
PACIFIC RAILWAY SYSTEM.

APRIL 1, 1880.—Recommitted to the Committee on the Pacific Railroad and ordered to be printed.

Mr. CHALMERS, from the Committee on the Pacific Railroad, submitted the following

REPORT:

[To accompany bill H. R. 5543.]

Your committee having had under consideration the bill (H. R. 468) to complete the system of Pacific Railways, beg leave to report back a substitute therefor, which is herewith presented.

House bill 468, which was referred to us, contemplated the completion of the Texas and Pacific Railway, the Southern Pacific Railway, and the Northern Pacific Railway, to which grants of land were heretofore made, and also the construction of several other railroads named in said bill to which no government aid of any kind has been heretofore given. The aid asked in said bill for the completion and construction of the roads therein named was of two kinds. One the absolute grant of alternate sections of the public lands lying on both sides of the railroads to be constructed; the other, the loan of United States credit in the indorsement by the government of the payment of the interest on the bonds to be issued by the railroad corporations. The latter aid being asked where the roads to be constructed did not run through public lands belonging to the United States, or where the lands granted were not of sufficient value to insure the necessary aid required for the construction of the road.

Your committee sympathize with the general object of the bill, and concur in the belief that it is the duty of the government to aid in the completion of the Pacific Railway system so far as the same can be legally accomplished, but do not concur in the details of said bill.

The policy of granting government aid to construct railroads through the public lands by giving a certain number of alternate sections on each side of the roads has been fully justified by the great benefits we have received from the rapid growth and extraordinary development of our country through the instrumentality of railroads. But experience has demonstrated that far more aid has been given in many cases than was necessary, and that in some instances a generous, liberal, and confiding government has been overreached and defrauded by the machinations of unscrupulous men.

Your committee find that about 187,000,000 acres of public lands have been granted to railroad companies, of which they have obtained title by construction of their roads to about 80,000,000 acres.

The probable cash value of these lands to the railroads, as near as we can estimate it, is about \$200,000,000, of which the roads have already realized by sales of their lands about \$60,000,000. If the policy we now

recommend of making loans instead of donations to these roads had been pursued in the beginning, we would now have accumulated a princely sum for public improvements, while the railroads that have been built would just as easily have been secured for the improvement of the country. Your committee believe that the sentiments of our people still favor the policy of giving such reasonable government aid as may be necessary for the construction of as many lines of railway through the public lands, which private capital is unable or unwilling to construct, as the wants of commerce and the interest of the government may demand. They believe further that the most equitable as well as the most unquestioned legal mode of giving such aid is by disposing of the alternate sections of public lands through which these roads may run.

But public opinion has been outraged by enormous and unnecessary grants of public lands equal to principalities and empires of the old world, and your committee think it is time that the policy of the government should be changed upon this subject, and, therefore, they have reported a substitute for H. R. 468 which will give reasonable aid to complete the Pacific railway system and at the same time preserve the avails of the public lands for public use.

Your committee find four great transcontinental lines now in process of construction: The Northern Pacific, the Atlantic and Pacific, the Southern Pacific, Texas and Pacific, and that large grants of land have been made to these railroads as follows:

	Acres:
Northern Pacific	43,000,000
Atlantic and Pacific	42,000,000
Southern Pacific	10,500,000
Texas and Pacific	18,000,000
Total	113,500,000

The right of said companies to acquire title to these lands was made dependent upon the performance, by them, of the conditions named in their respective charters, one of the most vital of which conditions was that the roads should be commenced on a day named in the respective charters, and that fifty miles per year after the second year should be completed of said roads.

About 10,500,000 acres—as estimated by the company—were granted to the Southern Pacific Railroad Company, of California; the estimate of the General Land Office is 9,500,000 acres. Earned, by building of road for 581 miles, were 7,436,800 acres, leaving about 3,000,000 acres liable to forfeiture.

About 42,000,000 acres were granted to the Atlantic and Pacific Railroad Company, of which the road has earned about 1,164,800 acres, by construction of 91 miles of road, leaving liable to forfeiture about 40,835,200 acres.

About 43,000,000 acres were granted to the Northern Pacific, of which the road has earned about 10,579,200 acres, leaving liable to forfeiture about 32,420,800 acres.

That the grants to the three first-named railroad companies have lapsed there can be no question; whether they are now subject to forfeiture has been questioned. Upon this subject a report to the Secretary of the Interior (see Senate Ex. Doc., No. 88, second session, Fort-sixth Congress, dated February 11, 1880, from the acting Commissioner of the General Land Office, page 4), says:

The only remaining grants to be considered are those to the Northern Pacific, Atlantic and Pacific, and Southern Pacific (main line) Railroads. These grants are anomalous.

ious in character, and though lapsed, so far as the failure of the companies to perform the acts required and imposed by the respective charters is concerned, are not considered as subject to forfeiture.

In other grants provision was made that in case the roads were not completed within certain specified times the lands unsold or unpatented should revert to the United States, and the effect of such a reservation was considered and elaborately discussed by the Supreme Court in *Schulenberg vs. Harriman* (21 Wallace, p. 44), where it was held that the provision was no more than a provision that the grant should be void if the condition subsequent be not performed. But no such provision is incorporated in the acts granting lands to the Northern Pacific, Atlantic and Pacific, and Southern Pacific (main line) Railroads. In those grants the only power or right reserved to the government will be found in the eighth and ninth sections thereof. The first of those sections imposes certain conditions required to be performed, and the second declares that in case the companies make any breach thereof, and allow the same to continue for upward of one year, then, in such case, at any time thereafter, "the United States may do any and all acts and things which may be needful and necessary to insure a speedy completion" of the roads. The time for the completion of the Atlantic and Pacific road expired under its charter July 4, 1878. It had then completed 125 miles, 33 of which are situated within the Indian Territory. Nothing further, so far as this office is advised, has been done toward completing the road. The time for the completion of the Southern Pacific Railroad expired also on said 4th July, 1878. It had then constructed 231.92 miles lying between San José and Tres Pinos, in San Benito County, and between Huron, in Tulare County, and Mojave, in Kern County, leaving an intervening section of about 90 miles to be constructed in order to make a continuous line from San José to Mojave. It has also failed to construct its road from this last-named point to the eastern boundary of the State, an estimated distance of about 200 miles.

The question as to when the time for the completion of the Northern Pacific Railroad expired was fully considered and passed upon by the department in the decision of June 11, 1879. It was held that under section 8 of the act of July 2, 1864, as modified and amended by joint resolution of May 7, 1866 (14 Stats., 355), and joint resolution of July 1, 1868 (15 Stats., 555), the time for the completion of the road did not expire until July 4, 1879, and that, under section 9 of the original act, no proceedings can be taken until one year thereafter, viz, July 4, 1880. This appears to be the only proper construction to be placed upon the grant, and if that be so, then the time when Congress can take action has not arrived; but, as stated above, the grant comes clearly within the purview of the first inquiry of the resolution, for the time within which the road was required to have been completed has already passed.

Your committee concur in so much of this decision as declares that these land grants have lapsed, but do not concur in the implied conclusion that the lands could not revert to the government without a special reservation therefor in the charter, and do not concur in the opinion that the time for the government to assert its rights against the Northern Pacific has not yet arrived. Section 8 of the charter imposed conditions on the company and fixed the time for commencement and completion of the road. The joint resolutions passed in 1866 and 1868 were amendments to section 8 alone; they had no reference to any other section. They extended the time for the completion of the road to July 4, 1879, but the road was not then completed, and hence the land grants lapsed, as very properly decided by the Secretary of the Interior, as to all lands not then earned by construction. The grant was made on conditions; the conditions were broken, and the rights of the government revived as the rights of any other grantor of lands upon condition revive after condition broken. This is clearly stated by the Supreme Court in the case of *Schulenberg v. Harriman* (21 Wallace, 44). But it is contended that, although the rights of the company to these lands have lapsed, the government must wait twelve months before it can take any steps to assert its own rights. This seems to involve a palpable absurdity. If the government must wait, it is because the company has some rights which it may perfect during the twelve months; but it is difficult to understand how such a right can be consistent with the decision of the Secretary that the rights of the company have lapsed. It is contended that section 9 of the charter compels the government to wait one

year after the lapse of the grant before it can proceed. We think this a total misconception of the law. The language of section 9 is as follows:

SEC. 9. *And be it further enacted*, That the United States make the several conditioned grants herein, and that the said Northern Pacific Railroad Company accept the same, upon the further condition that if the said company make any breach of conditions hereof, and allow the same to continue for upwards of one year, then, in such case, at any time hereafter, the United States, by its Congress, may do any and all acts and things which may be needful and necessary to insure a speedy completion of the said road.

The language of this act shows that it was an enabling and not a restraining statute as to the powers of the United States, and in truth section 9 had no reference whatever to what should be done in case the land grant should lapse, as it has done. Section 9 was intended to apply to breaches of condition that might occur before the grant should finally lapse, and to give the United States the right to step in and build the road, if it saw fit, after any failure for twelve months to comply with any of the conditions of the charter. And your committee are utterly unable to comprehend how a statute authorizing the government to take charge of and build a road for breach of condition before ultimate failure of the charter or grant, can be construed into a restraining statute to prohibit the government from exercising its legal right to declare a forfeiture when all the rights of the company have expired by limitation.

While the time for the completion of the road was unexpired the government had no right to do anything but take measures to insure the completion of the road, and it could not do this until the company had failed for more than twelve months to discharge its own duty. But when the time for completion had expired, the land grant lapsed, and thereby the land reverted to the grantor, to be retaken whenever the United States saw fit by proper proceedings to do so. But if the government's right to proceed to a forfeiture is restrained by section 9 until twelve months after a breach of condition, the language of the section shows that the breach of any condition gives the right to proceed. It was not necessary, therefore, to wait for a final lapse of the grant. One essential condition was that fifty miles of the road should be completed every year after the second year.

This condition has been long since broken, and yet by the decision of the Commissioner we have the government placed in this singular attitude.

The company has been guilty of breaches of the conditions of its charter, and these have continued for more than twelve months, and the government has therefore the right to take possession of and complete the road now. But the breaches of condition have continued many years, until the rights of the company have all lapsed, yet the government must wait twelve months after the lapse before it can assert its rights as owner of the lapsed lands. In this view of the case we are not astonished that the land Commissioner should have said "these grants are anomalous in character." There is no rule of law better settled than that statutes of limitation are never cumulative, and your committee think these land grants have lapsed, that the right of the government thereto has revived, and that there is no legal reason why an act of forfeiture may not be at once enacted.

But an appeal has been made to the generosity of Congress to extend this land grant to the North Pacific. If, as admitted by the Commissioner, the grant has lapsed, there can be no extension of it, and the only question now is, shall we make a new and original grant of these

lands to the North Pacific? If we are to look to the annual report of the president of this road made to the stockholders in New York, September 24, 1879, it not only does not need this immense land grant of about 33,000,000 acres of land, worth double as much as the estimated cost of the road to be completed, but scarcely needs the assistance of the loan tendered to it by the substitute which we report.

The report of the president shows the company to be in a most flourishing condition. By the reorganization all the debts of the old company were wiped out, and the new company, who were first-mortgage bondholders, are now the owners of 560 miles of a road well built and equipped, running through a growing and prosperous country.

The gross earnings of the road for the ten months ending June 30, 1879, were \$1,167,261.82, showing an increase of \$220,023.53 over the earnings of the same time for the year previous, and the net profits of the year are stated to be \$516,869.38. The debt is stated to be \$385,302.46, and after enumerating the facilities for payment the report says "This net floating debt is therefore easily extinguished."

The original grant of land was 43,000,000 acres, and of these 10,579,200 acres have been earned by construction, and of these 2,312,119 acres have been sold at an average price of \$3.75 per acre, making about \$8,470,415 bonus received from the government.

The president's report further shows that contracts have been made for the construction of this road averaging about \$12,000 per mile. The land grant asked for is twenty sections, or 12,800 acres per mile, and this at \$2.50 per acre would give \$32,000 per mile—more than double the contract cost of the road. The estimated cost of the road is about \$40,000,000; the land grant asked for is about 32,000,000 acres, the estimated value of which is about \$95,000,000. This proposition therefore for a renewal under the guise of an extension of this land grant simply amounts to a building of the road by the government, presenting it to the company when completed, and giving them a bonus of about \$45,000,000 for accepting the present.

Your committee are not prepared to recommend such a proposition to swell the coffers of an already opulent corporation.

The argument made that when any grant of land is made upon condition, the land reverts to the grantor, without any special stipulation therefor, upon breach of the condition, applies equally to the Southern Pacific and the Atlantic and Pacific, without any embarrassment as to the time when proceedings of forfeiture may be commenced by the United States.

The grant to the Texas and Pacific Railroad was also made upon condition that it would commence its road at San Diego, in California, within two years after the approval of its charter, and complete fifty miles of its road within that time, and so much each year thereafter as to insure the completion of its road in ten years.

Your committee find that said Texas and Pacific have not complied with the conditions, and have not built any of its road through the public lands, and have therefore earned no portion of its grant, but the grant to this road does not expire until the 3d of March, 1882, and a clause is inserted in the substitute that the forfeiture of this grant shall not be effective until after the 3d of March, 1882, without the consent of this company. But your committee have reason to believe the Texas and Pacific Company will find it to its interest to consent thereto and accept the provisions of this act.

A synopsis of the substitute :

Section 1 of the substitute declares all grants forfeited that were made

to the Northern Pacific, Southern Pacific, Atlantic and Pacific, and Texas Pacific, except where the lands have been earned by construction.

Section 2 sets apart all the lands heretofore granted to these roads, and the alternate sections contiguous thereto, as public improvement lands, to be sold at \$2.50 per acre, one-half the proceeds of which shall be covered into the Treasury as a public improvement fund. A proviso protects the rights of homestead entries.

Section 3 provides for loans from this fund to the above-named roads upon the completion of sections of ten miles, but limits the loan to four-fifths of the actual cash cost of the road. The loans to be secured by first-mortgage bonds, due in ten, twenty, and thirty years, and bearing $3\frac{1}{2}$ per cent. interest. A proviso gives preference of loan to the road running through the lands sold.

Section 4 provides for the building of future roads through public lands in the same manner.

Section 5 makes the money arising from the sale of these lands and the interest thereon a perpetual improvement fund.

Section 6 prescribes the method of making loans.

Section 7 limits future loans to two-thirds of cash value of road.

Section 8 gives priority of loan to the roads from which the land grants are taken away.

Section 9 provides for a future change of this law.

Section 10 gives the option to the Texas Pacific to accept the benefits of the act.

Section 11 repeals all inconsistent acts.

It will be observed that the bill reported by your committee contemplates not only the completion of the four transcontinental roads named therein, but seeks to establish a general system for giving aid to all roads hereafter constructed through the lands of the United States, and provides a fund to enable the government to accomplish this purpose without taxation and without incurring any risk by the indorsement of railroad bonds.

By this bill about 106,500,000 acres of public lands are rescued from corporations and restored to public use, and if they can be sold at an average of \$2 per acre will give us \$213,000,000 for purposes of public improvement, and other sums will hereafter be added as other roads are hereafter constructed through the public lands. Your committee were careful not to interfere with the right of homestead entries, and while they have been actuated by an earnest desire to rescue the public domain from the extravagant, if not reckless, legislation of the past, they trust they have not been unmindful of equity and justice toward the corporations which have forfeited their legal claims during a great financial crisis. They believe they are sustained in the course they recommend by the general principles of law herein stated, but, if mistaken in this, they feel assured that Congress has power to alter, amend, or repeal the charters heretofore given, and that the change of policy herein recommended is in accord with the interest of the government and the demands of public opinion.