ATHEARN

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THE SEPARATION OF

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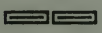
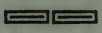
AND

THE SOUTHERN PACIFIC

RAILROADS



A PLAIN STATEMENT OF THE FACTS



COMPILED FROM ADDRESSES BY

FRED G. ATHEARN

ATTORNEY FOR

THE UNION PACIFIC RAILROAD COMPANY

723 BALBOA BUILDING

SAN FRANCISCO, CALIFORNIA

SAN FRANCISCO JULY 7, 1922

THE SEPARATION OF THE CENTRAL PACIFIC AND SOUTHERN PACIFIC RAILROADS

A PLAIN STATEMENT OF THE FACTS

(Compiled from addresses by Fred G. Athearn, attorney for the Union Pacific Railroad Company, 723 Balboa Building, San Francisco, California)

Central Pacific and Union Pacific History

In 1862 and 1864 the Congress of the United States, by appropriate legislation, incorporated the Union Pacific Company to build from the Missouri River westward, and authorized the Central Pacific to build eastwardly from the Pacific Coast, at or near San Francisco, to a common meeting point with the Union Pacific. These acts of Congress authorized the issue of first mortgage bonds, and also second mortgage bonds, and made a land grant of public lands for each linear mile of railroad construction. These acts provided that these two railroads should be operated as one continuous line, and that neither should discriminate against the other.

The Central Pacific Property

The Central Pacific begins at Ogden, Utah, and runs to the Oakland Mole on the eastern side of San Francisco bay, via Sacramento, Stockton and Niles. It also extends down the east side of the San Joaquin valley as far as Goshen Junction, passing through the cities of Modesto, Merced, Madera and Fresno. It extends into the Santa Clara valley as far as San Jose by way of Niles. It runs northward up the Sacramento valley as far as the California-Oregon line. At Weed, California, there is a branch line that runs northward by way of Klamath Falls as far as Kirk. A line beginning at Natron, Oregon, and extending southward to Oak Ridge was built by the Central Pacific and was intended to meet the line that passes

through Klamath Falls. This latter line was for the purpose of tapping the rich timber belts of Southern Oregon and Northern California. It also owns the line that runs from Fernley, Nevada, through Susanville, California, to Westwood, as well as the line from Hazen, Nevada, to Mojave, California, running through Tonopah Junction and Owenyo.

Lease

In 1885 the Southern Pacific Company acquired control of the Central Pacific by a 999-year lease, and has held control under this lease, and modified leases, ever since.

The Harriman Period

Prior to the year 1901, Mr. E. H. Harriman acquired the Union Pacific, refinanced that road and put it on a financial basis which today is second to none in the United States. It is recognized as the most carefully and thoroughly financed road now being operated. Upon the acquisition of the Union Pacific, Mr. Harriman found that while under the acts of Congress the Union Pacific was designed to connect with the Central Pacific at Ogden and that the two roads should be operated as one continuous line without discrimination either in favor of or against either of the roads, the Union Pacific was being discriminated against by the Central Pacific. It was found that this discrimination was due to the fact that the Southern Pacific controlled the Central Pacific, and that the Southern Pacific also owned a road that ran from San Francisco along the coast line to Los Angeles, as well as down the west side of the San Joaquin valley, over the Tehachapi mountains to Los Angeles and from Los Angeles to New Orleans, running by way of El Paso and Galveston, Texas; that the Southern Pacific also owned, or controlled, the line from Oakland to Portland, Oregon. The line of the Southern Pacific via New Orleans being a very much longer line, the Southern Pacific, by diverting freight that originated on the Central Pacific lines and sending it by way of El Paso and New Orleans to the East, got a long haul and earned 100% of the freight charges, while if this same traffic were sent over the Central Pacific short haul to the East, it would get only an 800-mile haul, which is about one-third of the haul that it would get by sending it via its Sunset Route. In order to avoid this discrimination against the Union Pacific by the

Central Pacific, Mr. Harriman endeavored to buy the Central Pacific. He was unable to do this, so he proceeded to get control of the Southern Pacific, which controlled the Central Pacific. He acquired control of the Southern Pacific in 1901. From 1901 to 1912 the Southern Pacific and Central Pacific were operated by the Union Pacific and the discrimination against the Union Pacific by the Central Pacific was discontinued.

Millions for Improvement

At the time the Union Pacific took control of the Southern Pacific and Central Pacific both the roads were very much in need of repairs and equipment. The Union Pacific immediately advanced many millions of dollars for the rehabilitation of the Southern Pacific and the purchase of equipment. Of this aspect the following quotations taken from the annual reports to the stockholders of the Union Pacific for the fiscal years ending June 30, 1903 and 1904, are enlightening:

"It was deemed expedient, however, to aid the Southern Pacific in temporarily financing its large expenditure for reconstruction, betterments and improvements to its property and for much needed equipment. For this purpose $15,396,119.12 was advanced by the Union Pacific Railroad Company to the Southern Pacific Company, repayable on demand. Of this sum the Union Pacific Railroad Company provided from its surplus cash funds $1,146,119.12 and incurred loans for the remainder. The work in hand on the line of the Southern Pacific will be finished before the end of the year and it is expected that it will result in a satisfactory saving in the cost of operation and in other directions. Since the close of the fiscal year the Union Pacific Railroad Company sold $10,000,000.00 face value of its 5% collateral notes maturing February 1st, 1905. The greater part of the proceeds of this sale was loaned to the Southern Pacific Company; the remainder was used to repay in part the Union Pacific Railroad for outlays amounting to $11,873,842.34 incurred by it in advancing funds to auxiliary and allied companies for the construction of new lines, purchase of two new steamships and for other equipment. With the exception of these loans and short term notes the company has no floating debts, and they have a large excess of assets in the demand loan to the Southern Pacific in advancing for account of construction of new lines and equipment and in free assets in the form of unpledged stocks and bonds.

"There were sold during the year $10,000,000.00 face value Union Pacific 5% collateral notes maturing February 1st, 1905. The proceeds were used in further advancing to the Southern Pacific in the construction and invest-

ment in net income from operation completion of the steamships Manchuria and Mongolia, referred to in the last Annual Report, and in the purchase of other equipment.

"In addition to the above-mentioned short term notes, the company have incurred loans to the amount of $13,128,000.00. Against these liabilities they have a large excess in demand loans to the Southern Pacific which on June 30th, 1904, amounted to $20,460,927.43."

During this period, 1901 to 1912, a great deal of work was done on the Southern Pacific and Central Pacific lines.

New Construction

The Lucin cut-off across Great Salt Lake was built; the shops at Sparks, Nevada, were constructed; many line changes and double tracking, both in Nevada and California, were completed or contracted to be built. The line from Benicia to Sacramento was double tracked. New steel bridges were built over the Sacramento and American Rivers. The Dumbarton cut-off was constructed; the line between Tracy and Sacramento was double tracked; the gauge of the line from Alameda to Santa Cruz via San Jose was widened. A road was constructed from Sacramento to Walnut Grove. The Weed lumber road was purchased and extended through Klamath Falls to Kirk; the line from Natron to Oak Ridge was built. The suburban lines on the east side of the Bay of San Francisco were electrified. The line from Fernley, Nevada, to Westwood, California, was constructed. All of this work was done while the Union Pacific controlled the Central Pacific.

The United States Government brought a suit to have it declared that the ownership of the Southern Pacific by the Union Pacific was unlawful and in violation of the Sherman anti-trust act. In 1912 the United States Supreme Court handed down a decision declaring that the ownership by the Union Pacific of the Southern Pacific was unlawful and ordered the Union Pacific to sell all of its interests in the Southern Pacific. This the Union Pacific did and, of course, thereupon the Central Pacific came again under the control of the Southern Pacific, through the lease already referred to. Immediately the old system of discrimination by the Central Pacific against the Union Pacific again went into effect, and this, notwithstanding the fact that Congress originally designed

Dissolution of Union Pacific and Southern Pacific

these two roads, the Union Pacific and Central Pacific, to operate as one road, one continuous line, to the Pacific Coast, without any discrimination of one against the other. This fact was very clearly pointed out by the Supreme Court in its decision in the Union Pacific case, reported in 226 United States 61, where the court says:

> "The purpose of Congress to secure one permanent road to the coast, so far as physical continuity is concerned, is apparent; but we do not think the acts stop with that requirement. It is provided that facilities as to rates, time, and transportation shall be without any discrimination of any kind in favor of either of said companies, or adverse to the road or business of any or either of the others; and the purpose of Congress to secure a continuous line of road, operating from the Missouri River to the Pacific Coast as one road, is further emphasized in the act of Congress of June 20, 1874 (18 Stat. at L. 111, chap. 331, U. S. Compt. Stat. 1901, p. 3577), making it an offense for any officer or agent of the companies authorized to construct the roads, or engaged in the operation thereof, to refuse to operate and use the same for all purposes of communication, travel, and transportation, so far as the public and government are concerned, as one continuous line, and making it a misdemeanor to refuse, in such operation and use, to afford and secure to each of said roads, equal advantages and facilities as to rates, time and transportation, without any discrimination of any kind in favor of or adverse to any or either of said companies."
>
> "The obligation to keep faith with the government continued, as did the legislative power of Congress concerning these roads, notwithstanding changed forms of ownership and organization. *Union P. R. Co.* vs. *Mason City & Ft. D. R. Co.*, 199 U. S. 160, 50 L. ed. 134, 26 Sup. Ct. Rep. 19."

Southern Pacific Once Proposed Separation

In 1913 the Southern Pacific made an application to the Railroad Commission of California for permission to sell the Central Pacific to the Union Pacific. The terms of the sale were all agreed upon and permission was finally granted by the Railroad Commission of California, subject to certain conditions as to the use by roads other than the Union Pacific and Southern Pacific of lines and terminal facilities of the Central Pacific, which conditions were unsatisfactory to the Union Pacific and the sale did not take place. The agreement of 1913 is of value in the present case as showing how completely it proved to be possible to overcome the difficulties of a dissolution if the parties in interest were

moved to do so. The United States Government then brought a suit in 1914 against the Southern Pacific to compel it to divest itself of the control of the Central Pacific line. That case was carried to the highest court in the land and on May 29, 1922, the United States Supreme Court decided that the control of the Central Pacific by the Southern Pacific was a restraint of competition and violative of the Sherman anti-trust act, and directed that the Southern Pacific divest itself of its control of the Central Pacific.

No clearer statement of facts and principles upon which the dissolution was ordered can be made than was made by the Supreme Court in the decision just referred to. The following excerpts from the opinion of the Supreme Court handed down May 29, 1922, are quoted in point:

> "Under principles settled in the Union Pacific case, 226 U. S. 61, 86, the acquisition by the Southern Pacific Company of the stock of the Central Pacific Railway Company in 1899, unless justified by the special circumstances relied upon, to be hereinafter considered, constituted a combination in restraint of trade because it fetters the free and normal flow of competition in interstate traffic and tends to monopolization. In the Union Pacific case this court held that the acquisition by the Union Pacific, which constituted about 1,000 miles of the transcontinental system, to which we have referred, of enough stock in the Southern Pacific to dominate and control it, was violative of the Sherman Act. This case differs from that not at all in principle. These two great systems are normally competitive for the carrying trade in some parts from the east and middle west to the coast, and for the traffic moving to and from central and northern California, including a great volume of ocean-borne traffic which lands on the coast destined across the continent to the Atlantic Seaboard and intermediate western and eastern points, or is destined from the latter points to foreign ports via San Francisco or other Pacific Coast points."
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> * * * * *
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> "Such combinations, not the result of normal and natural growth and development, but springing from the formation of holding companies, or stock purchases, resulting in the unified control of different roads or systems, naturally competitive, constitute a menace and a restraint upon that freedom of commerce which Congress intended to recognize and protect and which the public is entitled to have protected."
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> * * * * *
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> "In the instant case we are not dealing with the principle in the abstract. The proof is ample that the policy of the Southern Pacific system has been to favor transportation on its line by securing for itself, whenever practicable,

the carriage of freight which would normally move eastward or westward over the shorter line of the Central Pacific Railroad and its connection, for its own much longer and wholly owned southern route. This course was limited by an arbitrary rule during the time the Union Pacific dominated the Southern Pacific from the stock purchase in 1901 until the so-called 'unmerger' in 1913, as a result of the decision of this court in the Union Pacific case. The compelling motive of this course of conduct is obvious. The Southern Pacific owns and controls the southerly route, and receives 100% of the compensation for freight transported by its road and water lines. Over the Central Pacific route it receives but a fraction of the freight because the Union Pacific with its eastern connections take up the carrying from Ogden to the east. Self-interest dictates the solicitation and procurement of freight for the longer haul by the Southern Pacific lines. While many practices, formerly in vogue, are eliminated by the legislation of Congress regulating interstate commerce, and through rates and transportation may be had under public supervision, there are elements of competition in the granting of special facilities, the prompt carrying and delivery of freight, the ready and agreeable adjustment and settlement of claims, and other elements which that legislation does not control."

* * * * *

"It is conceded in the brief of counsel for the defendants that 'it is true of all such systems that, other things being equal, freight is preferentially solicited for the 100% haul.'"

* * * * *

"We reach the conclusion that the stock ownership in the Central Pacific acquired by the Southern Pacific is violative of the Sherman Act within the principles settled by this court, certainly since the decision in the Northern Securities case, in 1903."

Campaign Against Supreme Court's Decree

There is now being sent broadcast a large amount of propaganda by the Southern Pacific Company and by certain civic bodies, particularly the San Francisco Chamber of Commerce, in an endeavor to make it appear that the divorcement of the Central Pacific and the Southern Pacific would be a calamity to the State of California and to its industrial, commercial and agricultural development; that service to both shippers and passengers would be most seriously impaired; that the shops at Sacramento and Sparks will have to be largely reduced; that there will be much duplication of facilities, and that rates will probably be increased. All of this propa-

ganda, as I shall show, is utterly without foundation.

It must be conceded that competition is a good thing. It is not competition in rates of which I speak, but competition in service. Rebates have been done away with and everyone is glad of it. Rates are now regulated, but service, such as the sending out of agricultural experts to aid the farmer, industrial agents to induce the location of manufacturing plants along the lines of the railroad, the building of branch feeders to develop the resources of the country and produce new traffic, the quick handling of traffic, fast train service, the prompt supplying of empty cars for shipments, a courteous handling of and attitude toward the public, and the prompt and agreeable adjustment of claims for damaged goods—all these things are matters which are not regulated, but they are the things which constitute the class of service that builds up a community.

Benefits of Competition

Northern and Central California, because of lack of competition, have never had this kind of service during the control of the Central Pacific by the Southern Pacific. We might take a leaf from the book of the metropolis of the south, Los Angeles, which has three competing transcontinental railroads. That city today is engaged in a greater campaign of harbor development than any other city on the Pacific Coast. The harbor about the Bay of San Francisco, because of lack of railroad competition, has not developed as it should have. We are told, however, that if the Central Pacific and Southern Pacific lines are separated that, because of the fact that they are so inextricably woven together, it would tear the Southern Pacific system all to pieces and would seriously inconvenience travelers and shippers.

The Central Pacific has been maintained as a separate corporate entity and all of its accounts are separately kept. It is operated by the Southern Pacific under a lease and when, in 1913, the Southern Pacific offered to sell the Central Pacific to the Union Pacific, all of the operating difficulties, by the joint use of trackage and terminal facilities, were worked out. What has been done once can be done again. It is neither impossible nor difficult. In fact, the decree of the Supreme Court of

Decree Meets Alleged Difficulties

the United States specifically provides for the separation of these two roads, so as to avoid all the difficulties which it is said will come about. Here is what the Supreme Court says in that regard:

> "We direct that a decree be entered severing the control by the Southern Pacific of the Central Pacific by stock ownership or by lease. But, in accomplishing this purpose, so far as compatible therewith, the mortgage lien asserted in the brief filed for the Central Union Trust Company shall be protected.
>
> "In addition, the several terminal lines and cut-offs leading to San Francisco Bay which have been constructed or acquired during the unified control of the two systems for the purpose of affording direct or convenient access to the Bay and to the principal terminal facilities about the Bay should be dealt with, either by way of apportionment or by provisions for joint or common use, in such manner as will secure to both companies such full, convenient and ready access to the Bay *and to terminal facilities thereon* that each company will be able freely to compete with the other, to serve the public efficiently, *and to accomplish the purpose of the legislation under which it was constructed.* And a like course should be pursued in dealing with the lines extending from San Francisco Bay to Sacramento and to Portland, Oregon."

Arizona's Argument

At the recent conference of the Railroad Commissions of the Western States, held in San Francisco on June 20, 1922, Mr. Johnson, the Commissioner from Arizona, stated that Arizona was opposed to the separation of the Central Pacific and Southern Pacific for the reason that if that were done, then the traffic that now originates on the Central Pacific lines would not move through Arizona via the Sunset Route of the Southern Pacific, and hence would reduce the amount of traffic moving through the State, and therefore, reduce the number of men that it would be necessary to employ to take care of the traffic. That was a very fair statement. Indeed, that would be true. But while the separation would not build up the State of Arizona, it would build up the States of California, Nevada and Utah, through which the Central Pacific runs, because all of that traffic would then move over the short line to the Atlantic seaboard, instead of over the long line by way of New Orleans. Now if it is true, and the Supreme Court found it was, that the Southern Pacific was diverting the traffic originating on the Central Pacific lines to its Sunset Route, instead of letting it go over its normal, natural, short route via Sacramento, Nevada

and Utah, it must be manifest that if the shop force at any point, either at Sacramento or Sparks, is necessary to take care of the traffic that now moves over the Central Pacific, it will be necessary to increase the force at those shops when all of the traffic originating on the Central Pacific lines moves eastward in the manner that it naturally and normally should.

Joint Use of Terminals

We have heard much about the difficulties involved in a two-line or three-line haul. All that is meant by that is that the traffic may move over more than one railroad. That sort of thing happens every day in the year and on every railroad, but the freight is not shifted from one car to another, nor does a passenger have to change from one car to another. Anyone who has shipped freight from or to the East knows that it moves on several lines before it reaches its destination. Anyone who has traveled as a passenger to the East knows that he passes over several lines before he reaches his destination, but he does not change cars and seldom does he change trains. There are literally hundreds of cases of joint use of tracks and terminals. In California the Santa Fe has used for years, and is still using, jointly with the Southern Pacific the line from Mojave to Bakersfield over the Tehachapi mountains. The Los Angeles and Salt Lake Railroad uses the Santa Fe from Daggett to San Bernardino and Riverside and has a contract for the joint use of the Southern Pacific from San Bernardino to Riverside. The Rock Island uses the Union Pacific from Kansas City to Topeka, Kansas. The Union Pacific, Northern Pacific, Milwaukee and Great Northern use each other's lines indiscriminately between Portland and Seattle.

Real Competition

But the most important thing for the State of California is the fact that the operation of the Central Pacific in connection with some strong road will give real railroad competition in the great agricultural valleys of Northern and Central California, such as the valleys of Santa Clara, San Joaquin and Sacramento. It will give the producer a direct, short route to the East. It will give the city of San Jose a direct line to the Atlantic seaboard. It will give Fresno, Madera, Merced and Modesto in the San Joaquin valley a direct short line to the East. It will put the city of Stockton on a through, transcon-

tinental railroad. It will bring another competing, transcontinental railroad into the cities of Berkeley, Oakland and Alameda. It will enable San Francisco to maintain her commercial supremacy on the Pacific Coast.

But we are told that if the Central Pacific is taken away from the Southern Pacific it would so weaken the Southern Pacific that it might not be able to meet its great operating deficit on the Pacific Electric lines, that system of electric lines in Los Angeles County that honeycombs the entire community. The Pacific Electric for the five years from 1917 to 1921 lost $7,358,712.31. The argument is that the shippers and producers of Central and Northern California should make up this great loss at the cost of the development of their own territory by permitting the traffic to be diverted via the Southern Pacific long haul and thus give a greater earning power to the Southern Pacific at the expense of the Central Pacific.

This is certainly a very remarkable argument. The truth of the matter is that the Pacific Electric lines were built because of competition and they act as feeders for the Southern Pacific. As a separate corporate entity they do not in and of themselves show a profit. No feeder lines seldom are, in and of themselves, profitable. It is only as a feeder serves to increase the profit of the main line that it is valuable. A feeder, as much a part of transportation system as an engine or freight car, alone it is not profitable, but as a part of the entire transportation system it plays its part and makes the business of railroading pay.

A Change of View

Mr. William Sproule, President of the Southern Pacific Company, has been recognized for years as a traffic expert. He now disagrees with the United States Supreme Court in its application of the federal statutes. In other words, he now asserts that the principle of railroad competition does not apply when to comes to the separation of the Central Pacific and Southern Pacific. I confess my total inability to make this position square with this same gentleman's testimony before the Railroad Commission of California when the Southern Pacific was endeavoring to sell the Central Pacific to the Union Pacific and I quote here the testimony of Mr. Sproule given at the hearing before the California Railroad Commission:

"Railroad Commission Application No. 409.

"Testimony Beginning Page 144, Reporter's Transcript.

"COMMISSIONER ESHLEMAN: Now, the new arrangement on transcontinental business, in your view, will certainly not decrease rates. Will it improve service over what exists today?

"A. It necessarily increases the competition between the carriers themselves; the effect of the alliance with the Union Pacific is bound to increase, through a series of years, the activity of the Ogden Route, and the El Paso routes have been less active; the effect of the new agreement would be to force the Southern Pacific, in connection with its El Paso routes, into very active affiliations and strenuous competition, and where, in the case of business that they cannot get for the El Paso routes, it is forced to make delivery by the shipper at a short-haul junction, it will make that delivery to the Union Pacific, we will say, at Sacramento, or the Western Pacific at Sacramento or Stockton, or the Santa Fe at Mojave, the Southern Pacific's interest being, if it cannot get its long-haul, to get the longest haul it can.

"COMMISSIONER ESHLEMAN: I understand that. I am trying concretely, gentlemen, to get at this question: First, as to transcontinental business, will the sale of the Central Pacific or the change of ownership in the Central Pacific from the Southern Pacific to the Union Pacific, first, lower the rate to the shipper, second, improve the service to the shipper; will it do either; and then, after we have finished that, I want to take up the local conditions which will be brought about by this dissolution. Now, will the passage of the control of the Central Pacific, with all of its tributaries, from the Southern Pacific to the Union Pacific, in your opinion, first, reduce any transcontinental rates?

"A. The agreement of itself does not affect the question of rates one way or the other.

"COMMISSIONER ESHLEMAN: Well, it is your belief, just as Judge Lovett suggested, that it will not reduce the rates?

"A. Except to the extent that competition has a tendency to reduce rates, but there is nothing inherent in that agreement.

"COMMISSIONER ESHLEMAN: I am not trying to urge that I think rate wars or cutting of rates is a good thing, but I want to analyze the situation.

"A. There is nothing in that agreement, Mr. Chairman, that compels rate reduction or contemplates rate reduction.

"Testimony Beginning Page 151, Reporter's Transcript.

"COMMISSIONER ESHLEMAN: I think we understand your idea as to the effect of this arrangement on transcontinental rates. Now, how about transcontinental service? — Is it your opinion it will improve, first, the service of the Union Pacific and Central Pacific, and second, the service of the Southern Pacific?

"A. Competition always improves service,

and the competition will be chiefly in the service.

"COMMISSIONER ESHLEMAN: That is, in time of running?

"A. In running time and in the care given the business and the soliciting of it and the care of it after obtaining it; in other words, service and attention."

Principles Unalterable

It is most strongly argued, however, that conditions have changed since 1914, when the suit was filed by the Government to compel the Southern Pacific to relinquish its control of the Central Pacific and that the Supreme Court was under a legal necessity to decide the case as the law stood in 1914, at which time the Transportation Act of 1920 was not on the statute books.

Laws may be changed from time to time by Congress and legislatures, but economic principles are more stable and the economic principle of competition has been true since the days of earliest reported history, and it is true today. The principle has been crystallized into the commercial axiom, "Competition is the life of trade."

Court Knew What It Was Doing

But let us reason about the decision of the United States Supreme Court. Does it seem at all reasonable that the Supreme Court would take the trouble to spend all the time it did spend in arriving at a decision in the Central Pacific case if it knew that its decision might be set at naught by the Interstate Commerce Commission under authority granted to that Commission under the Transportation Act of 1920? The court takes judicial notice of the Federal statutes. When the Central Pacific case was decided the Supreme Court knew that the Transportation Act of 1920 was on the statute books, and it might well have said: "Why should we decide this case? It is within the power of the Interstate Commerce Commission to consolidate these various lines into systems and it may be that the Interstate Commerce Commission will want to consolidate the Central Pacific with the Southern Pacific. Therefore, we will simply dismiss this case with the direction that it be taken up with the Interstate Commerce Commission, because whatever we may decide regarding the divorcement of the Central Pacific from the Southern Pacific, it will still remain in the hands of the Interstate Commerce

Commission to make such disposition of the Central Pacific as it chooses."

But this is not what the Supreme Court did. It decided that the Central Pacific should be divorced from the Southern Pacific and did it knowing that the Transportation Act of 1920 was in effect, and it is very clear why it did it. It did it first, because the control of the Central Pacific by the Southern Pacific was in violation of the Sherman Act, and second, because it was violative of the very acts under which the Central Pacific was constructed,—the acts of 1862 and 1864. It did it further because of the fact that it recognized the limitation placed upon the Interstate Commerce Commission in the matter of consolidating railroads into various systems.

Transportation Act

In that connection a quotation from Paragraph 4 of Section 5 of the Act empowering the Interstate Commerce Commission to consolidate the railway properties of Continental United States into a limited number of systems, is illuminative. It reads as follows:

> "The Commission shall, as soon as practicable, prepare and adopt a plan for the consolidation of the railway properties of the Continental United States into a limited number of systems. In the division of such railways into such systems, under such plan, competition shall be preserved as fully as possible and wherever practicable the existing competition and channels of trade and commerce shall be maintained."

A Traffic Manager Testifies

In 1913, when the proposal to sell the Central Pacific to the Union Pacific was under consideration, the then traffic manager of the San Francisco Chamber of Commerce, Mr. Wm. R. Wheeler, under examination by Mr. Seth Mann, present attorney for the traffic department of the San Francisco Chamber of Commerce, testified and introduced in evidence a telegram to Mr. Garrit Fort under date of February 7, 1913, reading as follows:

> "Yours sixth while I heartily approve of separation of Central Pacific from Southern Pacific and the establishment of Central's managerial operating headquarters in San Francisco you will appreciate that I will not be in a position to lend intelligent assistance until after I am advised of the details connecting certain trackage and running rights in this State."

Again in 1913, Mr. Wheeler testified as follows:

"There is one thing I want to say before I leave the stand and that is the advantages of additional roads with regard to competition. It is a popular fallacy, I think, that because there is not a rate war, because there is not a cutting of rates, general demoralization of rates, following the advent of a new road into a territory, that, therefore, there is no competition. There is competition in the service and that is what we desire. There is also competition in this respect, that, if we have two roads who have a voice in the rate question, you stand 100 per cent, or double, the chance of gaining tariff concessions that you do if there is only one road to deal with; if there are three roads, you stand three times the chance of getting your concessions; or, if four, four times, and so on; in other words, you do not find—are not as apt to find three men of one mind as you are two men of one mind, and so on as the number grows. We have already had an example of that here in San Francisco: There was a proposition something more than a year ago to advance rates between San Francisco and Stockton, make a very material advance, on the part of the railroads, and the fact that it required the assent of three roads instead of two was the only thing that prevented that advance going into effect at that time; we were successful in convincing one of the roads that it was unfair to us to raise those rates and they declined to join in the advance. That is all I have to say."

San Francisco Chamber of Commerce

These statements were made by men who are recognized as traffic men. That is what they said under oath in 1913. The principles there enunciated are just as true today as they were then. They then took the position that competition was a valuable thing in the matter of building up a community. The executive committee of the San Francisco Chamber of Commerce was apparently of the same opinion, for on February 18, 1913, it adopted a resolution, which resolution was introduced in evidence. It read as follows:

"*Resolved*, That so far as we are at present advised, we approve of the terms of the proposed agreement dated February 8, 1913, between the Union Pacific Railroad Company and the Southern Pacific Company, et al., relating to leases, sales, trackage rights, and joint use of terminals, which terms are to be submitted to the California Railroad Commission for consent and approval, and are referred to in subdivision 2 of section 8 on page 32 of said proposed agreement, with the exception of the clause found on page 13 of Exhibit B, which reads:

'No additional companies shall be admitted to use the property except by the written consent of both the Pacific Company and the Central Company'

and

"*Resolved*, That the Manager and Attorney of

the Traffic Bureau are hereby authorized to express the attitude of the Chamber in this regard before the California Railroad Commission, at the hearing to be held February 19, 1913, or any adjournments thereof.

"*And be it further resolved*, That a copy of this Resolution be immediately transmitted to the Chairman of the Executive Committee of the Union Pacific Railroad Company."

That was the resolution passed by the executive committee of the San Francisco Chamber of Commerce approving the sale of the Central Pacific to the Union Pacific in 1913. How can that position be reconciled with the position that is today being taken by that same Chamber of Commerce?

Finally, we are told that if the Union Pacific would perchance acquire the Central Pacific, the Union Pacific would dominate the Pacific Coast because it has a line into Los Angeles and a line into Portland, Oregon.

A Competitive New Transcontinental Line

All traffic moved over the Union Pacific out of Los Angeles moves over the Salt Lake line and connects with the Union Pacific at Ogden. All traffic moved over the Union Pacific controlled lines at Portland, moves to connect with the Union Pacific at Granger and Ogden, each territory getting a short direct haul. Traffic is not moved from Los Angeles to Portland or from Portland to Los Angeles and thence East. There are not two lines to the East, but only one. The Southern Pacific has one line, the Central Pacific which runs part of the way East and a line that runs all the way East via New Orleans. The line that 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 line via New Orleans. Should the Union Pacific acquire control of the Central Pacific the traffic would move by the shortest and most direct route to the 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.

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.