

ARKANSAS, NEW MEXICO AND PACIFIC RAILROAD COMPANY.

MAY 25, 1886.—Committed to the Committee of the Whole House and ordered to be printed.

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

REPORT:

[To accompany bill H. R. 9107.]

The Committee on Pacific Railroads, to whom was referred the bill (H. R. 8758) to incorporate the Arkansas, New Mexico and Pacific Railroad Company, and for other purposes, have had the same under consideration, and report the accompanying bill as a substitute therefor, and unanimously recommend its passage.

The bill recommended by the committee incorporates, in a carefully guarded, form the Arkansas, New Mexico and Pacific Railroad Company, with authority to construct and operate a railroad and telegraph line from a point at or near Fort Smith, on the western boundary line of the State of Arkansas, through the Indian Territory and New Mexico to Albuquerque, in said last named Territory, and grants the right of way through the public lands and the right to bridge all rivers that said road may cross in accordance with the plans, specifications, and requirements of the Secretary of War, or such as he may approve.

The usual right to take and use all necessary material and to have the same, together with the right of way, condemned and appraised when agreements cannot be reached, are accorded with careful safeguards.

The bill gives the same remedy to owners of private property taken for use or right of way as is provided by the acts of 1862 and 1864, incorporating the Union, Central, and other Pacific railroad companies, and for property belonging to Indian tribes, the same as provided in other bills granting the right of way to railroads through the Indian Territory, and contains all the safeguards and precautions which have been insisted upon by the Committee on Indian Affairs of both House and Senate. On that point your committee have adopted the following report of the House Committee on Indian Affairs, and have incorporated the same provisions in the substitute recommended as were contained in the bills there referred to, only changing the phraseology to conform to said substitute:

This bill grants a right of way through the Indian Territory, from any point on the Red River or the southern boundary of the Territory, to the Fort Worth and Denver City Railway Company, a corporation created by and existing under the laws of the State of Texas.

In recent reports submitted from this committee recommending passage of similar bills, first, that granting right of way through said Territory to the Gulf, Colorado and Santa Fé Railway Company, and, again, that granting the right of way to the Southern Kansas Railway Company through the Indian Territory, the 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 citizen 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 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 Fort Worth and Denver City Railway Company has constructed and owns 116.3 miles of railway, but operates 121 miles of railway from the city of Fort Worth to Wichita Falls, in Wichita County, Texas, within 10 miles of the Indian Territory, and the main line of the road has been located, and the right of way secured to the northwestern boundary of the State, through the Pan-handle of Texas, on its line to Denver City, Colo. The company has no floating liability and a bonded debt of \$20,000 per mile on its constructed road.

The committee therefore report the accompanying bill as a substitute for bill H. R. 2407, and recommend its passage.

The persons named as incorporators are, with the exception of those named for the States of Arkansas and Texas, well-known capitalists of abundant means, who are now operating an extensive system of railroads and who are by this means seeking to effect direct communication with the Pacific coast, thus completing the shortest and most direct line of railway across the continent, and contributing to that wholesome competition which is at last the best regulator of commerce and transportation. Your committee have no doubt of the good faith of the company and the carefully guarded provisions of the bill will, at a glance, show that the charter will possess no value to the company unless the road be built.

O