Actual Facts About

The Campaign for Disruption of Southern Pacific Lines

Facts and Circumstances of Public Interest

Answers to representations published by or in the interest of Union Pacific Railroad, in its effort to precipitate a forced sale of the Central Pacific portions of Southern Pacific System, and to be the preferred purchaser at such sale, notwithstanding the powers granted by Congress to the Interstate Commerce Commission to legalize unified operation of carriers, when the public welfare so demands.

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So much has been said and so much published—directly or indirectly—on behalf of the Union Pacific Railroad, attacking the Southern Pacific Company, and the hundreds of organizations, shippers, manufacturers, producers and citizens who have, for their own protection, rallied to its support, that in justice to them, the people of the Pacific States, and to the 54,000 stockholders of the Southern Pacific Company, it is believed a clear, concise, unprejudiced and complete statement is due.

The following is therefore submitted by the Southern Pacific Company, not only as a correct statement of the facts, but to refute the charges that have been made against it.

For the convenience of the reader:

On pages 30 et seq. will be found Appendix A, containing the pertinent portions of the decision of the California Railroad Commission rendered February 24, 1913.

On pages 33 et seq. will be found Appendix B, the story of the building of the railroad system, and how it has been operated.

On pages 11 et seq. will be found specific answers to and explanations of the statements contained in the Pamphlet most recently issued by Western counsel for the Union Pacific Railroad.

Present Status of Dismemberment Suit

On May 29, 1922, a decision was handed down by the United States Supreme Court, declaring that the Southern Pacific Company in its ownership and operation of those portions of its system standing in the name of Central Pacific was violating the Sherman Anti-Trust Law; and that this violation might be discontinued it should divest itself of ownership and possession of the Central Pacific properties.

On June 5, 1922, the United States Supreme Court suspended the effective date of its order and granted the Southern Pacific Company permission to file a petition for rehearing. This was done. The petition was denied on October 9th, 1922. The United States District Court in Utah will, in due course, decide upon an appropriate form of decree.

Union Pacific Launches Publicity Campaign Against Southern Pacific Company

On June 10, 1922, a public statement of about 1500 words was issued to The Associated Press by Mr. Carl Gray, president of the Union Pacific, at Omaha, which appeared in the newspapers the following morning, announcing that the Union Pacific stood ready to buy the Central Pacific properties if they could be had for a right price and pointing out alleged advantages which it might offer the public through making such purchase.

On June 11, 1922, the Southern Pacific Company through Mr. Wm. Sproule, president, answered this statement with a few lines given to the press, and on the following day issued its first formal statement on the subject entitled "Threatened Disruption of Southern Pacific Lines." Since that time it has been compelled to defend itself against a most aggressive and outrageous onslaught.

The most extraordinary charge made against the Southern Pacific Company and the many civic bodies who have rallied to its support is that they are conducting a campaign against the decree of the Supreme Court. This is an absolute perversion of the truth. The Southern Pacific Company has not, either by the utterance of any of its representatives, or in writing or otherwise, criticized the Supreme Court or any court. The Supreme Court on October 9, 1922, denied the petition for rehearing and its mandate will issue to the United States District Court to prepare a decree accordingly. The Southern Pacific Company will of course abide by the final decree that may be entered in the case.

Union Pacific Charges Respecting Decision of the United States Supreme Court

Without any foundation whatsoever in fact, the Union Pacific has openly charged the Southern Pacific Co. with endeavoring to break down the United States Supreme Court and the judicial department of the Government in such words as this:

> "It has been the habit of the people of the West to stand by the law and to abide by the Decisions of the Court. That is their duty at this time.
>
> "Stand by the Supreme Court!
>
> "Stand against those who traduce that court's decisions for pecuniary or political gain!"

The pecuniary gain to the Union Pacific, if it accomplishes its purpose, is obvious and is hereinafter stated at length. Whether the Southern Pacific Company, in defending against this onslaught, is seeking to traduce any decision of any Court for pecuniary or political gain or otherwise will be left to the reader. To anyone who stops to analyze the situation, the charge is ludicrous.

The decision of the United States Supreme Court is a mere declaration that the continued ownership and operation by the Southern Pacific Company of those parts of its system which stand in the name of the Central Pacific Company constitute a violation of certain acts of Congress, and that to conform with the intent of Congress in the enactment of these laws a dismemberment should be effected, and the lower court is ordered to prepare an appropriate decree.

The Southern Pacific Company, recognizing that its present lease and stock ownership of the Central Pacific has been finally determined illegal, and on the theory that these properties are now legally apart, is applying to

the Interstate Commerce Commission for authority to re-acquire the properties of the Central Pacific, and thus, in effect, to legalize the present ownership of its stock at this time, and to take a new lease on its physical properties.

The powers of the Interstate Commerce Commission will be so invoked under the Interstate Commerce Act, as amended by the "Esch-Cummins Bill," or Transportation Act of 1920, which contains the following provisions for the unification of the operation of carriers, viz.:

By subdivision 2 of Section 5, the Commission may, upon request of one carrier, authorize it to acquire another carrier by lease or stock ownership, or any other manner (not involving the consolidation of the corporations) which, in the opinion of the Commission, is in the public interest, under such rules and regulations and on such terms and conditions as shall be found by the Commission to be just and reasonable.

By subdivisions 4, 5 and 6 of Section 5, the Commission is authorized to adopt a general consolidation plan for the railways of the United States to confine them to a limited number of systems, arranging the plan so that "competition shall be preserved as fully as possible and wherever practicable the existing routes and channels of trade and commerce shall be maintained." And it is made lawful for any two or more carriers to consolidate into one corporation the railway properties in any one of said systems, so prescribed by the Commission.

It should be noted that the permission for one carrier to acquire another without consolidation of corporations can be specifically authorized by the Commission when simply in the public interest; but it is only in the general consolidation plan that competition need be preserved as fully as practicable and existing routes maintained.

It should also be noted that in the general consolidation plan the Commission is not authorized to "create" competition but merely to "preserve" existing competition as far as practicable. To dismember the Southern Pacific System and transfer part of it to the Union Pacific would not preserve the existing competition as it would destroy the existing competition in transcontinental business between Southern California and Ogden and East, and between Oregon points and Ogden and East, respectively. Nor would this preserve existing routes of traffic as the routing of traffic throughout the Pacific States would have to be largely revised and made more circuitous and more expensive by any such dismemberment. It is clear, therefore, that the Commission has full authority to permit the Southern Pacific Company to re-acquire the Central Pacific properties under subdivision 2 of Section 5, if simply in the public interest; and that even in the general consolidation plan, to group the Central Pacific with the Southern Pacific as at present would preserve both present competitive conditions and existing routes or channels of trade, in harmony with the rules laid down by Congress for the guidance of the Commission in establishing consolidated railway groups.

Subdivision 8 of Section 5 then provides that the acquisition of one carrier by another under subdivision 2, or a consolidation of carriers under subdivisions 4, 5 and 6 may be effected when authorized by the Commission, irrespective of the restrictions of any State or Federal law, viz.:

> "The carriers affected by any order made under the foregoing provisions of this section and any corporation organized to effect a consolidation approved and authorized in such order shall be, and they are hereby, relieved from the operation of the 'anti-trust laws,' as designated in section 1 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, and of all other restraints or prohibitions by law, State or Federal, in so far as may be necessary to enable them to do anything authorized or required by any order made under and pursuant to the foregoing provisions of this section."

Congress, of course, knew that it would be almost impossible to consolidate any large railway systems without destroying some competition, great or small, as the case may be. If the Sherman Anti-trust law were to apply, it would be impossible to carry out the intention of Congress to divide the railways into a limited number of groups (19 groups have been tentatively planned by the Commission). Congress wisely made provision that the railway systems within any such group would be free to consolidate and for that purpose should be exempt from the restrictions of any Anti-trust law.

The Southern Pacific is therefore applying to the Interstate Commerce Commission for permission to reacquire the Central Pacific tracks. This application is in recognition of, not opposed to, the decision of Court holding the present status unlawful. If the Commission, in the public interest, should authorize such recombination of the incomplete parts of the system, its order will exempt the system, to that extent from the operation of the Anti-trust laws, in pursuance of which the court order was made.

Nor is it improper that the public should know the facts. This is one of the few cases in which the public is permitted to express its interest in advance. If this were merely a case of litigation in Court, the public would be powerless, and a dismemberment of the transportation system inevitable. But here Congress has provided a machinery for making exemptions from the very laws which the Government, through the Courts, is seeking to strictly enforce. If the public interest is against applying those laws in this case, the public interest may be expressed to and through the Interstate Commerce Commission, and it is absurd to assert that there is anything improper in such conduct.

Union Pacific Onslaught

In 1913, shortly after the Union Pacific was ordered by the United States Supreme Court to divest itself of the controlling interest in the stock of the Southern Pacific Company, it conceived the plan of selling to itself those parts of the Southern Pacific System which stood in the name of the Central Pacific, before parting with the Southern Pacific Stock. The Union Pacific thereupon proposed a contract with the Southern Pacific Company for this purpose, which required the approval of the California Railroad Commission. Because of pressure brought by the United States Attorney General, the Southern Pacific Company thereupon requested such approval. The California Railroad Commission held, however, that it had no jurisdiction to prevent the dismemberment of the Southern Pacific System, as insisted upon by the Attorney General, but would not approve the proposed contract as presented, as it would be against the public interest of California, and the plan failed of accomplishment.

By reason of the decision of the United States Supreme Court on May 29, 1922, ordering the dismemberment of the Southern Pacific System by its divesting itself of those portions standing in the name of the Central Pacific, the prospect of the Union Pacific making the same purchase which it formerly proposed was revived and the Union Pacific has issued numerous pamphlets, employed speakers and, both directly and indirectly attacking the Southern Pacific Company, sought to educate the public into a sympathetic reception of its plan to insist upon a forced sale of the Central Pacific properties, with a view to being the preferred purchaser at such sale.

Immediate Objects to be Attained

By the purchase of the Central Pacific parts of the Southern Pacific System, the Union Pacific would achieve the following objects:

(a) Stifle the present competition in interstate traffic between Southern California and Ogden and East as between the Southern Pacific-Central Pacific route and the Union Pacific-Salt Lake route, both in passenger and freight business.

(b) Stifle the present competition in interstate traffic between Oregon points and Ogden and East, as between the Southern Pacific-Central Pacific route, and the Union Pacific Short Line Route, via Portland, for both passenger and freight business.

(c) Reduce present competition east of Ogden, Utah, between the Union and the Denver and Rio Grande as to traffic. If it owned the Central Pacific, the Union Pacific would be in the same position on the Central Line as it now is with respect to the Pacific Northwest, as it could not legally be compelled to "short-haul" itself. It has closed the Ogden gateway to the Denver and Rio Grande as to the business of the Pacific Northwest. It could do the same with respect to business on the Central Pacific and thus forcing all through traffic to use the Central Pacific-Union

Pacific rails, impairing the Denver and Rio Grande as a competitor of the Union Pacific east of Ogden.

(d) Reduce present competition with the Western Pacific. The same provision of the Interstate Commerce Act, under which a carrier cannot be compelled to short-haul itself, would put the Union Pacific in a position to reduce the earning capacity of the Western Pacific by closing the Ogden gateway to business between Union Pacific and Western Pacific points. This would make the Western Pacific less potential as a competitor.

(e) Would place the Union Pacific in a dominant position over all competitors with respect to transcontinental traffic, giving it trunk lines into every important Pacific Coast seaport.

(f) Would weaken the Southern Pacific as a competitor by increasing the cost of transportation on its lines and impairing the service it could give.

(g) Would leave no substantial competitor north of Santa Barbara and the Tehachapi—this because the Southern Pacific would no longer have any *direct* route east from this territory—The Union Pacific would not want to buy the Western Pacific, for with this it would have the Central Pacific as a strong competitor; but with the Central Pacific, it could so reduce the Western Pacific as to encounter no substantial competition at all.

Would Stifle New Railroad Building

(h) Would effectually discourage the Chicago Northwestern from extending its line from Lander, Wyoming, to Ogden, thus obviating a third transcontinental line. The Chicago Northwestern only has a comparatively short gap to build to complete its railroad from Chicago to Ogden. With the Union Pacific and Central Pacific one, the Chicago Northwestern, at Ogden, would be cut out of all through business, and in the same situation as the Denver & Rio Grande. But with the Central Pacific owned by the Southern Pacific, as at present, the Chicago Northwestern could build to a connection at or near Ogden and exchange a large volume of business with the Central Pacific. There would be no incentive for this construction, with the Union Pacific owning the through line.

Representations About New and Desirable Competition

The Union Pacific has not called attention to the many competitive conditions hereinbefore enumerated that would be destroyed if it acquired the Central Pacific properties.

On the other hand, the Union Pacific promises to bring a "new" competing railroad into Central and Northern California and to create competition in the interest of the public at every important Northern California shipping point. They disregard the unbiased conclusions of the California Railroad Commission, but, to support this assertion, cite testimony given by Mr. Wm. Sproule, President of the Southern Pacific Co., before the California Railroad Commission in 1913, to the effect that competition would be created by such sale to the Union Pacific and recommending the

approval of the agreement proposed by the Union Pacific for this purpose in 1913. Disconnected excerpts only from the testimony so given in 1913 are quoted, but without context necessary to a clear understanding of the matter, and only those words are quoted which support the conclusions desired by the Union Pacific. Everything else is omitted. In commenting upon this matter recently Mr. Wm. Sproule said:

"A pamphlet is in circulation containing some disconnected excerpts from my testimony before the California Railroad Commission in 1913. In that year approval by the California Railroad Commission was asked for a proposed contract with the Union Pacific Railroad Company to sell to that Company those parts of the Southern Pacific System standing in the name of the Central Pacific, with a number of provisions for the protection of the Southern Pacific Company and the shipping and travelling public. The California Railroad Commission refused to sanction the contract in the form submitted and it never took effect. I then held, and still hold, that there should be no dismemberment of the properties. In my opening statement to the California Railroad Commission which appears at page 139 of the transcript, line 26, I said:

" 'Perhaps I should begin by stating, with the permission of the Commission, that if the Southern Pacific had been left to its own will, it would not consent to the severance of the Central Pacific from its lines.'

"The approval of such contract as that presented in 1913 was only recommended by me as a hard expedient in an emergency we had suddenly to meet: Namely, the crisis which prevailed immediately after the Union Pacific unmerger decreed by the United States Supreme Court on December 2, 1912, when we were told by the United States Attorney General that separation of the Southern Pacific and Central Pacific properties was inevitable, as otherwise we in our turn would be forced by the Attorney General to effect a separation, as he claimed that we also were violating the Sherman Law.

"At that time there was no escape from the strict application of the Sherman Anti-Trust Law; but now the Sherman Law may in effect be set aside by the Interstate Commerce Commission, when in the public interest.

"We, of the Southern Pacific, were convinced at that time that if proceedings were taken to disrupt the Southern Pacific Company, the Southern Pacific credit would be so clouded that, with such a suit as threatened by the Attorney General hanging over us, it would be impossible to raise the moneys of which the Southern Pacific Company was in need, as we were heavily indebted to the Union Pacific. The agreement then made provided a means by which we could finance the Southern Pacific for two and a half years in advance, and con-

tained provisions which, however irksome they may have been, would at least have done away with some of the most extreme hardships to follow upon a disruption of the Southern Pacific Company's railroad system. We therefore believed, under those conditions of extreme perplexity, that it was to the interest of the Southern Pacific Company, and its stockholders, to submit to dismemberment with the expedients and financial assurance provided by the agreement, rather than to submit to forced sale of the Central Pacific properties at a time when the Southern Pacific was without funds competent for so grave an emergency.

"For these reasons we asked the California Railroad Commission to approve the agreement so proposed in 1913, simply as an expedient to meet the crisis of the time, because we felt that this was the better choice of two evils."

Conclusions of the California Railroad Commission with Respect to Desirability of Such Dismemberment

All of the reasons which might be urged for and against such a dismemberment of the Southern Pacific System, and all of the testimony were heard and analyzed by the California Railroad Commission at the time the Union Pacific proposed to purchase the Central Pacific properties in 1913; the members of the California Railroad Commission were wholly unprejudiced and were experienced in such matters. Their inquiry was wholly unbiased, they were not particularly interested in the welfare of any railroad, but made an impartial examination in the public interest.

Excerpts from the final decision of the California Railroad Commission are hereto attached, as Appendix "A". The sum and substance of the conclusions reached by the California Railroad Commission was that the sale to the Union Pacific Railroad of the Central Pacific portions of the Southern Pacific System would:

(a) Work a mere substitution of the company operating the Central Pacific tracks rather than to create any new or substantial competition.

(b) Tend to increase rates and fares.

(c) Impair the financial stability of the Southern Pacific Company, and its ability to make new and useful improvements and extensions and to render the best service.

(d) Make the Union Pacific the one dominant carrier of the Pacific Coast, and

(e) Seriously impair the service rendered by the Southern Pacific System to the shippers and to the travelling public, by leaving its system incomplete, and in many disconnected parts; and

(f) That while the California Railroad Commission had no jurisdiction over the subject matter as a whole, and could not prevent such sale under order of the Federal Court, as threatened by the United States Attorney General it would not approve other features of the proposed agreement

that were within its jurisdiction, such as exclusive trackage rights, length of terms of leases, etc., etc.

The economic principle with reference to competition observed by the California Railroad Commission in announcing its 1913 decisions was that there cannot be substantial competition between carriers or any lines of business unless the competing parties were operating on a substantial parity; and that therefore if one carrier were placed in a dominant position so as to be able financially and physically to render excellent service; and the competing carriers were in an impaired condition, both financially and physically, so as not to be able to render substantially as good service as the dominant carrier, there could be no substantial competition between them.

There is no doubt that the main object to be achieved by the Union Pacific in carrying out this program is to stifle competition; and it is equally true that this promise of new competing conditions to Central and Northern California is flimsy, without merit and contrary to the findings of the California Railroad Commission, after a most exhaustive investigation.

Befogging The Issue

The only issue before the public is whether it is to their interest to dismember the Southern Pacific System and to permit the Union Pacific to be the preferred purchaser at a forced sale of the Central Pacific properties. Any irreconcilable contentions that may have been made; any apparently misleading excerpts from testimony in any case; any inconsistent statement that any railroad officer may have made in the past, has nothing to do with the one and only issue really before the public. To argue the merits of irreconcilable contentions, or the conflicting statements or testimony under past conditions is merely to befog the issue and to cause the reader to lose sight of the point.

THE UNION PACIFIC PAMPHLET

The pamphlet issued on behalf of the Union Pacific Railroad and widely circulated everywhere in California and the adjacent states is entitled "The Separation of the Central Pacific and Southern Pacific Railroads: A Plain Statement of Facts. . . ." etc. It is apparently a compilation of all of the charges that have been made on behalf of the Union Pacific Railroad. This pamphlet is highly misleading, full of misinformation and in many cases the facts are distorted to fit the desired conclusion: For instance:

The title itself speaks of the separation of the Central Pacific and Southern Pacific "Railroads." This implies on the face of it that there were two railroads. This is contrary to fact, as anyone familiar with the history of California will know. The Central Pacific is one of the subsidiary corporations of the Southern Pacific Company, of which there are many. There never has however, since the beginning, been more than one railroad system of which the Central Pacific is a part.

The pamphlet then calls attention to the seemingly large amounts for which the carriers were authorized to issue bonds or create liens on the original railroad line. It is not stated, however, that these bonds had to be sold at a large discount as Government bonds at that period sold for currency at about 75% of their par value; and gold coin had to be expended for the construction of the original railroad, this being shortly after the close of the Civil War, and each $100 in currency derived from the sale of the bonds was only worth from $35.09 to about $90.00 in gold, according to the market fluctuations of the time. It should also be said, in all fairness, that all of the mortgage bonds referred to, both principal and interest, so far as the Central Pacific line is concerned, *have been paid.*

Then it is stated that the Acts of Congress providing for this transcontinental Central Pacific-Union Pacific line specified that the two railroads should be operated as a continuous line and neither should discriminate against the other. It should be stated that the Acts specified that neither should discriminate either *jor* or against the other. They should also state, in all fairness, that many years after the passage of these Pacific Railway acts the Union Pacific passed into the hands of a new and different corporation which probably would not have the same powers as the original Union Pacific; and since then *the present Union Pacific has built or acquired lines to Portland, Seattle and Los Angeles, competitive with the Central Pacific,* which in itself constitutes a conclusive reason why the Union Pacific should not be allowed to combine with the Central Pacific.

The pamphlet is obviously written from an Eastern viewpoint, as evidenced by its describing the Central Pacific as beginning in Ogden, whereas in fact its construction was commenced in 1863 at Sacramento and proceeded easterly to a connection with the Union Pacific near Ogden. Many of the branches and extensions which are described as having been built by the Central Pacific were in fact built by the Southern Pacific Co. in recent years, either in its own name or in the name of various corporations formed by it for the purpose, and afterwards allocated to and, for convenience, placed in the name of the Central Pacific.

The pamphlet then proceeds with further garbled and inaccurate statements. For instance, by a footnote it described the "road" of the Southern Pacific Railroad Company of California as having been changed in 1867 so as to turn Eastward, etc. This is not a fact, as the construction of the Southern Pacific Railroad Company had not been commenced in 1867.

It is also probably true that the Central Pacific and the Southern Pacific Railroad Company of California were "launched," as represented, as independent lines in California; but, in all fairness, it should be explained that they were not built as independent or competing lines; and that while

independent parties filed their original articles of incorporation it was only after these corporations were in common ownership that the construction of the Southern Pacific Railroad was commenced (except for the 30 miles between San Jose and Gilroy,) in the name of the Southern Pacific Railroad Company, and carried to completion. In fact, the land grant in aid of the construction of the Southern Pacific route to Yuma (part of the present Southern Pacific line to New Orleans) was made in 1871—a *year after the original Central Pacific Railroad builders had acquired the ownership of the Southern Pacific Railroad Company in California.*

In this pamphlet also is a misquotation from testimony of Mr. Leland Stanford, while president of the Central Pacific Railroad Company in 1887, before the United States Pacific Railway Commission tending to show that the original Central Pacific and the original Southern Pacific were built by different people. A true quotation would have reflected the opposite conclusion. As given in the pamphlet the quotation omits necessary explanatory context—and while represented as one continuous statement, it is in fact a series of discontinued statements taken from Stanford's testimony, the first two sentences being taken from page 2737 of the testimony, the next three sentences being taken from page 2803 of Mr. Stanford's testimony, the last sentence being taken from page 2829 of his testimony, but omitting a necessary correction therein made by Mr. Stanford himself, where he added the following sentence:

> "I mean to say they (the Central Pacific Railroad builders) had nothing to do with procuring Government aid for the Southern Pacific. They had no interest in the Southern Pacific until long afterwards."

With the explanation last given Mr. Stanford's statement is clear and conforms with the fact, viz.: that the Central Pacific work at Sacramento was begun in 1863, or thereabouts; the first Government aid for the Southern Pacific Railroad Company of California was granted in 1866 and the Central Pacific Railroad builders did not become the owners of the Southern Pacific Railroad Co. of California until 1870.

The pamphlet also states for some unknown reason that the Central Pacific and Southern Pacific for certain years did not have a majority of the directors in common, and in 1894, 1898 and 1899 had no directors in common.

The author of the pamphlet must have known this statement to be misleading, for the fact is, that at all times the Boards of Directors of the Central Railroad Co. and the Southern Pacific R. R. Co. and even the Southern Pacific Co. consisted either of the original Central Pacific R. R. builders themselves or their successors, or the office employees or other representatives whom they asked to act for them, as such directors, and that there never was any director of any of these companies who represented

any other interest than that of the original Central Pacific R. R. builders, their heirs or assigns, except from the year 1888 to 1898, inclusive, when Mr. C. E. Bretherton was on the Board of Directors of the Central Pacific R. R. Co. to represent some foreign stockholders. There was no other outside director of any of these companies. Nor is it true that in 1894 they had no directors in common, for in that year C. P. Huntington was both President and a Director of the Southern Pacific Company, and Vice-President and a Director of the Central Pacific.

A further mis-statement in the pamphlet is that prior to the accession of Mr. E. H. Harriman to the control of both the Union Pacific and Southern Pacific in 1901, the Southern Pacific in its operation of the Central Pacific line, was discriminating against the Union Pacific and after the time Mr. Harriman gained control of both the Union Pacific and the Southern Pacific, viz.: from 1901 to 1912, this discrimination against the Union Pacific by the Southern Pacific was discontinued.

This is contrary to fact. The Union Pacific officials themselves have testified that during Mr. Harriman's control from 1901 to 1912 there was no material change in the method of routing freight as between the Central route and the Southern route; that even during Mr. Harriman's control there was preferential routing of certain commodities for certain destinations when the best service could be given, over the Southern route, the shipper being free to designate either the Central route or the Southern route, as the business required; but that the line of the Central Pacific-Union Pacific was always operated through Ogden as a continuous line, so far as the public and the Government were concerned.

Funds Advanced by Union Pacific for Improvements

It is true, as stated in the pamphlet, that in 1901 when the Union Pacific took control, the Southern Pacific Company required funds for repairs and equipment and extensions. It should also be explained in all fairness that this was because the Southern Pacific Company was then in the process of paying to the Government an enormous debt of $58,000,000 and interest owed by the original Central Pacific Railroad Company; and that this indebtedness was finally paid in full by the Southern Pacific Company.

It is likewise true that during this period of Union Pacific control, viz.: 1901 to 1912, many improvements were made on the Southern Pacific-Central Pacific system and that the Union Pacific R. R. Co. advanced to the Southern Pacific Company moneys necessary for this purpose.

It should be explained, in all fairness, that these moneys were borrowed by the Southern Pacific Company from the Union Pacific at interest; that they were borrowed from the Union Pacific, rather than from any outside interest because at that time Mr. Harriman was President of both the Southern Pacific and the Union Pacific; and that afterwards the Southern Pacific Company repaid these loans with interest in full to the Union Pacific Railroad Company.

Separation Proposed in 1913

It is not true, as stated in this pamphlet, that the Southern Pacific Company once proposed a separation of its lines. The conditions which prevailed in 1913 were explained by Mr. Wm. Sproule in a statement recently issued, as follows:

Conditions Which Prevailed in 1913

"In 1901 Mr. E. H. Harriman, while in control of the Union Pacific Railroad Company, purchased in the name of the Union Pacific Railroad Company 46% of the stock of the Southern Pacific Company which was a control of this Company for all practical purposes.

"In 1908 suit was brought by the United States Government against the Union Pacific Railroad Company and others, charging that this ownership by the Union Pacific Railroad Company of a control of the Southern Pacific Company violated the Sherman Anti-Trust Law of 1890. The lower Federal Court held that such ownership of Southern Pacific stock was not unlawful, but this case was reversed by the United States Supreme Court on December 2, 1912, and the Union Pacific was ordered to divest itself of its Southern Pacific stock. This meant that the Union Pacific was confronted with the necessity of making an immediate sale of $126,000,000 worth of Southern Pacific stock. The Supreme Court was asked, but refused, to permit the Union Pacific to distribute its Southern Pacific stock among the Union Pacific stockholders. This created a crisis in which the Union Pacific had to get rid of $126,000,000 worth of Southern Pacific stock, and in which the Southern Pacific was faced with the crash that might follow the dumping of such a huge quantity of its stock upon the market. In such an atmosphere a plan was then announced by the Union Pacific for purchase from the Southern Pacific Company of those parts of its system which stood in the name of the Central Pacific, as part of a plan for disposing of this $126,000,000 of Southern Pacific stock, of which the Union Pacific was required to divest itself.

"The United States Attorney General was party to and approved of this plan. He stated to the Southern Pacific Stockholders Protective Committee that unless the Southern Pacific would agree with the Union Pacific to sell the Central Pacific properties to the Union Pacific he would at once take summary proceedings to compel separation of the Central Pacific properties from the Southern Pacific System. The protests of the Southern Pacific Stockholders Protective Committee were met by the Attorney General s statement that he appreciated the force of our objections, and that while he knew he was placing the Southern Pacific under duress he would put like pressure upon the Union Pacific that the Southern Pacific might obtain from that Company a fair price and terms, so as to relieve the most evident hardships to the Southern Pacific Company of the dismemberment.

"The California Railroad Commission, in its opinion February 24, 1913, said:

"We are not unmindful of the fact that, as testified by both Judge Lovett and Mr. Sproule, these companies are more or less under duress to contract. On the one hand the stock of the Southern Pacific owned by the Union Pacific is in the hands of the court for sale, and if an arrangement is not consummated before ninety days shall have elapsed after the decision of the court, this stock is to be placed in the hands of a receiver to be sold as the court directs. It is testified that the Attorney General is threatening proceedings against the Southern Pacific if it does not divest itself of control of its alleged competing line, the Central Pacific, and we appreciate the desire of the parties to bring about a solution of their troubles which will result in as little financial loss to them as possible, yet we believe it is our duty to have in mind the effect of any arrangement which may be designed upon not only the contracting parties here, but the public."

"The California Railroad Commission held that while it had no jurisdiction over the subject matter as a whole, it would not approve certain features of the proposed contract with reference to exclusive trackage rights, length of terms of leases, etc. The Commission held in the course of its opinion, however, that such sale from the Southern Pacific to the Union Pacific of the Central Pacific properties would:

(a) work a mere substitution of the operating agency of the Central Pacific properties, rather than to create any new or substantial competition;

(b) tend to increase rates and fares,

(c) impair the financial stability of the Southern Pacific Company,

(d) make the Union Pacific the dominant carrier on the Pacific Coast, and

(e) seriously impair the service rendered by the Southern Pacific Company to the shippers and the travelling public.

"It is not true, that because, under the circumstances then existing, I recommended the approval of the proposed contract of 1913 and so urged the California Railroad Commission, I would therefore recommend or approve any such dismemberment of any such contract under the conditions which prevail today. In testimony I stated then that "if the Southern Pacific had been left to its own will, it would not consent to the severance of the Central Pacific from its lines." If The Transportation Act of 1920 had been in effect then, none of us would have thought of consenting to it, much less recommending it. The fact that a unified ownership of the entire Southern Pacific properties would violate the Sherman Anti-Trust Law of 1890 is no longer a ground for urging dismemberment of the integral part of this transportation system. For, if the court should finally hold that the unified ownership of the entire Southern Pacific System violates the

Sherman Law, the Transportation Act of 1920 expressly authorizes the Interstate Commerce Commission in the public interest to exempt railroads from the operation of the Sherman Law.

"In other words, my opinion in 1913 was, and might still be if identical conditions obtained now, that if it were legally necessary to dismember the Southern Pacific Company it would be wiser to dismember under the safeguards provided by the proposed 1913 contract than without any safeguards whatsoever, and with unknown hazards ahead.

"If the Transportation Act of 1920, under which the Southern Pacific lines may be kept intact regardless of the Sherman Law, had been in effect in 1913, I could not and would not have recommended the approval of the contract proposed in 1913 or any other plan of separation, as no such separation could be effected without bringing about the objectionable conditions so pointed out by the Railroad Commission.

"The Interstate Commerce Commission on August 3, 1921, adopted and published a tentative plan for grouping the railroads of the United States into a limited number of systems under the mandate of the Law to preserve existing conditions and routes of traffic and at the same time competition as far as practical. In this plan the Commission has tentatively proposed to continue the Central Pacific properties as part of the Southern Pacific System, and did not follow the recommendation to the contrary made by Professor Ripley, who had been previously employed as an expert by the Commission, to prepare a plan for such railroad consolidation. Professor Ripley had recommended that the Central Pacific lines be consolidated with the Union Pacific. If the the Interstate Commerce Commission in its final plan in grouping the railroads of the Pacific Coast, should confirm its tentative plan theretofore published there will be no legal necessity of our considering any plan for dismembering the Southern Pacific Lines, and the public interest will be fully protected, as well as the interests of the 54,000 stockholders who own the Southern Pacific Company."

Disregards California Railroad Commission

The pamphlet then charges the Southern Pacific Company, the San Francisco Chamber of Commerce and other civic bodies with issuing propaganda to the effect that the dismemberment of the Southern Pacific would effect a serious detriment to the railroad service now rendered to both shippers and passengers; that the shops at Sparks would have to be largely reduced; that there would be much duplication of facilities and rates would probably be increased, all of which, according to the pamphlet is utterly without foundation.

To reach the conclusions mentioned is to disregard the conclusions reached by the California Railroad Commission after a thorough investiga-

tion made in 1913 and is even to disregard statements made by Professor William Z. Ripley, the expert appointed by the Interstate Commerce Commission, who has reported on page 581 of his report, as printed by the Interstate Commerce Commission that such dismemberment would be against the interests of California. Professor Ripley at this point in his report says:

> "The Central Pacific merger cannot be discussed without due consideration of the economic—not the legal—objections thereto. The first of these is that local transportation in California would probably suffer at first from the disorganization incident to separation of these properties. This accounts in part, perhaps, for the attitude of the California Railroad Commission which has resolutely set its face against the proposal. The President of the Commission, Mr. Eshleman, testified not only that the separation would tend to increase rates where double service was substituted for single service, but also that these lines, separately owned and managed, could not furnish as good service as is now rendered under single management. 'The acquisition of the Central Pacific by the Union Pacific would result in breaking up a well-constructed single system of railroads in this State into two dissociated and incomplete systems, neither of which would be adequate conveniently to serve the traffic needs of the State of California'." . . .

The Interstate Commerce Commission, however, pursuant to the mandate of Congress, on August 3, 1921, adopted a tentative plan for the consolidation of the railroads of the country into a limited number of systems and in this plan rejected Professor Ripley's recommendation with respect to these lines, and refused to approve the inclusion of the Central Pacific properties with the Union Pacific group.

The Interstate Commerce Commission will hold hearings in the near future to determine in what, if any, particulars this tentative plan should be changed or whether it should be confirmed. At such hearings, the people will be called upon to show to the Commission where their interest lies.

The pamphlet then speaks of the great benefits of competition which would be effected by the dismemberment of the Southern Pacific system. It thus sets up the Union Pacific opinion as against the opinion of the California Railroad Commission. This Commission, in the course of its decision (excerpts from which are printed in Appendix "A") with respect to the alleged competitive conditions which the Union Pacific promised, stated:

> "There is room for grave fear that if the agreement (for dismemberment) is carried out this State will, instead of securing two strong, competing lines, secure one dominant line (the Union Pacific) and one much impaired line (the Southern Pacific)."

This decision of the California Railroad Commission was written by Mr. John M. Eshleman, afterwards Lieutenant Governor of California, Mr. H. D. Loveland, Mr. Alex. Gordon, Mr. Max Thelen and Mr. Edwin O. Edgerton. There has never been an abler set of public officers in California, or men who have been more deeply interested in properly safeguarding the interest of the State. They found that there would be no substantial competition created, but merely a substitution of carriers with connecting links in separate ownership and greater costs to the public.

No one could doubt their ability to reach a proper conclusion in such a matter, based upon sound economic principles.

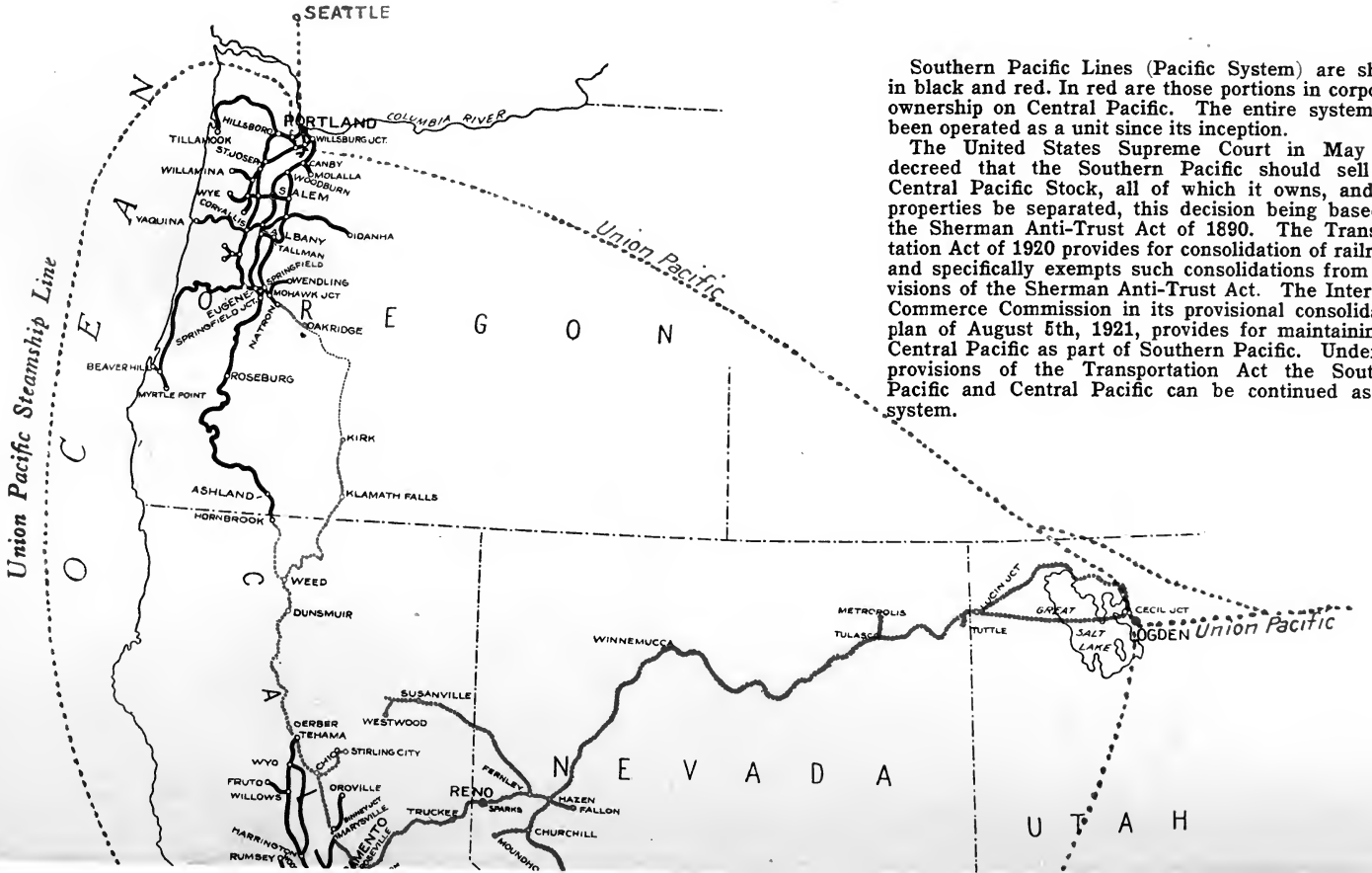
Detriment to Railroad Service Inevitable from Dismemberment

The Union Pacific pamphlet then represents that it is said that dismemberment of the component parts of the Southern Pacific System by removal of the Central Pacific tracks therefrom would seriously inconvenience travelers and shippers and would have a tendency to increase rates; but that such contentions are without foundation, as the decree of the Supreme Court meets these alleged difficulties by prescribing certain joint use of terminals and trackage rights, to be provided for when the parts of the system are put asunder, upon such lines as the Union Pacific proposed in 1913, but which were not consummated because of the refusal of the California Railroad Commission to approve the plan.

This is contrary to the fact for the following reasons:

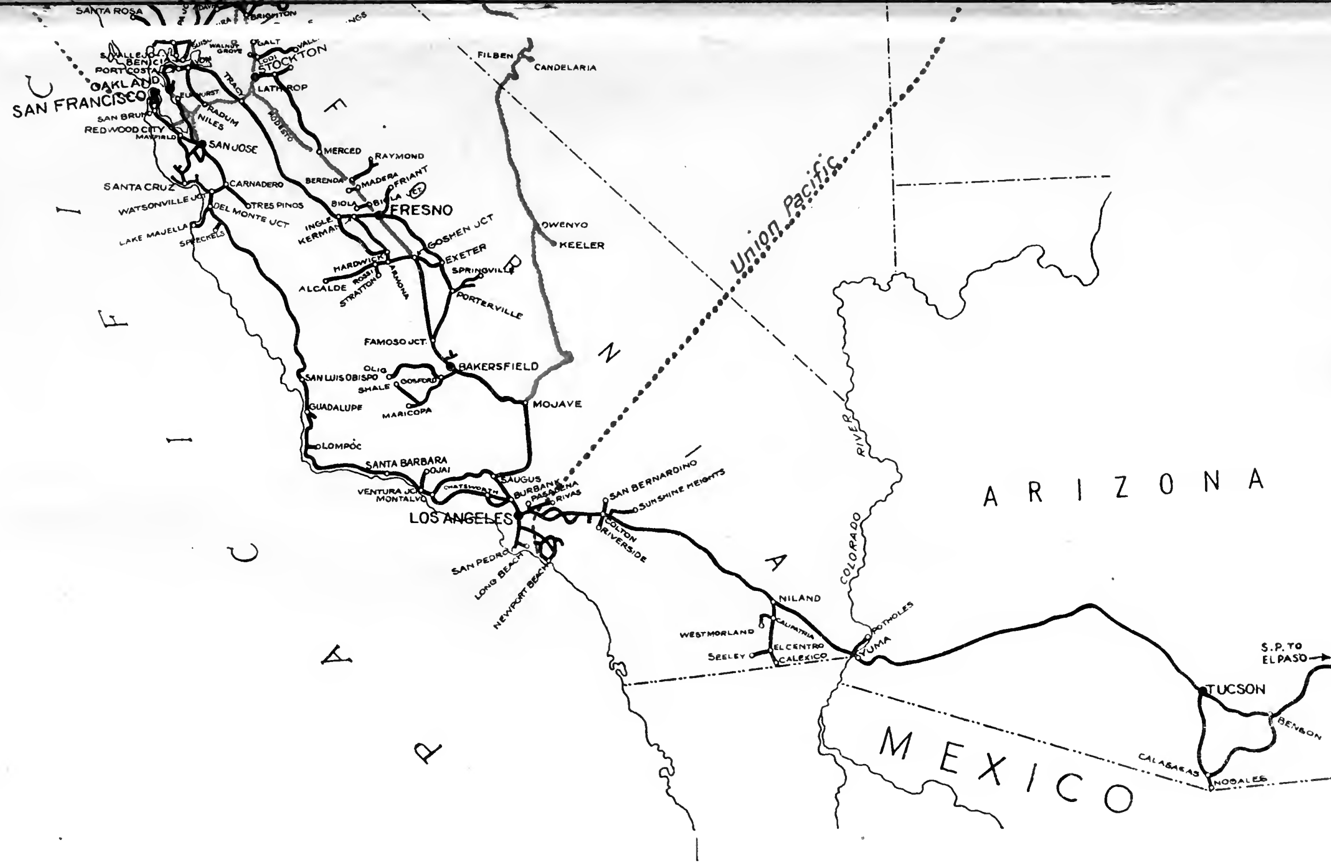
(a) It is almost axiomatic in rate making that where service is rendered partly over the lines of one railroad and partly over the lines of another railroad an extra charge or differential is allowed for the added expense contingent upon the transfer from one line to the other, whether in through cars or otherwise. This was recognized by the California Railroad Commission, which found that such dismemberment would inevitably result in traffic having to be hauled partly over one line and partly over another, in place of a single line haul as at present, and that this would inevitably tend to increase rates. See Exhibit A.

(b) Neither the decree of the Supreme Court nor the agreement proposed by the Union Pacific in 1913 meets the difficulty of keeping the present co-ordinating railroad service throughout California intact, for there is no provision either in the decree or the agreement under which the present railroad service could be retained on the Central Pacific line up and down the Sacramento and San Joaquin Valleys; and it is inevitable that such towns as Kingsburg, Selma, Madera, Modesto, Turlock, Stockton, Lodi, Galt, Roseville, Marysville, Chico, Niles, Livermore, Pleasanton and many others would no longer be on the Southern Pacific lines accessible to Southern Pacific service. They would be just as much removed from Southern Pacific lines as points which are exclusively on Western Pacific



Southern Pacific Lines (Pacific System) are shown in black and red. In red are those portions in corporate ownership on Central Pacific. The entire system has been operated as a unit since its inception.

The United States Supreme Court in May last decreed that the Southern Pacific should sell the Central Pacific Stock, all of which it owns, and the properties be separated, this decision being based on the Sherman Anti-Trust Act of 1890. The Transportation Act of 1920 provides for consolidation of railroads and specifically exempts such consolidations from provisions of the Sherman Anti-Trust Act. The Interstate Commerce Commission in its provisional consolidation plan of August 5th, 1921, provides for maintaining of Central Pacific as part of Southern Pacific. Under the provisions of the Transportation Act the Southern Pacific and Central Pacific can be continued as one system.



CALIFORNIA
ARIZONA
MEXICO
Union Pacific
SAN FRANCISCO
OAKLAND
PORT COSTA
BENICIA
STOCKTON
LATHROP
SAN JOSE
NILES
REDWOOD CITY
SANTA CRUZ
WATSONVILLE JCT
DEL MONTE JCT
CARNADERO
TRES PINOS
LAKE MAJELLA
SPRECKELS
MERCED
RAYMOND
BERENDA
MADERA
FRIANT
BIOLA
FRESNO
KERMAN
GOSHEN JCT
EXETER
SPRINGVILLE
PORTERVILLE
HARDWICK
ALCALDE
STRATTON
ARMONA
FAMOSO JCT.
BAKERSFIELD
OLIG
SHALE
GOSFORD
MARICOPA
SAN LUIS OBISPO
GUADALUPE
LOMPOC
SANTA BARBARA
OJAI
VENTURA JCT
MONTALVO
CHATSWORTH
SAUGUS
BURBANK
PASADENA
RIVAS
LOS ANGELES
SAN PEDRO
LONG BEACH
NEWPORT BEACH
MOJAVE
FILBEN
CANDELARIA
OWENYO
KEELER
SAN BERNARDINO
SUNSHINE HEIGHTS
COLTON
RIVERSIDE
NILAND
CALIPATRIA
WESTMORLAND
EL CENTRO
SEELEY
CALEXICO
COLORADO RIVER
POTHOLES
YUMA
TUCSON
BENSON
CALABASAS
NOGALES
S.P. TO EL PASO

or Santa Fe railroads in California, and service to and from such places and the benefits of through routes through such towns would unquestionably be lost to the people of California, even assuming that the provisions for joint trackage and joint terminals were embodied to the utmost extent in the final plan for dismemberment.

(c) Because none of the many important shipping points on the Southern Pacific rails north of Santa Barbara and the Tehachapi would any longer be located upon a *direct* railroad route to the east, as at present. Such transportation could only be effected by transfer to Central Pacific tracks.

Loss to Communities by Reduction in Shop Forces and by Lessening of Importance of Central Pacific Lines

The Union Pacific then represents that the Southern Pacific has been diverting traffic originating on Central Pacific lines to its Sunset route instead of letting it go over its natural, normal route via Sacramento, Nevada and Utah; and that if the normal traffic were to go over this line it would be necessary to increase the shop forces at such points as Sacramento, California, and Sparks, Nevada, in order to take care of the normal increase in traffic.

This is again contrary to the fact. The fact is, irrespective of what the courts may have found as to conditions in 1914, that today the Southern Pacific hauls over the Central route through Sacramento and Nevada and Utah an amount equal to far more than 100% of the traffic originating on the Central Pacific lines. This is obvious for the reason that practically all of the freight originating on these lines going to northeastern and north central points of the United States goes east over the Central Pacific under present day conditions; and in addition to this large quantities of freight competitive with the Union Pacific-Oregon Short Line are brought from Oregon over this route; and large quantities of freight competitive with the Union Pacific-Salt Lake Line are brought by the Southern Pacific from Los Angeles through California and thence over the Central Pacific to Ogden; making a total amount of freight over the Central Pacific through Sacramento, Sparks, Nevada and Utah in excess of the entire business originating on the lines of the present Southern Pacific System in northern and central California.

With these competitive conditions in Oregon and Southern California destroyed, as would inevitably result from a Union Pacific ownership of the Central Pacific line, the amount of business moved over the Central Pacific line through Sacramento, Sparks, etc., would be greatly diminished and this line would be reduced in importance.

The foregoing statement is made more manifest by the fact that under present day conditions the Southern Pacific moves eastward over the Central Pacific line, through Nevada, and delivers to the Union Pacific at Ogden practically double the tonnage which it moves westward over this

line from the Union Pacific connection at Ogden. The reason for this is obvious, as the Southern Pacific competition for traffic as against the Union Pacific in both Oregon and Southern California is not as effective in west bound shipments, hence the Union Pacific hauls relatively more westbound traffic over its own lines to these destinations.

Shops at Sacramento and Sparks

As to the shops at Sparks, Nevada, these are far larger and are operating on a far larger scale than would be necessary for the Central Pacific trackage alone. Approximately one-third of the work done at the Sparks shops is for parts of the Southern Pacific System other than the Central Pacific. With the Central Pacific in separate ownership, the Southern Pacific would have to have its shop work done elsewhere and the shop force and pay roll at Sparks, Nevada, would necessarily be reduced by at least one-third.

At Sacramento, California, the general shops for the Southern Pacific-Central Pacific are located on property standing in the name of Central Pacific. They are at a central point for the system as a whole, and approximately 65% of the work done at these shops is for those parts of the system which do not stand in the name of the Central Pacific. In other words only 35% of the work at Sacramento is strictly Central Pacific work.

With a dismemberment of the Southern Pacific-Central Pacific System the Southern Pacific would have to have this work done at other shops more centrally located with respect to tracks of Southern Pacific. This would naturally result in a reduction of the shop force at Sacramento by 65%, and would be a great blow to Sacramento and that locality. The pay roll of the Sacramento shops is approximately $9,000,000 a year under present conditions. Such a pay roll could not be reduced by 65% without serious detriment to the community in which the employees have their homes.

Joint Trackage Rights are not Desirable

Joint trackage rights or joint operating rights would not, as represented by the Union Pacific, relieve the undesirable situation resulting from breaking the present railroad system into incomplete parts. Joint trackage rights of this nature usually provide either that the company owning the trackage right would use the other's line as a mere bridge—doing no local business—as in the case of the Santa Fe Railroad using the Southern Pacific line between Mojave and Bakersfield, California, which is of no particular benefit to the communities along the line, or secondly where there is absolute common use.

An instance of such common use is the railroad which now exists between Portland and Seattle, over which the Union Pacific, Northern Pacific and Great Northern operate in common. The contract under which they operate provides that none of the agents along the line shall solicit any

business, and that each shall remain absolutely neutral and handle the business with impartiality. In actual practice this results in a careless disregard for business, and an undesirable indifference toward the public requirements. So far as service is concerned, in actual practice this likewise results in unnecessary and injudicious duplication of operating costs, for which the public has to pay. Between Portland and Seattle, instead of the different carriers uniting to spread their trains over the entire day, so as to give the public the benefit of the additional service the trains are bunched so as to compete to the utmost where there is a particular demand at a particular hour, but with no service in between. Moreover, it is far better to have three separate railroads between termini than one railroad over which three companies operate. With three railroads the lines can ordinarily be spread miles apart, so as to serve different communities which would otherwise be without service, but where the companies all operate over one line only one set of communities is favored by being located on the railroad, and all the communities off the line have to pay the penalty of remaining without service, where they could be properly served if the railroads had their individual lines. Joint trackage rights have thus, in actual practice, never been found satisfactory.

Even the agreement proposed in 1913 by the Union Pacific to provide for the separation, which provided for trackage rights by the Union-Central Pacific over the so-called Benicia cut off, contained the following language:

> "Sec. 4. All agents and employes engaged upon said railway by the Southern Pacific shall do the business of the Central Company without discrimination. Such agents and employes shall not solicit business, or recommend the routing thereof, but in all respects shall act with entire neutrality between the parties using the property."

The trackage rights proposed by the Union Pacific in 1913 between the Dumbarton cut-off and San Francisco did not materially diminish the disadvantages of dismemberment, and were of little or no value to the communities on this line. The rights so granted were:

"* * Central Pacific Railway Company shall be entitled to trackage or running * * * rights between Redwood and San Francisco for the operation of through freight trains only, without right to do local business—Redwood to be considered local." * * *

Promise of "Real Competition"

The Union Pacific promises that "The operation of the Central Pacific in connection with some strong road will give real railroad competition to the great agricultural valleys of northern and central California, such as the valleys of the Santa Clara, San Joaquin and Sacramento. It will give the producer a direct, short route to the east," etc. This would sound enticing to any one not familiar with the geography of California or the railroad map of the West. On the other hand we know that for the Union

Pacific to control the Central Pacific would not place any new railroad in the valleys of Northern or Central California. It would not give the producer a new, direct, or any shorter route to the east. It would simply result in the withdrawal of the Southern Pacific from the field of competition for business that normally would pass through Ogden, and substitute the Union Pacific in the operation of this carrier, as the Southern Pacific would be so greatly impaired, both financially and physically, as to be unable to compete. On the other hand it would open the door to the stifling of the existing competition between the Union Pacific and the Denver & Rio Grande east of Ogden. It would stifle the existing competition between the Central Pacific and Western Pacific routes across Nevada, and impair the Western Pacific financially and reduce its ability to compete.

To promise the producer a direct, short route to the east by a substitution of Union Pacific for Southern Pacific operation is a simple perversion of the truth. All the points enumerated are already on a direct, short route to the east. No new line would be brought in. The Central Pacific and Union Pacific are operated so as to give convenient through service between Central California and Omaha and east. Judge R. S. Lovett so testified before the Federal Court in this dismemberment suit.

The Union Pacific's promise that such arrangement "will give the city of San Jose a direct line to the Atlantic Seaboard" is equally unworthy of consideration. San Jose is already on the direct line of the Southern Pacific-Union Pacific, which operate as one, not to the Atlantic Seaboard, but as far east as Omaha; and there would be no new line created.

The Union Pacific's promise that such arrangement "will give Fresno, Madera, Modesto and Merced in the San Joaquin Valley a short line to the east" is a statement equally unworthy. No new line is proposed, and they are already on a direct, short line to the east and no improvement in the present service could be suggested.

The Union Pacific's promise that such arrangement "will put the city of Stockton on a through transcontinental railroad" is another statement out of the whole cloth. The city of Stockton is already on three through transcontinental railroads, viz.: Southern Pacific, Western Pacific and Santa Fe. No new railroad line is offered or suggested, nor are any other trains promised that do not operate today. We know that the Union Pacific refused to purchase the Central Pacific in 1913 if it had to run its through passenger trains through Stockton rather than over the Benicia cut off. It is not offering to operate any through service through Stockton if it should accomplish its purpose. Stockton would no longer be on a Southern Pacific main line, and no longer on the main north and south artery of the trade of the Pacific Coast.

The statement that the Union Pacific, if it accomplishes its purpose, "would bring another competing transcontinental railroad into the cities of Berkeley, Oakland and Alameda" is another fallacy. Berkeley is exclusively on Southern Pacific rails, and would not be any where near the Union Pacific if it were in possession of the Central Pacific rails. Freight could not reach Alameda on the other hand except over Central Pacific rails; and no new line is promised to any of these cities.

The Union Pacific insinuates, in fact its Western Counsel has openly stated, that the Southern Pacific gets from the Pacific Electric, (its southern California subsidiary, which has been perhaps the greatest factor in the development of Southern California) an unfair division of the freight rates, so that the Pacific Electric shows an unfair deficit, to the credit of the Southern Pacific System, and to the disadvantage of the communities located upon the Pacific Electric. The Railroad Commission has investigated this very thing, and found that the Pacific Electric is given a fair, if not generous, share of the through freight earnings, and that the present policies are fair to those using the Pacific Electric lines.

In some of their publications, they have said that there were many thousands of acres of tillable land in California uncultivated because of lack of railroad facilities. They have not pointed to a single place however, where a railroad could be built that would pay expenses, and the very absence of a railroad in any such locality raises a strong inference that any such railroad building would be injudicious.

The Union Pacific pamphlet then points to the "unalterable" principle that "competition is the life of trade." It does not add the modification recognized by Congress and by most of the states, that unregulated competition is dangerous, that injudicious competition is highly destructive and against the public interest, and that competition in railroad building, etc., should only be indulged in under proper restrictions and regulations.

Under the caption "the court knew what it was doing," it is said that the Supreme Court need not have decided the case if the Transportation Act of 1920 (which amended the Interstate Commerce Act by authorizing the Commission to make exemptions) had been applicable.

It should be explained first that the court regarded the conditions existing at the time the suit was commenced in 1914, and that in 1914 the Transportation Act of 1920 had not been passed; and secondly, that the Transportation Act of 1920 does not repeal the Sherman Law or any other Federal Law, but simply gives Congressional authority to the Interstate Commerce Commission to make exemptions from the operation of such laws. The Interstate Commerce Commission has not yet finally acted on the subject. Until it acts no exemption has actually been made, and as no exemption had yet been made from the operation of these laws, the Supreme Court could not take cognizance thereof.

The San Francisco Chamber of Commerce is then charged with a change of view, the Union Pacific saying that in 1913 it favored a separation but in 1922 is against a dismemberment of the Southern Pacific System. To any one familiar with the facts the position of the San Francisco Chamber of Commerce is entirely consistent. In 1913 it approved the agreement propounded by the Union Pacific for a separation as the better choice of two evils, believing that a separation was inevitable. But since a separation is no longer inevitable and the question arises as to whether in the public interest there should be any separation at all, the San Francisco Chamber of Commerce and the commercial organizations throughout California with practical unanimity, have placed themselves on record as against such dismemberment, believing that exemptions should be made from the Sherman Anti-Trust law and any other state or federal law necessary to keep the great railroad system of the west intact.

"A Competitive Transcontinental Line Restored" A False Representation

Under the caption quoted above the Union Pacific pamphlet, in every line makes a serious mis-statement or a misleading statement.

For instance, they state: "There are not two lines to the east, but only one." This is highly misleading, for the reason that there are a number of lines east from Portland, Ore. There are three lines east from Central California, viz.: Southern Pacific-Central Pacific, Western Pacific and Santa Fe, and there are three lines east from the Los Angeles territory, viz.: the Southern Pacific (offering alternative routes either via Reno or El Paso) the Union Pacific-Salt Lake route and the Santa Fe route.

The statement then continues "the line which runs part of the way east, the Central Pacific, is used not in competition with any other line but for the purpose of aiding the long haul via New Orleans." This is not true. The Central Pacific main line today is operated in competition with both the Western Pacific and Santa Fe, with the Union Pacific-Salt Lake line and with the Union Pacific-Oregon Short Line. On the other hand it is not used for the purpose of aiding the so called long haul via New Orleans. The Southern Pacific has considered it suicidal to attempt to persuade shippers to divert freight away from the shortest natural route.

The statement then continues "Should the Union Pacific acquire control of the Central Pacific the traffic would move by the shortest and most direct route to eastern points, because there would be no advantage whatsoever in moving it over a long haul, as it would get no greater division of the freight charges." This is again contrary to the fact, because under present day conditions substantially all of the traffic which is routed on

the Southern Pacific from northern and central California passes over the central route through Ogden.

The conclusion then asserted is "Therefore, should the Union Pacific acquire control of the Central Pacific it would mean such active, aggressive competitions for northern and central California that it would force development of every kind through the entire territory. It would make every railroad coming into San Francisco 'stand on its toes' and do business efficiently." This is another obvious fallacy, for as we have noted, instead of creating any new competition in or about San Francisco or in northern or central California it would simply mean the withdrawal of the Southern Pacific from the business, leaving the Southern Pacific greatly impaired both financially and as to the service it can give, and leave the Union Pacific in the field. This is what the California Railroad Commission found after its investigation.

At present for transcontinental business from northern and central California the Union Pacific has a solicitor at every important shipping point, the Southern Pacific has a solicitor at every important shipping point, the Santa Fe has a solicitor at every important shipping point, the Western Pacific has a solicitor at every important shipping point. No new competitor is suggested.

It is also a fallacy to speak of "restoring" a competitive line to California. The Southern Pacific-Central Pacific System has been operating as a unit since its lines were built. Whatever competitive conditions there ever have been with respect to these lines are the same now as they were in the first instance. There is no restriction on competition to remove—no natural condition to restore, because the original and natural condition still exists, and to separate the lines would be to create a new and unnatural experiment in railroad economics, and a costly one to the shippers and the travelling public of the west.

It should be remembered that C. P. Huntington, Leland Stanford, Charles Crocker and Mark Hopkins who conceived and built this great transportation system, have done more than anyone, or any group, in building up the West. They were not unscrupulous men, as those who formerly were attacking them would have you believe. They were all California merchants located at Sacramento when they undertook the project. There were few if any men in their day, or since, in this country, who were their equal in recognized ability and integrity, whose promises or obligation, express or implied, orally or in writing, were met as faithfully. They were so trusted that contracts for hundreds of thousands of dollars of railroad construction were often let and accepted by word of mouth, and scrupulously carried out. They could borrow money on their personal unsecured promissory notes when the credit and the written obligations of their railroad was thought worthless. They were never known

to fail to fulfill a promise or obligation, and every dollar they ever borrowed, for their railroad construction or otherwise was always fully repaid with interest. Through their efforts, the prosperity of California was given its first great impetus, and its momentum has ever increased.

The last survivor of them, C. P. Huntington, died August 13, 1900, and since that time their stock has drifted into the hands of 54,000 people who have become the present owners of the Southern Pacific properties. These owners are conservative investors who are entirely innocent of any charges, just or unjust, such as are quoted by the Union Pacific, which were constantly being hurled at these four great industrial leaders by the press of their time. The Southern Pacific Company is almost unique in railroad history as being one of the few great railroads of the country which has never been in the hands of a receiver. The investments of these 54,000 owners should not be disregarded, and it is only proper to defend their interests against the onslaught waged by the Union Pacific in support of its ruthless program to stifle competition in interstate transportation.

The Central Pacific-Southern Pacific System has been the largest single factor in the prosperity of the West.

Since its first rails were laid, in October, 1863, Southern Pacific System has been closely identified with the upbuilding of California's communities and industries and the settlement and cultivation of the lands in this state.

During the last ten years the Southern Pacific Company spent $5,000,000 advertising attractions and opportunities offered in the states on its Pacific System. It has followed this up with vigorous personal solicitation by Southern Pacific representatives throughout the United States and the world. During the last ten years 4,500,000 tourists and settlers were brought to the West by Southern Pacific Lines.

The Southern Pacific Company's principal business and its principal properties are in the Pacific Coast States; and its principal interests are here. The Company's important shops, yards and other facilities, give employment to many thousand men. Its purchases in the West in 1920 were more than seventeen million dollars.

The financial strength of the Southern Pacific Company and its present unified comprehensive service are the result of generations of unceasing effort, and constitute a bulwark for the prosperity of San Francisco, California, and the Pacific Coast. Directly or indirectly, every resident of California and the West would be injured if Southern Pacific Lines were dismembered into incomplete parts, and those parts standing in the corporate name of the Central Pacific transferred to outsiders whose headquarters and chief interests lie east of the Rocky Mountains.

There is no escape from the sound conclusions reached by the California Railroad Commission in this matter. A dismemberment of the Southern Pacific System would be against the interests of the west.

APPENDIX A

Extracts from Decision of California Railroad Commission Reported in Vol. 2 of Opinions, and Orders of the California Railroad Commission at pages 233 and Following, in the Matter of Application of Central Pacific and Southern Pacific for Authorization to Sell the Central Pacific to the Union Pacific, Etc., Decided February 24, 1913.

The plan presented to us in this agreement contemplates the control by the Union Pacific not only of a line to the coast, but also of many important feeders owned by the Central Pacific in Northern and Central California. As a matter of fact, the acquisition of the entire Central Pacific holdings by the Union Pacific will give it an entry into all of the important centers of population in California north of the Tehachapi Mountains, while its control by stock ownership of the San Pedro, Los Angeles and Salt Lake Railroad Company from Salt Lake to Los Angeles, with the connections of the Oregon Short Line from Salt Lake to Ogden, gives it an entry into the region south of the Tehachapi Mountains, and its ownership of the Oregon Short Line and the Oregon Railway and Navigation Company gives it access to Portland and other Oregon points. The Southern Pacific, on the other hand, while it is left with its Coast line from San Francisco to Los Angeles, will, in our opinion, if this agreement is consummated, compete at a disadvantage at all points north of the Tehachapi Mountains with the Union Pacific-Central Pacific line. In fact, it is in evidence in this case from the testimony of the representatives of the Southern Pacific itself, that that line will be excluded from practically all of the deciduous fruit business in California, as well as a major portion of the dried fruit business and a large portion of the citrus fruit business originating at points north of the Tehachapi Mountains.

We do not believe it necessary to the determination of the questions that are now presented to us to present in detail the traffic conditions which we consider will be brought about if the rearrangement contemplated by this agreement is consummated. Mr. Sproule, president of the Southern Pacific, testified that 47 per cent of the traffic carried by the Southern Pacific as it now exists, controlling as it does the Central Pacific to Ogden, passes through the El Paso gateway. This, of course, includes practically all the Southern Pacific's traffic originating south of the Tehachapi Mountains and all of the traffic moving by water from Galveston over the Southern Pacific and Gulf line, and necessarily includes but a small percentage of the business produced north of the Tehachapi Mountains. Under present conditions, the Southern Pacific, having regard solely to traffic convenience, carries by way of its Sunset route only a comparatively small amount of freight which originates at points north of the Tehachapi

Mountains. It would appear that under the circumstances of this case, the traffic will largely move over the most convenient and expeditious route. Such being the case, we are justified in concluding that for most of the traffic originating north of the Tehachapi Mountains, the Sunset route is a less convenient route than the route by way of Ogden gateway, and if this conclusion is correct, the Southern Pacific will compete at a disadvantage for most of this traffic when the ownership of the lines through the Ogden gateway and the El Paso gateway is in the hands of competing owners. Thus, if the Union Pacific secures control of the Central Pacific with its feeders as far south as Goshen and into practically all of the important commercial centers in Northern and Central California, the Southern Pacific will be placed in the position of the inferior road at all of these points, while if the Union Pacific were to secure merely the control of the main line of the Central Pacific from Ogden to San Francisco, the condition would be reversed and the Union Pacific-Central Pacific line would compete at a disadvantage or be compelled to build additional feeders.

We do not pretend to say, nor do we consider it necessary to decide, how serious an impairment of the Southern Pacific will be brought about by the securing of the Central Pacific main line and feeders by the Union Pacific, but we are of the opinion that the present commanding position of that road cannot be maintained under the contract which is presented to us for approval, and that there is room for grave fear that if the agreement is carried out this State will, instead of securing two strong competing lines, secure one dominant line and one much impaired line.

The desire of the Supreme Court and the Attorney General to produce active competition between these two transcontinental lines, of course, is founded in the belief that such competition will produce advantageous results to the shippers. We do not believe, however, that any appreciable reduction of transcontinental rates will be brought about by the unmerging of these lines, particularly under the terms of the agreement here under consideration. If, however, active and bona fide competition is produced between these lines there will be more striving after business and, consequently, probably some improvement in service—how great it is impossible to determine. We do not believe that the improvement in service will be very marked, because of the fact that the freight east and west through both the Ogden and El Paso gateways is at the present time carried in active competition with two other transcontinental lines, namely, the Atchison, Topeka and Santa Fe Railway Company and Western Pacific Railway Company.

Believing as we do that the plan here under consideration will not substantially benefit the shippers of transcontinental freight, either in rates or in service, it is well to consider what, if any, effect will be the natural result of this arrangement upon local traffic. At the present time, the local lines of the Southern Pacific and the Central Pacific form one system within this State, reaching from Oregon to the Mexican line, and from Yuma and a

point near Reno on the east. All local lines of these two systems are now under the control of one agency and operated as a unit. The result of the reorganization plan as set forth in this agreement will be the substitution as to a great part of this territory of two agencies to perform the work now performed by one.

While the representatives of both the Union Pacific and the Southern Pacific state positively that it is contrary to their policy to permit the reorganization scheme to increase the rates or to interfere with the service locally within the State, yet we cannot refrain from observing that this result usually follows upon a substitution of two agencies in the performance of a service heretofore performed by one. We invariably have it urged upon us in rate controversies before the Commission, where rates are to be made over two connecting lines that the joint movement over two connecting lines is more expensive to the carriers in the aggregate than a single movement over one line between the same points. Therefore, regardless of the present disposition of the parties hereto, we feel that serious consideration must be given by the Commission to the possibility or probability of applications which may hereafter be made by carriers to increase rates in this State in cases where, as the result of the consummation of this agreement, points now upon one line may, by reason of the dismemberment of the Southern Pacific lines in this State be found located one solely on the Southern Pacific and the other solely on the Central Pacific.

It is our disposition to believe that it would be better for the local business within this State if the local lines now controlled by the Southern Pacific could remain under the control of one agency and not be separated and given over to the control of two. This conclusion, in conjunction with the opinion we have already expressed that the advantage to shippers as to transcontinental freight will be negligible if the provisions of this contract are carried out, leads us to suggest that it would be better to adopt the other method already suggested of bringing about the design of Congress in providing that the Central Pacific and the Union Pacific should be one continuous transcontinental line, namely, by the sale or long-term lease of the line of the Central Pacific from Ogden to Sacramento to the Union Pacific and the provision for a trackage right from Sacramento to pay points for the Union Pacific and the retention by the Southern Pacific of the remainder of the Central Pacific system.

Having given our views upon that portion of the contract, which while involved in the entire plan does not specifically require our approval, we shall now consider those matters for which our approval is required.

We are not unmindful of the fact that, as testified by both Judge Lovett and Mr. Sproule, these companies are more or less under duress to contract. On the one hand the stock of the Southern Pacific owned by the Union Pacific is in the hands of the court for sale, and if an arrangement is not consummated before ninety days shall have elapsed after the decision of the

court, this stock is to be placed in the hands of a receiver to be sold as the court directs. It is testified that the Attorney General is threatening proceedings against the Southern Pacific if it does not divest itself of control of its alleged competing line, the Central Pacific, and we appreciate the desire of the parties to bring about a solution of their troubles which will result in as little financial loss to them as possible, yet we believe it is our duty to have in mind the effect of any arrangement which may be designed upon not only the contracting parties here, but the public. As we have already indicated, we do not believe the sale of the stock of the Southern Pacific is necessary to bring about the result desired by the Supreme Court, or even by the Attorney General, but if Federal authorities, acting within their jurisdiction in this matter, which is wholly without our jurisdiction, shall decide that the sale of this stock must be made, then we do not feel that it will be possible for us to protect the public beyond that protection which may be accorded by the imposition of conditions specified in the order herein, which conditions, while not designed to be oppressive to the contracting parties, have as their object the restoration of real competition in local traffic in addition to the competition in transcontinental traffic, which is designed by the Attorney General.

APPENDIX B

Southern Pacific-Central Pacific System
Building of the Original Central Pacific

The Southern Pacific System had for its nucleus the Central Pacific Railroad Company of California, incorporated by Leland Stanford, C. P. Huntington, Mark Hopkins and Charles Crocker at Sacramento, California, in 1861 or thereabouts. By Act of Congress of 1862 provision was made for the construction of a railroad between the Missouri River and the Pacific Ocean. This Act of Congress incorporated the original Union Pacific Railroad Company (a predecessor of the present Union Pacific), authorized it to construct from the Missouri River westerly and authorized the Central Pacific Railroad Company of California to construct easterly from tidewater to meet the Union Pacific. Land grants and other Government assistance were given to both roads to aid in the construction. The original Act of Congress was afterwards amended in a number of particulars. The construction of the Central Pacific commenced at Sacramento and proceeded toward the East until it met the construction of the Union Pacific from Omaha westerly at Promontory, Utah, on May 10, 1869. The point of junction between the Union Pacific and the Central Pacific was finally established at, or in the vicinity of, Ogden. The Act of Congress of 1862, referred to, expressly provided that "the whole line of the said railroad and branches and telegraph shall be operated and used for all purposes of com-

munication, travel and transportation so far as the public and the Government are concerned, as one connected, continuous line."

In the amendatory Act of 1864, Congress provided "that the several companies authorized to construct the aforesaid roads are hereby required to operate and use said roads and telegraph for all purposes of communication, travel and transportation, so far as the public and the Government are concerned, as one continuous line, and in such operation and use to afford and secure to each equal advantages and facilities as to rates, time and transportation without any discrimination of any kind in favor of the road or business of any or either of the said companies, or adverse to the road or business of any or either of the others."

About 1870, shortly after the completion of its main line, the Central Pacific builders built, or otherwise acquired in the name of the Central Pacific, a line of railroad from Sacramento by way of Stockton and Niles to Oakland, California, and a ferry terminal on the easterly shore of San Francisco Bay, with a branch from Niles to San Jose, there connecting with the San Francisco and San Jose Railroad into San Francisco.

Original Southern Pacific Railroad Company of California

This corporation was incorporated on December 2, 1865, by filing Articles of Incorporation under the laws of the State of California, designating the purpose of the incorporation to construct a road from San Francisco to San Diego, hence to the Eastern boundary line of California "there to connect with a contemplated railroad from said Eastern line of the State of California to the Mississippi River."

On July 27, 1866, Congress passed an Act, incorporating the Atlantic and Pacific Railroad (which has since become part of the Santa Fe) and authorizing the Southern Pacific Railroad Company of California to avail itself of the land grants provided for in the Act if it would construct its line to a connection with the Atlantic and Pacific at such point near the boundary line of the State of California as they shall deem most suitable for a railroad line to San Francisco. This afterwards became part of the present Santa Fe route through "The Needles." Neither the Central Pacific Railroad Company of California nor the Central Pacific Railroad builders, so far as we know, had anything to do with the incorporation of the Southern Pacific Company of California in 1865, or up to 1870. The Southern Pacific Railroad Company of California while it was in independent ownership during 1869, constructed thirty miles of railroad, viz.: from a connection with the San Francisco and San Jose Railroad at San Jose to the town of Gilroy.

Mr. Leland Stanford testified before the United States Pacific Railway Commission on August 2nd, 1887 (page 2804 of testimony), "The Central Pacific was entirely completed, I think, before we touched the Southern Pacific at all." At any event, in October, 1870, we find that Stanford, Huntington, Hopkins and Crocker, the builders and principal owners of

the Central Pacific, had acquired the stock of the Southern Pacific Railroad Company of California, and its 30 miles of railroad. All of their names appear upon its Board of Directors in 1870, and thereafter, until they turned its stock over to the Southern Pacific Company, which they formed about 1885, they were the owners of the Southern Pacific Railroad Company of California, and the builders of its lines (except for the first 30 miles south of San Jose).

As the Laws of California have always required articles of incorporation of railroad corporations to describe the general route and termini of the contemplated railroad, the articles of incorporation of the Southern Pacific Railroad Company of California were therefore amended in 1870 and thereafter from time to time so as to provide for the construction of the different lines that were actually constructed by the Central Pacific Railroad builders in the name of the Southern Pacific Railroad Company of California. In 1871, a year after the Central Pacific railroad builders had bought it, the Southern Pacific Railroad Company of California was further authorized by Congress to construct its railroad through Los Angeles to connect with the Texas and Pacific Railroad at a point near Yuma on the Colorado River, with similar land grants. This latter route afterwards became part of the present Sunset Route of the Southern Pacific Company.

It will be observed that the first Congressional land grant in aid of construction of the Southern Pacific Railroad Company of California (between San Francisco and The Needles, part of the present Santa Fe route), was made in 1866, before the Central Pacific builders had anything to do with the Southern Pacific Railroad Company of California. It is obvious that the Central Pacific builders purchased the Southern Pacific Railroad of California and decided to build the railroad themselves for the reason that after pioneering the original Central Pacific line, to make it effective they would have to construct an elaborate system of feeders throughout California and, with their enormous obligations, they could not afford to have a second local system built in California. They therefore, in 1870, bought the Southern Pacific Railroad Company of California (and with it the San Francisco and San Jose Railroad), and constructed the Southern Pacific Railroad themselves. They decided that the best route of construction toward the south would be down the San Joaquin Valley; but, as the route prescribed by Congress for the Southern Pacific Railroad did not connect with the Valley construction until it reached a point now known as Goshen. They built for the first 158 miles, to Goshen in the name of the Central Pacific and availed themselves of the land grant by continuing the construction beyond Goshen, in the name of the Southern Pacific Railroad Company of California. They pushed on, making the connection through to Los Angeles September 1st, 1876, and reached the Colorado River at Yuma in September, 1877.

The Texas and Pacific Railway did not make satisfactory progress in building westerly. On the other hand, there was a great demand at that

time for a transcontinental route which could handle transcontinental traffic economically and efficiently under one management and with reasonable dispatch. The Central Pacific-Union Pacific route at first proved highly unsatisfactory to shippers by reason of the lack of co-ordination between the various railroads composing the through lines. On the other hand, the great wheat crop of California was handled largely by clipper ships, sailing from San Francisco to the Atlantic seaboard around Cape Horn. These clippers in the 70's, or thereabouts, formed a trust, with resulting rates so high that the wheat farmers of California were helpless. To break this trust and to provide a satisfactory means for the California wheat farmers to market their crop, the original Central Pacific Railroad builders pushed on their railroad construction beyond Yuma, without any aid or subsidies—first, across Arizona in the name of the Southern Pacific Railroad Company of Arizona, then across New Mexico, in the name of the Southern Pacific Company of New Mexico; and then by other corporations, through Texas or Louisiana, and finally in 1883 provided a through railroad from San Francisco to New Orleans.

The Fifth Annual Report of the Railroad Commission of California, issued by the State Printing Office, for the year ending December 31, 1884, contains the following statement:

> "It is said that the 'Southern Desert Road' is a burden upon its owners. Because any desert road is such burden, the Commission has given this one the benefit of deferential rates. But without all its costly mountain and desert divisions the Southern Pacific Railroad is a work of public economy from which the State has gained infinitely more than its owners have lost. The year it was completed it took from the grain crop of California more than a third of the taxes levied upon it by the ocean carriers. . . . .
>
> "The reduction (in rates) was made and has continued under stress of threatened competition for which, if honor be due, it is to the men who built the Southern Pacific Railroad."

Further Construction of the System

After completing the through route between San Francisco and New Orleans in 1883, the Central Pacific Railroad builders turned their attention to the more intensive development of the railroad system of the Pacific Coast.

They first built a branch in the name of the Southern Pacific Railroad Company of California from Mojave, California, to The Needles, which they afterwards leased and then sold to the Santa Fe. They then built (but this time in the name of the Central Pacific, to avail themselves of the land grant in favor of the Central Pacific for this construction) through Redding, California, to the California-Oregon State Line, where they connected with the railroad which they had acquired in Oregon and which they had constructed southerly through Ashland, Oregon, to the Junction

Point at the State Line. Branches and feeders were built throughout California, where the demand for transportation seemed to warrant the expenditure, and often far in advance of the promise of any immediate return.

The intensive development of this western railroad system still continued and in 1901 the popular Coast Line was completed, the construction being partly in the name of the Southern Pacific Railroad Company of California and partly in the name of the Southern Pacific Branch Railway Company which had been formed for the purpose of completing a section of the line between San Francisco and Los Angeles, along the Coast. They used perhaps 50 different corporations in the construction of this system.

On August 13th, 1900, the last of the great railroad builders, C. P. Huntington, died, and shortly thereafter Mr. E. H. Harriman, who had in the meantime secured control of the Union Pacific Railroad Company, (a new corporation formed in 1897 under the laws of Utah, to take over the old Union Pacific railroad, under a re-organization plan) acquired 46% of the stock of the Southern Pacific Company through its purchases in the name of the Union Pacific Railroad. This was afterwards shown to be an actual control from a practical standpoint, of the Southern Pacific Company. This control by Harriman through the Union Pacific stock ownership continued until shortly after Mr. Harriman's death, when the Union Pacific was ordered by the U. S. Supreme Court to divest itself of this 46% of the Southern Pacific stock on the ground that such holding violated the Sherman Anti-Trust Law. This took place in 1913.

After the accession of Mr. Harriman in 1901 the construction policy pursued by the former Central Pacific and Southern Pacific owners was continued, and the Southern Pacific Company, under the direction of Mr. Harriman, who became its President, continued with the intensive development of the properties, construction of new feeders and large internal improvements. This policy has been continued up to the present time, except that further expansion of, and additions to, those parts of the properties which stand in the name of the Central Pacific Railway Company have had to be deferred since 1913, because of the pending litigation.

OPERATION OF THE SYSTEM

In the Name of the Central Pacific Railroad Company, up to 1885:

The Central Pacific Railroad Co. of California, as it built its line toward the East, was the original operating Company. It continued in the operation of every part of the System as it was built, not only the original main line as it was built from Sacramento to Ogden, but all of the branches of the System, whether constructed in its name, or in the name of the Southern Pacific Railroad Company of California, or in the name of any of the corporations formed or acquired by Stanford, Huntington, Hopkins and Crocker or their successors. As the construction progressed (in the name

of the Southern Pacific) through Los Angeles to Yuma, thence across Arizona and New Mexico and eventually to New Orleans, as each section was thrown open for operation the only operating organization these railroad builders had, viz., the Central Pacific Railroad Company, extended the operation of its trains in its name over the completed section of the line until in 1885 the Central Pacific trains, in its name were operating through to New Orleans. The Central Pacific operating organization likewise operated every branch in California that was constructed or acquired up to April 1st, 1885, and there has never been but this one operating organization.

In the Name of the Southern Pacific Company after 1885:

In 1885 Stanford, Huntington, Hopkins and Crocker found themselves the owners of the stock of dozens of different railroad companies that they had formed or acquired, and in whose names they had built different sections of the system, and found it inconvenient to keep account of so many stocks. They further considered that it was inappropriate to continue the operation in the name of the Central Pacific as, by that time "the tail was wagging the dog." They therefore formed a corporation under laws of the State of Kentucky and assigned to it the stock of all these railroad corporations, which they owned (except the Central Pacific, as to which there were outside stockholders) and for the purpose of proper records and accounts at each of these corporations, including the Central Pacific, leased their respective properties to the Southern Pacific Company.

The Central Pacific thereupon ceased as an operating company, its status changed into that of a mere property holding company, (such as the Southern Pacific Railroad Company of California, of Arizona, of New Mexico, the Northern Railway and many others, which Stanford and associates owned) and by means of a rubber stamp the letter heads and tickets were changed on that date to the name of the Southern Pacific Company, which continued in the operation of all the properties as theretofore, but in the name of the new Southern Pacific Company.

There was no change of actual ownership in this transaction and the same operating organization continued to operate the lines as a whole, as it had done since their inception. This operation in the name of the Southern Pacific Company has been extended to all of the various branches and extensions which have been built since 1885, whether in the name of the Southern Pacific Company, the Central Pacific Railway Company or any of the other proprietary companies. The operators of this system have, since the beginning, operated the System as a unit, and have treated the proprietary companies as merely for bookkeeping purposes, and of no consequence except to comply with the mortgages which were made on the several sections of the line which required that the corporate entities and properties be kept intact and undiminished, and the respective securities unimpaired.

The entire system has been developed in accordance with the traffic needs of the communities, to provide railroad service where railroad service was required. No parallel lines were built, there were no duplications, each line serving a distinct territory with no idea of any future separation or the possibility of the use of any lines in any attempt to compete with each other. Each section of the property has had the benefit of the resources of the whole, has had the use of cars and locomotives where needed from any point on the great system; operating schedules have been arranged to provide the shortest practicable routes and the most efficient service, and the system has never been considered either by the public or by its owners as anything other than a single comprehensive system.

Routing of Traffic and Operation in Conjunction with the Union Pacific

The Central Pacific Railroad, in conjunction with the Union Pacific and the connecting carriers east of Omaha has provided a through transcontinental route since May 10, 1869. This route has always consisted of a number of connecting railroads whose co-operation was necessary for transcontinental service. From the beginning up to some time in the '90's, this through route proved very unsatisfactory to shippers by reason of the lack of co-ordination between the different connecting links in the transcontinental chain. For many years it took what seemed an interminable period to move a carload of freight across the country. There was no means of checking up the location of cars in transit, no settled rates and when claims for loss or damage arose, the shipper encountered the utmost difficulty in endeavoring to locate the responsible party. On the other hand, upon the completion of the Southern Pacific route from San Francisco by way of Los Angeles to New Orleans in 1883 and by the purchase of a line of steamers operating between New Orleans and New York the Central Pacific, afterwards the Southern Pacific Company, was able to handle transcontinental traffic rapidly and effectively under one management from coast to coast, and the Southern route handled a considerable part of the traffic.

In 1895, or thereabouts, however, the service was so improved upon the Central-Union Pacific route as to make it not only the shortest transcontinental route in miles, but also in service and from that time on traffic began to resume the more direct route, the Southern route becoming less potential as a competitor.

The Santa Fe system afterwards was completed and became a competitor, not only in the South but also in Northern California to both routes; the Western Pacific was then completed from a connection with the Denver Rio Grande at Salt Lake City to San Francisco, as another competitor, and the Union Pacific in 1905, or thereabouts, completed its so-called "Salt Lake Line," from Ogden directly to Los Angeles, thereby creating another transcontinental route for Southern California.

During the period from 1901 to 1913, while the Southern Pacific Company was under the control of the Union Pacific Railroad Co. there was no material change in the policy with respect to preferential routing of freight; for many years all shippers have had the legal right to designate the routing of freight and no shipper could be induced to route his freight except where he could get the best service.

During the Union Pacific's control of the Southern Pacific Co., however, the Union Pacific closed the California gateway to Oregon traffic and by confining all transcontinental Oregon traffic to the Union Pacific-Oregon Short Line, deprived shippers of the alternative routes that they would otherwise have had. Since the dissolution of the Union Pacific merger, however, the Roseville (California) gateway has been re-opened and there is now substantial competition between Central and Southern Oregon and the east by way of Portland, as against the Southern Pacific Line via the Central Route through California and across Nevada.

During the Union Pacific control of the Southern Pacific Co., upon the completion of the Salt Lake line from Los Angeles to Salt Lake City, the Union Pacific virtually closed the Roseville gateway to Southern California business, moving by way of Ogden to and from the east and by this means the shipments via Ogden were confined almost entirely to the Union Pacific-Salt Lake Line; since the dissolution of the Union Pacific merger, however, substantial competition has been resumed between Southern California and the East by way of Ogden, as between the Union Pacific-Salt Lake line and the Southern Pacific line, via California and across Nevada. Competition has likewise become keen between these two lines in passenger business.

As between Central and Northern California, however, and the North Central and North Eastern points of the United States, in recent years the best service has been rendered over the Southern Pacific, Central-Union Pacific route by way of Ogden, and the bulk of the business has gone that way. As a matter of fact, there is but little, if any, business passing between these territories at the present time over the Southern route, and to use the words of Mr. Julius Kruttschnitt it would be "suicidal" for the Southern Pacific to attempt to divert this business to the Southern route, as the shipper could not be induced to route traffic against his own interest over a circuitous route.

As to the Central Pacific and Union Pacific operating as a continuous line, so far as the public and the Government are concerned, the through trains, both passenger and freight, have always moved through Ogden, between the Southern Pacific and the Union Pacific lines, without delay. Judge R. S. Lovett himself testified that the Union Pacific could not complain of the Southern Pacific for failing in any way to co-operate in all respects for prompt through service and connecting schedules