COMMENT.

The use of the injunction as a panacea for legal ills has led to an attempt to make it practically a substitute for *quo warranto* proceedings against private corporations illegally organized. The fact that a trust was involved made the attempt more plausible in *Stockton* v. *American Tobacco Co.*, 36 Atlantic (N. J. Eq.) 971. When companies which manufactured ninety-five per cent of the cigarettes of the United States were incorporated into the American Tobacco Co., they issued its stock in exchange for the property of the several manufactories thus merged. Little money was actually paid in. It then set out to keep other manufacturers from getting a foothold in the market by making jobbers sign a contract not to sell the cigarettes of any other company, and its own only at a certain high price. The jobbers, deprived of the profit from selling other goods, then asked that the trust be restrained from causing this special injury, and also moved the Attorney-General to ask for an injunction restraining the alleged public injury. The court expressed no doubts that the acts were within the chartered powers of the corporation. Being a legal entity, "a trading corporation has the same authority as an individual to sell or consign its goods, to select its selling agents, and to impose conditions as to whom they shall sell, and the terms upon which they shall sell." Then quoting from Chancellor Vroom, in the leading case of *Attorney-General* v. *Stevens*, 1 N. J. Eq. 369, the decision proceeds: "They are a corporation *de facto*, if not *de jure*. * * * I do not feel at liberty in this incidental way to declare all their proceedings void, and treat them as a body having no rights and powers." The purpose of the contract to form the corporation may have been to create a monopoly. As such it was unenforceable, and might have been annulled upon a bill filed by the Attorney-General. But to enjoin it from exercising its powers would be equivalent to taking away its powers. For this there is an adequate remedy at law, by *quo warranto*. To enjoin the agents of the corporation from doing acts within its powers is practically to enjoin the corporation from transacting any business, and this is the equivalent of a judgment on *quo warranto*. Although such a prayer will not be granted in the case of private corporations it is well settled that where a quasi-public corporation exceeds its corporate powers and its acts tend to public

injury a bill will lie to restrain it. Such are the cases of *Raritan and D. B. R. Co.* v. *Del. and R. Canal*, 18 N. J. Eq. 547, and *Atty. Gen.* v. *Great Eastern Ry. Co.*, 11 Cho. Div. 450.

A few years ago to break up the coal "trust" a bill was recognized to annul the lease of the New Jersey Central to the Philadelphia and Reading (*Stockton* v. *Ry. Co.*, 50 N. J. Eq. 52; 24 Atlantic 964). But in that case the lease was distinctly *ultra vires*, and its annulment in no way curtailed any corporate powers. It is interesting to note in this connection that in New York the officers and agents of the American Tobacco Co. have been indicted for conspiracy in doing acts in furtherance of the contract tendered to its agents and referred to above. The acts were held to amount to "intimidation," and therefore were unlawful, and a combination of the officers of the corporation to carry them out amounted to conspiracy (*People* v. *Duke*, 44 N. Y. Sup. 336).

The Supreme Court of Missouri in the recent case of *Glencoe Sand and Gravel Co.* v. *Hudson Bros. Commission Co.* (40 S. W. Rep. 93), has decided that no action will lie against one who induces a third party to break a contract with another, unless the relation of master and servant was created by such contract. In reaching this conclusion the court has departed from the English doctrine as laid down in *Lumley* v. *Guy* (2 El. & B. 216), and *Bowen* v. *Hall* (62 B. Div. 333), and from *Walker* v. *Cronin* (107 Mass. 555), *Haskins* v. *Royster* (70 N. C. 601), *Jones* v. *Stanley* (76 N. C. 355), and *Jones* v. *Blocker* (43 Ga. 331), the early decisions of this country following the English decisions.

Lumley v. *Guy*, *supra*, decided in 1853, was the first English case to extend the doctrine and hold that an action would lie for the procurement of a breach of contract even though the strict relation of master and servant did not exist. *Bowen* v. *Hall*, *supra*, followed and affirmed this in 1881. *Walker* v. *Cronin*, *supra*, and cases following it, held that the action did not rest upon the relation of master and servant alone, but was founded upon the legal right derived from the contract, and that it applied to all contracts of employment if not to contracts of every description. The later American decisions, which are relied upon by the court in the present case, hold directly the reverse. In *Chambers* v. *Baldwin* (91 Ky. 122) and *Bourlier* v. *Macauley* (*id.* 135) decided in 1891, it is held that there are only two exceptions to the rule that an action cannot be maintained against one who maliciously procures the breach of a contract, viz:

(1). Whereby a contract of employment the relation of master and servant exists, and (2), where the party has been procured to make the breach against his will by deception and coercion *Boyson* v. *Thorn* (98 Cal. 579), decided in 1893, holds that the action will not lie unless the relation of master and servant exists, or there were threats, violence falsehood, deception, etc., used in procuring the branch.

In the present case which was an action brought for procuring a railway company to break a contract of carriage with the plaintiff, the learned judge thought it not pertinent to inquire whether the relation of master and servant existed between the plaintiff and the railroad for "to hold that a carrier is the servant or employe of the shipper would revolutionize the whole law relating to the duties, obligations, and liabilities of common carriers."

When a doctrine which has been almost continuously upheld since the foundation of the common law, is overturned, it is worthy of notice. Such a case is that of *Clayton* v. *Clark et al.*, 21 South. Rep. 565, which was founded upon a few simple facts. A written agreement of release had been given, upon receipt of $1,000, for a past-due note of $2,789. Upon an attempt to recover the balance, the Supreme Court of Mississippi, in a very clear and logical opinion, containing a *resumé* since its foundation of the doctrine involved, reversed the rule almost continually held hitherto, that "an agreement by a creditor with his debtor to accept a smaller sum of money in satisfaction of an ascertained debt of a greater sum is without consideration and is not binding upon the creditor, even though he has received the smaller sum agreed upon in the new contract." The court also overruled the cases of *Jones* v. *Perkins*, 29 Miss. 139, and *Jones* v. *Perkins*, 50 Miss. 251, in setting up this new rule as the doctrine of the State of Mississippi.

A Connecticut case of special importance is that of *Canastota Knife Co.* v. *Newington Tramway Co.*, lately decided by the Supreme Court of that State. This case involved the interesting question of "additional servitude," and while the court agreed in its conclusions, there were two views raised as to whether a street railway may be built in a highway without compensation to the owners of the adjoining land. The majority of the court hold that circumstances may determine that point, while two dissenting judges are of the opinion that the owner is entitled to

compensation. Judge Baldwin, in the majority opinion, maintains that the common law of Connecticut is somewhat more favorable to the rights of the public as against the land owner than the common law of England, and that New York is the only State in the country which has accepted the position that a railway not operated by steam imposes new servitude upon the soil of a city or village street. While the courts of Connecticut have regarded the railway structure as the private property of the company and in the nature of real estate, they also hold that its right to pass over the streets is no greater than that of any other member of the community, at the most a limited, qualified property right; and no owner of the soil, subject to the highway, had set up a claim to compensation for the construction of a street railway upon it, before the present suit was brought. The majority of the court hold that there is no substantial impediment to public travel or proximate cause of special damage of a new description to the owner of the soil, and that the public right has for some time been recognized as extending not only to the laying of water pipes, gas pipes, etc., but to street railways as well. "Two rights are to be guarded with equal care; that of the individual land owner, and that of the public at large; but his estate is the servient tenement. He has no rights which are incompatible with the fullest enjoyment of the public easement."

The dissenting judges, however, regard the street railway as creating a new right against the owner of the fee in favor of persons with whom he before had no legal relation whatever, and as burdening the land with a peculiar use for one person exclusive of any rights in others to that use.