road the incoms venience of break of gauge was found, and its engineer changed it to the uniform narrow gauge road the incoms venience of break of gauge was found, and its engineer changed it to the uniform narrow gauge of 55% inches, saying, "The locomotive of its and y is not the locomotive of its of the uniform any now with facility clean an engine in an hour, which would formerly take a man a day." Another eminent engineer said. "I think the absolute necessity of extending railways, now that 2 very lorad is to have a railway, rather goes to show that it is not wis, to make these railways of very large dimensions," and parteniarly take a man eday." Another eminent engineer said. "I think the absolute necessity of extending railways of very large dimensions," and parteniarly that reference to extension by branches. Unfortunately for the Great Western these warnings of experienced engineers itad no effect upon Mr. Brunel, a man of magnificent ideas, carried out not enly on the troad, but in the steamship Great Eastern, and on the Atmospher'c Killway, the last two of which were entire failure at a vast cost to the unfortunate proprietors, who were led awayby his engineers ability, tact and excellent temper. The stockholders, or to nee the English phrase, the shoulders, of the Great Western, according to their play point of view, for their persist determination to become ingeloguence. His erailway is not the anarow massive states of anarow gauge tailway iournal, "Is now us much a narrow gauge and warows and the great we lad the narrow massive the road of \$5,167.000, and the State of Pennsylvania of \$6,700,000, making a total of 11,807,000. The Sunbury and Eric Rallroad Company was incor-porated by an act of Assembly of the 3d of April, 1807, to survey and fix a route for a railway from Sunbury, by way of Northumberiand and Williamsport, to the secting of their Stockholders on the 12th September, 1865, adopted the joint consolidation private by it, and 1851 the Eastern and Western atrisions of the road were sgain surveyed, and in 1852 a great effort was made to infuse vitality into the corpo-ration.

ration. Under the provisions of an act of 2d March, 1852, an

great effort was made to infuse vitaility into the corp or ration. Duder the provisions of an act of 2d March, 1852, an attempt was made by the company to exteud their road to Harrisburg, which was defeated by a decision of the Supreme Court, showing a prior right in what is now the Northern Courtal Rallroad Company, (Packer vs. Sunbury and Erie Railroad Company, 8 Norris, 211.) Under an act of the 10th February of the same year, suborising municipal and other corporations to sub-scribe to its stock, subscriptions were sought from Philadelphia and Exie, and other counties and boroughs on the route of the road, and upon a favor-able report from a Committee of Councils who visited Erie, the City of Philadelphia subscribed two millions of dolars. The District of Richmond subscr.bed 250,000, which, upon consolidation, merged into that of the city. The county of Krie subscribed 320,000, and the city of Erie subscribed 320,000, and the city of Erie subscribed 320,000, and the city of Erie \$200,000 and these, with some indivi-dual subscriptions, formed the capital on which ope-rations were commenced, and in 1855 a very able Board found forty miles of road in good running order from Eunbury to Williamsport, and upwards of two hundred miles under contract. By an act of 21st of A pril, 1850, the State sold to the Sunbury and Erie Hailroad Company, for \$3,500,000, all the public works of the Commonwealth remaining un-sold upon certain terms, which act the Supreme Court decided to be constitutional. (Sunbury and Erie Rall-read Company vs. Cooper, 5 Casey, 278.) By the act of 18th April, 1860, and of March, 1861, the indebiedness to the Commonwealth was substantially changed into a second mortgage, for four millions o doliars were deposited in the State sinking fund, the name of the Company was altered to that of the Phi-ladelphia and Erie Raliroad Company, and they were authorized to contract with any other rallroad com-pany in the State in relation to the completion and working of the road. A ccordingly, on the 6t

equipments. These two roads therefore have carried out by land carriage the original intentions of the fra-mers of the act of 1825, to connect the city of Philadel-phia with Pittsburg and Lake Erie by the main line and West Branch causis. In this Roan the state has four millions of dollars, the City of Philadeiphia two million two bundred and fifty thousand dollars, and both roads are Pennsylvania en errises. Douring the trade and com-The journalist also advised a suspension of dividends The journalist table divised a suspension of dividendas for three or four half years, as an economical method of providing money, and at the sixtleth half-yearly meeting in September-last, the dividend declared was one ptr cent, and the stock in D.cember was quoted at 61%. I have annexed to this ophilon extracts from the proceedings of that meeting, and from the *Bailroad* fournal

The south Wales part of the Great Western termin-ates at Milford Haven, the point selected by one of the learned counsel for the derendant as the eastern terminus of the proposed steamship line from this port. The South Wales line furnishe; the best steam_and lair-house coal, in relation to which the Chairman of the Great Western Company said to the shareholders. "The mineral frade from South Wales, oppecially in steam coal, was largely diminished by the sudden ces-sation of the demand for blockade-runners." [Result of British Experience,] It is, therefore, the indisputable result of British experience, first, that the narrow gauge is preferable to the broad gauge, noi only on the score of commercial convenience, but for list up concomy in making and working; second, that there should be an entirely uniform gauge over the whole railway system of the country; and third, that there should, of course, be no break of gauge. In a State like Pennsylvania, crossed and inter

the City of Philadeiphis two million two hundred and fifty thousand doilars, and the city and county of Friefive hundred thousand doilars, and both roads are Pennsylvania en erprises, pouring the trade and com-merce of the West directly into the lap of the com-mercial metropolis of the State. The Central Railroad of New York, from Albany to Buffalo, has 4 feet 8½ inches gauge, and I believe the roads north of it, and east of the Hudson, including the New England States, have the same uniform gauge, with the exception of the road from Portland joining the Grand Trank of Canada, which has the Canadian gauge of 5 feet 6 inches. The ordinary gauge in New Jersey is 4 feet 10 inches, but the New Jersey Central has the 4 feet 8½ inch gauge, with a third rail to accommodate the Delaware, Lackawanna, and Western. By Laprovenents ita ma-chinery the cars of the narrow gnage can run upon the New Jersey roads. The New York and Erie Road was planned as far back as its2; and the purpose was to construct a rail-road from New York to Lake Erfe, through the south-ern tier of counties, entirely upon New York soil, and the Company was restricted from cannecting with any ruliroad either of the State of Fennsylvania or New Jersey, or leading into either of the said States, without the consent of the Legis lature of the State of New Jorks to Ale Mas of the State of New Jork soil, and the company was restricted from cannecting with any ruliroad either of the State of Jennsylvania for New Jersey, or leading into either of the said States, without the consent of the Legis lature of the State of New Jorks on available line without passing through Pennsylvania, they were allowed to construct their road through Susquehanna and Pike counties by two acts of Assembly, passed the listh Feb-ruary, 181. and 2014 March, 186. In a similar way, 11 becoming necessary to secare a terminus opposite the city of New York instead of depending upon the steamboats from Piermont, by Yarious leages ind contracts with New Jersey Rail-road Companies, sa

In one of these agreements it is expressly stated that the object of laying one rall on each side of the present tracks of the road of the New Jersey Bailroad and Transportation Company, so as to form is con junction with one rall of each track, two tracks of five iees wide, is for the purpose of enabling the New York and Eric Railroad Company to run the cars and engines of the said Company from their road at Suf-ferns, across New Jersey, null at or near the Hudson River at Jersey City, without change, dclay, or obstruc-tion.

ables longwed shit, on the left and left or the same nonth. Certificates were produced from the Secretaries of tate of the States of Ohlo and New York, of the filing of the agreement or a copy in their respective offices, but none from the Secretary of the Commonwealth of his State, but in lieu thereof a letter from thim declin-ag to file it addime "by the Action of the Attorney

this State, but in lieu the value of the Comm him declin-ing to file it, adding, "by the advice of the Attorney General, Mr. Meredith," and I have therefore no evi-dence of the existence of the new corporation. The necessity of the filing to create the new corporation, is distincily recognized in the certificate or agreement of consolidation fiself. The act of the State of Ohio is entitled "An Ac to suthorize the consolidation of Rallroad Com-panies of States adjoining in certain cases and to authorize Rallroad Companies in this State to extend their roads into adjoining State," and was passed toth April, 1556 (53 vol. P. Laws, p. 143). This act authorized any rallroad com-pany in the State whose line of road extended to the boundary line of the State, or to any point either in or out of this State, to consolidate its capital stock with the stock of any rallroad in an adjoining State, the line of whose road has been made "to the same point and there the swering the state of the state point and there the swering the state of the state of the same point of whose road has been made "to the same point and there the swering the state of the state of the same point and there the swering the state of the state of the same point and there the swering the state of the state of the same point and the swering the state of the state of the same point and where the several roads so unite as to form a c line for the passage of cars: Provided that p ing to the bank of any river, which is not shall be held to be continuous under this as set would authorize consolidation with a twould suthorize a consolitation with a Pennsyl-ania road, but not with a New York road. Pennsylvania Aci. Our act which was the subject is an uppleasant investigation which has cast a shooe f sysplicion over it, was passed at the

of an unpleasant investigation which has cast a shode of suppleion over it, was passed at the instance of the Atlantic and Great Western and is a general law applicable to all companies em-braced within its terms. There are words omitted in it first section which make nonsense of it; but sup-posing it to mean the consolidation of the capital stock of a Fennsylvania Railroad Company with similar companies in other States "whenever the two or more railroads of the companies or corporations so to be consolidated shall or may form a continuous line of railroad with each other or by means of any interven-

consolidated shall or may form a conlinuous line of rairoad with each other or by means of any interven-ing rairoad—Provided, that rairoads terminating on the banks of any river which are or may be con-nected by ferry or otherwise shall be deemed con-tinuous under this act." The interposition of "any in-tervening railroad" was intended to include the Buf-faio Extension. This act would authorize consolidation with the Ohio and New York companies, if the following proviso contemplating the passage of similar general laws by the states taking aurantage of it was complied with : "And provided further, That nothing in this act con-tained, shall be taken to authorize the consolidation of any company or corporation of this Commouwealth. any company or corporation of this Commonwealth with that of any other State whose laws shall not an

any company or corporation of this Commonwealth, with that of any other State whose laws shall not an thorize the like consolidation. I can have no doubt of the intention of the Legisla-ture, who were dealing with our sister States upon terms of entire resiprocity. Our act was passed 24th March, 1855; (P I aws. p 49.) New York act.] On the 29th April, 1885, the Legis-laure of New York passed, not a genetial law, but a private special act to authorize the consolidation of The Aitanic and Great Western Railway Company with certain other Railroad company. This act is expressly confined to the merger of the two New York companies, and although the words are general as to the companies in other States with whom they may consolidate, yet the description of their forming a continuous line of railroad fus only the two roads of the same name in Pennsylvania and Ohio, which with the New York road form the main line of the Atlantic and Great Western Railway. By the New York act, our general law is degraded into a private eact, for a company whose name was studiously kept out of view. The as not of Canadian reciprocity; all the benefits This is a sort of Canadian reciprocity; all the benefit

This is a sort of Canadian reciprocity: all the benefits on one side. But if this view be correct, still the Pennsylvania Charter of the Atlantic and Great Western Company remains, and we have it before us— [Catawissa Railroad,] The Little Schuyikill and Sus-quehannab Railroad Company was incorporated by as act of 31ts March, 1851 (P. Laws, p. 153). In 1849 its name was changed to the Catawissa, Williamsport and Eric Railroad Company. By an act of 21st March, 1850 (P. Laws, p. 234), and ajudicial sale of the said railroad, the whole became veried in a new company called the

Laws, p. 234), and sjudicial sale of the said railroad, the whole became vested in a new company called the Catawissa Baliroad Company, which Company, by an act of 10th April. 1861, was permitted to morigage its road for 250,000 (P. Laws, 1862, p. 357). On the 31st October, 1860, the Sunbury and Erie Bali-read Company entered into an agreement with the Catawissa Baliread Company, whose road extended from Tamaqua to Mitton, the object of which was that the Sunbury and Erie ahould furnish sufficient motive power to hard over their own read between Mitton and William Sport hil the passenger, axpress and bargage

Railroad, over the whole of the United States, would be incalculable both in peace and war, as the same locomo-tives and cars could be used on every road in the Union. BI cannot understand how s in feet gauge road run-ning through our State and crossing a narrow gauge road with which it mechanically connot connest, can be called a connecting road. I can therefore of onlyion be called a connecting road. I am therefore of opinion that the Atlantic and Great Western Railroad Comthat the Atlantic and Great Western Railroad Com-pany. and the Catawissa Railroad Company are not "directly, or by means of intervening railroads con-nected with each other," and, of course, that their sgreement, of the 1st November, 1865. is entirely null and void.

But supposing this to be the case, it is said that the omplainants are not entitled to take advantage of its

But supposing this to be the case, it is said that the complainants are not entitled to take advantage of its invalidity, because they have no such interest as en-able them to apply to a Court of Equity for the erer-cise of its equitable powers. [Andrew Scott's Bill.] In Andrew Scott's Bill against the defendants, it was sworn, on their part, that he was not a stockholder in the consolidated company, but he exhibited a certificate of stock shewing he was a holder of tweive shares in the Atlantic and Great Western Railroad Company, the Pennsylvania corporation and the only one i can recognize. It was then the ordinary case of a sharenoider in a company, axking the interthe only one I can recognize. It was then the ordinary case oi a sharenolder in a company, asking the inter-position of a Court of Equity, to restrain the commis-sion of acts which were ultra vires. I thought this was settled in the case of sanford vs. Raihroad Company, 12 Harris, 378, where the plaintiff was the holder of only ten shares, and was the member of a rival ex-press company, and had purchased the stock for the purpose of filing the bill. It was held there that the contract made by the railroad company was against law and void, and it was ordered to be canceled and delivered up. In the case of Gratz vs. Pennsyl-vania Railroad and Philadelphia and Erie Railroad

and delivered up. In the case of Gratz vs. Pennsyl-vania Raliroad and Philadelphia and Erie Raliroad Companies (5 Wright, 42) the snit was by a single sharebolder brought to restrain acts alleged to be wire vires. [English cases cited by defendants.] - As seve-ral coses in England have been cited by the defendants, and the question has been argued at length, I shall consider them briefly to see whether we have been in error in Pennsylvania. In Sparks vs. Southwestern Raliway Company, I Small & Gifferd, 142. Vice Chancellor Stuarton the 14th January, 1853, heid that the plaintiffs having been aware of the in-tention to construct the line, and not having applied in several cases that the mere fact that the plaintiffs are shareholders in a fival company is no reason for the court in a proper case refusing its ald to prevent the violation of contracts. But where, the fact is established that under the pretence of serving the interests of one Company, the shareholders in a rival company by purchasing shares for the purposes of iltigation can make this Court the instrument of de-feating or injuring the Company into which they so intrude themselves in order to raise questions and dis-putes on matters as to which the other members of the company by perchasing shares for the purposes

utes on matters as to which the other members of he company may be sgreed. I cannot consider that n such a case it is the province of the Court ordinarily o interfere." This is not the case before us, taking

be anguage in the strongest sense. In Recers vs. Oxford, dc., Railway Company, 2 De is and Jones 602, the blit was filed by a clerk of a view solely, who had made him a shareholder with view solely to the rown interests, and the case was A view solely to their own interests, and the case was beard and decided on the merits against him, the act complained of not being *ultra viras*. Lord Justice Knight Bruce said: "But if on the legal point there is room for doubt, the circu astances do not in my judg-ment render it imperative on the Court to act against the Company.

hent render it imperative on the Court to act against the Company. In Forrest vs, Manchester, Sheffield and Licolnshire Railway Company, 30 Revan 40 (30th May, 1831), where the Piaintiff, who held fig: 0 stock of the Railway Company had an interest amounting to £250 in a Packet Company, whose profits were interfered with by the excursion traffic of the Defendant. He was also a Director of the Packet Company, and the directors directed the institution of the suit, and indemnified him against the costs The Master of the Rolls decided tha case on the merits against the plaintiff. Upon appeal I ord Chaftellow Woodbury on the 18th July, 1851, af firmed the decree of the Master of the Rolls (2 Jurist, N. S., 857), not upon the ground taken below, but en-tirely upon that of personal exception to the character of the plaintiff as being the mere puppet of the Packet Company, who had directed the institution of the he plaintiff as being the mere puppet of the Packet npany, who had directed the institution of the

soit. In Hare vs. Loudon and Northwestern Bailway (Company (2 Johnson & Hemmirg. 80) Vice Chancellor Wood, on the 11 June, 1831, held the arréement com-plained of was not ultra tircs, and it was queried whether the plaintiff as a shareholder in one company had with full knowledge received profils under an I knowledge received n greement between that company afterwards on purchasing shares in companies parties to the agreement, behalf of all shareholders in such co stain a ipany impeacu-ocially if it behall of all shareholders in such outpany inter-ing the agreement as undra vires; more especially if it appears that he is really suing in collution with one of the companies parties to the agreement. I have stated these cases in detail to show, that the

I Dave a late Court has no leatures in the second complete in the second complete in the leading case of Colman vs. (other Cases J In the leading case of Colman vs. (other Cases J In the leading case of Colman vs. (other cases J In the leading case of Colman vs.) (other cases J In the leading case of Colman vs.) (other cases J In the leading case of Colman vs.) (other cases J In the leading case of Colman vs.) (other cases J In the leading case of Colman vs.) (other cases J In the leading case of Colman vs.) (other cases J In the leading case of Colman vs.) (other cases J In the leading case of Colman vs.) (other cases J In the leading case of Colman vs.) (other cases J In the leading case of Colman vs.) (other cases J In the leading case of Colman vs.) (other cases J In the leading case of Colman vs.) (other cases J In the leading case of Colman vs.) (other cases J In the leading case of Colman vs.) (other cases J In the leading case of Colman vs.) (other cases J In the leading case of Colman vs.) (other cases J In the leading cases of Colman vs.) (other cases J In the leading cases J In the leadi

the Philadelphia and Erie and under the acts of 13th March, 1847, and 23th March, 1853, they are intimately connected by the contract of 31st October, 1850, for a period of twenty years. This contract embraces the running of the lo-comotives and cars of the Catawissa upon the other road, and the use management and working of these years. This contractembraces use running on any op-comotives and cars of the Catawissa upon the other road, and the use, management and working of these several roads, and was necessary for the successful management by the Catawissa of their through line be-tween Williamsport and Philadelphia. The contract of the lst November last transferred all the right pro-perty and franchises of the Catawissa in the Western Central and the Atlantic and Great Western, and left nothing to the Catawissa but the shell of a corporation. This con-tract is founded upon the hypothesis that the Cata-wissa and the Atlantic and Great Western are con-nected with each other by means of the Pailadelphia and Erie as an intervening railread, a question in which that Company have a very deep interest. As it is clear that the contract of the lat November last, is illegal and void, and uttra virze of all the paties to it, can it be said that the intervening road which has se important a contract with the Catawissa, has not a direct and positive interest in preventing illegal acts

As it is clear that the contract of the lat November last, is illegal and void, and ultra vira of all the parties to it, can it be said that the intervening road which has so important a contract with the Catawissa, has not a direct and positive interest in preventing illegal acts by illegal assignces in relation to this contract and the working of its road, which can only be effected by the restraining power of a Court of Equity? I cannot doubt that this is such an interest as a Court of Equity will protect, particularly where the intervening road is not to be used according to the interview of the cigila-ture, but a new and hostileroad is to be constructed to connect with the leased road. The Atlanticand Great Western has no authority to contract it build the rai road specified in the contract, nor has the Western Central, for by the Reading con-tract it was thought necessary to add another com-pany to complete the route, and it is perfectly certain that the Catawiss had no authority to one for into such a contract which on all hanes was *ultra* vires. Where acts have been done by corporations so en-tirely illegal and in such niter violation of the well-etablished policy of the state. I thick it is the duty of this court to exert the power entrusted to it, at the sait of wny one having such an interest, however small, as entitles bim to equitable relief. It is the interest of the public that these nnanthorized stretches of power of great corporate bodies who are sometimes controlled by a board three though noute to New York city." Is openly avowed in the Catawissa contract. If it had been a scheme for Philadelphia it would have coa-nected at Lewisburg with the Philadelphia and Erie, and by it have reached the metropolis of the State. The contract with the Philadelphia and Meading falls with the contract with the Philadelphia and catawissa. But the wole contract is ultra viras. Is seenothing in the various points and objections of the learned counsel of the defendants to alter the views have already expr

The learned counsel of the defendants to alter the views I have already expressed. I do not regard it as en-forcing a forfeiture, it is simply declaring an act con-trary to law and restraining it at d thus saving the parties from any forfeiture. As I do not intend to touch the contract of \$1 October, 1860, nor to express any oplinion upon the points presented by the plain-tiffs in their second prayer for relief, I do not see how the provision permitting a reference as to disputes, under the contract can interfere with the present gro-cerding.

seeding. On the 10th February inst the Chief Justice delivered an opinion in the Lenigh Valley Railroad Company ys. The Lenigh Coal and Navigation Company, in which he says: "The bill and altidavits profess. the Warenter Coal Field ose to reach :he Wyoming Coal Field, ter requires them to connect with the Corporate purpose to requires them to connect with the Lehigh and Susquehanna Railroad, and by a connec-tion I understand such a union of the two roads at some point as to enable cars to pass from one road to the other for business purposes. Such a connection must be made with the Lehigh and Susquehanna Road and 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 yet selected the point of connection, nor disclosed it in the Bill and affidavits;" (In the word "cars" the Chief Justice includes locomotives.) This the Chief Justice includes 1000mG01Ves.) This strengthens meas to the correctness of my opinion, for both of us have arrived at the same conclusion without consultation with each other. In the Passen-ger Rallway Acts the word connection is used in its mechanical sense.

mechanical sense. Mr. Smith, the President of the Reading Road, says, in his affidavit, "car trucks constructed for a track of four feet eight and a half inches gauge, can run upon a track of four feet ten inch gauge, provided the wheels are made with a broad tread. But it is impossible for cars specially constructed for a track of four feet ten inch gauge. To none of the affidavits is it alleggi that the locomotive of one road can run on the other, of either of these gauges. This clearly establishes the entits, and complete uniformity contemplated hy one of either of these gauges.

-corporation of the first named piace, and its principal merchants in 1832, and was encour aged by the commer-cial establishments in Ireland and Wales transacting business with either or both of those cides. The act of incorporation was obtained on the 31st of August, 1835, and Mr. J. Kinadom Brunel, who had made the preli-minary surveys, was elected as the engineer, and ander his advice the gauge of seven feet or eighty-four inches was adouted.

minary surveys, was elected as the engineer, and ander his advice the gauge of seven feet or eighty-four inches was adopted. This was recommended by him originally, on the ground that the country would eventually be divided into railway districts, each of which would be served by one company, and that as each district would have but little direct communication with the others, a va-riation or break of gauge would be no inconvenience. that the vest of England would form one of those dis-tricts-a district-in which the traffic would be chiefly passenger traffic-that this traffic would be mote satis-factorily conducted by one or two very large, trains daily. On roads where the entryes were more frequent and sharp, and the mercantile traffic bore alarger pro-portion to the passenger than on the western, Mr. Brunel admitted that a marrow gauge might be more advantageously use. A few years later he said: "It can have no connection with any other of the main thrafe which they will bring to the main truck, and the commercial isolation of the original plan, nor can these be dependent on any other cristing lines for the traffic which they will bring to the anian truck, and the commercial isolation of this exceptional system neer and directors." This line, therefore, dissolated itself from the general railway system of Kajad, and wherever the two gauges approached each ether occa-sioned, of course a break or gauge and at ranchipmeth of passengers ang baggage, and also of freight, whether dead or alive.

of passengers ang baggage, and also of freight, whether dead or alive. In 1845 there were about 2,100 mlles of railway in England in operation, of which 1,860 mlles were of the marrow gauge 5612 inches, and 240 of the broad gauge of 84 inches. The magnitude of the misance was admitted, and after a discussion in the House of Commons, Mr. Codem moved for the ap-pointment of a commission, and the House subse-quently unanimously voted an address "praying her Majesty to be graciously pleased to issue a commission ato inquire whether in inture private acts for the con-struction of railways, provision ought to be made for secording a uniform gauge, and a commission was accordingly appointed of Sir F Smith, Professor Bar-low, and Professor Airy, who made their report in To the provise were examined including and

second graph and the second se

only guage in England and Scotland, with the excep-tional broad gauge of 84 inches and a permitted mix-ture of both. The 33d section of the Railway's Constitutional aFa-cilities act of 27 and 28 Victoria, c. 121 (29th July 7864), enacted that "Every railway made under this act in England or Scotland shall be made on the gauge of four feet eight inches and half an inch, unless in aby case the certificate provides the making of the railway on the guage of seven feet, or on both those gauges." "Every railway made under this act in Ireland shall be made on the gauge of five feet three inches." The experience of Great. Britain, with all its lines of railway leading to one great central point, London, has settled into an approval of one uniform narrow gauge, with a permitted deviation to avoid a destruc-tion of existing property to one broad gauge of seven feet, with a mirture of gauges intended to remedy the evil occasioned by the unwise, short-sighted, aggres-and followers. The continent has profited by the dear bought

Sive, and expensive policy of Brunel and his associates and followers. The continent has profited by the dear bought knowledge and experience of England, and France, Belgium, the Germanic States, and Italy have adopted the uniform narrow gauge of 56% inches. The mixed gauge in England proves clearly that the marrow gauge canothe inferior in real railway power to the broad gauge for passenger goods and mineral traffic and in all but passenger traffic it is acknowledged by the latest authorities to be superior for the carriage of freights of all kinds. It is much less expensive in construction, and of conrese in keeping in repair, and the introduction of another line of rails on the broad gauge system, to another line of rarvow gange carriages upon it, increases the cost of the road, and the iron used for that purpose on a double track broad gauge road would lay a third track for the road, which, on some modate the constantly increasing railway business; for it is not be separate tracks for passengers and for goods and mineral trackito, classed by us as freight

oration of the first named place, and its principal

miles of territory, with a population of more than soo-600 souls. The State of New York, in 1824, had nearly completed their canal from Lake Erie to the Hudsen, which, with the Northern Canal, connecting Lake Champiain with the same river, had formed their system of State inter-nal improvement. In October, 1825, the Erie Canal was insibed, and on the 4th of November the first canal boat arrived at New York from Buffalo. In 1836, ten years afterwards, the enlargement of the canal with double locks was commenced. In 1826 a company was incorporated to construct a railway from Schenectady to Albany, and other companies were chartered from 1833 to 1836 to form connecting roads, which in 1830 were consolidated and formed the New York Central Bail-road Company. [Canal system of Pennsylvania.] In 1824 the first canal commissioners in this State were appointed and the law authorizing the first board of canal com-missioners, consisting of five persons, was appointed and the law authorizing the first board was repealed. By this second at the routes to be examined to the north and west started from the city of Philadelphia, and both the Western routes extended to Lake Krie, so as to connectify auters with those of the Delawars. Out of this grew our system of State International improvement by canal and slackwater. It was soon found necessary to substitute a railpoad for a canal between the Schnylkill and the Susquehanna, and the Portage road forthe Allegheny tunnel. Our mistake was in supposing that because New York had constructed a continuous canal through a nearly level country, during a period when the price of labor was low, that we could effect the same object at a similar expense in a State cornseally expanding, and of ourse the reasing the cost of labor and mate-rials. Bo imperfect was the communication between Philadelphia and Pittsburgh, that, in 1846, the Penn-sylvania Railroad was incorporated to construct a railway from Harrisburg to Pittsburgh, so as to form, whit the Harrisburg and Colombia Roads, a co

The interior when we were just beginning to recover from one of those financial collapses to which we have been periodically subjected.
By the purchase of the main line of the public works from the State in 1850, this company became the owners of the entire route from Philadelphia to Pittsburgh, and were enabled to build and complete a double track, first-class road, connecting the waters of the Ohlo with thore of the Delaware.
The tracks on the Columbia Rairoad were moved further apart, so as to admit wider cars, for it was the original fault of this road, and of the Reading road, that the two tracks were brought too close together.
All connects with Cincinnati by the Steubenville route, crossing the Ohlo by one of the most extensive and magnificent iron bridges in the world; and by other roads with Cincipnat tracks, and there of the Use and magnificent iron bridges in the world; and by other roads with Cincipnate track, and the prest west by the steupenville and the prest were dispensed with.
All connects with Cincipnation by the Steubenville great West. Thus the great trade of the West passes into the two great clites of the state, Pittsburgh and Philadelphia, and thence by the connecting railway now building, the Philadelphia and Trenton, and Jersey roads to New York, withoutany transabilyment whatever.
During the late rebellion the Pennsylvania Railroad became the great route for the transportation of troops and upen three days notice, could have furnished at Philadelphia, shiftmore or Pittsburgh, accommodations of the philadelphia, and many of 0,000 men from one point to the other in twenty-four hours, with all their equipments and munitions of war.
I believe this to be correct, for the 1822 (and their capaditions of war.

10.018 and cars for the transportion of an army of 50,000 men from one point to the other in twenty-four hours, with all their equipments and munitions of war. I believe this to be correct, for in 1862 (and their capacity is now greaty increased) it was ascertained by the agent of the Camden and Amboy Company, that they could transport from Philadelphia to New York in twenty-four hours, by their roads and ranal, an army of 100,000 men, with all their equipments and munitions of war. They were never called upon to transport more than 8,000 men uith all their equipments and munitions from five to seven hours, without interrupting their ordinary travel.
18. [Big 20-inch gun.] Besides the transportation of the heavy guns manufactured at Fort Pitt Works, they carried the big 20-inch gun, twenty-five feet long, weighing 116,400 pounds, and throwing a solid shot of 1,000 pounds, on cars specially constructed for the purpose by the Pennsylvania Ralircad Company, over their cod to Harrisburg (248 miles), and theave by the Lebanon Valley, Rast Pennsylvania, Lehigh Valley, and New Jersey Central Roads to Elizabethport. New Jersay, a total distance of 413 miles, without change or trans-shipment, or breaks of gauge.
[Interest of State and city, J For the Main Line the commutation for the tonnage tax, and they increased the annual payments to \$400,000, which was larceased the annual payments to \$400,000, which exit plants \$2,500,000 in cash, or fits equivalent, besides having received \$2,500,000 in cash, or fits equivalent, besides having received \$2,500,000 in cash, or fits equivalent, besides having received \$2,500,000 in the tonnas tax, and they for our six per cell, on the original investment, besides having received \$2,500,000 in cash, or fits equivalent, besides having received \$2,500,000 in cash, or fits equivalent, besides having received \$2,500,000 in cash, or fits equivalent, beside having received \$2,500,000 in cash, or fits equivalent, beside the ordinary and extra dividents above that percentage

the ordinary and can divide above and processing see. The improvements already made and which are still progressing on the west bank of the Schuylkill, the Junction Road, the iron bridge over the Schuyl-kill the grain elevator, and the wharves on the Dela-ware, attest the public spirit and enterprise of a com-pany which has added so largely to the wealth and prosperity of my native city. The city of Philadelphia has a money interest in thi.

River at Jersey City. without change, delay, or estima-line. It is a set in the state of the same state of a mortgage exe-cuted by the said company, saale sanctioned by acts of the Legislatures of New York, New Jersey and Penn-sylvania, all the property and franchises of the New York and krie kallroad Company became vested in the present Erie Ballroad Company. The gauge of this road is six icet, an exceptional one not used in England nor in Canada, and in very few instances in the United States. It occupied the whole southern line of the State of New York, and no road north or south of it, whether in New York, New Jer-sey or Pennsylvania, could mechanically connect with it, except one of the same guage, thus practically re-fusing all such connection with all therefore, of the New York Central connecting by any intervening road with the Erie, they are entirely disconnected. for the other.

constructed in those states. Intrease, incretore, of the New York Central connecting by any intervening road with the Erie, they are entirely disconnected, for the cars and engines of one road cannot run upon the other. [5]The Erie Road is, therefore, an aggressive road, pre-venting all communication with and through it of the hadrow gauge line. If, for instance, you have freight it on Albany to Rochester designed for Avon, Gene-see, Mountmoris, or any southern point, there is an entire break of gauge and transhipment at lochester, which would have been entirely unneccessary if all the roads of the State ware narrow gauge roads, and entire uni-ormity of auge had prevalled. In England the New York central has been compared to the London and Northwestern Rallway, and the Erie to the Great ... estern, the effects of whose broad-gauge policy we have aircody steer. The effect of this has been to make our coal roads (for which the narrow gauge is peculiarly fitted) connecting with it, such as the Bloss-turg and Delaw are, Lackawanaa, and Western, ex-pensive roads of all foot gauge, with a correspondingly expensive roads of and two the eat of the stand there distinct charters from the States of New York, and runs in a southwesterly direction 388 miles to Dayton, othic. I have not been turnished with the Erie Raliway at Salamanca, 414 miles from New York, and runs in a southwesterly direction 388 miles to Dayton, othic. I have not been for any, twith the third section of the Ohio charter, and I have not the dates of either, and I do not know their provisions. The charter of the Atlan-tic and Great Western Raliroad Company of Pennsyl-vania, is to be found in four Acts of Assembly, of 20th Mary, 1857 (P. L. 501; and 224 March, 1853 (P. L. 500; 10th Mary, 1857 (P. L. 501; and 224 March, 1853 (P. L. 500; and the length of the road in this State is 88 miles. The main line (which is a single) at Dayton connects with a railroad to Cincinnati, a narrow gauge road, which has put down a broad gauge 'sinddle' track (r

ern Raliway Company, who are constructing a road from Randolph, near Salamanca, to Buffalo, of the six foot guage. [London Board of Control.] The Atlantic and Great Western being built by English capital and controlled in London, it was stated at the same meeting of bond and shareholders in November by the President of the London Board of Control. "We are methere to day for friendly ex-planations. I felt it my dnty when I took the position of Chairman of the London Board of Control to re-quire certain things to be done. The first was that all money should be sent over to London, that we might know what we earned, that is forty per cent, of the receipts." It is not therefore singular that the princi-pal information as to this road is to be gleaned from Engline Raliway Journals. The road is spoken of as freeding the Erie with great additional traffic to New York, and it is said "under the company, which will doubless derive a great benefit from the Atlantic and Great Western, has engaged "to supply rolling stock to the amount of five millions of dollars for the pur-pose of the through traffic between New York and Chainchal," and this engagement "is being faithfully and energetically fulfilled by that (Erie) Company and the road is said to be "pro-moted by a number of leading Englahmen," a techni-cal term in England designating Englahmen," a techni-cal term in England designating Englahmen," a techni-cal term in England designating the planners or origi-nators of Company. In addition to the report of Mr. Forbes to the Lon-fom Board of Control, there was also a detailed report on the 29th of May list by Mr. Moseley, an English Engineer, sent out to inspect the road. An enthusiastic gentleman at the November meet-ing, said "It was the interest of every gentleman in the room to promote emigration to the iar West upon a very large scale, as their traffic would be increased by addition to the population. The more English people

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ertain terms and conditions therein mentionel. and

the similar paid and any set of the anomal between Million and Williamsport, upon certain terms and conditions therein mensione?, and bis agreement was to continue in force for twenty years. This agreement jassed to the Philadelphia and Erle and to the Pennsylvania Railroad Company. under their contract and lesse. In this agreement was the set of the

of sed April, 1861.] entitled "an act relating to ceriain cerporations," (F. Laws, p. 410), to provide for this case and to extend the powers of such connecting roads. It enacts "that it shall are may be lawful for any Railroad Company created by and eristing under the the laws of this Commonwealth from time to time to purchase and hold the stock and bonds, or either, of any 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 hawful for any railroad company or Companies contracts for the use or lease of any other railroads, upon such terms as may be agreed upon with the compa-ny or companies owing the same, and to run, use and operate such roads in accordance with such contract or reacting railroads.connected with each other. The word "connected" has in this law the same meaning as in the two preceding laws. If you'leave out the interposed words, and read it "directly con-nected with each other," in is is beyond doubt, and the intervening railroads there comping railread, it and the other roads at either end must all be mechani-cally connected, which can only be when the gauge of all the roads is the same, so that the same cans and the ouneted, which can only be when the gauge of all the roads is the same, so that the same free into on of the genetice of our senses, but the opinion of a very able gentlemen, a formet President of one of the obsert the same of an acting and extended and the '' the Sunbury and Erie route appendix and a change of one ton of merchandise from one cart another is short equal to the cast of trans-porting it fifty miles," what would be its practical ifficts of congress. March, itses.] The act of Congress of the 2d March, 1862, to establish the gauge of the Pacific Railroad and its branches has ender. "That the gauge of the Pacific Railroad and its branches in the construction read and the offer, the sand and the intervel is shore the whole extent, from the, Pacific coast to the Missouri sh

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into effect. The second prayer in Andrew