

Foreword

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PUBLIC TAKINGS BY THE STATE FOR PRIVATE USE:
*A MARYLAND CASE STUDY IN GEORGES
CREEK COAL & IRON COMPANY v. NEW CENTRAL
COAL COMPANY (1871–1874)*

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I. ABSTRACT

This paper examines the legal controversy concerning New Central Coal Company's attempt to execute a public taking of the land of the Georges Creek Coal & Iron Company for its private use to build a railroad. This paper analyzes the significance of the case within the social, economic, and political context of the town of Lonaconing in Allegany County, Western Maryland, where the parties were situated. This paper also traces the procedural history of the case, including its appearance before the Allegany Circuit Court in 1872, and before the Maryland Court of Appeals in 1873 and 1874. Finally, this paper presents an analysis of the Maryland Court of Appeals 1873 opinion.

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The author offers the following disclaimers concerning the papers, briefs, and opinions submitted to and issued from the Allegany County Circuit Courthouse during the initial appearance of the dispute between Georges Creek Coal & Iron Company and Lincoln Coal, Iron Fire Brick & Oil Company (later renamed to New Central Coal Company) in 1872. In transcribing the lower court papers, the author has made adjustments to modernize punctuation, capitalization, and spelling. The author has also named the lower court documents, briefs, papers, and opinions to the best of his ability, given the substance of the material contained in each. Nearly all of the lower court documents were handwritten, therefore the author executed the difficult task of transcribing those documents (approximately 225 pages worth) into digital form. Wherever writing on a handwritten document was illegible, the said illegible word or string of words is so indicated in the digitized transcriptions within this paper by the parenthetical: "(unreadable)."

The lower court documents recovered from the Maryland State Archives lack pagination, therefore pagination has been omitted from citations to those documents. Those interested in consulting the lower court documents cited to in this paper may find them with the following information: Allegany County Circuit Court Equity Papers, 1816-1984, T1782, Date: 1871-1872; Description: Location 00/50/04/011; Box: 30; Case No. List: 1951-1992; MSA Citation: T1782-37; Case #1967; The Georges Creek Coal & Iron Company.

II. INTRODUCTION

The nineteenth century was defined by the growth of industry to accommodate the economic needs of an increasingly interconnected world. The resource used to power this new era was coal. Western Maryland was endowed with an abundance of that resource, and so Western Maryland became a focal point for competition between various corporate players in the North American coal mining industry.

The judiciary demonstrated a remarkable willingness to permit the delegation of the government's eminent domain power to private organizations to facilitate the development of the coal mining industry. This paper will examine a case study illustrating this trend — the legal dispute between New Central Coal Company and Georges Creek Coal & Iron Company between 1871 and 1874.¹ This paper will demonstrate the significance of the dispute within the social,² economic,³ and political context⁴ of Allegany County during the nineteenth century in lieu of the industrialization of Western Maryland.⁵ This paper will present an analysis of the Maryland Court of Appeals resolution of the dispute in 1873.⁶ This analysis will demonstrate that the Maryland Court of Appeals correctly determined that New Central Coal Company was duly empowered, as an incorporated entity, to execute public takings.⁷ However, this analysis will also contend that the Maryland Court of Appeals erred in holding that the taking in this particular case constituted a “public use.”⁸

III. OVERVIEW OF THE GEORGES CREEK COAL & IRON COMPANY

The public taking of the land Georges Creek Coal & Iron Company (“GCCIC”) for private use by New Central Coal Company (“NCCC”) for the purposes of building a railroad falls within the greater narrative of coal mining industry in Western Maryland. The agricultural economy of Western Maryland during the early nineteenth century gave way to the expansion of the coal-mining industry, a development precipitated by the commercial venture of GCCIC in the Georges Creek Valley. The social, economic, and political context of the mining town of Lonaconing in the Georges Creek Valley illustrates the significance of the Court of Appeals decisions in 1873 and 1874 regarding the dispute between GCCIC and NCCC.

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1. *See infra* Part V.
 2. *See infra* Part IV.A.
 3. *See infra* Part IV.B.
 4. *See infra* Part IV.C.
 5. *See infra* Part III.
 6. *See infra* Part VI.
 7. *See infra* Part VI.A.
 8. *See infra* Part VI.B.

*A. Western Maryland Was Transformed by the Coal-Mining Industry
During the Nineteenth Century.*

During the early nineteenth century, Western Maryland was settled by farming immigrants from the palatinate region of Germany. As the century progressed, the vitality of the region was not contingent on agricultural production only, but increasingly on industrial efforts towards developing the region's vast coal reserves. The rise of the coal mining industry in Western Maryland was congruent with the growth of infrastructure in the region, as principally demonstrated by the expansion of the Baltimore & Ohio Railroad ("B. & O. R. R.") into Western Maryland.⁹

*B. Georges Creek Coal & Iron Company Precipitated the Expansion of
the Coal-Mining Industry.*

The history of GCCIC coincides with the history of the industrialization of Western Maryland in general, and the Georges Creek Valley in particular. GCCIC was founded by John Henry Alexander (1812-1867), one of the great men of the state.¹⁰ John Henry Alexander was something of a prodigy—he began his study of the classics at St. Johns College at the age of 14, and at the conclusion of that study, read law for an additional four years.¹¹ At age 20, John Henry Alexander was appointed to study the need for a topographical geological survey of Maryland.¹² At age 22, he was appointed to the position of State Topographical Engineer. Other notable achievements in Alexander's pedigree include becoming a professor of mining and engineering at the University of Pennsylvania, becoming a member of the American philosophical Society, and becoming one of the founders of the National Academy of Science.¹³ Alexander's brilliance was never more finely demonstrated than by his founding of GCCIC.

In 1833, John Henry Alexander, and his friend Philip T. Tyson, a fellow trained in chemistry and geology, united their resources to purchase a tract of land called "Commonwealth."¹⁴ "Commonwealth" consisted of 3,817 acres along George's Creek, a tributary of the Potomac River running

9. See DONNA M. WARE ET AL., A PUBLICATION OF THE MARYLAND HISTORICAL TRUST BASED ON THE COAL REGION HISTORICAL SITES SURVEY PROJECT CONDUCTED FOR THE MARYLAND BUREAU OF MINES, GREEN GLADES & SOOTY GOB PILES: THE MARYLAND COAL REGION'S INDUSTRIAL AND ARCHITECTURAL PAST, A PRESERVATION GUIDE TO THE SURVEY AND MANAGEMENT OF HISTORIC RESOURCES 30 (Millie Riley et al. eds., Maryland Historical & Cultural Publications 1991) (indicating that the construction of the B. & O. R.R. across the Allegheny Mountains in the mid-nineteenth century "revolutionized the area" by precipitating the formation of towns along its various waypoints, and, in turn, fostering demand for agricultural production to cater to the needs of said communities).

10. THE LONACONING JOURNALS: THE FOUNDING OF A COAL AND IRON COMMUNITY: 1837-1840, reprinted in 67 TRANSACTIONS OF THE AMERICAN PHILOSOPHICAL SOCIETY HELD AT PHILADELPHIA FOR PROMOTING USEFUL KNOWLEDGE, 3 (Katherine A. Harvey ed., 1977) (hereinafter LONACONING JOURNALS).

11. *Id.* at 7.

12. *Id.*

13. *Id.* at 3.

14. *Id.* at 9.

through the Georges Creek Valley, located in present day Allegany County, Maryland.¹⁵ The two men officially formed the corporation that would become GCCIC in 1836.¹⁶ They spent the next several months examining “Commonwealth” and acquiring the capital necessary to support their coal mining venture.¹⁷ At the conclusion of their survey, they concluded that the land they had purchased would yield well over one hundred million tons of coal ore.¹⁸ By 1837, sufficient capital had been acquired to support the construction of essential company buildings, including an iron furnace.¹⁹ The operations of GCCIC illustrate the pattern of industrialization sweeping through the Georges Creek Valley specifically and throughout Western Maryland in general.²⁰

IV. THE CASE IN CONTEXT

In order to understand the significance of the legal dispute between GCCIC and NCCC, one must understand the context of the town of Lonaconing, the Georges Creek Valley, and Allegany County as a whole. The social dynamics of the town of Lonaconing illustrates the extent to which communities of coal miners in Western Maryland were dependent on coal corporations for subsistence and social order. The intense competition

15. *Id.* The land was purchased for \$4,770, though the assessed value of the land was \$1,908.50. *Id.*

16. *Id.* “An act of the General Assembly passed on March 29, 1836 [Md. Laws 1835, ch. 328], granted John H. Alexander and Phillip T. Tyson the right to form a corporation under the name of the George’s Creek [M]ining Company with the authority ‘to open and work such veins of coal, iron and other miners as may exist in the tract of land on George’s Creek, called Commonwealth, now owned by them . . .,’ and to erect and carry on mills and manufactories of iron.’ The act further allowed the company to acquire more land and to build a railroad from the company works to some point on George’s Creek or on the Potomac River near the mouth of George’s Creek. The capital stock was to consist of three thousand shares at \$100 each in addition to the land owned by Tyson and Alexander, which would be considered part of the capital at a price to be determined by three disinterested person – one appointed by the governor of Maryland, one by the proprietors, and the third by agreement of the other two. A supplementary act passed June 1, 1836, changed the name of the company to the George’s Creek Coal and Iron Company.” *Id.*

17. *Id.* at 12 (quoting language from a letter written by Alexander to an associate on June 22, 1837, requesting \$30,000 to begin operations: “We are at present in advance of General Green’s Union Company and our railways will take precedence of his. But if we forfeit our present advantages it may be found that our company will become a mere appendage. If we should improve our present opportunities, we shall acquire an important influence, perhaps a control, over the whole valley of George’s Creek.” (internal quotation marks omitted)). Investors from London and Baltimore did indeed raise capital to support the foundation of the company through the sale of 3000 shares priced at \$100 a share. *Id.* at 7.

18. *See id.* at 9–10. (“Their exploration led them to estimate that Commonwealth would yield almost 95 million tons of rich ore, practically free from Sulphur and completely free from phosphorus, and nearly 158 million tons of coal suitable for smelting the ores.”).

19. *Id.* at 7.

20. *Compare* LONACONING JOURNALS, *supra* note 10, at 11–12 (specifying the nine other companies possessing Maryland charters allowing them to mine coal and iron in Western Maryland in approximately the same timeframe) *with* Ware, *supra* note 9, at 31 (indicating that by 1865, the flood of corporate investment into operations in the area had rendered the Georges Creek Valley the epicenter of the coal industry).

between coal mining corporations for economic hegemony indicates the underlying commercial concerns motivating public takings executed for the construction of railroads. Finally, the political atmosphere of the region, particularly the unionization movement of the 1870's, colors our understanding of the political significance of large lawsuits between coal mining corporations such as that between GCCIC and NCCC.

A. *The Social Context of the Case.*

The founding of Lonaconing resulted in the creation of a community of families dependent on coal-mining corporations, like GGCIC and NCCC, for subsistence. Law and order, quality of life, the ultimate destiny of vulnerable migrant working class families—all of these things were contingent on the vitality of the coal industry. The town of Lonaconing serves the purpose of illustrating the social dynamics of the Georges Creek Valley and Allegany County, and the importance of the economic and legal stability of coal mining corporations like GCCIC and NCCC.

1. The formation of the community of Lonaconing created a population of workers dependent on the coal industry for subsistence.

To facilitate the acquisition of labor to support its coal-mining operations, GCCIC founded the village of Lonaconing at the intersection of George's Creek, Koontz Creek and Jackson Run.²¹ The town consisted of 400 souls whom were charged a fee pay for lodging and food.²² The settlement was named after Chief Lonacona, the leader of a group of Native Americans that had once resided in the area.²³ The social context of Lonaconing during the nineteenth century was defined by population growth and ethnic homogeneity.

Lonaconing experienced significant population growth subsequent to its founding in 1835. By 1837, Lonaconing had evolved from a village into a "prototypical miner's town" with a population of 700 souls.²⁴ The growth of the village of Lonaconing into a town coincided with the expansion of the Western Maryland coal industry's efforts to reap the region's coal reserves.²⁵ The town's growth was stimulated by the arrival of the Cumberland Mount Savage Railroad in 1857, and that of the Cumberland and Pennsylvania Railroad ("C. & P. R. R.") in 1864.²⁶ The Reconstruction

21. See ROBERT J. BRUGGER AND EDWARD C. PAPAENFUSE, MARYLAND: A NEW GUIDE TO THE OLD LINE STATE 597 (The Johns Hopkins University Press 2d. ed. 1999) (describing the location of Lonaconing).

22. Ware, *supra* note 9, at 26.

23. LONACONING JOURNALS, *supra* note 10, at 9.

24. BRUGGER & PAPAENFUSE, *supra* note 21, at 597.

25. See LONACONING JOURNALS *supra* note 10, at 10 (indicating that the expansion of the Georges Creek Coal & Iron Company's during the 1850's and 1860's created demand for labor that was satiated by migrant workers coming from Germany and the British Isles).

26. *Id.* at 10.

Era rate of population growth in Lonaconing easily trumped that of its Antebellum phase. In 1865, the population of Lonaconing stood at 800, a figure that by 1878 had increased to 2,808.²⁷ In 1887, the town's population had mushroomed to 4,600.²⁸ The population of the region overall between 1860 and 1870 jumped from 28,348 to 38,536.²⁹

The population of the region as a whole remained ethnically homogenous throughout the nineteenth century. Allegany County was a white county: number of black slaves between 1790 and 1860 never exceeded ten percent of the population, and following 1850, the population of whites never dipped below 95 percent.³⁰ Allegany County lacked a strong presence of foreign born labor; those who did immigrate from abroad to Western Maryland were principally interested in joining the mining industry.³¹ The amount of foreign-born U.S. citizens peaked in 1860 at 21.3 percent, but declined to 4.8 percent by 1920.³² The influx of labor critical to the industrialization of the town of Lonaconing, the Georges Creek Valley, and Allegany County as a whole, consisted of coal miners of English, Irish, Welsh, Scottish, or German extraction.³³

2. The coal-mining population was dependent on the coal-mining industry for law and order.

The Georges Creek Coal & Iron Company was the quasi-sovereign of Lonaconing, its superintendent functioning as the coal-mining town's chief executive. The town of Lonaconing was regulated by a code of ordinances addressing a spectrum of matters ranging from personal behavior to professional conduct, including prohibitions of alcohol and brawling within the town's limits, and prescriptions as to the manner in which wages would be paid, and the hours that would be worked.³⁴ These ordinances penetrated deeper into the life of the community than those of British coal mining corporations.³⁵ These ordinances were probably displayed in three languages.³⁶

27. *Id.*

28. *Id.*

29. *See* Ware, *supra* note 9, at 29.

30. *Id.* at 29, 35; *see also infra* chart in App. I.

31. *See* Ware *supra* note 9, at 29 (“Most of the foreign-born workers arriving in the region were attracted by the mining industry. An ethnic breakdown of miners in 1820 shows that of the 2,460 miners surveyed only 493 were American-born, 137 were German, 1,774 were British, and 56 others were listed as British-Americans. Even in this industry, the native-born came to predominate in the early-twentieth century.”).

32. *Id.*

33. KATHERINE A. HARVEY, *THE COAL MINERS OF WESTERN MARYLAND: SOME ECONOMIC AND SOCIAL DEVELOPMENTS, 1850–1910*, 316 (1962).

34. *See infra* App. V. (quoting the ordinances in full).

35. *See* LONACONING JOURNALS, *supra* note 10, at 38 (“Compare the rules of a contemporary English establishment governing employees only while they were at work.” (citing ARTHUR RAISTRIC, *DYNASTY OF IRON FOUNDERS: THE DARBYS AND COALBROOKEDALE*, 298–99 (1970))).

36. *Id.* at 38 n.20.

The journals kept by the superintendent of GCCIC between 1837 and 1840 serve as a helpful guide for evaluating how law and order affected the social context of Lonaconing.³⁷ There is no evidence of social discord in Lonaconing stemming from complaints over company rule: proletarian angst was not present in Lonaconing.³⁸ The violence that did occur took place within the context of domestic violence³⁹ or private disputes between men.⁴⁰ Interestingly, it appears that instances involving domestic violence, far from being hushed, were rigorously investigated. If a battered woman required shelter from an abusive husband, it was granted.⁴¹ If an abused woman required funds and transportation to be relocated, it was generously supplied.⁴² If a man abused his wife, he was punished.⁴³ The lion's share of violent acts reported were associated with drunkenness, a pattern that

37. There are a number of methodological issues with looking strictly to the journals of the superintendent to evaluate the extent to which GCCIC was successful in operating as a quasi-governmental entity. First, the journals, taken at their face value, do not necessarily accurately represent the success or failure of similarly situated coal mining corporations of the same time period in the same region. Second, the time period of the journals, 1837-1840, does not necessarily represent the experience of GCCIC in maintaining law and order between 1835 and 1837, and during the period subsequent to 1840 till the company's dissolution. Third, the superintendent's journals, like the captain's log of a ship, only reflect one viewpoint, which, because of the author's potential bias, may have omitted crucial information either because of the author's benign negligence, or else because of a malign intent to strike from the record information unfavorable to the author. Having addressed these issues, it is emphasized here that the scope of this paper is not to critically evaluate the journals of nineteenth century Western Maryland mining corporation superintendents. Rather, the scope of this paper is to assess how an understanding of the social, economic, and political context of Lonaconing edifies our understanding of the public taking resulting from the legal dispute between GCCIC and NCCC. The journal entries utilized for analysis here reflect the best information that could be obtained concerning law and order in Lonaconing given the time-frame designated for this paper.

38. Compare LONACONING JOURNALS, *supra* note 10, at 24-53 (indicating that no violence emanated from disputes over wages or ordinances assigned by the company) with Karl Marx, *The Grundrisse*, in THE MARX-ENGELS READER 221, 292 (Robert C. Tucker ed., 2d ed. W. W. Norton & Co. 1978) (1857-58) ("Hence the highest development of productive power together with the greatest expansion of existing wealth will coincide with depreciation for capital, degradation of the labor, and a most straitened exhaustion of his vital powers...these crises, in which momentary suspension of all labor and annihilation of a great part of the capital violently lead it back to the point where it is enabled [to go on] fully employing its productive powers without committing suicide. Yet, these regularly recurring catastrophes lead to their repetition on a higher scale, and finally to its violent overthrow.").

39. See, e.g., LONACONING JOURNALS, *supra* note 10 at 28 ("[April 17. 1838] Last night at a party at Herman Dittmer's shantee the masons had a quarrel with some of the German hands. F. Pauer consulted with Mr. Harris. Two of the tenders were turned from the stack, and some of the masons got a warning from Mr. Harris.").

40. See *id.* at 55-56 ("[July 10. 1839] [T]omas Powell and John Williams during the absence of C.B.S., have been brutally ill-treating their wives. The wife of George Miller has also been detected in a disgrace full situation by her husband, from whom she also receives a beating. NO chivalry in Lonaconing.").

41. See *id.* at 59 ("[September 13.1839] Hill, the bailiff, calls on C.B.S. at midnight and informs that R[ichard] Williams, molder, had beaten his wife severely and that she had taken refuge in his house. He is told to keep her there till morning.").

42. See *id.* at 59 ("[September 15.1839] R. Williams' wife is supplied with \$50 from the wages due to him, to enable her to reach her friends in Dayton, Ohio, and departs this day in Ruppert's stage." 59

43. See *id.* at 56 ("[July 15. 1839] - This day has been appointed to examine into the reported cases of brutality to wives. George Miller and Thomas Powell are accordingly dismissed the company's service, and John Williams reprimanded and fined \$10.").

compelled the superintendent to call for the formation of a temperance society.⁴⁴ The prohibitions against alcohol and drunkenness, even where violence was not at issue, were nevertheless enforced.⁴⁵ Notably, principles of equity affording a degree of leniency were observed in the administration of discipline.⁴⁶

The relative lack of violence in Lonaconing and the efficacy of the ordinances imposed by GCCIC appear to correlate to the ethnic homogeneity of the region.⁴⁷ Thus, the social climate in Lonaconing, and indeed all of Western Maryland, seems entirely distinguishable from the tense environment of Baltimore City, where riots associated with the Know-Nothing faction were prevalent throughout much of the nineteenth century.⁴⁸ Just as Lonaconing was unstained by proletarian angst, so too was it also uncontaminated by scuffles between “natives” and “dead-rabbits.”⁴⁹

3. The Western Maryland coal-mining industry afforded its workers a relatively high quality of life.

By modern standards, one would plausibly suppose that the life a coal miner in Western Maryland was essentially a Hobbesian existence, a war for survival that was “[s]olitary, poor, nasty, brutish, and short.”⁵⁰ There is an element of truth to that intuition. The daily labor of coal miners working for GCCIC and other companies in the region consisted of exhausting hours of labor prying slabs of coal deep in the ground.⁵¹ The Western Maryland miner’s toolkit consisted of one sledge, one shovel, two wedges, and two

44. *See id.* at 38, 40, 44–45 (“[January 20, 1839]—The miners and colliers addressed at 3 P.M. by the superintendent on the subject of temperance and orderly conduct, and Monday evening appointed for the formation of a temperance society.”).

45. *See id.* at 25 (“[January 31 1838] Steele discharged three of the miners, as they got drunk.”).

46. *Compare* LONACONING JOURNALS, *supra* note 10, at 38 (“[October 1, 1838]—Owen Richards and William Farley are discharged for their share in Saturday night’s transaction. *John Powell is reprimanded and permitted to remain only on account of his wife, and William Mitchell proves by fresh testimony that he did not aid in throwing any stones. He is therefore allowed to remain.* Koenig, brakeman, is discharged also, and Zimmerman.” (emphasis added)) with ARISTOTLE, NICHOMACHEAN ETHICS bk. V, at 1137(b)20–1137(b)24 (David Ross trans., Oxford Univ. Press rev. ed. 2009) (c. 384 B.C.) (defining equity as the willingness to accommodate exigencies not contemplated in sweeping laws).

47. *See* Harvey, *supra* note 33, at 316 (“Considering the presence of substantial numbers of Irish, who in many cases drifted into mining from canal and railroad construction jobs, mining-region newspapers even in the Know-Nothing period were remarkably free of accounts of brawls among ‘foreigners,’ and the general impression handed down is that these miners were law-abiding, industrious and thrifty.”).

48. *See* J. TOMAS SCHARF, THE CHRONICLES OF BALTIMORE: BEING A COMPLETE HISTORY OF “BALTIMORE TOWN” AND BALTIMORE CITY FROM THE EARLIEST PERIOD TO THE PRESENT TIME 543, 550, 558, 565, 570, 576, 583, 662 (Turnbull Brothers 1874) (Recounting the painful violence wrought in Baltimore City during riots involving the nativist faction known as the Know-Nothings (a group that deeply resented Irish Catholic immigrants), specifically the riots of Aug. 18th, 1855, Nov. 4th, 1856, Oct. 14th, 1857, Oct. 13th, 1858, and Nov. 2nd, 1859).

49. GANGS OF NEW YORK (Miramax Film Corp. 2002).

50. THOMAS HOBBS, LEVIATHAN: OR THE MATTER, FORM, & POWER OF A COMMONWEALTH ECCLESIASTICAL AND CIVIL, 185–86 (C.B. MacPherson ed., Penguin Books, 1985) (1651) (describing the state of man as fundamentally being a state of war).

51. BRUGGER & PAPENFUSE, *supra* note 21, at 597.

picks.⁵² Once extricated, lumps of coal were transferred from the miners' workstations down vesicular passageways connected to a main tunnel or "heading" — from there, the coal was transported with the help of horses or mules to the main entrance.⁵³ One description amply describes prototypical Western Maryland mining conditions:

Mining was dark and dirty work; like factory and other heavy labor in this period before safety regulations it was dangerous. Masses of coal could collapse without warning, ventilation sometimes failed, and the cool mines (60 degrees summer and winter) occasionally filled with water. "Shut out from air and daylight, engaged in arduous toil, exposed to damp and danger," reported a Maryland inspector . . . "the miner who lives to 45 or 50 years of age is decrepit and broken down."⁵⁴

Miners were expected to work from sunup to sundown, six days a week, with Sundays and Christmas Day being the only days being prescribed for rest.⁵⁵ Mining in Western Maryland during the nineteenth century was indeed no easy task. As no statutory limit on the age when boys could go to work in the mines came into effect until the turn of the century, children of the time period began working in the mines as early as age 12.⁵⁶

The ceaseless activity of the mining industry in Allegany County did not impede one minister from reflecting on the delicate nature of life in a poem reprinted in the *Cumberland Alleganian* from the *Engineering & Mining Journal* entitled "Life! Death,"

*Life is a mystic woof
Piled by a spindle drear,
Weaving the threads of care,
Wet with affection's tear.
But death mutely stops the spindle's swift flight,
And severs our care's knotted thread,
While the tears of earth's millions are dried at the tomb
Where angels watch over the dead.*⁵⁷

Sanitary conditions in the communities of the kind found in the Georges Creek Valley and in Allegany County as a whole were "abominable," and frequently afflicted with "[e]pidemics of scarlet fever, measles, diphtheria, smallpox and typhoid."⁵⁸ Public health problems were compounded by inclement weather: temperatures ranged from winter lows of -9°⁵⁹ to summer highs of 120°.⁶⁰

52. *Id.*

53. *Id.*

54. *Id.* at 597–98

55. *Id.* at 597.

56. Harvey, *supra* note 33, at 318.

57. W. H. Platt, Editorial, *Life! Death!*, CUMBERLAND ALLEGANIAN, Jan. 19, 1870.

58. See Harvey, *supra* note 33, at 318.

59. See LONACONING JOURNALS, *supra* note 10, at 26 ("[February 22, 1838] Thermometer at 7 A.M. stands at -9°. It is so cold that a number of hands could not work out of doors.").

60. See *id.* at 35 ("[August 24, 1838] Hauling of stone from patch still continued, but in consequence of thoughtlessness of Mr. Schmidt a trouble is like to grow from it. The circumstances were that on the 23rd, when the work on the patch was done by the Welsh miners

Though from a modern perspective the quality of life experienced by miners in Lonaconing seems to be quite undesirable, one of the reasons that labor unions failed to expand into Allegany County from other regions, or else emerge organically within communities like Lonaconing, was that, *from a comparative standpoint*, the standard of living of miners in Western Maryland *was* enviable.⁶¹ One simple anecdote reflects that reality. On one occasion, an organizer for the United Mine Workers, apparently searching Lonaconing for signs of impoverishment and anger against the corporations in order to acquire material to utilize when developing local recruits, remarked that the miners of the town “were the best-dressed miners he had ever seen.”⁶²

There is additional evidence that supports the notion that by nineteenth century standards, the mining town of Lonaconing provided its residents a better quality of life than that had by miners in other regions. Miners in Western Maryland had higher wages than those in Pennsylvania, West Virginia, and Virginia.⁶³ The average income of a miner increased from \$300 in 1850 to \$635 by 1891.⁶⁴ Furthermore, there was an influx of cooperative stores in the region that accommodated the needs of miners and their families, providing an alternative to company grocers.⁶⁵ The Georges Creek Valley, including the town of Lonaconing, provided an ideal environment for such stores, which continued to provide their valuable services to miners for the *longue duree* of the coal mining industries dominance in Western Maryland.⁶⁶ The safety of mines in Western Maryland, including those in the proximity of Lonaconing, was superior vis-à-vis that of mines in Pennsylvania and West Virginia.⁶⁷ Maryland coal

under a temperature of 120° or thereabouts, their request through Mr. Hopkins to be allowed the use of a small quantity of wine whilst at their work was granted....”). Alternatively, the temperatures in which workers operating in coal mines remained consistent during the summer and winter at approximately 60°. BRUGGER & PAPENFUSE, *supra* note 21, at 597–598.

61. Harvey, *supra* note 33, at 318.

62. *Id.*

63. *Id.* at 320.

64. *Id.* at 321.

65. KATHERINE A. HARVEY, *LIFE AND LABOR IN THE MARYLAND COAL REGION, 1835–1910*, 184 (Cornell University Press 1969) “Cooperative stores in British mining communities dated back to 1861, and very early showed that they could be operated profitably. More important, they made it possible for the miners to escape from the credit system offered by village grocers. In the later years the cooperative store was often the “strike larder” for British miners....”. *Id.*

66. *See id.* (“The George’s Creek region, where the population was composed almost entirely of laboring men, seemed an ideal location for this type of enterprise. Possibly because it purportedly began to sell dry goods and breadstuffs at prices 30 percent less than those of other merchants in town, the miners’ cooperative store at Lonaconing completed its first six months of operation with a net profit of \$2,102.66 on total sales of \$35,749.78, and paid a 6.785 percent dividend. The Lonaconing cooperative store survived the difficult times which resulted from the panic of 1873. At the end of 1880 it was still in business, with an inventory of \$6,600 and fixtures valued at \$2,000. During the six years of its existence it had paid out dividends and interest of well over \$18,000, an enviable record in view of the general depression which settled on the Cumberland coal region in 1876 and 1877.”).

67. *See* BRUGGER & PAPENFUSE, *supra* note 21, at 597 (indicating that the horizontal cuts of Maryland mines were much safer than the deep vertical shafts of mines in other states).

fields never experienced a major disaster.⁶⁸ Even more incredibly, despite workers strikes in 1882, 1886, 1894, and 1900, working conditions were so stable and cohesive not only in Lonaconing, but throughout the Georges Creek Valley, that the region became known for its “gentlemen miners.”⁶⁹ Despite occasional conflicts over wages, the relationship between miners and corporation leadership was defined by respect and cordiality.⁷⁰

4. The livelihoods of the coal miners and their families were inextricably intertwined with their employment status.

The growing population of miners in Lonaconing and the Georges Creek Valley continued to depend on GCCIC, and players in the Western Maryland coal-mining industry, for regulation of the social order and subsistence. Leaving a mining settlement either voluntarily or by banishment as a result of violating company ordinances did not bode well for the future of a miner or his family. The professional vulnerability (and disposability) of the Western Maryland miner is exemplified by an incident that occurred on December 12, 1838, where a miner, by the name of John Williams, who worked for GCCIC, was discharged.⁷¹ The next day, Williams requested a pardon in order to support his family, consisting of a wife and six children (three of which were sons—ages 11, 13, and 15).⁷² The family had crossed the Atlantic Ocean from Wales on the *Tiberias*, a 109-foot barque that had arrived in the United States on the eleventh of September of that year.⁷³ A pardon was not granted; neither the \$187.62 debt Williams owed the company for paying for his family’s voyage, nor the \$47.07 debt Williams owed to the company store were expunged.⁷⁴

The lives of the miners of Western Maryland generally, and in Lonaconing in particular, were vulnerable ones, though well-dressed they may have been. The outcomes of coal-mining corporation lawsuits, such as that between GCCIC and NCCC were of serious significance so far as the livelihoods of the miners, who made their bread working for such coal mining corporations, were concerned. The zero-sum game that was the economic competition between coal mining corporations for supremacy, carried repercussions that touched the lives of their employees.

68. *Id.*

69. *Id.*

70. See e.g., KATHERINE A. HARVEY, *THE BEST-DRESSED MINERS: LIFE AND LABOR IN THE MARYLAND COAL REGION, 1835-1910* 177 (Cornell University Press 1969) (“The miners at Midlothian [New Central Company], for instance, during the normal winter slack season, publicly thanked the superintendent for dividing the work among all of his men instead of limiting it to those who occupied the company houses.”).

71. LONACONING JOURNALS, *supra* note 10, at 42.

72. *Id.* at 42 n. 37.

73. *Id.* at 36, 42 n. 37.

74. *Id.* at 42 n. 35.

B. The Economic Context of the Case.

The importance of the Western Maryland coal-mining industry to the nation, and the output of coal-mining operations around Lonaconing therein, cannot be overstated.⁷⁵ The region's rich coal reserves presented a lucrative opportunity for ambitious and enterprising businessmen such as John Henry Alexander:

The great Alleghany coal measures consist of a deep series of strata, which include gray sandstones, shales, bituminous shales, slate-clay and fire-clay, carbonate of iron, and coal, aggregating in thickness about one thousand five hundred feet...The lower division of the great coal basin extends down with a gentle slope towards the Potomac River, and is traversed in nearly its whole length by George's Creek, which runs through a trough scooped out of the coal and hard rocks to a depth of more than twelve hundred feet.⁷⁶

The estimated total amount of coal that could be extricated for market use in Alleghany County according to one observer stood at 4,000,000,000 tons.⁷⁷

Coal had been discovered in the Georges Creek Valley as early as 1736, but the first incorporation of a coal mining venture did not occur until the formation of the Maryland Mining Company in 1828.⁷⁸ The Georges Creek Coal & Iron Company took initiative of its own shortly thereafter.⁷⁹ The development of transportation networks in the 1850's did much to expand the economic production of the coal mining corporations operating in the Georges Creek Valley.⁸⁰ The population growth corresponding to the influx of workers, the development of infrastructure, and the expansion of coal mining operations, was such that the agriculture of the region had difficulty keeping up with demand.⁸¹

The hegemony of the Consolidation Coal Company ("CCC") in the Western Maryland mining industry illustrates the competitive strain on coal mining corporations with inferior production figures, such as that of GCCIC and NCCC, to increase production, and use the law if necessary to gain an

75. See Harvey, *supra* note 33, at 316 (indicating that the Georges Creek Valley was "[O]ne of the major sources of 'supercoal' for the expanding industries of the Northeast and for the naval and merchant vessels of the world.>").

76. J. THOMAS SCHARF, HISTORY OF WESTERN MARYLAND: BEING A HISTORY OF FREDERICK, MONTGOMERY, CARROLL, WASHINGTON, ALLEGANY, AND GARRETT COUNTIES FROM THE EARLIEST PERIOD TO THE PRESENT DAY; INCLUDING BIOGRAPHICAL SKETCHES OF THEIR REPRESENTATIVE MEN, Vol. II, 1312-13 (Regional Publishing Co. 1968) (1882).

77. *Id.* at 1316.

78. Ware, *supra* note 9, at 24.

79. See *supra* Part III.B.

80. Ware, *supra* note 9, at 28.

81. See *id.* ("Although census data from 1870 to 1930 listed over half the land and in Alleghany County as cultivated, agriculture seemingly did not support the majority of the population. Farmers in the Georges Creek Valley concentrated on orchards or grains. According to historian J. Thomas Scharf, writing in 1882, the county was not known for agriculture. The bottom lands traditionally supported corn and oats, while buckwheat and rye were common in the mountains areas.").

advantage. Though CCC was much younger corporation than GCCIC, being formed in 1860, and not beginning operations until 1864, it nevertheless achieved immense success.⁸² The Consolidation Coal Company benefited from a combination of assets resulting from the merger of the Ocean Steam Coal Company, the Frostburg Mining Company, and the Mount Savage Iron Company.⁸³ It acquired a tremendous advantage over other coal-mining corporations through its ownership of the C. & P. R. R., an asset formerly owned by the Mount Savage Iron Company that now conveyed to CCC the ability to cut costs by shipping its coal to market on its own rail line.⁸⁴ The aggressive expansion of CCC continued in 1870, when it acquired the Cumberland Coal and Iron Company, the holdings of which included a rail line from Cumberland to Eckhart.⁸⁵ In 1872, CCC acquired Alleghany Coal Company.⁸⁶ Through these acquisitions, CCC came to own over half of the region's coal lands, possessed a regional railroad monopoly, and eventually became the coal producing hegemon not only of the region, but of the Eastern United States.⁸⁷

The balance of power among the various corporations within the Western Maryland coal-mining industry was an unsteady one. While older companies had informally organized to lower production costs, from the 1870's onward, the rivalry between them became "ruinous and...uncontrollable."⁸⁸ The proposition of a grand alliance of twenty-one existing Western Maryland coal-mining corporations for the purposes of eliminate competition was rejected in 1869.⁸⁹ The desperate competition between Western Maryland coal-mining corporations continued as production figures escalated, and finally peaked in 1907; Western Maryland coal-mining corporations gradually began to dissolve during the mid-20th century.⁹⁰

The stiff competition between NCCC and GCCIC in pursuit of the soaring production rates of the regional leader, CCC, is plainly illustrated in an 1881 report indicating that these corporations' coal shipping figures (in tons) were 254,936, 213,002, and 628,063 respectively.⁹¹ A production table published in the *Cumberland Daily Times* on Wednesday, February 25, 1873, demonstrates the competitive distribution of coal shipping rates at

82. *Id.* at 28.

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. Harvey, *supra* note 70, at 165–66.

89. *Id.*

90. See BRUGGER & PAPERFUSE, *supra* note 21, at 597 ("Underground coal reserves remain in George's Creek, but Consolidation Coal disposed to its Maryland assets in 1944; the original George's Creek Coal and Iron Company went out of business in 1952.").

91. Scharf, *supra* note 76, at 1440; see also *infra* App. II (demonstrating the competitive distribution of coal shipping rates at date within the timeline of the legal dispute concerning the public taking that is the subject of this paper).

a date within the timeline of the taking dispute that is the subject of this paper.⁹²

The intensely competitive economic climate of the Western Maryland mining industry, in which the town of Lonaconing was located, serves to illustrate the importance of legal disputes between corporations such as GCCIC and NCCC. The taking case addressed in this paper is not only significant for its effects on the social climate of Lonaconing and the surrounding region. The legal outcome of the dispute between GCCIC and NCCC also is significant in that it sent a clear signal to Western Maryland coal mining corporations that the government's eminent domain power was at their disposal in their quest to handle the increasing demand.⁹³

C. The Political Context of the Case.

The cast of characters involved in the legal action between GCCIC and NCCC includes prominent players in the Allegany County political scene. Furthermore, the unionization movement of 1873 serves as an important backdrop to the legal dispute between GCCIC and NCCC in terms of illustrating the tense political climate, and the extent to which unions were dependent on the economic vitality of coal-mining corporations to survive. In the Georges Creek Valley, legal defeats of coal-mining corporations had economic, and therefore, political implications.

1. The characters involved in the dispute between Georges Creek Coal & Iron Company and New Central Coal Company were involved in the political structure of Allegany County.

The Allegany Circuit Court was born on April 25th, 1791.⁹⁴ Under the Constitution of 1850, only one judge presided over the Allegany Circuit Court, who was appointed by the governor.⁹⁵ The Constitution of 1867, however, adjusted the court structure slightly in providing for two associate judges and a Chief Justice, whom were to be elected for terms of 15 years each.⁹⁶ Concerning those judges who played a part in the legal controversy discussed in this paper, the Honorable George A. Pearre and the Honorable William Motter assumed positions on the Circuit Court for Allegany

92. CUMBERLAND DAILY TIMES, Feb. 25, 1873. The table's title, as it originally appeared in the newspaper was, "Statement of Coal transported over the Cumberland and Pennsylvania Railroad during the week ending Saturday, February 22 and during the year 1873, compared with the corresponding period of 1872." *Id.*

93. *See* Harvey, *supra* note 70, at 177 ("Coal production for the whole region rose 12 percent during 1873, and the Maryland Coal Company told its stockholders, "The demand for Cumberland Coal for steam and iron purposes, is increasing more rapidly than is reflected in the actual increase of production for the year.").

94. *See* Scharf, *supra* note 76, at 1347 ("The first court in the county met April 25, 1791, at John Graham's house. Andrew Bruce, on producing his commission as associate justice, was sworn in and opened court. The officers were John Beatty, clerk; John Lynn, clerk; and Jeremiah Willison, crier. On the third day, Richard Potts, chief justice, appeared and took his seat, as also did John Simpkins, the second associate judge.").

95. *Id.* at 1349 n. 1.

96. *Id.* at 1349 n. 2.

County in 1865 and 1871 respectively.⁹⁷ The Sherriff who facilitated the inquisition of condemnation of the property sought by NCCC, Richard Gross, assumed his position in 1871 and, at the conclusion of his two year term, was replaced in 1873 by Sheriff James C. Lynne.⁹⁸ Horace Resley was the clerk of the Allegany Circuit Court at the time that GCCIC brought its case against NCCC; he had assumed his position in 1851, and was not replaced until 1873 by Theodore Luman.⁹⁹

The period during which the legal dispute between GCCIC and NCCC raged witnessed some turnover among Allegany County's legislative representatives. Lloyd Lowndes, Jr. served two years as a Congressman from 1872 till 1874: his replacement was William Walsh, the attorney who represented NCCC from the cases inception before the Circuit Court of Allegany County on up until its appearance before the Court of Appeals in 1873 and 1874.¹⁰⁰ While the ages of many of the actors involved in the legal dispute is unknown, it is interesting to note that Judges William Motter and George A. Pearre were both admitted to the Bar of Allegany County in 1839, whereas William Walsh, apparently a younger fellow, was not admitted to the Bar until 1865.¹⁰¹

The town of Lonaconing was encompassed by Political District No. 10.¹⁰² The political lines of the region were split fairly evenly throughout the nineteenth century — a reality no more finely expressed than by the 26 vote margin that gave Republican Presidential candidate Abraham Lincoln the edge over Democratic candidate George B. McClellan in the 1864 election.¹⁰³ In 1820, the bastion of local democratic discourse, the *Cumberland Alleganian* newspaper, was born.¹⁰⁴ The only other newspaper of note (though there were others), the *Cumberland Daily Times*, was conceived in the thick of the dispute between GCCIC and NCCC in 1872.¹⁰⁵

The public school system of Allegany County was established in 1865,¹⁰⁶ an expression of the Progressive political movement reflecting the late nineteenth century trend in American intelligentsia to correlate democratization with the expansion of public education.¹⁰⁷ By 1880, there

97. *Id.* at 1349.

98. *Id.* at 1350.

99. *Id.*

100. *Id.* at 1351.

101. *Id.* at 1353.

102. *Id.* at 1473. The contours of Political District No. 10 are as follows: "Beginning at a point on the Garrett County line where said line crosses Laurel Run, and running thence down with the meanders of said Laurel Run to George's Creek; thence up with the center of said George's Creek to the lines of Frostburg District, No. 11, at the mouth of Wright's Run; thence up with said Wright's Rn to the Garrett county line, and with said line to the place of beginning." *Id.*

103. *Id.* at 1365–69.

104. *Id.* at 1410.

105. *Id.*

106. *Id.* at 1355.

107. *See, e.g.,* JOHN DEWEY, MY PEDAGOGIC CREED (1897), reprinted in THE PHILOSOPHY OF JOHN DEWEY, VOL. II 442, 453 (John J. McDermott ed., Univ. of Chicago Press 1981) ("[T]he community's duty to education is, therefore, its paramount moral duty. By law and punishment,

were nearly 80 elementary schools providing 8000 seats, where instructors provided lessons in return for making an average salary of \$36.50 per month.¹⁰⁸ Illiteracy in Allegany County, consequently, was relatively low: of the 36,481 white persons in the County in 1880, for example, only 2,829 persons over the age of ten could not read.¹⁰⁹

2. The emergence of the organized labor movement in the Georges Creek Valley coincided with the legal dispute between the Georges Creek Coal & Iron Company and the New Central Coal Company.

As stated previously,¹¹⁰ labor unions had difficulty arousing interest in Lonaconing and the region in general due to the relatively high standard of living.¹¹¹ The American Miners' Association, organized in St. Louis Missouri in 1861, spread to Maryland but did not significantly impact wage disputes between coal miners and their employers during the 1860's — the organization ultimately dissolved in 1868.¹¹² Rather, political tension in Lonaconing during the Antebellum period chiefly consisted of wage negotiations instigated by workers strikes.¹¹³ For example, in 1838 there were four strikes reported in the journal of the superintendent of GCCIC.¹¹⁴ Solidarity was an expectation among the miner community when such strikes were initiated, and those workers that defected were subjected to extreme harassment by their peers.¹¹⁵

Political tension in the Georges Creek Valley during the Reconstruction Era, on the other hand, consisted primarily of collective

by social agitation and discussion, society can regulate and form itself in a more or less haphazard and changed way. But through education society can formulate its own purpose, can organize its own means and resources, and thus shape itself with definiteness and economy in the direction in which it wishes to move.”).

108. See Scharf, *supra* note 76, at 1358.

The statistics of the public school of Allegany county, as returned by the census of 1880, are as follows: whole number of elementary schools, 78; schools for colored children, 3; whole number of school buildings, 78; number of buildings have more than one study-room, 19; number of buildings have two more recitation-rooms, 19; whole number of seats now provided, 8000; number of schools reported in good condition, 68; number reported in bad condition, 10; number of white teachers, 124, of whom 60 are male and 64 female; colored teachers, 3, all males; whole number of teachers, white and colored, 127.

Id.

109. *Id.* at 1358–59.

110. See *supra* Part IV.A.III.

111. *Id.*

112. Harvey, *supra* note 70, at 166–67.

113. See generally LONACONING JOURNALS, *supra* note 10.

114. *Id.* at 26–28, 36–37.

115. See *id.* at 36–37 (“[September 8. 1838]...[Thomas] Layson [miner] agrees to go to work on Monday at the reduced prices, which offends the other recusants very much....[September 9. 1838] This day is only commemoable because of an outrage having been committed by some person or persons unknown on the house [of] Thomas Layson, the miner about whom the entry was made yesterday. A reward of \$100 was offered by the superintendent for any information leading to the detection of the offender. At night two additional watchmen stationed privately in Layson's house.”).

angst stemming from the unionization movement that began in 1873.¹¹⁶ In 1873, the Miners and Laborers' Protective and Benevolent Association of Allegany County formed, and became "influential in securing the first legislation to provide for mine inspection and ventilation."¹¹⁷ This was an optimal time for unionization to occur, as coal production in the region was at an all-time high:

The spring of 1873 was an opportune time for the men to organize. In the years between 1869 and 1873 the operators had prospered and had gradually built up their production. In 1873, the high point before the effects of the panic were felt, the region shipped a record total of well over 2 ½ million tons. Production had hesitated slightly in 1870, and the superintendent of the Cumberland and Pennsylvania Railroad (part of the Consolidation Coal Company's holdings) had suggested that miners wages be reduced to 45 cents a ton. But the rate remained unchanged at 65 cents a ton, one of the reasons being a recognition of the fact that the closing of the canal in winter drastically shortened the working year.¹¹⁸

Wage strikes typically were conducted by miners in order to amplify complaints that the coal weighing scales used to measure worker performance, and thereby determine pay, were inaccurate. The strikes precipitating the unionization movement in 1873 at the Hoffman Mine, owned by Consolidation Coal Company, and the Midlothian Mine, owned by NCCC, were no exception.¹¹⁹

The strikes afflicting the Consolidation Coal Company and NCCC quickly gained publicity, as the Midlothian miners placed an advertisement on April 26th, 1873 in the *Frostburg Mining Journal*, which included a stirring call to action:

Next, we call your attention to the Union principle. We are endeavoring to form a MINERS' UNION along George's Creek and vicinity for the better protection of our interests. IN furtherance thereof we invite a delegation from each and every mine to meet us AT OCEAN MINES PLATFORM, ON Monday, April 28, 1873, for the purpose above indicated.¹²⁰

116. See Harvey, *supra* note 33, at 322 (describing the genesis of the unionization movement amongst coal miners in the Georges Creek Valley).

117. *Id.*

118. *Id.*

119. See *id.* at 168 ("At the Hoffman mine of the Consolidation Coal Company the men complained not only that the scales were incorrect but also that the inadequate site of the cars caused a loss of coal in transit to the scales. They stopped work until the scales had been checked and found accurate, and the superintendent had promised to enlarge the cars to carry a full two tons."). "Employees of the Midlothian mine of the New Central Company struck at about the same time, complaining of short weight and demanding that the scales be adjusted, that the miners be granted the privilege of placing a check weighman at the dump, that the weight of each car be marked upon its side, and that they be permitted to load each car to its full capacity. The company president granted all these demands except the last, refusing to allow more than two tons to a car."). *Id.*

120. *Id.* at 168-69.

A report published in the on May 1st, 1873 in the *Cumberland Civilian and Telegraph* indicates that the source of the controversy lay in the policy of railroads of unfairly fixing the capacity of the cars they used to transport coal: “B. & O. coal cars held 10 tons. If a coal company loaded less, it still paid for 10 tons; if more, it paid a premium rate on the overload.”¹²¹ The workers of seven mines did indeed meet at Ocean Mine and elected a man by the name of Thomas Brown as the leader.¹²²

Local newspapers, including the *Cumberland Civilian and Telegraph*, the *Cumberland Daily Times*, and the *Frostburg Mining Journal*, opposed unionization, expressing concerns that joining an interstate organization would force miners in Georges Creek Valley strike for controversies pertaining to out-of-state matters.¹²³ On May 3rd, 1873, 300 miners met in Frostburg to construct a code of union laws, and on May 24th of the same year, a constitution and resolutions were printed and distributed to each mine.¹²⁴ The Miners and Laborers Protective and Benevolent Association grew tremendously within its first eight months, and successfully negotiated, through arbitration, wage controversies at the Potomac, Phoenix, and Franklin Mines between December of 1873 and January of 1874.¹²⁵

The reputation of the well-dressed “gentleman-miners” of the Georges Creek Valley was not marred by their union exploits. A *Frostburg Mining Journal* report of May 30th, 1874, indicates that regional union activities were, “devoid of that boisterous offensiveness which sometimes characterizes such demonstrations in great cities.”¹²⁶ The miners unions did not degrade the Georges Creek Valley into a *Valley of Fear*.¹²⁷ That is not to say that the coal-mining corporations did not attempt to resist the efforts of miner unions — they did, but in doing so they resorted to more creative means to discourage union activities than violence.¹²⁸ In the end, the unionization movement in the Georges Creek Valley was not curbed by the resistance of coal corporations or even the Panic of 1873.¹²⁹ Rather, it was internal dissensions within organized labor that precipitated its downfall.¹³⁰

121. *Id.* at 168 n.1.

122. *Id.* at 169.

123. *Id.*

124. *Id.* at 170. The minimum age to join the union was 16, and the entry requirements consisted of a fifty cent fee and signature of the union constitution, as well as an agreement to pay union dues of fifty cents per month. *Id.* at 170-1. Disability benefits generated by the union consisted of \$5.00 dollars a week for a period of six months and \$2.50 thereafter being distributed to injured miners until fully healed; the union paid \$30 toward funeral expenses as well. *Id.* at 171.

125. *Id.* at 176-77.

126. *Id.* at 178.

127. *See generally*, SIR ARTHUR CONAN DOYLE, *THE VALLEY OF FEAR* (1914) *reprinted in* THE COMPLETE SHERLOCK HOLMES, VOL. II 229, 229-345 (Kyle Freeman and George Stade ed. Barnes & Noble 2003) (reciting a Holmesian adventure story involving a character who encounters the violent corruption of a private association of gangmen in a fictional region known as the “Vermissa Valley.”).

128. *See* Harvey, *supra* note 70, at 178 (“The New Central Coal Company tried to keep its men from participating, on the pretext that it needed them to dig coal for filling orders.”).

129. *See id.* at 179-80 “The depression that began in September 1873 curbed the activities of labor union in general, but the Miners’ National Association managed to survive until late in 1876.

V. THE CASE

The legal controversy that is the subject of this paper originated in NCCC's failure to negotiate a purchase of land¹³¹ owned by GCCIC for constructing a railroad to connect the C. & P. R. R. with one of its mines. NCCC resorted to initiating a public taking of the land for its private use by summoning a jury panel to conduct an inquisition in order to condemn the land it originally had sought to purchase outright. GCCIC filed suit, contending that such an inquisition of condemnation was illegal. The matter initially appeared before the Allegany Circuit Court, and later appeared before the Court of Appeals twice. The cause of NCCC ultimately prevailed.

*A. The Dispute Between the Parties in the Lower Courts Reflected Strong Differences of Opinion as to the Equity of the Taking.*¹³²

The legal proceedings before the Allegany Circuit Court began with GCCIC's filing suit against the Lincoln Coal, Iron, Fire Brick & Oil Company ("LCIC")¹³³ and its president, Alexander Shaw. GCCIC contested LCIC (the name changed to New Central Coal Company in January, 1872)¹³⁴ for the latter's attempt to execute a public taking of the former's lands for its private use to build a railroad.¹³⁵ The railroad was intended to be constructed for the purposes of carrying coal from a mine owned by LCIC to the C. & P. R. R., where it would therefrom be shipped to market.¹³⁶

In 1875, when it reached its highest development, the Miners' national had over 35,000 members, with 431 in Maryland. From coal production figures we can see how the sustained membership in Maryland was possible. Although the demand for coal throughout the nation fell 50 percent following the panic in 1873, shipments from the George's Creek region in 1874 and 1875 were almost up to the record 1873 level.").

130. *Id.* at 180–81.

131. *See infra* App.IV. (providing a Chain of Title Analysis for the land in dispute).

132. All lower court documents cited to hereinafter were retrieved from the Maryland State Archives, and may be retrieved using the following information: Allegany County Circuit Court Equity Papers, 1816-1984, T1782, Date: 1871–1872; Description: Location 00/50/04/011; Box: 30; Case No. List: 1951-1992; MSA Citation: T1782-37; Case #1967; The Georges Creek Coal and Iron Company.

133. Answer of New Central Coal Company.

134. Answer of New Central Coal Company.

135. The private railroad was to be a tram road with a 3.5 feet gauge. *See* Interrog. of John Somerfield ("It was to be a tram road with three + a half feet gauge! That is the gauge they have for all their cars."). The Lincoln Company apparently wished to build the railroad to cut transportation costs by having its coal carried by rail from mine to market. *See* Interrog. of John Douglas ("5th Int. What would be the most advantageous method of mining that unmined coal? [Answer:] The surest way most profitable to reach it all would be a tram road on the same line as said (unreadable) by the Lincoln Co. for their road, the reason is it would be unprofitable to have it by horse power (unreadable) of the present opening marked Excavation "No. 1" on the plat, the great expense it takes to keep a mine in order for that great distance.").

136. *See* Interrog. of John Douglas ("10 Int: Is it or not practicable for the Lincoln Co. to come on to the C. + P.R.R. in any other way than over the lands of the Georges Creek Co.? [Answer:] The best way to reach their lands except further expense which would be heavy, would be to go (unreadable) from the other end of the property but that expense could only be for the present as it would be paid back in freight.").

1. Initial procedural maneuvers included fact-finding interrogatories that militated against the reasonableness of the taking.

GCCIC and LCIC failed to negotiate a commercial agreement allowing the latter to use the former's lands to build a railroad to transport coal on January 22nd, 1871.¹³⁷ LCIC, seeking an alternative method to procure land to build a railroad to its mine, initiated a public taking for its private use by summoning a jury panel to conduct an inquisition of condemnation – a process by which the value of the land it desired would be assessed – on February 2nd, 1871.¹³⁸ A *Cumberland Daily Times* report, dated April 9th, 1873, recounts that GCCIC was awarded \$750 in damages for the taking.¹³⁹ The Allegany Circuit Court ordered LCIC and Alexander Shaw to appear in court in order to answer the complaint levied by GCCIC on January 22nd, 1872.¹⁴⁰

The Georges Creek Coal & Iron Company succeeded in acquiring an injunction against the public taking of its land, granted by Judge Motter, on

137. CUMBERLAND DAILY TIMES, Feb. 25, 1873.

138. *Id.*

139. CUMBERLAND DAILY TIMES, April 9th, 1873.

The Jury of Condemnation to assess the right of way for the track of the railroad of the New Central Coal Company through the lands of the George's Creek Coal Company, near Lonaconing, were drawn from the panel of twenty taken from this city by Sheriff Gross on Monday, and were sworn in yesterday upon the premises to be condemned and commenced the work of viewing the property. Their names are as follows: Owen Willison, Amos Gross, W. M. Roberts, R.A. Goodwin, John Gross, Arthur Poole, Thomas Cain, F.P. Rupert, Geo. P. Hinkle, Wm. Vincenheller, Jesse Wilson and Theodore Luman. The jury was accompanied to the ground yesterday morning by Messrs. Wm. Walsh and S.A. Cox, Attorneys for the New Central, and Messrs. Linticum and Alexander, for the George's Creek. A large number of gentlemen interested in the mining operations of the region also accompanied the party. . . The jury met at 8:30 A.M. The attorneys for the George's Creek Company opened the proceedings by objecting to the panel, chiefly on account of all the jurors, being selected from Cumberland. The Sheriff overruled the objection, when the panel was sworn, the counsel putting the following interrogatories to each one: "Are you a stockholder or director of the New Central Coal Company?" "Are you related to or connected by marriage with any person who is?" "Have you found or expressed an opinion on the matter?" "Have you heard the matter discussed in your presence?" The answers being all in the negative the jury as above given was selected. At nine o'clock the jury started on their tour of inspection, accompanied by Sheriff Gross; John Douglas, Esq., of the George's Creek Company; and O.D. Robbins, Esq., of the Maryland Company. After viewing the ground the jury returned to Lonaconing, at 12:30 P.M., where the afternoon was spent in examining witnesses and hearing arguments of counsel pro and con. At 7:30 P.M. the jury returned a verdict giving the George's Creek Company \$750 as damages for the land taken for right of way. The jurymen were sent to Piedmont on a special train and returned to this city on the Cumberland. Accommodation 10: 15 last night.

Id.

140. Subpoena. "Of Allegany County, Greeting: "You are hereby commanded that, all excuses set apart, you personally appear before the Judge of the Circuit Court for Allegany County, sitting as a Court of Equity to be held at the Court House, in the city of Cumberland, in and for said County, on the Second Monday of April to answer Bill of Complaint The Georges Creek Coal + Iron Company against You in the said Court exhibited. Hereof fail not, as you will answer contrary at your peril. Witness, the Honorable Richard A. Alvey, Chief Judge of the said Court the 8th day of January 1872, Issued the 22nd day of January 1872." *Id.*

February 24th, 1872¹⁴¹ — an injunction bond was approved on February 28th, 1872.¹⁴² On April 8th, 1872, the parties made an agreement as to the documents that would be admitted into evidence.¹⁴³ On April 23rd, GCCIC requested¹⁴⁴ permission to bring forward testimony at a hearing for a motion to dissolve the injunction that would support the contentions it had stipulated in its bill of complaint.¹⁴⁵ This request was granted by Judge Pearre.¹⁴⁶

A series of interrogatories were facilitated by the lawyers for both parties: William Walsh for LCIC and Julian J. Alexander for GCCIC.¹⁴⁷ Two interrogatories by the parties were conducted on April 29th, 1872, beginning at 9:30 AM.¹⁴⁸ Both subjects of the interrogatories were asked to consult a map of GCCIC's property in answering a series of questions about the nature of the taking by LCIC.¹⁴⁹ The first interrogatory taken was of John Somerfield, the superintendent of the Piedmont Coal & Iron Company.¹⁵⁰ Somerfield, having admitted to have been present at the inquisition summoned by LCIC to be executed against the land of GCCIC, testified that the public taking for private use was unreasonable from his point of view:

8th Int: State in whatever manner of a very unproposed road as located would interfere with the reasonable operations after Georges Creek Co. in mining its Coal under Dug Hill.

141. Allegany County Circuit Court Acknowledgement of Offense; CUMBERLAND DAILY TIMES, Feb. 25, 1873.

142. Inj. Bond.

143. Company Agreement.

144. Pet. for Leave to Take Testimony. "To the honorable the Judges of the Circuit Court for Allegany County. The petition of the complainant respectfully shows that it desires to take the testimony in support of certain averments in the Bill of Complaint to be used at the hearing of the Motion to dissolve the Injunction opened in the case. I therefore pray that an order may be passed granting leave to take such testimony before the standing Commissioners on such other persons in such manner as the Court in its (unreadable) may desire to be used at the hearing of said motion." *Id.*

145. *See infra* note 165.

146. Pet. for Leave to Take Testimony.

Ordered by the Court in the above petition that either party have leave to take testimony to be used at the hearing of the motion to dissolve the Injunction heretofore passed in this cause before the standing commission of the Court provided that two days (unreadable) thereof be given to the (unreadable) party or its solicitor and that the testimony so taken be returned in equity under the band + seal of said Commission at or before the (unreadable) of the Court on the first day of May next, April 23, 1872.

Id.

147. CUMBERLAND DAILY TIMES, Feb. 25, 1873.

148. Interrog. of John Somerfield. "By virtue of an order of the Circuit Court for Allegany County sitting as a Court of equity a copy of which is herewith changed in which the Georges Creek Coal + Iron Co. is Complainant + The Lincoln Coal Co. are defendants, the undersigned being one of the standing Commissioners mentioned in said order, did on the 29th day of April in the year 1872 in the presence of J. J. Alexander Esq. Sol for Complainants + (unreadable) M. Kaig Esq. Sol. for defendants within the hours of 9 1/2 O clock A.M." *Id.*

149. *Compare generally*, Interrog. of John Somerfield *with* Interrog of John Douglas. This map was introduced into evidence by GCCIC as Exhibit A. *See infra* App. IV.

150. Interrog. of John Somerfield.

Answer: I think it would materially interfere it comes right in the way or so close to it where they would have (unreadable) a road to take out the coal from the upper end of the property. (unreadable) arrogance of having (unreadable) them hauling, (unreadable) Timber across their (unreadable) road, if it was my own I would not have it done for any consideration whatsoever.¹⁵¹

Somerfield continued to express his disapprobation for LCIC's inquisition of the land, noting that LCIC's proposed creation of a dumphouse on the land would be injurious to its value.¹⁵²

A second interrogatory was taken of John Douglas, the fifty-five year old superintendent of the Georges Creek Coal & Iron Company and resident of Lonaconing.¹⁵³ The interrogatory illustrates Douglas' expertise, he having been a mining boss and superintendent for nearly twenty years.¹⁵⁴ Douglas expressed his opinion as to the unreasonableness of the taking, indicating that it would, if preserved: 1) prevent GCCIC from using a site marked on a map of its property identified as "Excavation No. 1,"¹⁵⁵ 2) impede GCCIC from using the same land to transport its own coal,¹⁵⁶ 3) deprive the home of GCCIC's superintendent its privacy, given its proximity to the proposed railroad,¹⁵⁷ and 4) devalue the property of GCCIC as a whole.¹⁵⁸ LCIC objected to the admission of the testimony of Somerfield and Douglas into evidence, but it is not clear as to whether this objection was sustained.¹⁵⁹

151. *Id.*

152. *See* Interrog. of John Somerfield ("15th Int: What effect, if any would the creation after Dumphouse upon this fat as proposed the Lincoln Co. upon the selling value a future lots? Answer: It would be very injurious to the value of (unreadable).").

153. Interrog. of John Douglas.

154. *Id.*

155. *See* Interrog. of John Doulgas ("18 Int: 'What would be the effect of the Construction of this road on excavation "No. 1" on the plat?' [Answer:] 'It would prevent us from using it entirely.'").

156. *See* Interrog. of John Douglas ("19th Int: 'Assuming the Road to be built by the Lincoln Co. would it or not be economical or Convenient for the Georges Creek Co. to use the same road to carry out their coal from Dug Hill while the Lincoln Co was carrying on their operations?' Answer: 'It would not , for the reasons that they would to carry it as cheap as we could ourselves, and at times not convenient for us, also the arrangement of loading the coal at the loadhouses + switches would be very expensive, the switches would have to cross one another our men could only be employed in conveying coal when they choose to carry it + if we had the road of our own we could bring the coal when we please as much as we please, load when we please to.'").

157. *See* Interrog. of John Douglas ("32 Int: 'State the effect the location of the proposed road will have upon the desirableness of the Superintendents house as a dwelling how would it affect its privacy + (unreadable) as a dwelling.' Answer: 'It would take away the privacy of the same + any control the superintendent would have for the purpose of making is private. It being located wither about two hundred + fifty feet from the house.'").

158. *See id.* ("34 Int: 'How will the proposed road (unreadable) the Georges Creek Co.'s property.'" Answer: 'It would depreciate the value of the property I should think at least in the sum of twenty thousand dollars.'").

159. *See* Def. Objection to Interrog. of John Douglas ("The defendant excepts to the whole of the testimony of J. Somerfield J. Douglas as appeared in evidence in this case except to the 38th + 39th, 40th answers of J. Douglas.").

Interrogatories were also held on May 1st, 1872, beginning at 9 AM.¹⁶⁰ The first man questioned during this session was Douglass Percy, one of the incorporators of LCIC.¹⁶¹ LCIC's incorporation being a contested issue of law in the pending case, Percy verified that a piece of evidence corroborating LCIC's incorporation, dubbed "New Central No. 4," was in fact a true copy.¹⁶² This exhibit, signed by James J. Shaw, then secretary for LCIC, does indicate that LCIC was duly incorporated at the time of the taking, as it recounts the process by which LCIC's stock was subscribed for on September 16th, 1871.¹⁶³ All told, 17,500 shares of stock were subscribed.¹⁶⁴

2. The George's Creek Coal & Iron Company argued that the inquisition of condemnation was inequitable in its complaint.

GCCIC filed its bill of complaint on July 22nd, 1872.¹⁶⁵ The principle argument contained within the bill of complaint was that chapter 206 of the

160. Interrog. of Douglas Percy.

161. *Id.*

162. *Id.*

163. *See* New Central Coal Co. Ex. No. 4 ("Which deeds the said Alonzo (unreadable), (unreadable), Henry M. Hudson, Andrew Spier, Alexander Shaw, and Alexander Shaw learned to be (unreadable) to said Company, in anticipation of paying (unreadable) for Ten Thousand shares of the stock of said Company, and which deeds will be delivered to said Company in payment for said subscription. Subject to the payment by the said company of the deferred payments due therein as follows, One hundred and Fifty four thousand, one hundred sixty-six dollars and six-six and two thirds cents to be paid in there equal installments on this fifth day of September 1873, 1874, and 1876 respectively, and Eight thousand and fifty five dollars and fifty-five cents to be paid in there equal installments on the sixteenth day of September 1873, 1874 and 1876 respectively the said first amount being payable to the said David Koontz, Salem Koontz, Barbara Koontz, Daniel R. Long, Delilah Long, John H.L. Berry and Mary L. Berry, and the said second amount being payable to the said Thomas H. Lindsay and Margaret E. Lindsay, and for the securing of which deferred payments deeds of Mortgage have been secured by the said Company to said David Koontz, Salem Koontz, Barbara Koontz, Daniel R. Long, Delilah Long, John H. L. Berry, Mary L. Berry, and Thomas H. Lindsay, and Margaret E. Lindsay bearing sale one (unreadable) on this day of September 1871, and the other thereof on the Sixteenth day of September 1871.").

164. New Central Coal Co. Ex. 4. The information contained in this exhibit is very extensive, as it even details the appointment of company leadership and the conveyance of land. *Compare* New Central Coal Co. Ex. 4 ("It was stated by the Secretary that the Capital Stock was now fully subscribed for. On motion of Mr. Walker recorded by Mr. Spier it was voted that the Stock book he now closed. The resignation of Mr. Alexander Sloan as a director was now presented. On motion of Mr. Spier recorded by Mr. Porter it was ruled that Mr. Sloan resignation be accepted.") *with id.* ("To be paid for the conveyance of said Henry G. Davis, William R. Davis and Thomas B. Davis to the said Company of the following lands lying in Allegany County State of Maryland. Viz Lots number two, four, Six, and part of lot number eight of the divisions of a tract of land called Strawberry Plains Reserved shown and represented on a plat filed in cause No 14 24 in this learned Court for Allegany County in which (unreadable) and others are Complainants and John Swan and others are defendants containing together about 1900 acres of land, and said conveyance is also made with the understanding and agreement that the said company will recover to the said H. G. Davis, William R. Davis and Thomas B. Davis sixty acres of the surface part of the said lot number six, lying around the dwelling house now occupied by Henry Friend, and embracing said dwelling house and spring and the land cleared or improved by said Friend to be hereafter conveyed and laid off upon notice to both parties, by a conveyor to be by them chosen, and as located as to put the same in compact shape, and not string it out in length of breadth to the injury of the balance of said lot.").

165. Georges Creek Coal & Iron Company's Bill of Complaint.

Constitution of 1865 incorporating LCIC was null and void, and even if it were not, that LCIC never accepted the act of incorporation from the State sufficient to justify its inquisition of condemnation.¹⁶⁶ The bill averred that on the 19th of January, 1871, Alexander Shaw of LCIC refused GCCIC's offer to use its land to build a railroad in return for paying \$15,000.00 up front (a figure more than three times what Alexander Shaw was apparently ready to put forward), and five cents for every ton of coal transported on the railroad through its lands.¹⁶⁷ On January 23rd, 1872, the Sheriff of Allegany County gave GCCIC notice that a jury of inquisition was being marshalled to condemn its property for private use by LCIC.¹⁶⁸ In doing so, it was alleged that LCIC and Alexander Shaw:

[F]alsely and fraudulently confederated and combined with R.L. Gross the sheriff of Allegany County and in pursuance of said combination and conspiracy and in fraud of your orator [Georges Creek Coal Co.] the said Sheriff according to the notice which your orator herewith tries as part of this Bill marked Complainant's Exhibit B did on the 2nd day of February 1872 appear on the lands of your orator with a panel of twenty persons when he had summoned a jury of inquisition in accordance to the said notice and said panel consisted of....

The bill furthered contended that the jury of inquisition included the brother of Alexander Shaw and employees of LCIC.¹⁶⁹

The primary arguments supporting an injunction against the inquisition of condemnation in the bill of complaint beyond criticism of the jury of inquisition itself, pertained to the nuisance the taking would impose on the operations of GCCIC. The bill alleged that the taking would complicate the function of a sawmill, iron furnace, and a site known as "Excavation No. 1," on the lands of GCCIC, that it would "materially diminish its value in

166. *See id.* (contending that chapter 206 of the Constitution of 1865 is "is null and void in in that [it] is in violation of several rules of constitutional Policy and of legislating which your orator reserves to itself the liberty and privilege of presenting at a future time....And your orator further shows that it is informed and believes that the said charter if it even accepted by the corporations unnamed document of the time it was so as aforesaid enacted by the General Assembly until within a late period and that during such time the new corporation never required by purchase in lease any lands or mines or . . . in Allegany County and never mined or transported to market any ores minerals or other substances, nor for the purpose of enabling itself to market the produce of its mines and manufactures did it exercise or affect of its mines and manufactories did it exercise or affect to exercise any of the powers and right to survey locate or construct nor did it make or construct any railroad or roads as authorized under the second section of its charter above recited, although by the twenty second section of the charter of the Baltimore and Ohio Railroad Company (the act of 1826 chapter 1231 which said corporations affects to incorporate into its chapter it is expressly provided that if said road shall not be commenced in two years from the passage of this act and shall not be furnished in the state in ten years from commencement thereof then this act shall be null and void. And your orator avers that the said Lincoln Coal Iron Fire and Brick and Oil Company did not at any time within two years from the passage of the said act of incorporation survey locate or construct or commence any road or roads for the purposes in said charter set forth.").

167. *Id.*

168. *Id.*

169. *Id.*

the market,” and that it would prevent the use of the land to support the transportation of coal from GCCIC’s own mines.¹⁷⁰

3. New Central Coal Company argued that the taking of the lands of the Georges Creek Coal & Iron Company via the inquisition of condemnation was equitable.

NCCC responded to the bill of complaint filed by GCCIC in asserting that it did indeed have the right to perform the inquisition of condemnation, and that no special legislative sanctity was afforded to the complainant’s lands to support an opposite conclusion.¹⁷¹ Concerning the issue of incorporation, NCCC, while conceding that it was not organized for the two years following the incorporating provision provided in Chapter 206 of the Constitution of 1865, did nevertheless accept the act of incorporation from the General Assembly.¹⁷²

NCCC argued in its answer to GCCIC’s bill of complaint that the railroad it was attempting to construct would, in fact benefit both parties, and from that argument it appears that NCCC was willing to share its railroad with the GCCIC.¹⁷³ The suggestion that GCCIC’s activities would be inhibited by the construction of a railroad through its lands was also strongly contested.¹⁷⁴ Furthermore, the necessity of the taking for commercial reasons was emphasized:

170. *Id.*

171. *See* Answer of New Central Coal Company. (“[T]he Georges Creek Coal and Iron Company great as it is in fact, and in its own imagination is not above the law of the State of Maryland from which it denies its real and fancied greatness, It is admitted it was incorporated under the above amend two acts, attained from the State of Maryland, not above for the public good, but to enrich its (unreadable), who named the land now called “Commonwealth,” which cost but a mere trifle. . . [it] is advised that under laws of Maryland no special sanctity attaches to the speculations of the incorporations of Complaint. . .”).

172. *See id.* (“Respondent admits that it was not organized under charter within two years from the passage of said original act of 1865 Chapter 206 and did not business as a corporation within that period; but respondent admits that there was any (unreadable) places upon it as to the time at which it should organize or exercise thee powers granted it by its charter, and submits that the bill of complainants that it was bound to commence its road within two years and complete it within the from the passage of its said charter, has no foundation in law. . . Respondent denies that its charter was ever accepted by the Corporations and that it lay dormant any time; and avers, on the contrary, that its corporators accepted the same and were always watchful and prepared to organize under it + being the powers thereby granted into (unreadable), where and so soon as is (unreadable) the development of the Coal and other interests connected with the exercise of its corporate powers should require them to act. . .”).

173. *See id.* (“Respondent denies that the construction of its railroad will interfere in any (unreadable) with Complainant mining its coal as Private use and taking its (unreadable) the spur of the Mountain called Dug Hill, to the opening on Georges Creek, but states that the making of respondents roads would enable Complainant to get its coal on Koontz Run more cheaply than it can through its present opening or by the road to the (unreadable) by small engines, by which complainant says it proposes to work out sad coal And further sates that before the Jury of Condemnation Complainant claimed that it could get said coal only as cheaply through present openings.”).

174. *See, e.g.*, Answer of New Central Coal Company (“Respondent denies that that making its rail road on the point proposed in the condemnation, will present complainant from housing its coal at what it calls its Excavation no. 1.”).

Respondent admits that it was necessary for it to create and construct its said rail road over the land of complainant, 'or over other lands' to the Cumberland and Pennsylvania Rail Road, and that it could not construct is said rail road (unreadable) without passing over some bodys of lands, and that upon consideration respondent determined that the route 'coming out at Squirrel Creek Run would be impracticable for several reasons,' and that said railroad might to be made upon Koontz Run 'along the slope of the spur of the Savage mountain turning the (unreadable) near the junction of said run with Georges Creek and running along the spur and parallel with Georges Creek to or towards excavation No. 1, and that accordingly respondent created said road as it has done and opened its miens upon Koontz Run near the line of Commonwealth into the Big Vein of Coal.¹⁷⁵

The factual narrative presented by GCCIC that trivialized the "commercial necessity" of the taking was also rejected wholesale; the answer of NCCC vociferously argued that NCCC "struggle earnestly for over six weeks to obtain said right of way by agreement with complainant," but to no avail.¹⁷⁶ Finally, NCCC attempted to rehabilitate the narrative of the manner in which the jury of the inquisition for condemnation executed its duties in describing the persons of which it consisted as "among the most intelligent men in Allegany County," and defended its damages assessment as a "liberal allowance."¹⁷⁷ Alexander Shaw adopted NCCC's answer to GCCIC's bill of complaint.¹⁷⁸

4. The decision of the Allegany Circuit Court was to grant Georges Creek Coal & Iron Company an injunction against the public taking of its lands for private use of a railroad by New Central Coal Company.

The decision making process of the Allegany Circuit Court is difficult to understand, given the illegibility of the writing of the judges, and the fact that a great number of documents have not been preserved by history.¹⁷⁹ The Circuit Court of Allegany County apparently reserved its judgment on the case on account of an internal disagreement between Judge Pearre and

175. *Id.*

176. *Id.*

177. *Id.*

178. Answer of Alexander Shaw.

The separate answer of Alexander Shaw to the bill of Complaint of the Georges Creek Coal and Iron Company in the Circuit Court of Allegany County as a Court of Equity against him and the Lincoln Coal Iron Firebrick and Oil Company of Allegany County (since changed by Act of the General Assembly of Maryland passed at January Session 1872 to the New Central Coal Company exhibited. This respondent for answer to said Bill of Complaint states that he has read the answers of the New Central Coal Company and adopts the same as his answer believing the same to be in fact and in law and respondent prays that said Bill of Complaint may be dismissed and the injunction in the said case dissolved with his reasonable costs allowed to him.

Id.

179. *See generally*, Allegany County Circuit Court Equity Papers, 1816-1984, T1782.

Judge Motter as to how the case should be resolved.¹⁸⁰ The court evidently refused a motion to dissolve the injunction at some earlier point granted against the condemnation of GCCIC's lands by NCCC, a decision filed on May 21st, 1872.¹⁸¹

On May 20th, 1872, Judge Pearre and Judge Motter of the Allegany Circuit Court wrote disagreeing opinions.¹⁸² Judge Pearre wrote an opinion for the court in considering whether or not the motion to dissolve the injunction against NCCC's condemnation of the land of Georges Creek Coal Co. should be granted.¹⁸³ The issues enumerated in the Pearre opinion appear to be 1) whether the charter incorporating NCCC is void, 2) whether the condemnation of the land of GCCIC constitutes a taking for public use, and 3) whether NCCC, if duly incorporated, had the power to condemn the lands of GCCIC.¹⁸⁴ Notably, the issues presented in GCCIC's bill of complaint as to the manner in which the inquisition of its land resulting in its condemnation for a public taking was performed, was dismissed entirely from consideration.¹⁸⁵ Evidence suggests that this determination was made in light of a previous decision of the court that found the inquisition of condemnation to be illegal because the jury panel of said inquisition

180. *See* Order of the Court Refusing to Dissolve Inj. ("This cause having been heard, by the (unreadable) when the motion to dissolve the injunction issued therein, and the same having been duly considered—and there being a disagreement in the (unreadable) of the (unreadable) of the Court, as will fully appear filed by their several (unreadable) herewith, to is ordered and adjudged this 20th May 1872, as a consequence of such disagreement that the making from the dissolution of the injunction be under the same is hereby ordered.").

181. Judge Pearre Opinion for Motion to Dissolve Inj..

182. CUMBERLAND DAILY TIMES, Feb. 24, 1873.

183. Judge Pearre Opinion for Motion to Dissolve the Inj..

184. *See id.* ("The bill avers that the charter of the defendants under which the condemnation motion of complainants land mentioned in the bill was made is void; that the complainant was incorporated in 1835, and that by its charter it has rights given it to mine the coal on its lands, to make railroads and that no person or corporation, can be (unreadable) to interfere with its chartered rights, for any (unreadable) of profit, is for any other interfere directly benefiting the people of the whole State; that the defendant (unreadable) rail-roads, leading from its mines in the property from (unreadable) by it of the Koontz, to a (unreadable) in the Cumberland and Pennsylvania Railroad, is not a public road and cannot, in the nature of things be such, but can only be used to bring defendants own coal from its new mines to the road of the C. & P. R. R., to be there transported to market. Other allegations in the bill aver that the land condemned by the injunction, taken by the defendant, was very important to the commercial and economical working of its new coal, and transporting to its market; that the land (unreadable) by the inquisition, in facts thereof, was in the line of the railroad of the complainant coal, and will materially interfere the proposed method complainant is working such corner of its coal (unreadable) using defendant property, by adding much to the cost of making it; and that the flat land cornered by the inquisition, is a such a sluice of land, which the complainant (unreadable), for its own (unreadable) contemplated use, in connection with the mining and shipment of its own coal; The bill further avers that charter was never accepted by the corporation; but has lain dormant (unreadable), and that the Company, doing nothing under it; and that the road was not commercial with how years from the passage of defendant's Charter, which it avers the defendant was (unreadable) to do, by the 22nd sect[.] of the Charter of Balt[.] + Ohio Rail road Company, which is allegedly incorporated into defendant's charter.").

185. *See id.* ("It is (unreadable) unnecessary to set out here the allegations of the bill which have exclusive reference to the inquisition already taken = All these have been heard and considered when the law sides of the Court. And that inquisition has been set aside. This is not of the admitted facts in the present case.").

included a blood relative of LCIC, and therefore, was spoiled by a conflict of interest.¹⁸⁶

In review of the facts and issues of law, Judge Pearre upheld the injunction against the condemnation of the lands of GCCIC. In doing so, he determined that the condemnation of the lands of GCCIC did not constitute a public use. Judge Pearre did admit that takings related to the development of coal deposits and railroads, though private in form, are public in nature,¹⁸⁷ even if the entire population of the State does not benefit from such takings.¹⁸⁸ Instead, it appears that Judge Pearre's determination was predicated on his factual finding that the land seized by NCCC for the purposes of building a railroad did not do what it was purportedly intended to do—reach NCCC's coal mine.¹⁸⁹ In narrowly tailoring his opinion to the

186. *See* CUMBERLAND DAILY TIMES, May 4, 1872 (“IMPORTANT DECISION – On Saturday last in the Court, in the suite of the George’s Creek Coal and Iron Company v. the Lincoln Coal Company, decided that the inquisition of condemnation, which condemned a portion of the land of the former to the use of the latter Company some time since, was illegal on the ground that one of the jurors was incompetent—he being blood relation of the chief officer for the Company. Today the case came up before the Court upon the question of the constitutionality of the charter of the Lincoln Coal Company, and also as to its right to condemn land for a right of way; the counsel for the George’s Creek Company urging that a private corporation has not the right to condemn property to its own use. The decision of the Court was reserved.”).

187. *See* Judge Pearre Opinion for Motion to Dissolve the Inj. (“What may be a public use (unreadable), may not be such use another—And what constitutes a public use at some times, may not have been such at a (unreadable) twenty years (unreadable). It depends where the wants of the people, as they are created and arise, from the progress of Commerce, trade and manufacturers, (unreadable) their = Wherever an article (such as coal) becomes necessary to the comfort and to the industry and the wants of the public to such as (unreadable) as that is produced in markets becomes one of the great leading interests of the State, there it may emphatically be said to constitute a ‘Public use’—and the meaning necessary to make it and get it to market much cheaply and in the best condition, and ‘public uses.’ That the development of the coal deposits of the County, constitute one of the Chief public (unreadable) of the State, the Court must review and judicially notice—It has been so declared by legislative grants repeated (unreadable). The highest judicial tribunal in the State has several times (unreadable) land. The furnaces, railroads, rolling mills, and (unreadable) factories in which it is used all over the State declare it every day. The vast amount of capital both by our own citizens and others installed in the lands of this county attach the (unreadable) of its necessity—and the (unreadable) jurisdiction of it from this county of over two millions of tons for America, proclaim it as an article of private necessity, and indeed (unreadable) of the leading interests of the State. To develop this great interest, the State has (unreadable) and indeed by its means, the (unreadable) great improvement above named. It will not do to say that as to the coal fields that these have been completed as (unreadable). As the state intended they should be (unreadable) of these reach of the coal-fields—wagons and wagon-ways will not suffice to bring the great quantity of coal needed in the interest of the country, when these great thorough-fares = It is self-evident, indeed it is conceded by the bill itself, that the C. & P. R. R., running through the valley of Georges Creek, where either side of the which where the mountains (unreadable), the coal deposits lie, was and is a necessary improvement for the development of the coal region.”).

188. *See id.* (“It is not requisite to constitute (unreadable) a public use, that it should ‘directly benefit the people of the whole State’ = It may be well questioned whether the Chesapeake and Ohio Canal or Baltimore and Ohio Rail-road, can be said to be works of ‘public use,’ under the definition thereof given in the Claimants bill. There are large portions of the people of Maryland who have never received any benefit wither of these corporations, but to the contrary, have always contended that they have been (unreadable) taxed for the benefit of both; and have had their products injuriously effected by the fact that these corporations bring into competition with (unreadable) the grains other products of the west, and (unreadable) of the State.”).

189. *See id.* (“But this road does not reach the coal—The geography of its location is shown in party by the plat filed in this case, to lie from (unreadable) to two miles, from the valley, of

facts of the case, Judge Pearre very much intended to allow sufficient railroad designs in similar situations to be permitted, for if minor railways connecting coal mines to major railways were not allowed to proceed through public takings, it would leave “great public works of the State without a feeding formation.”¹⁹⁰

Turning to the issue as to whether NCCC was incorporated sufficient to allow the condemnation to occur, Judge Pearre collapsed the third issue under the second¹⁹¹ in holding that NCCC was indeed incorporated and had the authority under its charter to condemn the land of GCCIC for its private use.¹⁹² The Constitution of 1865,¹⁹³ Judge Pearre noted, provided that “corporations may be formed under general lines,” but not “by special acts.”¹⁹⁴ GCCIC’s argument that the Constitution of 1867¹⁹⁵ foreclosed NCCC from exercising the power to condemn property for its private use, in Pearre’s view, could not stand under the principle that “Constitutions like laws should be construed prospectively and not retrospectively...”¹⁹⁶

Alternatively, Judge Motter issued an opinion rejecting the motion to dissolve the injunction against the condemnation of the lands taken by NCCC from GCCIC.¹⁹⁷ Judge Motter’s opinion first begins by asserting the fact that NCCC did, under the Constitution of 1865,¹⁹⁸ “one and truly incorporate and made a body politic by the name and style of the ‘Lincoln Coal, Iron, Fire Brick & Oil Company with certain powers, rights, and privileges,” which included the condemnation of land for the purposes of building railroads.¹⁹⁹ Judge Motter’s analysis crucially differs from that of Judge Pearre, in that in his reasoning, the power of NCCC to condemn land for the purposes of building railroads was voided by the Constitution of 1867.²⁰⁰ Apparently, in Judge Motter’s view, the language in the

Georges Creek, through which this lack of named rail-roads is located. The hill itself admits that the defendant land is (unreadable) with the “big vein” of coal, and that its point of opening is (unreadable) miles from the present (unreadable), and the defendant portion of the whole be not an exception.”).

190. Judge Pearre Opinion for Motion to Dissolve the Inj.

191. *See id.* “The third general proposition whether the act incorporating the defendant, under the bill answer and evidences in this case, confers power when the defendant for such public use, as authorizes the grant of the exercise of eminent domain, has been sufficiently discerned under the first proposition herein stated.”).

192. *Id.*

193. Const. 1865 48 Sect. 3rd Act.

194. Judge Pearre Opinion for Motion to Dissolve the Inj.

195. Section 49 and 48 Act 3 of Const. 1867

196. Judge Pearre Opinion for Motion to Dissolve the Inj. (“It would be a strange construction of a constitution to say that it was meant to repeal all laws granting official acts of incorporation, because it declares that such acts shall not in the future be framed by (unreadable) and law.”).

197. *Id.*

198. *Id.*

199. *Id.*

200. *See id.* (“The last (unreadable) to be formed in the constitution of 1867, the 48 sec. of the 3rd Art. Of which upon the subject of the formation of corporations other than municipal, is (unreadable) more restrictive in its provisions than either of the preceding constitutions. For which in those constitutions we have seen, that some discretion was left to the Legislature in the in the oration of corporators by special (unreadable) even in cases where general acts may have been enacted for their formation, by (unreadable) from the restrictions in said “cases where in the

Constitution of 1865 stating that “[T]he General Assembly reserves the right to alter, amend, and repeal this act at pleasure.” contemplated application of narrower condemnation provisions in future Constitutions.²⁰¹ Judge Motter drew from New York Case law in rejecting the notion that the Constitution of 1867 could not retroactively apply to disqualify the inquisition of condemnation by LCIC.²⁰² In Judge Motter’s mind, the state “[M]ay modify prospectively or retrospectively without infringing the provisions of the General Constitution against laws impairing the ratio of contracts; and that such modifications may be made as will by a change of the state constitution, as by an act of the Legislature.”²⁰³ LCIC was deemed, contrary to the testimony of Douglass Percy, never to have actually accepted the General Assembly’s act of incorporation, and therefore its inquisition of condemnation was moot.²⁰⁴

(unreadable) of the General Assembly, the object of the corporation counsel be attained under general laws,” the constitution of 1867 contains no such exception, but (unreadable) prohibits their enactment “by special act, except for municipal purposes, and by eight in cases, where no general laws exist providing for the enactment of corporation proposed to be enacted;” and their (unreadable) all such special acts, as may be (unreadable), are not (unreadable) of its provisions in the following in (unreadable) language: “and may act of incorporation, (unreadable) in violation of this section stock to the (unreadable) of 25.000 shares: there making the above capital stock \$5000.000. I have not the (unreadable) act before me, nor have I now at hand, (unreadable) of (unreadable) to it; but I believe the foregoing reference to its provision with the office for the purposes of this opinion...the question I have proposed for consideration, the points are made, 1st, that the said act of 1865, incorporating the said company is in violation of the Constitution of 1864; 289, that, of not violative of the provisions of that Constitution, the same was not formally and legally accepted by the corporation therein named, (unreadable) before the adoption of the Constitution of 1867, the passages of the general incorporation act of 1818 ch. 471, in acts under the provisions, and mandate of the Constitution of 1867; and that after the adoption of the last named Constitution and the passage of the said act of 1818, the power and author of the law corporation to organize a company under the provisions of the act of 1865 was gone, and that its (unreadable) organization on the 1st September, 1871, was invalid, and gave Court give it new corporate existence.”).

201. *See* Judge Motter Opinion (“In the course of our investigation, we must bear in mind, that by the 7th Sec. of 1865, the “General Assembly reserves the right to alter, amend, and repeal this act at pleasure.” (emphasis original)).

202. *See* Judge Motter Opinion (“On this question, I think be one be not without authority. On 21N.J.9. in the matter of (unreadable) – upon the following facts. The Legislature of New York in 1838, passed a general Banks Law. Its 32nd sec, is (unreadable) reserved to the Legislative the right to alter or repeal at any time...That the rule of interpretation by which that construction of the state is to be (unreadable) which gives it a retrospective operation has little if any association in construing the organic laws.”).

203. Judge Motter Opinion.

204. *See* Judge Motter Opinion (“In the view I (unreadable) objection made to the (unreadable) interrogatory recorded to the (unreadable) Douglas Percy by the defendant, because of its support having character; neither the interrogatory be leading or not, I do not think the answer proves acceptance in the sense in which the law means acceptance. Were (unreadable) in the part of the corporation, that their names shall stand in the act, without something done in their part to appropriate to the benefit, and (unreadable) the responsibilities of the act; and that before the adoption of the constitution and the passages of the act of 1818 is not in my judgment such an acceptance. (unreadable) to constitution such an acceptance there must be some act done, which manifests an intuition on the part of the corporation to avail themselves of, and execute the corporate franchises therein conferred at which would authorize a Court of Justice to say “these parties, have a vested right in the charter. . .And such seems to me the, not the plain; common sense meaning of the word acceptance in relation to charter of incorporation....”.

B. The Court of Appeals Favored New Central Coal Company.

In the cases first iteration before the Court of Appeals, William Walsh argued for New Central Coal Company, and Julian J. Alexander for Georges Creek Coal & Iron Company.²⁰⁵ New Central revived its argument on appeal that “The Constitution of 1867 did not purpose to repeal private Acts of Assembly,” (NCCC’s charter under the Constitution of 1865) endowing it with the power to condemn land for the purposes for building railroads.²⁰⁶ Walsh invoked the dictum of Thomas Cooley, legal scholar and judge on the Michigan Supreme Court, in arguing against a retroactive construction of the Constitution of 1867: “All Constitutions and laws speak to the future and not to the past. General legislation does not repeal or alter prior special legislation.”²⁰⁷ Additionally, Walsh argued that the taking in the form of the inquisition for condemnation constituted public use:

It is certainly a matter of great and general public interest to obtain access to the coal fields of the State, and to furnish the markets with coal for forges, ships, railroads and domestic purpose, though such coal may be owned by a single person or corporation. Domestic comfort, travel, commerce, and most every branch of industry, requires coal. The law does not look to whether one person or a thousand owns the coal, but to the universal public necessity of obtaining it.²⁰⁸

Walsh marshalled an impressive array of case law to support his argument that the taking was indeed “public.”²⁰⁹

Julian J. Alexander, arguing for Georges Creek Coal & Iron Company, also revived the basic argument that had been brought forth against the Allegany Circuit Court, that “The act of incorporation of the appellant is null and void under the Constitutions of 1864 and 1867.”²¹⁰ Alexander contended that the Constitution of 1867 retroactively nullified New Central Coal Co.’s incorporation.²¹¹ Furthermore, Alexander asserted that the taking was not a public use.²¹²

Judge Alvey delivered the opinion of the Court.²¹³ Judge Alvey concluded as to the incorporation issue that New Central Coal Co. was indeed duly incorporated, and that the “[A]ct of incorporation was immediately accepted, though nothing appears to have been done under it until September, 1871.”²¹⁴ Next, Judge Alvey held that the taking by New Central Coal Co. constituted a public use. He did admit that private

205. *New Central Coal Co. v. George’s Creek Coal & Iron Co.*, 37 Md. 537 (1873).

206. *Id.* at 540.

207. *Id.* at 541.

208. *Id.* at 543.

209. *Id.* at 544.

210. *Id.* at 545.

211. *Id.* at 546.

212. *Id.* at 550.

213. *See infra* App.V. (providing a biographical sketch of Judge Alvey).

214. *Id.* at 556.

property rights are indeed sacred.²¹⁵ However, Judge Alvey also took into consideration the prevailing policy of the state in making his decision:

It has certainly been the settled policy of the State, for many years past, to stimulate enterprise and to encourage the combination of capital, for the purpose of developing the large mineral resources in the western portion of the State; as upon their full and successful development depend, in a great measure, the success of the works of internal improvement upon which the state has expended many millions of money. As means of wealth and revenue, therefore, the State has a material interest in the operation of the coal and other mineral lands in that section; and the statute book, within the period of the last thirty or forty years, will abundantly attest the policy of the State upon the subject, by the great number of liberal charters granted, all having for their object the same general purpose as the charter before us.²¹⁶

Ultimately, he concluded that the taking in question was of a public nature, and justified under the powers granted to New Central Coal Co. under its charter.²¹⁷

Judge Alvey also disposed of three additional peripheral issues in overturning the Circuit Court and dissolving the injunction against the condemnation concerning the alleged misconduct of Sheriff Gross in executing the inquisition, the manner in which New Central Coal Co. subscribed its stock, and the reasonableness of the taking.²¹⁸ Judge Alvey concluded his opinion by addressing the fact that New Central Coal Co. had apparently illegally entered the condemned lands while the case was pending before the Circuit Court.²¹⁹ On that point, Judge Alvey held that the injunction should have been dissolved by the Circuit Court in spite of said entry by New Central Coal Co. employees.²²⁰

In a second iteration before the Court of Appeals, New Central Coal Company also prevailed.²²¹ Regrettably, the lower court papers related to the Circuit Court decision appealed to the Court of Appeals in 1874 have been lost to history, and, therefore, the Court's decision in 1874 is largely incoherent, especially as the issues on appeal appear to be of a procedural nature.²²² For the purposes of this paper, it is sufficient to note that the public taking New Central Coal Company survived a second appeal.²²³ The decisions of the Court of Appeals ultimately allowed New Central Coal Company to build a two mile tram road at the cost of \$60,000, on which for

215. *Id.* at 560.

216. *Id.* at 561

217. *Id.* at 563.

218. *Id.*

219. *Id.* at 565.

220. *Id.*

221. *Georges Creek Coal & Iron Co. v. New Central Co.*, 40 Md. 425 (1874).

222. *See generally id.* at 435 (“Our inquiry must be confined to the question, whether the Circuit Court by these proceedings, has in any respect exceeded the power and jurisdiction conferred upon it by the statute under which it acted, so that this appeal can be entertained and its action reversed.”)

223. *Id.*

a 12 ton locomotive operated to increase the corporation's daily coal output by 1,000 tons.²²⁴ Newspaper reports of the time indicate that the lawsuit paid massive dividends for New Central Coal Company.²²⁵ Indeed, it might be said that this dispute signified GCCCI's deterioration from a ranking player in the quest for economic hegemony of the George's Creek Valley to a mere "appendage," just as John Henry Alexander had once feared it would.²²⁶

VI. ANALYSIS OF THE CASE.

The Court of Appeals decision was only partly correct in deciding the legal dispute between Georges Creek Coal & Iron Company and New Central Coal Company. The Court of Appeals correctly reasoned that the Constitution of 1867 could not be applied retroactively to foreclose NCCC from exercising its power to initiate a public taking for private use. However, the taking of GCCIC's land cannot be said to have been for "public use." Jurisprudence has appropriately evolved to make similar takings more difficult now that the period of industrialization has come to an end.

A. The Constitution of 1867 could not be Applied Retroactively to Impede the Taking.

The New Central Coal Company was initially incorporated as the Lincoln, Coal, Iron, Fire Brick & Oil Company on March 24, 1865.²²⁷ The

224. CUMBERLAND DAILY TIMES June 6, 1874.

225. *See e.g.*, CUMBERLAND DAILY TIMES June 6, 1874 ("The New Central Coal Co., whose mines are located in the George's Creek region, Alleghany county, Maryland, figure on the tonnage reports as second in the rank of producers from this region. The extent of the property already developed maintaining the 14 foot vein consists of Midlothian, of 250 acres, which they have been working about three years. The Big Vein 215 acres, which they have but just opened out, (the leased lands being nearly worked out) and the Koontz, 854 acres, is in the fine a body of the 14 feet as there is in the region: this is only just proved, to develop it, a tramway two miles in length is being constructed, at a cost of \$60,600, to be completed about the 15th of August. At present this company is sending out about 1,300 tons a day, and next year when the Koontz is opened up, it alone is expected to give them 1,000 tons daily. To draw their cars from the Koontz to the C. & P. Railroad is a locomotive engine, weighing 12 tons has been contracted for with the National Works of Connellsville, Pa. The properties of this company amount to a total of 3,721 acres of which the above has been opened and proved. In 1873, production was 285, 146 tons, beside purchase from other companies of 60,000 tons to May 16th, this year, they had done 75,765 ton. Their coal is sold to all [the] leading rail companies, steamships and manufacturers on the Atlantic Coast; being shipped in good order at either Georgetown, D.C., Alexandria, or Baltimore, and to supply the local trade in the vicinity, they have wharves at Hoboken N. I."). *Id.*

226. *See supra* note 17 (accompanying text).

227. Constitution of 1865 Ch. 206. Sect. 1. "Be it enacted by the General Assembly of Maryland, That Douglass Percy, Crawford W. Shearer and William R. Percy, and such other persons as may be associated with them in manner hereinafter provided, shall be and are hereby incorporated and made a body politic by the name and style of the Lincoln, Coal, Iron, Fire Brick and Oil Company, and by that name shall . . . have power to lease or purchase lands, mines, and such property personal, real and mixed, as they may require for the purposes aforesaid, and the said company shall also have power to purchase nay railroad or tram road within the limits of Allegany county, and also for the purposes above mentioned, and shall have to make such bylaws, rules and

relevant legislative provision authorizing LCIC to execute a public taking for its private use is found in section two of the Constitution of 1865:

And be it enacted, That for the purposes of enabling said company to transport the produce of their mines and manufactories to market, the said corporation shall be and is hereby invested with all and singular the rights, profits, powers, authorities, immunities and advantages for the surveying, locating and constructing a railroad with then necessary appurtenances from their mines or works to connect any convenient point or points with other existing railroads in Allegany county or with the Chesapeake and Ohio Canal at Cumberland, and for the making, constructing, preserving and controlling the said railroad or roads, and the necessary vehicles and appurtenances thereto belong and every part thereof....²²⁸

The Georges Creek Coal & Iron Company argued that Chapter 206 of the Constitution of 1865 was rendered null and void.²²⁹ An injunction was granted by the Allegany Circuit Court in GCCIC's favor against the inquisition of condemnation on the basis that the 1865 charter was repealed by the Constitution of 1867.²³⁰

The first essential issue of the case discussed by both the Allegany circuit Court and the Court of Appeals was "Whether the charter of the defendant, being the act of 1865 charter, was repealed an annulled by the Constitution of 1867?"²³¹ The Constitution of 1867 states, in pertinent part:

Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes, and except in cases, where no general law exist, providing for the creation of corporations of the same general character, as the corporation proposed to be created; and any act of incorporation, passed in violation of this section shall be void.²³²

Julian J. Alexander, in arguing for GCCIC before the Court of Appeals in 1873, argued that the Constitution should apply retroactively to void the incorporation of the Lincoln Coal, Iron, Fire Brick & Oil Company (by then named the New Central Coal Company).²³³

The Court of Appeals rightly concluded that the Constitution of 1867 could not retroactively apply to nullify the charter of 1865 incorporating New Central Coal Company. There is a presumption in the law that statutes do not apply retroactively.²³⁴ As Chief Justice Marshall stated in 1809, there

regulations may be necessary; provided, that they be not repugnant to any law of this State or of the United States." *Id.*

228. Constitution of 1865 Ch. 206 Sect. 2.

229. Georges Creek Coal & Iron Company Bill of Complaint.

230. CUMBERLAND DAILY TIMES, Feb. 25, 1873.

231. Judge Pearre Opinion for Motion to Dissolve Inj.

232. Constitution of 1867 Sect. 48.

233. Appellee Br. (1873).

234. See ANTONIN SCALIA, BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS*, 107, 261 (Thomson/West. 2012) ("As a general, almost invariable rule, a legislature makes law for the future, not for the past. Judicial opinions typically pronounced what the law was at the time of a particular happening. Statutes, by contrast, typically pronounce what the law

is a general principle, “that after the expiration or repeal of a law, nor penalty can be enforced, nor punishment inflicted, for violations of the law committed while it was in force, unless some special provision be made for that purpose by statute.”²³⁵ Thomas Cooley, a nineteenth century authority on statutory interpretation, said as much in his classic treatise: “We shall venture also to express the opinion that a constitution should operate prospectively only, unless the words employed show a clear intention that it should have a retrospective effect.”²³⁶

In view of the fact that the Constitution of 1867 does not contain express retroactive language, the Court of Appeals rightly concluded that the Constitution of 1867 could not nullify the charter of 1865.²³⁷ Judge Alvey, in articulating the reasoning of the Court, rightly considered and accepted the argument of the appellant noting the presumption, and the high regard of the presumption amongst the period’s leading legal scholars.²³⁸

B. The New Central Coal Company’s Inquisition of Condemnation did not Constitute a Taking for “Public Use.”

The Court of Appeals wrongly concluded that NCCC’s public taking of GCCIC’s land for private use of a railway to ship coal from its mines to market was constitutional. Judge Alvey correctly noted in addressing the public use issue at the outset that “The fundamental maxims of a free government seem to require that the rights of personal liberty and private property should be held sacred.”²³⁹ This maxim was not properly applied in Judge Alvey’s 1873 opinion.

At a high level of abstraction, it was true, as Judge Alvey observed, that the State had an interest in developing the coal reserves of Western

becomes when the statutes take effect. This point is basic to our rule of law. Even when they do not say so (and they rarely do), statutes will not be interpreted to apply to past events.”).

235. *Yeaton v. United States*, 9 U.S. (5 Cranch) 281, 283 (1809).

236. THOMAS M. COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION, 62 (2d ed. Little, Brown, and Co. 1871).

237. Compare Constitution of 1867 Sect. 48 (containing no retroactive language) with *New Central Coal Co.*, 37 Md. at 557 (“There can be no good reason suggested by this same general principle, so wise and just, should not also apply as a rule of interpretation of the Constitution. It is stated as the rule upon the subject, by Judge Cooley, (Const. Lim. 62,) and he is not only supported by the reason and justice of the thing, but by authority.”).

238. Compare Appellant Br. (“All Constitutions and laws speak to the future and not to the past. General legislation does not repeal or alter prior special legislation.”(citations omitted)) with Cooley, *supra* note 228, at 370 (“[I]t is a sound rule of construction that a statute should have prospective operation only, unless its terms show clearly a legislative intention that it should operate retrospectively.”). Cooley also illustrates the importance of the presumption against retroactivity in citing to the Constitutions of New Hampshire, Texas, Ohio, and Tennessee which expressly prohibit retroactive legislation. *Id.* at 370 n.3.

239. *New Central Coal Co.*, 37 Md. at 560; accord *Constitutional Law—Eminent Domain—Public Use*, 10 IND. L. REV. 257–58 (1935) (“No principle of law is better settled that the legislature cannot grant to a private corporation or individual the power to take private property for a private use, but it is equally well settled that the legislature may grant the power of eminent domain to a private individual or corporation when the property taken under the grant of that power is for a public use.” (citation omitted)).

Maryland, as was well attested by the statute books over the previous three or four decades.²⁴⁰ Judge Alvey later invoked a dictum of the Supreme Court of Pennsylvania in asserting that the private nature of a taking does not generally detract from its public function.²⁴¹ However, Judge Alvey was mistaken in applying the reasoning of the Pennsylvania Supreme Court in *Hays v. Risher*²⁴² to the case before him.

In *Hays*, the court was critically addressing the constitutionality of a lateral railway law passed in 1832.²⁴³ In justifying its decision to uphold the constitutionality of laws allowing private corporations to take land to build railroads, the *Hays* court understood that but for such laws permitting public takings for private use, railroads simply could not function.²⁴⁴ “The truth is,” the court went on to explain, “that an individual expects to gain thereby, and has private motives for risking the whole of the necessary investment, and acquires peculiar rights in the work, detracts not a whit from the public aspects of it.”²⁴⁵

In the case before Judge Alvey, however, the facts were different. The case concerned not a public taking for the purposes of developing a major rail line, but rather, a smaller tramway to connect a private mine to a major rail line—the Cumberland and Pennsylvania Rail Road. This distinction is important. It is reasonable to posit that the “public” nature of a taking decreases in relationship to the size, scale, and scope of the utility for which the taking was initiated. Judge Alvey was not in line with Cooley’s wisdom, for Cooley believed that the delegation of the power of eminent domain to private railway companies should be strictly construed.²⁴⁶ Were Cooley in Judge Alvey’s shoes, he would have likely ruled the taking as not constituting a public use.²⁴⁷

The Court erred in dissolving the injunction against the inquisition for condemnation because there was insufficient precedent to support the

240. *New Central Coal Co.*, 37 Md. at 561.

241. *Id.* at 561–62 (citing *Hays v. Risher*, 32 Pa. 169, 174, (1858)).

242. 32 Pa. 169 (1858).

243. *Hays*, 32 Pa. at 174.

244. *Id.*

245. *Id.* at 177

246. Cooley, *supra* note 236, at 529. Judge Cooley, in espousing his belief in strict construction, noted a case, *Currier v. Marietta and Cincinnati R. R. Co.*, 11 Ohio, N.S. 228, where a railroad company authorized to construct a road along the north side of a town was not allowed to appropriate a right of way along the south side of the town to serve as a substitute for its main track while its main track was under construction. *Id.* But see EDWARD L. PIERCE, A TREATISE ON AMERICAN RAILROAD LAW 149 (John S. Voorhies, Law Bookseller and Publisher 1857) (articulating a more permissive standard: “The right of eminent domain is only to be exercised when required by the public necessity. This necessity need not be controlling. It relates rather to the nature of the property, and the uses to which it is applied, than to the exigencies of the particular case.”).

247. See Wendell E. Pritchett, *The ‘Public Menace’ of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 YALE L. & POL’Y R. 1, 10 (2003) (“In the 1877 case *Reyerson v. Brown*, for example, Cooley declared Michigan’s Milldam Act of 1873, which allowed private companies to condemn land for the construction of water-powered mills, unconstitutional and stated that private corporations could be given the right of eminent domain only in cases of ‘extreme necessity.’”).

notion that a taking not for a major railway, but for a tramway connecting a mine to a major rail line, was in accord with “the settled practice of free governments.”²⁴⁸ A New York Case from 1888, citing to the same passage from *Cooley*, rightly reasoned that the primary basis for justifying the delegation of the eminent domain power to private railroads is that such railroads are principal conduits of communication.²⁴⁹ In this case, the taking by NCCC for building a tramway connecting its mine with the C. & P. R. R. had commercial value, but did not serve the public as a communications route. Both that case and a subsequent Minnesota case make a clear distinction between takings for “public interest” and takings for “public use,” a distinction that would apparently disqualify New Central’s taking under the former category.²⁵⁰ In sum, the notion that withholding authorization of takings of the kind New Central Coal Company was attempting to execute would “leave the State ‘great public works without a feeding formation,’”²⁵¹ was not sufficiently addressed by Court of Appeals to justify dissolving the injunction against the inquisition of condemnation.²⁵²

VII. CONCLUSION

The Maryland Court of Appeals decisions regarding the legal dispute between Georges Creek Coal and Iron Company and New Central Coal Company fall in line with a historical pattern of the judiciary upholding the delegation of the eminent domain power to common carriers.²⁵³ The Courts

248. See *Cooley*, *supra* note 236, at 532 (“The reason of the case and the settled practice of free government must be our guides in determining what is or is not to be regarded a public use; and that only can be considered such where the government is supplying its own needs, or is furnishing facilities for its citizens in regard to those matters of public necessity, convenience, or welfare, which on account of their peculiar character, and the difficulty—perhaps impossibility—of making provision for them otherwise, it is alike proper, useful, and needful for the government to provide.”).

249. *In re Niagara Falls & W. RY. Co.*, 108 N.Y. 375, 385 15 N.E. 429 (1888).

250. Compare *In re Niagara* 108 N.Y. at 385 (“What is a public use is incapable of exact definition. The expressions ‘public interest’ and ‘public use’ are not synonymous. The establishment of furnaces, mills and manufactures, the building of churches and hotels, and other similar enterprises, are more or less matters of public concern, and promote, in a general sense, the public welfare. But they lie without the domain of public uses for which private ownership may be displaced by compulsory proceedings.”) with *Minnesota Canal & Power Co. v. Koochiching Co. et al.*, 97 Minn. 429 107 N.W. 405 (1906) (“Under normal conditions, the distinction must be made between a use which is public and the interest which is public. Where there is simply a public interest, as distinguished from a public use, the power of eminent domain cannot be exercised. The mere fact that the interest is of a public nature, and that the use tends incidentally to benefit the public in some collateral way, confers no right to take private property in invitum. A use is not public unless the public, under the proper police regulation, has the right to resort to the property for the use for which it is acquired independently of the mere will or caprice of the person or corporation in which the title of the property would vest upon condemnation.” (citation omitted)).

251. Judge Pearre Opinion for Motion to Dissolve Inj..

252. See generally *New Central Coal Co.*, 37 Md. at 425.

253. Asmara Tekle Johnson, *Privatizing Eminent Domain: The Delegation of a Very Public Power to Private, Non-Profit and Charitable Corporations*, 56 AM. U. L. REV. 455, 465–66 (2007) (“Historically, delegation of eminent domain power to common carriers, such as private railroad companies and private companies that operate public utilities, has been upheld by courts.”)

decisions were significant for several reasons. The Court's decisions first and foremost sent a loud signal that public takings for private uses by mining corporations for the purposes of building tramways connecting their mines to market were generally acceptable. Given that the social order of mining communities like Lonaconing were generally dependent on the economic vitality of mining corporations, the Court of Appeals essentially added another instrument into the tool kit of mining corporations seeking to press their advantage in economic competitions between each other.²⁵⁴ The economic significance of the opinion lies in the expanded capacity of New Central Coal Company to bring coal to market through the tramway it was constructing, but also in mining corporations of the state now having the ability to follow in New Central Coal Company's footsteps to expand their own production.²⁵⁵ Finally, the Court of Appeals decisions occurred as political tensions stemming from coal miners' quest for unionization came to a head in the 1870's. Though unions were dependent upon the economic wellbeing of mining corporations, the Court of Appeals decision to render mining corporations a legal pathway to secure more profit did not nullify the internal dissensions that ultimately precipitated the collapse of mining unions.²⁵⁶

Today, jurisprudence regarding the delegation of the eminent domain power to private corporations has evolved. Executing a public taking for the private use of a corporation is harder than ever before.²⁵⁷ Nevertheless, the legal dispute between Georges Creek Coal & Iron Company and New Central Coal Company illustrates the degree to which the economic importance of industrialization occurring in North America in the nineteenth century compelled the judiciary to relax its notions of what is considered a "public use" in eminent domain cases. It is not a foregone

254. *See supra* Part IV.A.

255. *See supra* Part IV.B.

256. *See supra* Part IV.C.

257. *See e.g., Texas Boll Weevil Eradication Foundation, Inc., v. Jack Abbott d/b/a Arroyo Farms, et al.*, 952 S.W.2d 454 40 Tex. Sup. Ct. J. 523 (1997) (employing an eight factor test by which it determined that the delegation of eminent domain power to a private corporation to seize land for the purposes of eradicating boll weevils threatening the cotton industry). The eight factors the court applied were as follows:

1. Are the private delegate's actions subject to meaningful review by a state agency or other branch of state government?
2. Are the persons affected by the private delegate's actions adequately represented in the decision-making process?
3. Is the private delegate's power limited to making rules, or does the delegate also apply the law to particular individuals?
4. Does the private delegate have a pecuniary or other person interest that may conflict with his or her public function?
5. Is the private delegate empowered to define criminal acts or impose criminal sanctions?
6. Is the delegation narrow in duration, extent, and subject matter?
7. Does the private delegate possess special qualifications or training for the as delegated to it?
8. Has the Legislature provided sufficient standards to guide the private delegate in its work?

Id. at 473.

conclusion that unforeseeable economic exigencies of the future will likely compel the judiciary to retrogress into a similar laxity concerning the delegation of the government's power of eminent domain.

**APPENDIX I: POPULATION OF ALLEGANY COUNTY 1790–1930 (&
GARRETT COUNTY UNTIL 1872).²⁵⁸**

Year	Total White	Native White	Foreign Born White	Negro	Slave	Free Colored	Total	Total Acreage/Sq Mile	Pop. / Sq. Mile
1790	4,539				258	12	4,809	721,920	4.3
	94.4				5.4	.2	1.5	1,128	
1800	5,703				499	101	6,303	1,128	5.6
	90.5				7.9	1.6	1.8	1,128	
1810	6,176				620	113	6,909	1,128	6.1
	89.4				9.0	1.6	1.8	1,128	
1820	7,767	7,664	103		795	195	8,757	1,128	7.8
	88.7	87.5	1.2		9.1	2.2	2.1	1,128	
1830	9,569	9,504	65		818	222	10,674	1,128	9.5
	89.6	89.0	.6		7.7	2.1	2.4	1,128	
1840	14,663				812	215	15,690	1,128	13.9
	93.4				5.2	1.4	3.3	1,128	
1850	21,663				724	412	22,769	1,128	20.2
	95.0				3.2	1.8	3.9	1,128	
1860	27,215	21,172	6,043		666	467	28,348	1,128	25.1
	96.0	74.7	21.3		2.3	1.6	4.1	1,128	
1870	37,370	29,401	7,969	1,166			38,536	1,128	34.2
	97.0%	76.3	20.7	3.0			4.9	1,128	
1880	36,463	29,470	6,993	1,549			38,012	283,520	85.8
	95.9	77.5	18.4	4.1			4.1	443	
1890	40,135	34,513	5,627	1,431			41,571	283,520	93.8
	96.5	83.0	13.5	3.4			4.0	283,520	
1900	52,019	47,299	4,720	1,669			53,694	283,520	121.2
	96.9	88.1	8.8	3.1			4.5	283,520	
1910	60,893	56,497	4,396	1,517			62,411	283,520	140.9
	97.6	90.5	7.0	2.4			4.8	283,520	
1920	68,111	64,741	3,370	1,825			69,938	283,520	157.9
	97.4	92.6	4.8	2.6			4.8	283,520	
1930	77,642	75,319	2,323	1,454			79,098	283,520	178.6
	98.2	95.2	2.9	1.8			4.8	283,520	

258. Ware, *supra* note 1 at 35 (citing KIT W. WESLER, ET AL., M/DOT ARCHEOLOGICAL RESOURCES SURVEY, VOL. IV: WESTERN MARYLAND, MARYLAND HISTORICAL TRUST MANUSCRIPT SERIES NO. 8, 110 (Maryland Historical Trust 1981)).

**APPENDIX II: WESTERN MD. COAL SHIPPING FIGURES (IN TONS), FEB. 25,
1873.²⁵⁹**

Company	B. & O. R.R.	C. & O. Canal	P. S. Line	Total
Borden Mining.	2,475 09			2, 475 09
Consolidation	5, 018 02		1, 536 05	6, 576 07
Hamp & Balto	1,439 02			1, 409 02
Do Va. Mines	1, 847 18			1, 847 18
George's C. C. & I	3, 152 00			3, 152 00
New Central Coal	2, 485 69			2, 485 69
Maryland Coal	1, 656 02			1, 656 02
American Coal	2, 998 02		223 05	3, 231 07
Atlantic & G. C.	1, 924 02			1, 924 02
Piedmont	1, 442			1, 442 00
Swanton	1, 176 02			1, 176 02
Barton				
Potomac	1, 314 10			1, 314 10
George's C'k M'g	559 11			559 11
Franklin	1,263 01			1, 263 01
Total for week	28, 751 10		1,781 10	30, 533 00
Previously	156, 831 15		10, 933 17	161, 767 12
Total for year	179, 583 05		12, 717 07	192, 300 12

259. CUMBERLAND DAILY TIMES, Feb. 25, 1873. The table's title, as it originally appeared in the newspaper was, "Statement of Coal transported over the Cumberland and Pennsylvania Railroad during the week ending Saturday, February 22 and during the year 1873, compared with the corresponding period of 1872." *Id.*

APPENDIX III: CHAIN OF TITLE ANALYSIS.²⁶⁰

Date	Grantor	Grantee	Source
30th March 2001	Buffalo Coal Company (WV Corp.)	CDS Family Trust LLC (Del. LLC)	Liber 696 Folio 437-45
27th January 1975	The George's Creek Coal and Land Company (MD Corp.)	Buffalo Coal Company (WV Corp.)	Liber 356 Folio 552-54
1st December 1952	The George's Creek Coal Company Inc. (MD Corp.)	The George's Creek Coal & Land Company (MD Corp.)	Liber 175 Folio 546-51
13th July, 1919	The George's Creek Coal and Iron Company (MD Corp.)	Robert L. Somerville, Harry E. Weber, and William H. Cooper	Liber 106 Folio 377-86
18th October 1875	Julian J. Alexander	The Georges Creek Coal and Iron Company (Md. Corp)	Liber T. L. 45 Folio 481-85

260. The author of this paper conducted a chain of title analysis on this property. Though the chain of title was difficult to navigate, to the author's knowledge, the following sequence of property exchanges constitutes the chain of title.

APPENDIX IV: JUDGE RICHARD H. ALVEY – A BIOGRAPHICAL SKETCH.

Judge Richard Henry Alvey of Washington County served on the Maryland Court of Appeals as an associate judge from 1867 to 1893, and served as Chief Judge from 1883 to 1893.²⁶¹ Judge Alvey's tenure was defined by his reputation for possessing a tremendous work ethic. Like his peers on the bench, Oliver Miller of Anne Arundel County²⁶² and James McSherry of Frederick County,²⁶³ Judge Alvey tended to write opinions of exhaustive length.²⁶⁴ It appears that Judge Alvey's habit of intensive study and his custom of producing three opinion drafts before furnishing his final product, though excellent for the Court's purposes, was inimical to the development of his social skills.²⁶⁵

Judge Alvey appears to have had extensive political connections. President Grover Cleveland apparently was so impressed by many of Judge Alvey's opinions that he had a Congressman from Maryland by the name of Dr. Frank T. Shaw bring Alvey to the Whitehouse.²⁶⁶ The purpose of the meeting was to discuss the President's interest in nominating Alvey to the Supreme Court of the United States.²⁶⁷ The nomination was not to be, however. A number of Judge Alvey's opinions regarding the Chesapeake & Ohio Canal Company had aroused the anger of a senior Maryland Senator, who ultimately was successful in orchestrating the Senate to block Alvey's nomination.²⁶⁸ In 1893, Alvey rebounded professionally upon receiving an appointment to become Chief Justice of the District of Columbia Court of Appeals.²⁶⁹ In 1895, Alvey was appointed to the commission assigned to settle a boundary line dispute between British Guiana and Venezuela.²⁷⁰

261. CARROLL T. BOND, *THE COURT OF APPEALS OF MARYLAND, A HISTORY*, 202 (The Barton-Gillet Co. 1928).

262. *Id.* Judge Miller served from 1867 to 1892 as an associate Judge.

263. *Id.* Judge McSherry served from 1887 to 1896 as an associate Judge, and from 1896 to 1907 as Chief Judge.

264. *Id.* at 180.

265. *Id.* at 180–181.

266. *Id.* at 181.

267. *Id.*

268. *Id.*

269. *Id.*

270. *Id.* at 181.

Appendix V: Lonaconing Ordinances²⁷¹

The superintendent of the works of the George's Creek Coal and Iron Company at Lonaconing has prescribed the following rules for the government of all persons in the service of the company:

1. Every department of the works...by whom all the hands in the respective departments are immediately superintended and to whom every hand in this particular department will be required to pay entire respect and obedience. These managers are selected in the discretion of the superintendent, and report to him the state and progress of the work in their particular charge. They also report the time and wages of the hands in their employ, by which report the payments for wages are all governed.
2. Every person in the employment of the company will be required to be present at work on every day in the year excepting Sundays and Christmas Day, and the hours of employment (excepting in special cases which the superintendent allows in his discretion) shall be from sunrise to sunset, with which intermission for meals as shall from time to time be appointed.
3. Signals are given, by tolling the great bell of the company, of the hours for beginning and leaving work, and every person who is not in his place in the proper time will be expected to account for his absence to his immediate manager.
4. Absences from work will be punished by abatement from the wages at the discretion of the manager; and where such absences are frequent, or without sufficient excuse, the individual who is guilty will be discharged and reported by the manager to the superintendent.
5. No distilled spirituous liquor shall be sold on the grounds of the company, nor shall any distilled liquor be used by any person whilst he is actually engaged at work for the company. Intoxication at all times and places is strictly prohibited. The managers of the several departments required to enforce the strict observance of this rule by dismissing immediately from service any person or person under their respective charge who may be guilty of a violation thereof. The superintendent requires its observation also on the party of the managers themselves, and all others in the service of the company are likewise in such case directly responsible to him.
6. All brawling, quarreling, fighting, and gaming are prohibited. The firing of guns, which has been more frequent of late than usual in the valley of the works, is also, as dangerous and unnecessary amusement, forbidden in future. The managers must aid in the enforcement of this rule by reporting to the superintendent all violations thereof which may come under their knowledge.
7. The company expects all person in its service to observe an orderly and decorous conduct towards each other; and if any controversy should arise between such persons, the superintendent will, on application, use

²⁷¹ LONACONING JOURNALS, *supra* note 10, at 37–38.

his good offices and authority to reconcile the parties on just and property grounds.

8. Every person in the service of the company, whether employed by the day, month, or year, shall be liable to be dismissed at the discretion of the superintendent, and on his dismissal shall leave the grounds of the company.
9. In like manner the superintendent claims the power of determining at any moment any lease or renting of the company's grounds or houses, whether the same be made by the day, month, or year; and it is expressly declared that no tenant of the company shall board or lodge any person who may be discharged from the service of the company, nor shall be permitted to engage in any manner in buying or selling distilled spirituous liquors on the company's grounds. When work is contracted to be done by the job, it is understood that it is to be subject to the acceptance or rejection of the contractor; and all persons entering into such contracts are to be subject to the operation of these rules, and to be liable to have their contracts rescinded for a violation thereof.
10. Monthly settlements will be made with every individual in the regular employment of the company. From the sum due him for labor will be deducted the amount of the accounts against him at the store, mills, and post office, and his contributions for the doctor and school fund as hereafter mentioned, and the balance will be paid him in money or a check on Baltimore or Cumberland at the discretion of the superintendent.
11. For promotion of the general health a physician is settled at Lonaconing. Every able-bodied man in the service of the company, who will contribute out of his wages monthly sum of fifty cents for the support of the physician, will be entitled to medical advice and assistance of himself and family without further charge.
12. The physician will make a daily report to the superintendent of the general health of the village, and the numbers of death and births within its limits; and he will also from time to time specially report all nuisances which may affect the health or comfort of any portion of the inhabitants.
13. Every tenant of the company is expected to preserve neatness and cleanliness about his premises, and more especially to pay attention to the condition of the sty or other places where he may keep his logs and pigs. The superintendent will insist on the observance of this rule and will prohibit the keeping of hogs or pigs by any person who may disregard the same.
14. After the first day of January next [1839] no dog shall be kept on the company ground without special permission of the superintendent, who may withdraw the same at any time in his discretion."