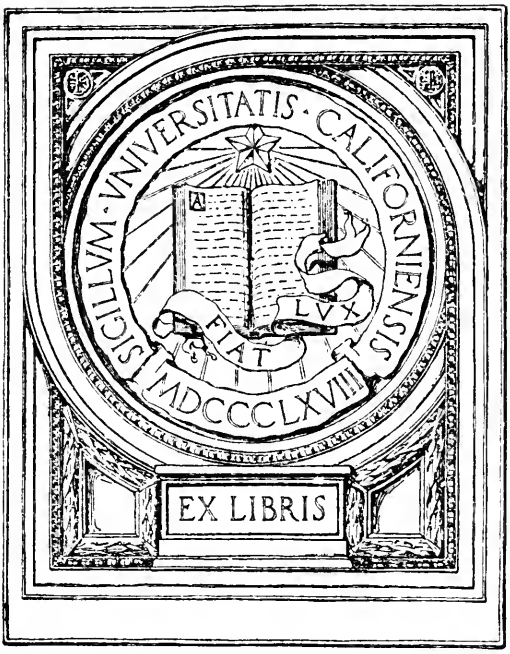


Threatened Disruption of Southern Pacific Lines

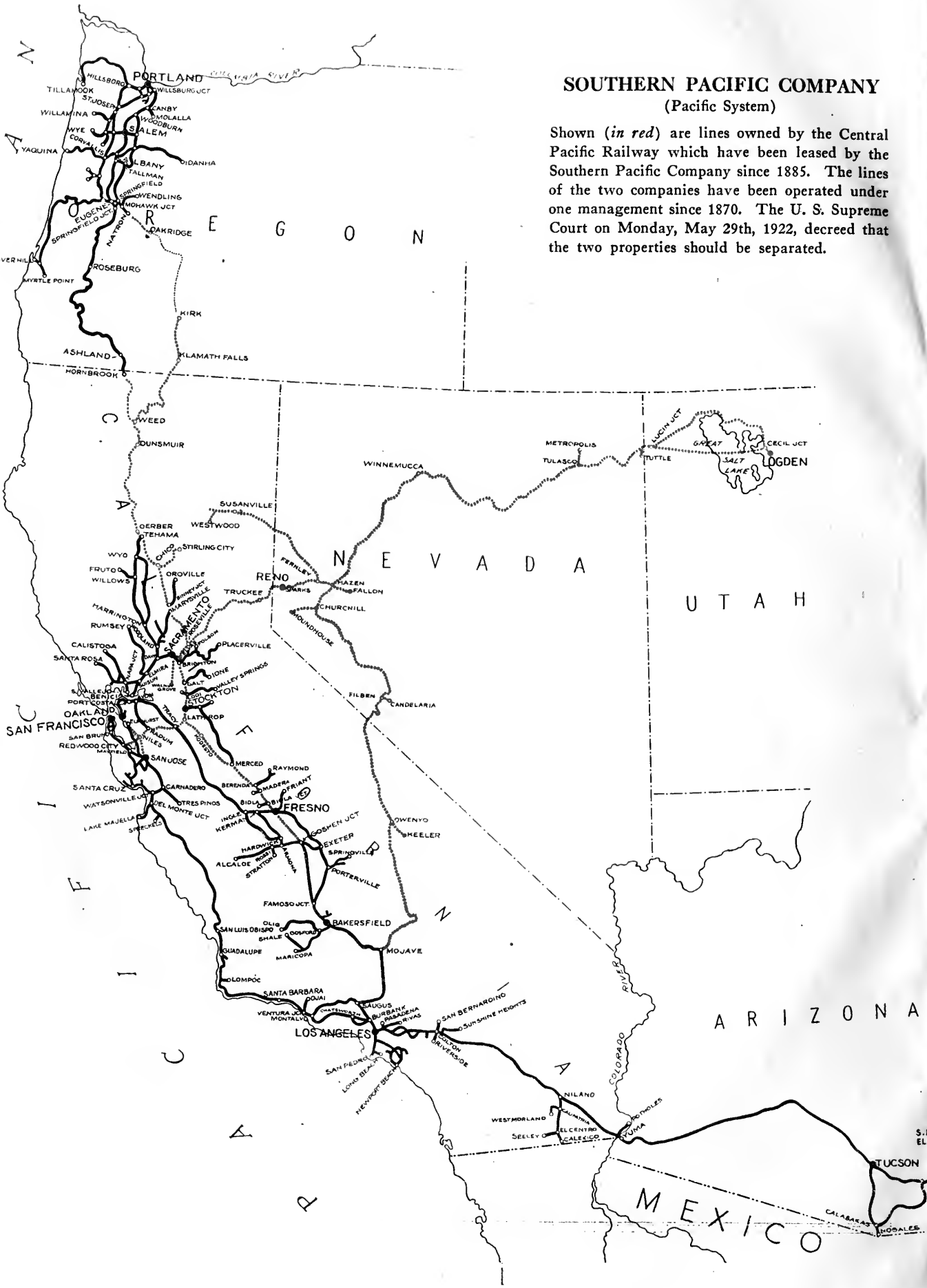
Statement by

Wm. Sproule,

President, Southern Pacific Co.

SAN FRANCISCO

JUNE 12, 1922



SOUTHERN PACIFIC COMPANY

(Pacific System)

Shown (*in red*) are lines owned by the Central Pacific Railway which have been leased by the Southern Pacific Company since 1885. The lines of the two companies have been operated under one management since 1870. The U. S. Supreme Court on Monday, May 29th, 1922, decreed that the two properties should be separated.

Threatened Disruption of Southern Pacific Lines

THE public are so widely interested in the present discussions of the Southern Pacific System as it now exists, in contrast with what may happen to it under the recent decision of the Supreme Court of the United States, that it seems proper for me to submit to our customers, who are the shipping and traveling public, some leading facts in the situation with which they are confronted as well as this Company.

The Supreme Court decision of May 29, 1922 requires Southern Pacific to cancel its lease of the Central Pacific, to sell its Central Pacific stock, and to bring about separation of the two Companies so that control of their operations will be separate and independent of each other.

The Central Pacific has been leased to the Southern Pacific for thirty-seven years, or since February 1885, by unanimous vote of all the stockholders present or represented, who constituted more than five-sixths of the entire capital stock. The Southern Pacific has been the actual owner of the entire capital stock of the reorganized Central Pacific for twenty-two years, or since 1899.

The decision of the Supreme Court is that both these transactions are in violation of the Sherman Act, although the Sherman Act was not passed until 1890, which was five years after the Central Pacific was leased to the Southern Pacific.

Besides all this, there is sufficient evidence that the Central Pacific and Southern Pacific were held in common ownership as early as October 1870. The official records prove that the two have been under common control and management for fifty years, or since July 1872.

The growth has been of one system and not two; it has been responsive to the needs of Coast communities and producers. Whichever company could get the money most readily was the company in whose name the railroad lines were extended. It is well known that the Central Pacific carried a heavy burden of debt to the Government and the Southern Pacific had to come to its aid not only in helping the Central Pacific to pay that debt, but also in following up railroad construction wherever desirable from time to time.

Thus the two companies did what one company could not do under the circumstances of the time. The result has been the growth of a single railroad system under two corporate names, each of them necessary to the other for effective service to the public for whose service the system was created.

The Supreme Court now decides in effect that the lease became void when the Sherman Act passed, because of the Sunset Route through Texas on the south competing with the line through Ogden on the north. The business fact is that the line down the

San Joaquin Valley and over the Tehachapi Mountains to Los Angeles was built to meet the public demand for a railroad through the San Joaquin Valley and on to Southern California, and the same public demand was behind the further extension of the line from Los Angeles eastward through El Paso to Sierra Blanca, Texas. The Central Pacific carried the extension into the San Joaquin Valley as far as Goshen, the Southern Pacific taking it up there and carrying it on southward and eastward. Everything that was done had behind it the backing of public desire with the approval of Congress, for the development of the resources of California, Oregon and the other Pacific Coast States,—resources then dormant but their possibilities evident.

If the same urgent work had to be done again and under the same public aspects, the same set of railroads would again be brought into existence, and if done under a single corporate name as well as single operating control there would now be no debate. So I conceive that the only question of present interest to the public is whether or not the public is hurt by having this development done by a single control under two corporate names, instead of having it done by single control with a single corporate name.

If the work had been done by either the Southern Pacific or the Central Pacific there would have been no suit under the Sherman Act. Hence the essence of the matter is that this vast work, after having public approval, violates the Sherman Act in having been done by two companies instead of one under single control.

The decision of the Supreme Court turns upon the Sherman Act because the suit was brought by the Government in 1914 under that Act. In 1917 the United States District Court decided the suit in favor of the Company. The Government then appealed from this decision to the Supreme Court. Thus this suit brought eight years ago charging us with violation of the Sherman Act is decided against us under that Act.

But in this eight years' interval a world war has been fought, because of which every business is operating under new conditions, and the Transportation Act of 1920 passed by Congress and approved by the President February 28, 1920 is now the governing federal law for the railroads of the United States to meet the new conditions. That law instructs the Interstate Commerce Commission to prepare and adopt a plan for the consolidation of the railway properties of the United States into a limited number of systems. That law expressly provides that with consent of the Commission it shall be lawful for two or more carriers by railroad to consolidate their properties or any part thereof, into one corporation for the ownership, management and operation of the properties theretofore in separate ownership, management and operation, under conditions in harmony with and furtherance of the general plan of consolidation of the railroads into groups.

So since February 28, 1920, the Interstate Commerce Commission is empowered to authorize in appropriate cases that which the Sherman Act, standing alone, might otherwise forbid. The Interstate Commerce Commission can thus take up the chain of events. The fact is that Government control of the railroads has so increased and the

policies of the Government so changed, since the suit in question was begun in 1914, that the situation needs to be dealt with in the light of present conditions, and not the conditions that prevailed from 1885 to 1899. The public commissions now have power over rates, service, extensions and issue of securities by the railroads. Every essential factor in the railroad business is supervised by the commissions created to protect the general public interest. The Transportation Act of 1920 is designed to meet present conditions.

The Interstate Commerce Commission, following the mandate in the Transportation Act of 1920, has already prepared a plan for consolidating the railroads into a limited number of systems. This plan was tentatively presented by the Commission on August 3, 1921, serving notice on all railroads to prepare for hearings. In this tentative plan the Central Pacific and Southern Pacific remain together. It is generally conceded that the Interstate Commerce Commission, by reason of its position, has at its command a greater knowledge of the railway traffic of the United States and its competitive and other features than any other organization in our Nation. As a business question the Commission evidently saw the wisdom of not disturbing the present control, and found no reason to believe that there was any undue restriction of competition in the situation now existing; or if there were any titular restriction it was more than balanced by the other conveniences it afforded to the public.

The tentative grouping by the Interstate Commerce Commission thus tends to remedy the unfortunate legal situation presented by the Sherman Act standing alone. The grouping indicated by the Commission provides the remedy by which one of the principal transportation systems of the Nation need not be torn asunder, after having been built as one structure during a period covering several decades and making for the people a convenient unit of service covering almost the entire length of the Pacific Coast.

It is needless to say that the decision of the Supreme Court of the United States carries the full weight of judicial authority on the issue before the court. Following upon it, however, new constructive aspects of the subject have to be considered as practical questions for the users of these railroads, as well as their owners, in order to determine what is best in the public interest.

I take it that the Supreme Court, in passing upon the legal question involved, has not concerned itself with the possible consequences to follow from that decision under a law which the Transportation Act of 1920 supersedes as to the railroads, whenever the Interstate Commerce Commission takes jurisdiction under the terms of the latter act.

There can be no doubt that all the public tribunals and responsible officers of Government concerned have a common desire to do that which will be practical and wise and with least disturbance to all the parties concerned. But the positive support

of public opinion is needful in working out the problem to such a constructive conclusion as will allow this railroad system to remain at the service of the public for whom it was designed as built. The public have nothing to gain by breaking up these properties; they stand only to lose by the complications that would follow.

It is not a question of unmerging two roads separately built and developed, but afterwards put together under a merger plan of finance and control. The present instance is one in which there has been no merger, but on the contrary the roads have grown and developed, like a healthy tree, from a common root into a single unit of growth and service throughout half a century. This single unit can now be separated into two units only by a process of disintegration and tearing into confused remnants of railroad, neither of which can function of itself. Therein would lie a new and real restraint of trade. By the very nature and circumstance of their construction beginning with pioneer days neither the Southern Pacific nor Central Pacific can serve the public adequately and well when one is separated from the other.

We recognize that the interest of the Southern Pacific, or indeed of the Central Pacific, or both of them as corporate entities, is a lesser factor in this instance. We recognize that whatever is to the public interest in the light of experience up to the present time is likely to prevail, as affecting the people served by and using this railroad system.

Based upon an extended experience which began with these properties in 1882, I am persuaded that, regardless of any personal or official interest of my own, the great public interest is best served by recognizing that even a technical violation of the Sherman Act is of small detriment to the public, when compared with the large and extended and convenient service given to that public by the present railroad system of the Southern Pacific Company under existing regulative control. The Commissions, State and Federal, are endowed with all the powers necessary to make that control potent and complete; while in their discretion elastic enough not only to promote private investment for upbuilding the railroad service to the people, but also to promote private initiative that sound and progressive management may be encouraged in the general interest of all.

There seems, therefore, to be proper motive for direct appeal to these Commissions to the end that the power lodged in the Interstate Commerce Commission under present law (which is the Transportation Act of 1920) be exercised to maintain the operations of this transportation system as a unit justified by the general experience of the people served; and if necessary for this purpose a new power might well be created by appropriate legislation.

WM. SPROULE,
President, Southern Pacific Company.

San Francisco, June 12, 1922.