

KANSAS CITY, FORT SCOTT AND GULF RAILROAD COMPANY.

MAY 31, 1884.—Referred to the House Calendar and ordered to be printed.

Mr. PERKINS, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 5700.]

The Committee on Indian Affairs, to whom was referred the bill H. R. 5700, respectfully submit the following report:

This bill grants the right of way through the Indian Territory, from Baxter Springs, in the southeastern part of the State of Kansas, to Fort Smith, in Western Arkansas, to the Kansas City, Fort Scott and Gulf Railroad Company, a corporation created by and existing under the laws of the State of Kansas. In a recent report submitted from this committee, recommending the passage of a similar bill granting right of way through said Territory to the Gulf, Colorado and Santa Fé Railway Company, this committee said:

The right of eminent domain in the Federal Government over the Indian Territory is the principle on which the bill has been constructed. Its precedent is found in a law enacted by the Forty-seventh Congress, granting a similar right of way to the Saint Louis and San Francisco Railway Company.

The limitations, which the bill now reported throws around the exercise of the right of eminent domain, have been conformed as far as circumstances would allow to those provided by the laws of all the States where the same right is exercised by State authority within State limits. The rights of the Indians are fully protected, both in tribal and individual relations.

Suitable provisions are made for the ascertainment and payment to the Indians of just and fair compensation for property taken from and damages done to them.

Where the company and the respective tribes, or the company and individual occupants of the land fail to agree, a board of appraisers is constituted to determine the amounts of compensation, and if a tribe or individual occupant should be dissatisfied with the award of the appraisers, such tribe or occupant has substantially the same resort to the courts of the country that is allowed to the citizens of a State whose property, under like circumstances, is appropriated for public use. The details of the bill in this particular are believed by the committee to be appropriate and fully adequate to the purposes they contemplate. They protect fully and amply all the rights of the Indians.

The main questions presented by the bill are two:

First. Has Congress the power to grant the proposed right of way?

Second. Is there any necessity for the exercise of this power?

To both of these questions the committee make affirmative answers.

The power of Congress, as already stated, rests upon the right of eminent domain. That the Federal Government possesses this right over the Indian Territory it seems to the committee cannot be seriously questioned. The Indian Territory is a part of the United States, and subject to its jurisdiction. This jurisdiction is now, and has been for a long number of years, exercised in a variety of ways.

The executive branch of the Government has its civil officers and agents located throughout the Territory. Postal routes permeate it as they do the States and other Territories. The Army occupies it. The judicial power of the Government is also

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extended over it in certain cases. In a word, whenever exigencies have required, the potential jurisdiction of the Government has been called into actual exercise.

While existing laws allow to the tribes which occupy this country certain sorts of domestic or local government, there is nothing in the relations which these tribes sustain to the Federal Government which denies to the latter ultimate jurisdiction and sovereignty over them.

This proposition is abundantly established, not only by the practices of the Government in the various instances cited, but also by an unbroken line of *judicial constructions*. Such jurisdiction and sovereignty embrace within their scope the right of eminent domain. So long as the Federal Government possesses this jurisdiction and sovereignty it must have the right also. No department or departments could divest the Government of this right, save and except by an absolute cession of the territory to some foreign power.

The committee are equally convinced that there is a necessity for the exercise of the power.

The Indian Territory divides prosperous and growing States and Territories. On the west is New Mexico; on the north, Colorado and Kansas; on the east, Missouri and Arkansas, and on the south, Texas. The rapidly increasing productions of these respective sections of country demand corresponding facilities for mutual exchanges. It is needless to add that in this age railroads alone furnish such facilities.

There is now but one line of railroad running north and south across the Indian Territory. This line of road has, therefore, a monopoly of transportation and travel in the directions indicated. The commercial and other national interests, not only of adjacent States, but of the whole country, demand competing lines. Whenever private capital, without Government aid, proposes to meet this demand it should be allowed to do so.

The conclusions of the committee on the two main questions which the bill presents may be clearly stated in one sentence, namely, that Congress has the power to grant rights of way through the Indian Territory, and that there is an occasion for the exercise of this power whenever private capital in *good faith* proposes to build a new road.

That the condition on which an occasion for the exercise of the power arises exists in this case has been satisfactorily shown to the committee. The Kansas City, Fort Scott and Gulf Railroad Company is now operating nearly 1,000 miles of road, as follows: A continuous line from Kansas City, in the State of Missouri, to Memphis, in the State of Tennessee, with a branch from Fort Scott, in the State of Kansas, to Joplin, in the State of Missouri. This corporation is regarded as one of the most enterprising and popular in the West, and fully able and anxious to build this line of road from Baxter Springs, in Kansas, to Fort Smith, Ark., and intend, as we believe, to construct said line at once, if it can procure this right of way, for which it offers and expects to pay its full value.

The committee find that by accident in drafting the bill the said corporation is denominated the Kansas City, Fort Scott and Gulf Railroad Company, instead of the Kansas City, Fort Scott and Gulf Railway Company, and therefore recommend its amendment by striking out the word "railway" wherever it occurs in the bill, and inserting in lieu thereof the word "railroad," and also to insert after the word "Territory," in the 12th line of the first section, the following words, to wit: "Or such portions thereof as may afford the best route to the point of destination." The object of this amendment is to permit the railroad company at any points along the Territory line, when the route in the Territory might be ineligible, to run in the State and return again to the Territory and continue the route therein to the point of destination.

With these amendments the committee recommend the bill do pass.