

Compliments J. K.

THE RAILROAD QUESTION

IN ARIZONA TERRITORY.

REPORT OF THE LEGISLATIVE COMMITTEE ON CORPORATIONS, WHICH DECIDES THAT IT IS UNWORTHY THE PEOPLE TO "CINCH" THE RAILROADS WITH HOSTILE LEGISLATION.

Mr. President—Your committee on corporations, to whom was referred House bill No. 29, entitled "an act to prevent discrimination in freights and fares by railroad companies whose railroads run through the territory of Arizona, or by railroad companies the terminus or termini of whose railroads are within the Territory of Arizona, and the petitions relating thereto," beg leave to make the following report:—

Your committee have carefully considered all the provisions of the above bill, and are of the opinion that the proposed measures will reduce the charges on local railway traffic to a very low figure.

We have carefully investigated the different charters of the several trunk lines at present operating in our territory.

We find that by an act of the Legislative Assembly of the Territory of Arizona, approved February 7, 1877, the Southern Pacific Railroad Company of California was declared to be a body corporate of this territory and clothed with certain powers, among which was the power to regulate the time and manner in which passengers and property should be transported over its roads and the tolls and compensation to be paid therefor, with the proviso, however, that it should be unlawful for said corporation to charge more than ten cents per mile for each passenger and fifteen cents per mile for each ton, by weight or measurement, of freight transported on its roads. It was further granted the power to mortgage its corporate property and franchises within the territory, and such further powers as might be necessary to enable it to exercise and enjoy fully and completely the powers granted by said act, and generally all such powers as are usually conferred upon, required and exercised by railroad corporations.

Subsequent to the passage of this act the Southern Pacific Railroad of Arizona was organized and incorporated under the general laws of the territory.

On the 14th day of February, 1879, the Legislature of this territory passed "an act of general railroad incorporation," the ninth section of which provides that the directors of any railroad company theretofore incorporated, or which might be thereafter incorporated, should for and on behalf of such company manage the affairs thereof, make and execute contracts of whatever nature or kind, fully and completely, to carry out the objects and purposes of such corporation, in such way and manner as



they may think proper, and exercise generally the corporate powers of such company.

Section fifteen empowers the company to borrow from time to time on the credit of the corporation, and under such regulations and restrictions as the directors might, by a two-thirds vote, impose, such sums of money as they might deem necessary for constructing, completing and maintaining their railroad, and to issue and dispose of bonds or promissory notes therefor.

Section seventeen declares that said corporations shall be bodies politic and corporate within this territory, and should have power to make contracts, to acquire, hold and convey all real and personal property necessary for the construction, operation and maintenance of their railroad and telegraph lines, or either thereof, and generally for the purpose of constructing, maintaining and operating their railroad and telegraph lines and carrying on their business, and that they should have and possess all the rights, powers and privileges enjoyed by natural persons.

The eleventh subdivision of section eighteen grants to such corporations the authority to regulate the time and manner in which passengers and property shall be transported over their roads, and the tolls or compensation to be paid therefor; provided, that it shall be unlawful for said corporations to charge more than ten cents per mile for each passenger and fifteen cents per mile for each ton of freight transported over their roads.

The fourteenth subdivision of said section confers upon such corporations such further powers as might be necessary to enable them to exercise and enjoy fully and completely the powers granted by the act, and generally all such powers as are usually conferred upon, required and exercised by railroad corporations.

The thirty-second section of the act is as follows:—

“Any railroad company now existing in this territory may, by resolution of its board of directors, elect to come under and enjoy all the advantages of this law, and upon filing in the office of the secretary of the territory a copy of said resolution, certified by the seal of said corporation and attested by the president thereof, with the seal of said corporation. Then such railroad shall have the same powers, privileges and rights as though it had been erected under this act.” It will be observed that no right to alter or amend these acts, or any part thereof, was reserved by the Legislature.

In compliance with the provisions of said thirty-second section, the Southern Pacific Railroad Company of Arizona did, on the 24th day of May, 1881, pass a resolution electing to avail itself of the provisions of said act, which resolution, duly certified as required, was, on the 13th day of June, 1881, filed in the office of the secretary of this territory. In our opinion the passage of the above-mentioned acts without any reservation clause, and the acceptance by the Southern Pacific Railroad Company of the terms thereof, created a contract between the territory and the said railroad company, which is binding upon the parties thereto, and cannot be violated by one without the consent of the other. To such extent is this the case that even a subsequent Legislature is bound thereby, and has no power, without the consent of the railroad company, to pass any legislation in conflict therewith. This principle is enunciated in Angel and Ames on corporations, page 22, where the well-established principle is laid down that “private corporations are created by act of the Legislature,

which, in connection with its acceptance, is regarded as a compact, and one which, so long as the body corporate faithfully observes, the Legislature is constitutionally restrained from impairing."

Again, on page 81: Private corporations are in the nature of a contract; this is well settled.

In the Pennsylvania college cases reported in 13 Wallace, 190, where this question was before the Supreme Court of the United States, Mr. Justice Clifford, speaking for the whole court, said:—

"Cases often arise where the Legislature, in granting an act of incorporation for a private purpose, either make the duration of the charter conditional, or reserve to the state the power to alter, modify or repeal the same at pleasure. When such a provision is incorporated in the charter it is clear that it qualifies the grant, and that the subsequent exercise of that reserved power cannot be regarded as an act within the prohibition of the constitution. Such a power also—that is, the power to alter, modify or repeal an act of incorporation—is frequently reserved to the state by general law, applicable to all acts of incorporation, or to certain classes of the same, as the case may be, in which case it is equally clear that the power may be exercised whenever it appears that the act of incorporation is one which falls within the reservation, and that the charter was granted subsequent to the passage of the general law, even though the charter contains no such condition, nor any allusion to such a reservation. Reservations in such a charter, it is admitted, may be made; and it is also conceded that where they exist the exercise of the power reserved by a subsequent Legislature does not impair the obligation of the contract created by the original act of incorporation. Subsequent legislation altering or modifying the provisions of such a charter, where there is no such reservation, is certainly unauthorized if it is prejudicial to the rights of the incorporators, and was passed without their assent; but the converse of the proposition is also true, that if the new provisions altering and modifying the charter were passed with the assent of the corporation, and they were duly accepted by a corporate vote as amendments to the original charter, they cannot be regarded as impairing the obligation or the contract created by the original charter. Private charters, or such as are granted for the private benefit of the corporators, are held to be contracts, because they are based for their consideration on the liabilities and duties which the corporators assume by accepting the terms therein specified, and the grant of the franchise on that account can no more be resumed by the Legislature, or its benefits diminished or impaired, without the assent of the corporators, than any other grant of property or legal estate, unless the right to do so is reserved in the act of incorporation, or in some general law of the state, which was in operation at the time the charter was granted."

The same court has applied the rule expressed above in *Tomlison v. Jessup*, 15 Wallace, 454; *Holyoke Co. v. Lyman*, id., 500. See also *Piek v. Chicago & Co.*, 6 Bissell, 177; *Commonwealth v. Eastern R. R.*, 103 Mass., 254; *Fitchburg R. R. v. Grand Junction R. R.*, 4 Allen, 198; *English v. New Haven R. R.*, 32 Conn., 240; *Albany, etc., Co. v. Brownell*, 24 N. Y.; 345; *Attorney-General v. Chicago, &c., Co.*, 35 Wis., 425.

The Territory of Arizona is situated between the fertile regions of the West and the East. As is well known its resources are in an undeveloped state, and that the different trunk lines traverse a country devoid of devel.

opment and of limited resources to be developed. The whole future of our Territory is bound up in the construction of railroads; and the development of its resources is dependent upon such construction.

Your committee are of the opinion that at present it is unwise to adopt any detractive or discouraging measures, feeling that if such a step is taken and the measures of this act be adopted, the development of railroad building in this Territory will be largely arrested; the completion of a railroad system will be discouraged, and population, settlement and civilization, which should be invited, will be delayed and postponed. It is obvious that the originators and promoters of the act now under consideration do not understand why any particular rate exists; they do not possess the materials out of which a judgment may be formed as to what constitutes a profitable, or what could constitute an exorbitant rate of transportation. To form a just judgment upon these matters would require an intimate knowledge of railway matters.

Your committee have caused persons to appear before them for the purpose of becoming acquainted with the facts, and have investigated all matters that would throw any light upon the subject. With that view they have directed enquiries to the following points:—

First—The cost of constructing a line of road across the Territory.

Second—A just rate of interest for the capital invested in such line.

Third—The fixed expenses of operating such line.

Fourth—The cost of maintaining the line.

Fifth—The expenses of which are incidental and varying, such as taxes, legal expenses, repairs, accidents, damages to property, damages by floods, etc., etc.

Sixth—The volume of traffic both as to freight and passengers, against which must be charged a rate sufficient to meet and liquidate the aggregate expenses presented in the items above.

The interest upon the capital invested must be met; the cost of operating the road must be paid; the road must be maintained; the incidental expenses must be liquidated; and the aggregate of these sums must be charged to the traffic carried by the road.

The question arises, what is the sum thus obtained, and what is the aggregate of the traffic originating in the Territory over which the legislature is now attempting to exercise a control.

The proposers of the legislation now under consideration are certainly not familiar with the data; and your committee respectfully submit that the measures proposed by them are not founded upon sound reasoning. They are not dictated by a sense of justice. They are not demanded by the necessities of our young Territory. The rates now proposed by the Act under consideration are, we suggest, mere guess work. They could not, in the light of the fact before your committee, have originated in a mind thoroughly imbued with a sense of justice, or trained in any school of statesmanship.

It is now admitted by all who have given the subject attention, that in order to confer a development upon a country, a railway line of transportation must carry the products of that country to market at a cheap rate; that by doing so a development ensues which creates a demand for more costly materials upon which a higher rate may be charged, without injury to the merchant or the consumer, and thus distribute by an *ad valorem* principle, the burdens of transportation which the exports and imports of commerce of any community must necessarily have. To admit

of the operation of this principle, a high maximum is fixed. This affects only the luxuries of a country, and only articles so costly that the cost of transportation scarcely influences their selling value. It also admits of the carrying of the industrial products of the territory at such low rates of transportation as to encourage production. With the encouragement of production, there came to our citizens wealth, and to our territory population. And with this comes a demand for more costly articles, whose transportation ranges up to higher maximums.

Your committee are of the opinion that any attempt at present to regulate freights and fares by arbitrary statutes, and by inflexible enactments, will be the commencement of an era far more injurious to the future of our territory than the railroads themselves, however great an injustice may be perpetrated by the latter. The legal consequence of such a course should be deliberately considered by our legislature. Suppose that this act should pass and should become the statutory enactment of our legislature. The reductions affected by it will become at once the maximum standard by law, at which the next legislative enactments will be aimed. Succeeding legislatures, influenced by the same motives of responding to the popular clamor, will follow the example set by this act now proposed, and will propose further reductions. At least we may reasonably conceive that a succeeding legislature will not deliberately propose an increase of rates. Following this on still, succeeding legislatures will find themselves forced to further reduction, or debarred from making legislative record on the subject of freights and fares. It follows, therefore, that the success of the measure now proposed by our legislature will be a most encouraging fact to the builders of the railroads across our territory.

We all know that our Territory possesses geographical advantages relating to the proposed development of a railroad system for the great fertile country lying southerly; namely, Sonora and contiguous Mexican States. Legislation hostile to the roads already constructed will have a tendency to defer the completion of the roads now contemplated, and, in our judgment, will necessarily deflect the lines of the railroads now proposed to be built in Mexico away from our Territory, and toward Territories and States which invite the investment of capital by less hostile legislative measures. If by wise laws our Territory will avoid the error which she may make (should the Act now under consideration become a law), she will undoubtedly become the focal centre of railroads eventually to be developed in Sonora and northern Mexico, and destined to traverse her borders, connecting the great populations of the Atlantic and Pacific coasts. It should be the policy of our Territory, young and struggling as she is, to invite the construction of all lines of communication; and the question of their legislative control can, your Committee submits, be safely left to the future. We suggest it to be a wise policy to invite the construction of lines of communication rather than to discourage or injure them. And it is certainly in accordance with the dictates of prudence to allow the railroad system of our Territory to be completed before attempting to hamper, obstruct or discourage them by hostile and "cinching" legislation.

In the mass of testimony, and other documentary matters submitted to your Committee, they have carefully examined the affairs of the Southern Pacific Railroad, of Arizona. While the laws allow that company to charge fifteen cents per ton per mile for freight, and ten cents per mile for passengers, your Committee are satisfied that that company barely maintain this maximum as to passengers, and have not demanded, on an

average, but little over one-half of the rate allowed by law for freight transportation. Apply the rate allowed that company by law for freight to the traffic carried within the Territorial limits of Arizona during the last six months of 1882. Your Committee is satisfied that the Southern Pacific Railroad Company would have been entitled to receive \$60,000, while, in fact, it received but a little more than one-half of this sum. The charges for freight taken up and laid down in Arizona, for the six months ending December 31, 1882, was \$30,207.20. Rate per ton per mile on first-class freight, \$08.02. Rate per ton per mile on second-class freight, \$04.22. We also find that from July 1, 1882, to December 31, 1882, the total earnings of the road from passenger and freight traffic was less than \$94,000 on the 384 miles of road operated within the Territory, or an average of \$244.79 per mile, and this small earning of less than \$250 per mile is by a road laid on the best line of commerce which crosses this Territory. The lines in progress of construction cannot hope for better returns, and our people cannot desire that this small earning shall suffer a further diminution by a reduction of rates.

Your Committee admit that there will be those to say that the geographical position of the Territory will force the construction of lines running East and West; that such lines are built because of the through traffic, and that therefore the people of Arizona may as well enjoy the benefit of cheap transportation. The answer to this is obvious. Every enterprise involving the outlay of money is undertaken for profit. That patronage will be sought which is most profitable. If the local traffic of our Territory is permitted to be carried at a rate which returns a profit, its development will be sought. If the rate is irremunerative, a carrying trade from other sources will be sought. It follows that if legislation so far reduces the rates of transportation as to make the local traffic unprofitable, we destroy all incentive on the part of railroad lines to develop such traffic. It is certainly in accordance with the dictates of wisdom to produce close alliance between the railroads crossing our Territory and the development of our resources.

Railroads are in natural alliance with all the great resources of capital seeking investment. To divest our local traffic of profit is to destroy all the interest the railroads may have for directing capital to our territory, since the development such capital would confer could only create an unprofitable business for the roads. This branch of this subject deserves thoughtful consideration at the hands of those who represent the interests of a young and struggling community. All our resources are in their infancy, and awaiting development. The construction of railroad lines and the direction of the great inland commerce of our country is directing and changing the seat of population, and governing the course of settlement and civilization; and situated as Arizona is, upon a connecting link between terminal empires of wealth and population, her first aim should be to form close alliance with the great leading force of modern civilization and development.

Your committee submit that the bill under consideration would, if passed, seriously arrest the construction of railroad lines, and ultimately retard their progress.

Railroads are built with money borrowed upon mortgaged bonds in money markets, where there exist large sums of idle capital. This money is available only upon such representation as exhibits a sound security for the investment of capital for a long term of years.

Now, the present showing of the earnings of the different trunk lines operating within the borders of our territory certainly does not constitute a showing of sufficient attractiveness to inspire confidence in the minds of investors in railroad securities of Arizona lines. Even at the maximum of fifteen cents per ton for freight and ten cents per mile for passengers, the gross earnings of these roads for the past half year is less than \$250 per mile.

There is no immediate prospects of any considerable local traffic over these lines; but if to these apparent disadvantages is added arbitrary and inflexible statutory seductions, no road can put forth a prospectus that would float its securities in any market.

It should be made plain to the lowest intelligence that the legislation of any people through which a road passes becomes an important factor in stimulating the value of its securities. If at this time our territory commits itself to the policy of statutory regulation, and forced and inflexible reductions, the significance of the precedent will be plain to the minds which control the money markets of the world. They will readily comprehend that subsequent acts will necessarily present successive steps downward in the rates of compensation allowed by them.

All this can have but a single tendency; namely, to discredit the securities of our railroads. To do this is to strike at the vital spot in railroad building. A blow at the general value of the securities of incomplete lines of road is a blow at their most vital parts.

Another feature which presented itself to this committee was the fact of taxation. They found that during the year 1882 the Southern Pacific Railroad of Arizona received from local traffic on 384 miles of road about \$481 per mile; of this sum we found that the company has paid into the public treasury \$234 per mile, leaving the gross receipts over taxes but \$247. This arises out of the fact that that railroad constitutes a very large proportion of all the assessable property of the counties through which it passes.

The counties of Yuma, Maricopa, Pinal, Pima and Cochise, through which that company operates, collected in 1882 taxes aggregating the sum of \$244,399, of which the Southern Pacific Railroad of Arizona paid \$89,976, or over one-third of the entire aforesaid amount. These facts certainly constitute a sufficiently discouraging showing, without adding the depressing weight of statutory reductions.

Again, the fact presented itself to your committee,—what does it cost to operate a railroad? An examination of this subject has disclosed the following facts:—

We find that Thomas A. Scott, the celebrated railroad king of America, giving his testimony in the case of the Kansas Pacific vs. Union Pacific, said: "On looking over the operating expenses of our Pennsylvania railroad divisions for 1876, I find that the expenses of the Pittsburg division, which includes the heavy grade of 95 feet to the mile from Altoona to the summit and 52 feet down on the other side, amounted to sixty-nine per cent. of the gross earnings, while the expenses of the Philadelphia division, which represents a fairly rolling country, with ruling gradient of about 39 feet to the mile, were sixty-two (62) per cent." This was in a country where coal abounds, where iron is manufactured all along the line, where there is an abundance of timber, coupled with cheap labor. In Arizona the converse of these facts exists. We all know that there are no such

advantages existing here as exist in Pennsylvania. In Arizona almost everything necessary to construct and operate a railroad has to be carried hundreds of miles, at great expense and loss of time, whilst wages are much higher. We find, notwithstanding these great drawbacks, that it requires, even on the most economic plan, at least 50 to 60 per cent of the gross earnings to operate a line of railroad within our Territory. To briefly recapitulate, it becomes apparent to this Committee that our Territory is sparsely settled, and affords but slight local support to any road. Like all new countries, Arizona possesses but a small amount of taxable property; and that there is no immediate prospect of any considerable increase of local business. In view of these facts, if this legislature should add the discouraging feature of legal reductions, it cannot be denied that thereby a showing may be made which will be utterly destructive to the values of railroad securities, as to all lines not already on velvet by reason of the past disposal of their bonds. An enlightened self-interest should dictate a wiser policy. Your Committee recognizes the fact that the owners of the different trunk lines have in good faith built their roads, especially so the Southern Pacific Railroad, which has built its road into our Territory without a dollar of aid from the commonwealth of Arizona or from the Federal Government. In addition to this, the company has also built its road far in advance of civilization and settlement, thereby laying the foundation of a large portion of our prosperity and increasing its value. We find that the Atchison, Topeka and Santa Fe Railroad has also built a considerable portion of road without any aid whatever from Territorial or Federal sources, and that the Atlantic and Pacific Railroad are also quietly and obtrusively building their trunk lines without any aid, nor have they asked from our Territory any aid whatever.

Your Committee are satisfied that the local traffic of the different lines at present operating in this Territory falls far short of returning operating expenses for any mile of road maintained by them.

Surely this legislature will not ask any railroad corporation to put their millions into our Territory and not allow them a fair recompense therefor.

Your Committee submits that these corporations ought to be allowed :

First— The privilege of making enough to operate their roads in our Territory.

Second — Enough to pay the interest on their bonds. And

Third — Enough to pay a fair interest on their investment.

We think that under the existing facts these roads are not making a dollar, but on the contrary are operating their roads at a great loss; why, then, "cinch" these corporations with hostile legislation?

In view of these facts, we submit several official schedules and other data which we requested sent to our Committee, so that we might act understandingly in the premises.

